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THE ISSUES OF OBJECTIVE PREREQUISITES IN CASES OF CHALLENGING THE LEGALITY OF NORMATIVE LEGAL ACTS IN ADMINISTRATIVE PROCEDURE

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The most effective way to protect from individual and normative illegal legal acts of the state and local self-government bodies and their officials is the right to access the court, which in the Republic of Armenia, as in other states governed by the rule of law, has the nature of a fundamental right (with the 2015 amendments to the Constitution of the Republic of Armenia (hereinafter - the Constitution)[1] Article 61, part 1).

According to the decision SDO-665 of the Constitutional Court of the Republic of Armenia, the situation when the law and the legal practice exclude the judicial control over the legality of individual legal acts based on the applications of individuals and legal entities is inappropriate for the states governed by the rule of law[2]. The specialized body of administrative justice is designed to ensure the legality of the activities of administrative bodies through the exercise of the right to fair trial of natural and legal persons against administrative and normative legal acts, actions or inactions of state and local self-government bodies and their officials, as well as through the examination of claims of administrative bodies and officials against natural and legal persons[3].

In this context, it is necessary to emphasize the fact that until the Second World War, the view prevailed that only certain acts of the executive power can be appealed in the judicial order and only after reviewing them in the administrative order. Subsequently, theorists radically changed their perception of the limits of the application of administrative justice. The approach that all the acts of the bodies of the executive power should be subject to appeal was considered the most acceptable and justified[4].

Thus, in paragraph 1 of Recommendation No. 2004 (20) of the Committee of Ministers of the Council of Europe of December 15, 2004 "On Judicial Review of Administrative Acts", the following provision is established: " By “administrative acts” are meant: a. legal acts – both individual and normative – and physical acts of the administration taken in the exercise of public authority which may affect the rights or interests of natural or legal persons; (...)[5]". In this context, it should be noted that G. B.

[1] See ՀՀՊՏ 2015.12.21/Հատուկ թողարկում, Հոդ. 1118:

[2] See the decision of the Constitutional Court No. SDO-665, 16.11.2006.

[3] See the decision of the Constitutional Court No. SDO-780, 25.11.2008.

[4] See **Ule C.** Verwaltungstrozebrecht, Munchen, 9 Aufl, 1987, page 32:

[5] See Recommendation Rec(2004)20 of the Committee of Ministers to Member States on Judicial Review of Administrative Acts, (Adopted by the Committee of Ministers on 15 December 2004 at the 909th Meeting of the Ministers' Deputies) https://rm.coe.int/09000016805db3f4

Danielyan, referring to the domestic legislative definition of the term "administrative act", noticed that with some exceptions, even that definition could fully include not only individual but also normative legal acts. The fact that not only the individual but also the normative legal act is endowed with these features is not controversial, moreover, it is the normative legal acts that are often mostly characterized as those with external influence, for the purpose to regulate relations in the field of public law, to define, modify, eliminate rights and obligations for individuals or legal acts aimed at recognition. Narrowing the scope of administrative acts and limiting them exclusively to individual acts do not derive from international legal standards either[1].

Many theorists define the judicial challenge of the legality of normative legal acts as a judicial control over the legality/lawfulness of a normative legal act (its disputed provision). Based on the above, it is customary to consider the normative legal act (its disputed provision) as the object of the cases on challenging the legality of the normative legal acts[2].

It should be noted that although the proceedings on challenging the legality of normative legal acts are one of the most significant legal institutions in administrative procedure and have high public importance, there is almost no comprehensive research work devoted to this special procedure in domestic jurisprudence, which indicates the lack of due studies, legislative gaps and the need for solutions aimed at eliminating the conflicting legal practices that have developed.

Nevertheless, we consider it necessary to point out that it is crucial to distinguish between the control over normative legal acts carried out by the administrative court from the control carried out both by the Constitutional Court of the Republic of Armenia and also from the control carried out within the framework of another proceeding. So the control over secondary regulatory legal acts can be carried out both in a principal way, that is, in a special proceeding *(principal control),* and in an incident way, mediated or within the framework of another proceeding *(incident control).* Thus, the direct object of the special proceedings in question is the normative legal act, and the proceedings are exclusively aimed at verifying the legality of the disputed normative legal act or its contested provision. On the contrary, the mediated "normative control" carried out in an incident procedure takes place in such proceedings, the subject of examination of which is not any normative legal act, but an administrative act, which in turn is based on that normative legal act, and the validity of which depends on the legality of the individual act.[3]

While revealing the specifics of the proceedings on challenging the legality of normative legal acts, first of all, it is necessary to reveal the content of the legal concept of "normative legal act"- the object of the given proceedings. The answer to the question, of whether the contested document is a normative legal act or not, is of primary importance both for the person requesting judicial protection by choosing such form of protection of his subjective rights, and for the court in deciding whether to accept the application for proceedings. The approach established in legal theory, which is also fixed in a number of legal acts, allows us to state that the general

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[1] See G. B. Danielyan, The criteria determining the need for certain types of administrative proceedings, A collection of materials of the scientific conference of YSU Faculty of Law, Yerevan State University Press, Yerevan, 2017, page 81:

[2] See И. М. Евлоев, “О предмете и объекте судебного нормоконтроля”, 2017 N 1, page 25:

[3] See the justification of the draft Law "On Amendments and Additions to the Code of Administrative Procedure of the Republic of Armenia" and related laws, https://www.e-draft.am/projects/1555/justification , page 2.

concept of a normative legal act is the following: an act of general action, which is directed to an indefinite number of persons, is intended for multiple applications and contains mandatory rules of conduct, which are subject to execution[1].

From the point of view of the above-discussed question, it is appropriate to identify the domestic definition of the term "normative legal act". According to part 1 of Article 2 of the RA Law "On Normative Legal Acts"[2], a normative legal act is a written legal act adopted by the people of the Republic of Armenia, as well as by bodies or officials provided for by the Constitution, which contains mandatory rules of conduct for an indefinite number of persons. According to point 3 of part 1 of the same article, a secondary regulatory legal act is a normative legal act adopted by the bodies provided for by the Constitution, based on the Constitution and laws and in order to ensure their implementation, if authorized by law.

In order to provide a comprehensive study of the issues related to the object of the proceedings on challenging the legality of normative legal acts, it is appropriate to study its features, in other words, the requirements for the object of the special proceedings.

In this context, the following features defining normative legal acts can be distinguished:

- adoption and publication in the prescribed manner,
- adoption by the authorized bodies of state and local self-government and their officials,
- the existence of legal norms (rules of conduct),
- mandatory legal norms for persons of uncertain scope,
- the multiplicity of applications,
- are aimed at the regulation of public relations or the modification or termination of existing relations[3].

Each of the qualitative features listed above is necessary, and their combination is sufficient to qualify a written document as a normative legal act; moreover, in the absence of any of these features, the document cannot be considered a normative legal act.

The legislator has clearly emphasized the fact that the principle of legality is one of the cornerstones of the state governed by the rule of law. In this context, the proceedings on challenging the legality of normative legal acts are of particular importance, since in this way it is possible to ensure the requirements of Article 5 (The Hierarchy of Legal Norms) of the Constitution with the amendments of 2015, which stipulates that the Constitution shall have supreme legal force. Laws must comply with constitutional laws, whereas secondary regulatory legal acts must comply with constitutional laws and laws.

Therefore, in a state governed by the rule of law, administrative justice, in particular, this special procedure provided for by the Code of Administrative

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[1] See В. В. Ярков, Административное судопроизводство, Учебник для студентов высших учебных заведений, Уральский государственный юридический университет, Екатеринбург - Москва, 2016, page 96:

[2] See Adopted on 21 March, 2018. Entered into force on 7 April, 2018. ՀՀՊՏ 2018.03.28/23(1381), Հոդ.373:

[3] See Пленум Верховного суда Российской Федерации, Постановление о практике рассмотрения судами дел об оспаривании нормативных правовых актов и актов, содержащих разъяснения законодательства и обладающих нормативными свойствами, 25.12.2018, N 50:

Procedure, has specific goals and objectives, which also determine the procedure for the administration of justice. In other words, the proceedings of cases challenging the legality of normative legal acts can be defined as the proceedings of control over the legality of legal norms, which, as already mentioned, has its own specific object of control.

In such conditions, it should be noted that only such disputes related to the legality of legal acts can be examined within the framework of the special proceedings in question, with which the legal act submitted for appeal has a normative character, otherwise, the legal prerequisite for initiating proceedings to challenge the legality of normative legal acts, the relevant normative legal act, will be missing.

Thus, Part 1 of Article 191 of the Administrative Procedure Code of the Republic of Armenia[1], enshrines that cases regarding the contestion of legality of normative legal acts of state and local self-government bodies and their officials pending before the administrative court are the following:

Cases on challenging the conformity of the normative legal acts of the President of the Republic of Armenia, the Government of the Republic of Armenia, the Prime Minister of the Republic of Armenia, agency acts “գերատեսչական նորմատիվ իրավական ակտեր”, as well as the normative legal acts of the community council and the head of the community compared with the normative legal acts of higher legal force (except the Constitution).

The above-mentioned rule predetermines the objective limits of contesting normative legal acts in the procedure of contesting the legality of normative legal acts. By analyzing the current legal norm, it can be stated that the legislator has provided an opportunity to challenge the compliance of normative legal acts, "agency acts" of a limited number of state and local self-governing bodies and their officials with normative legal acts having a higher legal force than them (except the Constitution).

First of all, we should highlight the use of the legislative term "agency acts" as this term is no longer used in the RA Law "On Normative Legal Acts" which was adopted on 21.03.2018 and entered into force on 04.07.2018. The RA Law "On Legal Acts"[2], which entered into force on 31.05.2002 and expired on 07.04.2018, also included “agency acts” among the legal acts (Article 4, part 1, point 2), while there are no “agency acts” in the current system of legal acts. This hinders the challenge of normative legal acts previously considered “agency acts” when the legislator's goal was to provide an opportunity to challenge these acts. In fact, taking an inconsistent approach during the law-making activity, in this case by not making appropriate changes to the RA Administrative Procedure Code along with the adoption of the RA Law "On Normative Legal Acts", may not provide the opportunity of full protection of the rights of individuals, due to the inconsistency of terms found in different laws.

Thus, the wording "agency acts" is no longer relevant, it should be amended along with the provisions of the RA Law "On Normative Legal Acts".

Referring to the secondary regulatory legal acts that are subject to challenge in the administrative procedure, it is worth emphasizing that the limitation of the scope of entities adopting the act does not derive primarily from the provisions of the Constitution.

Thus, according to part 2 of Article 6, of the Constitution. “Bodies provided for by the Constitution may based on the Constitution and laws and to ensure the

[1] See ՀՀՊՏ 2013.12.28/73(1013).1 Հոդ.1186.1:

[2] See ՀՀՊՏ 2002.05.21/15(190) Հոդ.344:

implementation thereof, be authorized by law to adopt secondary regulatory legal acts. Authorizing norms must comply with the principle of legal certainty".

As a result of the 2015 amendments, the Constitution clarified the hierarchy of legal acts and introduced the concept of secondary regulatory legal acts. Part 2 of Article 6 of the Constitution reserves the right to adopt secondary regulatory legal acts only to the bodies provided for by the Constitution, which are the Government (Article 153, Part 3), Members of the Government (Article 152, Part 4), Autonomous bodies (Article 122, part 3), The Council of Elders (Article 182, part 3), the Central Electoral Commission (Article 194, part 2), the Television and Radio Commission (Article 196, part 5), the Central Bank (Article 200, part 5) and the Supreme Judicial Council (Article 175, Part 3). Moreover, the above-mentioned bodies can adopt secondary regulatory legal acts only in cases provided by law, and the authorizing norm must comply with the principle of certainty, that is, it must be clear enough to understand the content and limits of the legislator's will[1].

The scope of the above-mentioned bodies with the authority to adopt secondary regulatory legal acts is wider than that provided for in Article 191 of the RA Code of Administrative Procedure, which theoretically may lead to incomplete protection of the subjective rights of a person. Nevertheless, the mentioned legal gap is currently being ignored in judicial practice. The courts are examining the legality of the secondary regulatory legal acts adopted by the bodies empowered by the RA Constitution to adopt secondary regulatory legal acts, but not provided for by Article 191, Part 1 of the RA Code of Administrative Procedure. For instance, in administrative case No. VD/0879/05/21, it was being examined the compliance of the decision of the Supreme Judicial Council dated 19.10.2020 No. BDKH-67-Ա-14 to the "Judicial Code of the Republic of Armenia", Article 26, which has a higher legal force.

In such conditions, we can state that the current judicial practice was formed in line with the development of public relations, aimed not only at the protection of subjective rights and legal interests of a person but also at ensuring the rule of law.

Nevertheless, the need to provide guarantees for the effective protection of public subjective rights of individuals and to improve judicial procedures requires legislative changes that will be comprehensive in nature and include all secondary regulatory legal acts.

Both theoretically and practically, the issue of how the court determines the nature of the disputed act is particularly vital, and the said issue is subject to consideration in the context of both the RA Law "On Normative Legal Acts" and the previously existing RA Law "On Legal Acts". In addition, it is necessary to note that the presented question is of practical interest since the systematic analysis of the above-mentioned laws indicates a differentiated approach.

Consequently, part 2 of Article 19 of the RA Law "On Normative Legal Acts" stipulates that immediately after the serial number of the normative legal act, the body adopting the legal act shall note its normative nature with the letter "N" (normative). In other legal acts, the nature of the act is indicated by the letter "A" in the case of an individual legal act, and by the letter "L" in the case of an internal (local) legal act.

A similar regulation was also provided for by part 3 of Article 38 of the RA Law "On Legal Acts", which was adopted on 31.05.2002 and expired on 07.04.2018. Nevertheless, we should note that the structure of the determination of the nature of the legal act by the law-enforcement body is different in the previous and current laws.

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[1] See **V. Poghosyan**, **N. Sargsyan**, The Constitution of the Republic of Armenia, with the amendments of 2015, Yerevan, Tigran Mets, 2016, pages 29-30:

As we notice, the serial number of normative legal acts, which is also the number for registering that act, as well as specifying the nature, has significant practical significance. Specifying the serial number is necessary to record the legal acts, to use them, in particular, to make references, and ultimately to personalize them for coordination. As for specifying the nature, it should be noted that it has a significant practical significance from the point of view that not only the normative nature of the given legal act or its absence is revealed, but also several vital legal consequences are predetermined[1].

Thus, it follows from the systematic analysis of the provisions of the RA Law "On Legal Acts" that the nature of legal acts directly depends on the qualification of the body that adopts them, in other words, from noting the letter corresponding to the legal act, hence the provisions that do not correspond to the nature defined by that act simply have no legal force (Part 6 of Article 2 and part 3 of Article 38 of the RA Law "On Legal Acts"). In fact, in the case of previous legal regulations, the court when determining the object of control within the proceedings of contesting the legality of normative legal acts, in other words, when determining the nature of the disputed legal act, was limited only to the qualification of the nature of the legal act by the body that adopted the legal act. In the context of the above, the interpretations given in legal practice have a special role. In particular, by the decision of 07.07.2021 made in the administrative case No. VD/2225/05/20, the Administrative Court of Appeal of the Republic of Armenia expressed the position that the nature of the legal act according to the RA Law "On Legal Acts" directly depends on the qualification of the adopting body, which is expressed accordingly with reference to the letter, and the provisions that do not correspond to the defined nature cannot have legal force.

Meanwhile, a comprehensive study of the regulations of the RA Law "On Normative Legal Acts" allows us to state that the nature of the legal act is mainly determined by its content. Therefore, in the conditions of the current regulations, when determining the object of the legality dispute proceedings of normative legal acts the court must, first of all, make the content of that act the subject of discussion and, by analyzing its provisions, come to a certain conclusion about the nature of the legal act.

Thus, based on the presented research, the following conclusions can be made.

a) The wording "Agency acts" used in part 1 of Article 191 of the RA Code of Administrative Procedure is no longer up-to-date, and it should be aligned with the provisions of the RA Law "On Normative Legal Acts".

b) Not only the normative legal acts adopted by the entities listed in part 1 of Article 191 of the RA Administrative Procedure Code but also all secondary regulatory legal acts that meet the standards of the RA Law "On Normative Legal Acts" should be the object of judicial control in the administrative procedure.

c) According to the current legal regulations, the administrative court is not constrained by the qualification of the body that adopted the secondary regulatory legal act and can make the normative nature of the act an object of evaluation.

[1] See **G. B. Danielyan,** Law-creating activity and legal technique, Study manual, Yerevan, 2021, page 132:

ՆՈՐՄԱՏԻՎ ԻՐԱՎԱԿԱՆ ԱԿՏԵՐԻ ԻՐԱՎԱՉԱՓՈՒԹՅՈՒՆԸ ՎԻՃԱՐԿԵԼՈՒ ՎԵՐԱԲԵՐՅԱԼ ԳՈՐԾԵՐԻ ՎԱՐՈՒՅԹԻ ՕԲՅԵԿՏԱՅԻՆ ՆԱԽԱԴՐՅԱԼՆԵՐԻ ՀԻՄՆԱԽՆԴԻՐՆԵՐԸ ՎԱՐՉԱԿԱՆ ԴԱՏԱՎԱՐՈՒԹՅՈՒՆՈՒՄ

Օքսանա Դիլբանդյան
ԵՊՀ քաղաքացիական դատավարության ամբիոնի ասպիրանտ,
ՀՀ վճռաբեկ դատարանի աշխատակազմի իրավական
փորձաքննությունների ծառայության գլխավոր մասնագետ

Հոդվածը նվիրված է նորմատիվ իրավական ակտերի իրավաչափությունը վիճարկելու վերաբերյալ գործերի վարույթի օբյեկտին: Հաշվի առնելով այն հանգամանքը, որ նորմատիվ իրավական ակտերի իրավաչափությունը վիճարկելու վերաբերյալ գործերի վարույթը ունի հանրային բարձր նշանակություն, նշված հետազոտության շրջանակներում բացահայտվել են նորմատիվ իրավական ակտերի իրավաչափության վիճարկման վարույթի օբյեկտին բնորոշ հատկանիշները: Բացի այդ, սույն հոդվածի շրջանակներում քննարկվել են մի շարք խնդրահարույց հարցեր, ինչպես օրինակ՝ վիճարկվող իրավական ակտի բնույթի հատկորոշումը:

ПРОБЛЕМЫ ОБЪЕКТИВНЫХ ПРЕДПОСЫЛОК РАССМОТРЕНИЯ ДЕЛ ОБ ОСПАРИВАНИИ ЗАКОННОСТИ НОРМАТИВНО-ПРАВОВЫХ АКТОВ В АДМИНИСТРАТИВНОМ СУДОПРОИЗВОДСТВЕ

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Статья посвящена объекту производства по оспариванию законности нормативно-правовых актов. Учитывая, что производство по оспариванию законности нормативно-правовых актов имеет высокую общественную значимость, данным исследованием выявлены признаки, характеризующие объект производства по оспариванию законности нормативно-правовых актов, и пределы объекта. Кроме того, в статье рассматривается ряд проблемных вопросов, связанных с объектом судебного разбирательства при оспаривании действительности нормативно-правовых актов, таких как определение характера оспариваемого акта.

Բանալի բառեր – *նորմատիվ իրավական ակտերի իրավաչափության վիճարկում, նորմատիվ իրավական ակտ, ենթաօրենսդրական նորմատիվ իրավական ակտեր, նորմատիվ իրավական ակտերի իրավաչափության վիճարկման վարույթի օբյեկտ, վարչական դատավարություն*
Ключевые слова: *оспаривание законности нормативно-правовых актов, нормативный правовой акт, подзаконные акты, объект споров о законности нормативных правовых актов, административное судопроизводство.*
Key words: *challenging the lawfulness of normative legal acts, normative legal act, by-laws, object of disputes over the legality of normative legal acts, administrative procedure.*