

INTERNATIONAL CONFERENCE PROCEEDINGS

PROTECTION OF HUMAN RIGHTS AND FREEDOMS IN LIGHT OF INTERNATIONAL AND NATIONAL STANDARDS



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**“PROTECTION OF HUMAN RIGHTS AND FREEDOMS IN LIGHT OF
INTERNATIONAL AND NATIONAL STANDARDS”**

UNIVERSITY OF PRIŠTINA IN KOSOVSKA MITROVICA
FACULTY OF LAW



International Scientific Conference

**PROTECTION OF HUMAN RIGHTS AND FREEDOMS
IN LIGHT OF INTERNATIONAL AND NATIONAL
STANDARDS**

Thematic Conference Proceedings

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An International scientific conference "PROTECTION OF HUMAN RIGHTS AND FREEDOMS IN LIGHT OF INTERNATIONAL AND NATIONAL STANDARDS" was held on May 20, 2022, at the Faculty of Law of the University of Priština in Kosovska Mitrovica, on the occasion of marking its 61st anniversary. Raising scientific awareness and spreading knowledge about different ways of respecting and protecting human rights, through the exchange of ideas and experiences of authors/participants from a large number of countries, contributes to more effective exercise of human rights and freedoms, both internationally and nationally.

The particular importance of human rights is expressed in societies where social relations are burdened by recent upheavals and conflicts, and the latent risks of recurrence. The application of human rights is to a large extent subject to the influences of politics, which in the legislative sense does not affect the international legal nature of human rights, but the degree of their application and respect. Respect for the minimum of human rights in Serbia is the only guarantee that our society will make the necessary step forward in civilization. Cooperation between states in the field of human rights protection is of fundamental importance for the functioning and survival of the international community. International human rights treaties oblige member states to achieve results, ie to protect human rights, and they are free to choose the way to fulfill their international obligations. An appropriate normative framework has been created in the Republic of Serbia, which guarantees the exercise and respect of human rights to all persons who fall under the jurisdiction of domestic authorities. Therefore, the idea of the organizers of the scientific conference is to contribute to the scientific debate on the achievements in the realization of human rights, but also the difficulties, possibilities of overcoming them, as well as to contribute to the improvement of human rights, both in law and application. 77 international representatives from the country and abroad are participating in this international scientific conference, who have presented 55 scientific papers independently or as co-authors. Having in mind that a number of papers were written and announced in English, the papers were published in two thematic collections: in Serbian and English. In addition, a number of papers will be published at the request of the author in the annual Proceedings of the Faculty of Law University of Priština in Kosovska Mitrovica.

I would like to thank all the members of the Publishing Council, members of the Editorial Board from abroad and the country, as well as reviewers of submitted works, for comments and suggestions that were crucial for the final publication and quality of thematic collections.

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TYPES OF ADMINISTRATIVE ACT IN NRM

Abstract

Administrative activity means performing administrative and professional activities such as: resolving in administrative procedure, performing administrative supervision, drafting laws, adopting administrative acts, etc. Administrative acts differ in type, form and legal nature. The main feature of the administrative acts is unilateralism, which means that they can be adopted only by authorized adopters, these are the state administration bodies and other state bodies as well as legal entities that have public authorizations. The basic property of administrative acts is authoritarianism, which means that it can be adopted without the will of the natural or legal person (party), ie without its consent. Administrative acts are the general, specific, i.e individual administrative acts, material acts or actions and administrative agreements. With the general administrative acts, the rights and obligations of the citizens can be determined only if they are previously determined by law. Specific or individual administrative acts are acts that prescribe an individual and specific rule for a certain case and a certain person. Material acts or actions do not produce immediate legal consequences, but can serve as a basis for the realization of certain legal situations. While administrative contracts are a special type of administrative acts that occur between a public body and a legal or natural person (party), whose subject is performing a public service under the competence of a public body when it is prescribed by law, and is in public interest and with the rights of third parties are not restricted. The division of administrative acts is of particular importance because each of them has its own special characteristics and purposes. An administrative act is valid until it is repealed, annulled or amended by administrative remedies such as an appeal, objection or ex officio.

Keywords: administrative acts, administration, law, authoritarianism, public interest

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1. INTRODUCTION

Administrative acts are the most important and most common type of legal acts adopted or undertaken by the administration in performing administrative activities. The term administrative act (*acte Administratio*) originates from France and indicates the need for the administration to have its own special legal institute. The administrative act in France at the beginning of the 19th century was defined as a strong expression of power and as such was not subject to control by the courts. After a century, there was a change in the definition of the administrative act and it began to lose its classical meaning, ie the administrative bodies in adopting administrative acts no longer used force and power, but increasingly sought to ensure the right and protection of the parties, this was especially evident in the period of the transformation of the administration, ie. the public service administration and over time the administrative act becomes a basic instrument of the modern administration. The adoption of an administrative act implies the resolution of administrative matters, and the execution may be voluntary or forced.

2. ADMINISTRATIVE ACTS

Administrative or administrative activity means performing administrative and professional activities such as: resolving in administrative procedure, performing administrative supervision, drafting laws, adopting administrative acts, etc.

Administrative acts differ in type, form and legal nature. The main feature of the administrative acts is unilateralism, which means that they can be adopted only by authorized adopters, these are the state administration bodies and other state bodies as well as legal entities that have public authorizations.

Other important features of administrative acts are the form and content. The form represents the mode in which the content of the administrative act is expressed and is determined by legal regulations. The content serves to facilitate the achievement of the purpose for which the act was adopted.

The administrative act can be in oral and written form, if it is in oral form the administrative body should issue a written document to the party within eight days. In writing, the decisions are most often and they must contain an introduction, enacting clause, explanation, instructions, name of the body that issued it with number and date of the decision, signature of the official and seal of the body.¹

The basic property of administrative acts is authoritarianism, which means that it can be adopted without the will of the natural or legal person (party), ie without

¹B. Davitkovski, A. Pavlovska, Daneva, *Administrative law*, University "Ss. Cyril and Methodius" - Skopje, 2020, p. 49

its consent. Administrative acts are: general, specific, ie. individual administrative acts, material acts or actions and administrative agreements.²

3. TYPE OF ADMINISTRATIVE ACTS

➤ **General administrative acts**

Product for the performance of normative activity by the management, ie administration are general bylaws (regulations). The normative activity is in principle intended for the parliament, and the administrative bodies can adopt only bylaws on the basis of authorizations by the Assembly and the Government.³ With the general administrative acts, the rights and obligations of the citizens can be determined only if they are previously determined by law.

The administrative bodies can adopt the following general administrative acts: rulebooks, orders, administrative instructions and expert instructions.⁴

- The Rulebook is the most important general administrative act. The administrative bodies adopt rulebooks for the purpose of enforcing the laws, they elaborate certain provisions for the already adopted laws, regulations or general acts, ie the manner of their execution is determined, but not in the whole regulation, but only for its individual provisions. The rulebook, as a general administrative act, can regulate the internal organization of the administrative body, such as the rulebook for job systematization.⁵

- The order orders or prohibits certain actions in a certain situation that has a general mandatory meaning for all citizens in a certain territory. For example, an order for evacuation of the population from a certain area in case of a natural disaster, an order for mobilization in case of war, an order for vaccination of the population, etc.⁶

-Administrative instructions contain rules for actions of administrative bodies or rules for performing administrative work. The administrative or administrative instructions provide connection between the administrative bodies in the successful execution of the laws and other regulations or general acts, ie they are internal connecting acts between the administrative bodies.⁷

²B. Davitkovski, A. Pavlovska, Daneva, *Administrative law*, University "Ss. Cyril and Methodius" - Skopje, 2018, p. 271

³*Ibid.*

⁴*Ibid*, 272.

⁵*Ibid.*

⁶*Ibid.*

⁷*Ibid*, 273.

- The professional instructions contain rules for professional organization of the service and for professional work of the employees in the administration, as well as rules for the manner of performing certain administrative tasks. These guidelines provide liaison, cooperation and mutual assistance for successful execution of activities within a certain administrative department (branch of administration).⁸

➤ **Specific administrative acts**

Specific or individual administrative acts are acts that prescribe an individual and specific rule for a certain case and a certain person.

Therefore, a specific administrative act is such a legal act of the administrative body that resolves a specific case in an authoritative way.⁹

In the specific legal situation, a right is recognized or an obligation is imposed, so in the specific case - the party can use that right, ie he is obliged to perform the obligation because otherwise behind the performance of the obligation there is compel by the state government.¹⁰

Basic characteristics of specific administrative acts are: concreteness, authoritarianism, unilateralism, legal action, based on law and enforceability.¹¹

- Specificity - the administrative act refers to a specific legal situation, which is not permanent and recurring, but one-time and unique;¹²
 - Authority - this feature of the administrative act means that a certain behavior can be imposed on a person that the person would not choose at his own will, ie. the decision in the act has a forced character;
 - One-sidedness - indicates that the administrative acts are the result of the declaration of will of an entity;
 - Legal effect - the administrative act produces direct changes in relation to the legal order, ie. establishes, abolishes or changes certain legal conditions;
 - Based on the law - a legal basis is necessary for the adoption of an administrative act;
 - Enforcement - an administrative act that determines the obligations of the party, can be enforced.
- ❖ Types of specific administrative acts:
- ✓ Constitutive and declarative;
 - ✓ Positive and negative;

⁸*Ibid.*

⁹*Ibid*, 274.

¹⁰Z. Jovanovski, Colonel, *Administrative Law*, Textbook for students - cadets with practical examples - Tetovo, 2019, p. 44

¹¹B. Davitkovski, A. Pavlovska, Daneva, (2018), *Ibid*, 275.

¹²Z. Jovanovski, Colonel, *Ibid*.

- ✓ Free or legally bound;
- ✓ Individual and collective;
- ✓ Acts adopted in a special procedure;
- ✓ Ex officio or at the request of the party.

The first type of administrative acts are constitutive (creative, creation) which establishes, changes or abolishes a legal relationship, and declarative means determining the already existing legal relationship and situation. The difference between them is that the constitutive act creates a legal relationship that did not exist before, ie already causes changes in the existing act by changing or repealing it, while the declarative act determines that the legal conditions are met on the basis of which the legal situation can to create, modify or remove.

Constitutive acts have legal effect from the moment they are adopted or announced, they have no retroactive effect (backwards). Constitutive acts are: orders, recognition of abilities and properties and recognition of rights.¹³ With orders, the governing bodies issue specific orders or prohibitions to individuals or a group of specific persons to do or not to do something, for example: a call for a military exercise, a decision to pay taxes, etc.¹⁴ Recognition of abilities and properties - these acts recognize the legal ability of legal entities, for example, registration of a chamber of doctors in the central register. While recognizing certain properties are for example: natural beauties of a lake, mountain, etc.¹⁵ Recognition of rights - these acts recognize various personal rights of individuals or legal entities, for example, the right to a pension. The declarative administrative acts are valid from the moment when it is declared that the legal conditions for change of the legal situation and the legal relationship have occurred. They have a retroactive effect (backwards) so the decision can be made later and will be valid from the moment it is declared that the legal conditions for change are met, for example: retroactive increase of salaries or pensions.¹⁶

-Positive and negative administrative acts - when the issuer of the act may react differently according to the request of the party, ie. to accept and give the right to the party then they are positive administrative acts, on the contrary the issuer of the act can reject the request or resolve the request negatively and then that act is negative.

-Free or legally bound - are the administrative acts that depend on the degree of freedom of the administrative body. In the case when that freedom is strictly prescribed, under what conditions, when, with what content will the administrative act be adopted, it is an act adopted ex officio, ie obliged by law. Such acts are social

¹³B. Davitkovski, A. Pavlovska, Daneva, (2018), *Ibid*, 277.

¹⁴*Ibid*.

¹⁵ *Ibid*, 278.

¹⁶*Ibid*.

assistance, scholarships, etc. While in free acts, the governing body provides a freedom of decision, but with restrictions, ie it is taken into account that it is in accordance with the public interest, with the legal authority and with the goal that should be achieved with that act, example: permission for possession and carrying of weapons.

-Individual and collective - in the case of individual acts, the adopter of the act is one authorized bearer, and in the case of collective acts, the act is adopted with the participation of two or more authorized bearers. When adopting collective acts, there are different forms of cooperation between the bodies that adopt those acts, such as: a decision made by two or more bodies, a decision made by one body in accordance with another body, a decision made by one body with the approval of another and a decision taken by one with the requested opinion of another body.¹⁷

*A decision presented by two or more bodies, sometimes for one administrative case it is necessary to decide two or more administrative cases, ie governing bodies. They will agree with each other and only one of them will issue the decision, for example, a decision for exchange of apartments between people from two cities.¹⁸

*Decision adopted by one administrative body in accordance with another, where the consent issued by the body may be preliminary or additional. After obtaining the consent, the other body can make the decision.¹⁹

*A decision taken by an administrative body and requesting approval from another means that both administrative bodies are in the same position in the decision-making, but may also signify control by a higher administrative body over the work of the lower administrative body in resolving the administrative subject.²⁰

*A decision rendered by one with an opinion requested from another administrative body, means that one body must request an opinion from the other administrative body before resolving the case, otherwise it will not be able to make the decision.²¹

- Acts adopted in a special procedure - indicates the decisions and conclusions that are the most important type of administrative acts. It should be emphasized that there is a difference between them, ie. the decision decides on the subject of the procedure while the conclusion decides on the issues related to the procedure and the issues that arise as ancillary in the execution of the procedure that are not decided by a decision.

- Ex officio or at the request of a party - acts adopted ex officio may be based on law or legal regulation and indicate the obligations of the parties, for example, to pay

¹⁷ *Ibid*, 281.

¹⁸ *Ibid*, 282.

¹⁹ *Ibid*.

²⁰ *Ibid*.

²¹ *Ibid*.

taxes, fines, etc., or in the public interest, for example, to cede real estate due to the need for a public authority. While at the request of a party, these acts are adopted because the party needs, for example, permission or approval for a job.

➤ **Material acts**

The last way of direct execution of the laws consists in undertaking material actions, such as keeping registers, recognition of properties, etc. They do not produce immediate legal consequences, but can serve as a basis for the realization of certain legal situations. There are three groups of material act: material acts of confirmation, material acts of notification and material acts of ascertainment.²²

❖ Material acts of certification are divided into two groups as: material acts of records and certificates.

- The material acts of records are intended to be used in providing data such as: birth registers, marriage registers, voter lists, etc. While the certificates issued by the bodies that keep official records have the validity of public documents. In order to be a credible evidence, the certificate must meet two conditions: the certificate must be issued in writing by the competent authority and must refer to the occurrence, capacity or fact for which official records are kept. Example: certificate of citizenship, certificate of passed exams, diploma.

❖ Material acts of notification are: announcements, reports, statements, warnings, etc. by the administrative bodies in the interest of the parties.

❖ Material acts of ascertainment are: the minutes, the statements, ie the submitted applications or complaints by the citizens.

4. ADMINISTRATIVE AGREEMENTS

The governing bodies conclude numerous agreements with the parties, some of them have commercial or obligation character and in these agreements the public body is in an equal position with the party and are called civil agreements, and some are concluded due to public interest or public service, such agreements are under jurisdiction of the governing body and in that case both parties are not in the same position, because the governing body has prerogatives regarding the party and these agreements are called administrative agreements.²³

These reasons are the basic differences between civil contracts and administrative contracts. Administrative agreements are a special type of

²²Z. Jovanovski, Colonel, *Ibid*, 47.

²³*Ibid*, 42.

administrative acts that occur between a public body and a legal or natural person (party), whose subject is performing a public service under the competence of a public body when it is prescribed by law, and is in the public interest and with it the rights of third parties are not restricted.²⁴

5. IMPORTANCE OF ADMINISTRATIVE ACTS

Administrative acts in the Republic of Macedonia are regulated by the Law on General Administrative Procedure (LGAP), according to this law administrative acts are those acts or actions of public bodies, which are adopted on the basis of a law, which decides on the rights, obligations and legal interests of the parties in an administrative procedure. The administrative act may have legal consequences from the moment when it is delivered to the party to whom it refers and influences and may produce legal consequences from the moment stated in the enacting clause of the written administrative act.

An administrative act is valid until it is repealed, annulled or amended by administrative remedies such as an appeal, objection or ex officio. The validity may terminate after the expiration of the specified period of time or after the fulfillment of the purpose of the act.²⁵

6. CORRECTION OF ERRORS IN ADMINISTRATIVE ACTS

The public body that issued the administrative act may at any time correct the errors in the names, numbers, spelling and other inaccuracies in the administrative act or in its certified transcripts. A special administrative act is issued for correction. The note for the correction is written in the original of the administrative act, as well as in all certified transcripts that have been submitted to the parties.²⁶

7. CONCLUSION

The division of administrative acts is of particular importance because each of them has its own special characteristics and purposes. With the general administrative acts, the rights and obligations of the citizens can be determined only if they are previously determined by law, they are adopted and valid for all, with

²⁴*Ibid*, 125.

²⁵Draft-law on General Administrative Procedure, Ministry of Information Society and Administration - Skopje, July, 2014. Retrieved on January 4, 2022.

²⁶[https://repositorij.velegs-nikolatesla.hr ›PDF› view Forma i sadržaj upravnog akta - Veleučilište "Nikola Tesla" u ...](https://repositorij.velegs-nikolatesla.hr ›PDF› view Forma i sadržaj upravnog akta - Veleučilište) PDF Downloaded on 08.01.2022.

specific or individual administrative acts, a single and specific rule is prescribed for a certain case and a certain person. . Material acts or actions do not produce immediate legal consequences, but can serve as a basis for the realization of certain legal situations. While administrative contracts are a special type of administrative acts that occur between a public body and a legal or natural person (party) whose subject is performing a public service under the competence of a public body when it is prescribed by law, and is in public interest and with the rights of third parties are not restricted. Administrative acts are of great importance, both for the administrative bodies and for the legal or natural persons. In the scientific paper mentioned that the basic characteristics of administrative acts are one-sidedness and authoritarianism, but these properties should not mean that the administrative body should use its position, but on the contrary should apply those administrative actions that are favorable to the party, and thus will achieve the goal set by law. The administrative bodies should perform their activities in a way that will be appropriate to the position of the parties, which means that the activity in resolving the administrative matters should be harmonized with their constitutional-legal position, ie it should emphasize that the administrative bodies have the role of service to the parties, ie will enable better communication, will inform them in a timely manner, etc. , and thus will ensure the effective realization of their rights and interests, but at the same time will provide assistance and protection. The administrative bodies, with the administrative acts, regulate the relations with the public, the economic, the cultural, the socio-political life, the public peace and the security of the state. While administrative remedies are not only an instrument needed by the parties with which they defend their rights in relation to an administrative body, they are also an instrument for self-control of the administrative bodies because they give them the opportunity to identify system errors and thus improve administrative work.

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ВРСТЕ УПРАВНИХ АКТА У РСМ

Резиме

Управна или управна делатност подразумева обављање управних и стручних послова као што су: решавање у управном поступку, вршење управног надзора, израда закона, доношење управних аката и др. Управни акти се разликују по врсти, облику и правној природи. Основна карактеристика управних аката је једностраност, што значи да их могу доносити само овлашћени доносиоци, а то су органи државне управе и други државни органи, као и правна лица која имају јавна овлашћења. Основно својство управних аката је ауторитарност, што значи да се може донети без воље физичког или правног лица (странке), односно без његове сагласности. Управни акти се схватају као општи, специфични, тј. појединачни управни акти, материјални акти или радње и управни уговори.

Општим управним актима права и обавезе грађана могу се утврдити само ако су претходно утврђене законом. Посебни или појединачни управни акти су акти који прописују појединачно и посебно правило за одређени случај и одређено лице. Материјална дела или радње не производе непосредне правне последице, али могу послужити као основ за реализацију одређених правних ситуација. Док су управни уговори посебна врста управних аката који настају између јавног органа и правног или физичког лица (странке), чији субјект обавља јавну службу из надлежности јавног органа када је то законом прописано, а у јавног интереса и са правима трећих лица нису ограничени. Подела управних аката је од посебног значаја јер сваки од њих има своје посебне карактеристике и намену. Управни акт важи док се не укине, поништи или измени административним лековима као што су жалба, приговор или по службеној дужности.

Кључне речи: управни акти, управа, закон, власт, јавни интерес.

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