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ISSUES OF CLASSIFICATION OF THE TYPES OF ACTIONS IN THE ADMINISTRATIVE PROCEEDINGS OF THE REPUBLIC OF ARMENIA

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Abstract. The correct choice of the type of action in the administrative proceedings of the RA is crucial in the context of the outcome of the case, the distribution of the burden of proof, and the effectiveness of judicial protection.

The purpose of this research is to reveal the legal nature of administrative actions and to identify scientific and practical issues by analyzing the peculiarities of administrative actions, studying the claims underlying them, and, accordingly, the main criteria for differentiating these types of actions in the context of existing problems.

As a result of the research, conditioned by the significance of the institute of types of actions and their impact on the realization of the right to effective judicial protection, it is proposed: to merge actions for performance and actions for obligation; to interpret the procedural restrictions on filing a declaratory action (action for recognition) through the substantive impossibility of filing another type of action and the ineffectiveness of other types of actions in the context of achieving the goal pursued by the plaintiff; to consider the submission of a claim for compensation for damages caused by improper administration to the court as a derivative claim to the main claim of recognizing the administration as unlawful; as well as to confirm the fact of recognizing an administrative act as void also by a judicial act rendered as a result of the examination of an action for annulment (action for challenging), regardless of the outcome of the examination of the claim.

In the context of the above, this research contributes to the clarification of the criteria for differentiating types of actions, as well as to the regulation of existing legislative gaps.

Keywords - *action; administrative action; type of action; action for annulment; action for obligation; action for performance; action for recognition.*

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Introduction

The Administrative Procedure Code of the Republic of Armenia[1] establishes four types of action, the study of the legal nature of which is of paramount importance for a comprehensive analysis of the institution of action in administrative proceedings, particularly in the context of identifying the grounds for differentiating between these types of action.

The theoretical and practical significance of studying the institution of types of action is largely predetermined by the fact that this institution currently dictates such vital issues as the acceptance of the action for proceedings, the allocation of the burden of proof among the parties, and the submission of potential claims to the administrative court, up to the final outcome of the case. This is because a claim can ultimately be satisfied only if the appropriate type of action has been selected.

Accordingly, the importance of the proper selection of the type of action cannot be overlooked. Such selection is conditioned by the criteria that distinguish the types of action from one another. The identification of these criteria, in turn, is possible only through the examination of the specific features of each type of action.

Each of the aforementioned types of action is revealed not only through the scope of possible claims established by legislation for submitting these types of action, but also through the case law developed in practice by the Court of Cassation. The study of the latter demonstrates that the criteria for their differentiation generate a number of practical issues.

Taking into account the aforementioned, this scientific research entitled "Issues of Classification of the Types of Actions in the Administrative Proceedings of the Republic of Armenia" aims to reveal the legal characteristics of each type of action in administrative proceedings, to define the criteria for their differentiation, and to examine the legislative problems arising in practice, through a comparative legal analysis of international best practices, as well as practical and doctrinal sources.

Research

Legal Characteristics and Features of the Types of Action to Challenge and to Oblige:

Article 66 of the Administrative Procedure Code (APC) stipulates:

"1. Through an action to challenge, the plaintiff may claim to completely or partially annul an interfering administrative act (including the interfering

[1] Administrative procedure act of the RA, ՀՕ-139-Ն, ՀՀՊՏ 2013.12.28/73(1013).1 Art.1186.1, passed՝ 05.12.2013

provisions of a combined administrative act). 2. If, prior to submitting the administrative action, the interfering administrative act has been appealed through an administrative procedure, the action shall also include a claim to challenge the interfering administrative act adopted regarding the administrative appeal."

In the case of an action to challenge, the action may be filled to the court within a two-month period from the moment the administrative act enters into force. According to Part 2 of the same Article, in cases where the act adopted by the administrative body, or the failure to adopt an act, or the performance or non-performance of an action has been appealed through an administrative procedure, the action may be submitted within a two-month period after the expiration of the time limit set for the examination of the appeal.

In fact, an action to challenge may present a claim to completely or partially annul an interfering administrative act or the interfering provisions of a combined administrative act. From this formulation, it follows that the admissibility of an action to challenge requires the presence of the following circumstances:

1. there must be an administrative act that is interfering for the plaintiff; furthermore, the provisions of a combined administrative act that are interfering for the plaintiff may also be challenged within the scope of the specified type of action;

2. the plaintiff's claim must be directed at the complete or partial annulment of that administrative act.

Moreover, the impact of the administrative act on the challenging party is essential; accordingly, it is determined whether the administrative act is favorable or interfering. Meanwhile, the subject of an action to oblige can only be a claim for the adoption of a favorable administrative act.

Thus, Article 67 of the APC defines the type of action to oblige, which entails:

"1. Through an action to oblige, the plaintiff may claim the adoption of the favorable administrative act, the adoption of which was refused by the administrative body.

2. The action to oblige includes a claim to challenge the interfering administrative act specified in Part 1 of this Article by the administrative body."

It stems from the aforementioned norm that a mandatory condition for the admissibility of an action to oblige is that the plaintiff, prior to submitting the action, must have applied to the administrative body with a claim to adopt a favorable administrative act and must have been refused. Furthermore, the action to oblige encompasses the claim to challenge the interfering administrative act by which the administrative body refused the plaintiff's claim. In this case, we are dealing with a non-independent action to challenge.

Addressing the criteria for the type of action to oblige, the Court of Cassation has highlighted the following[2]:

1. Applying to the court with an action to oblige requires the existence of a dispute, which may arise in the event that a person has applied to an administrative body with a corresponding claim.

2. A precondition for submitting an action to oblige is the fact that the administrative body has refused to adopt a favorable administrative act. Furthermore, the action to oblige, in addition to the claim to adopt a favorable administrative act, inherently includes by virtue of law the claim to challenge the interfering administrative act regarding the refusal to adopt the administrative act, regardless of whether such a claim has been submitted by the plaintiff.

3. The core objective of the action to oblige is to achieve the adoption of a favorable administrative act for the person. If the administrative court, within the scope of the acquired evidence and based on the laws in force at the time of adopting the judicial act, considers the lawfulness of the requested favorable administrative act to be established, the latter must adopt a judicial act resolving the case on its merits regarding the satisfaction of the action by invalidating the decision of the administrative body refusing to adopt the requested administrative act and obliging the administrative body to adopt that administrative act. In other words, within the framework of an action to oblige, the lawfulness of the interfering administrative act regarding the administrative body's refusal to adopt the requested administrative act is not examined in the procedure established for the examination of an action to challenge, and establishing the lawfulness of the requested favorable administrative act within the scope of the acquired evidence and based on the laws in force at the time of adopting the judicial act inherently leads to the invalidity of the interfering administrative act regarding the administrative body's refusal to adopt the requested administrative act.

Summarizing the aforementioned, we can state that a person's right to submit an action to oblige may arise only if they have applied to the administrative body claiming the adoption of a favorable administrative act, but the administrative body has refused its adoption. In the opposite scenario, namely, in the absence of a decision by the administrative body refusing the adoption of a favorable administrative act, i.e., if no interfering administrative act has been adopted, the right to submit an action to oblige does not arise for the person, and a non-existent "dispute" is not subject to examination by the court.

Accordingly, if, in the case of submitting an action to challenge, the

[2] Decision of the Court of Cassation dated 26.08.2022 on administrative case No. **VD/2598/05/21**, "MBDesign" LLC v. State Revenue Committee of the RA.

administrative body bears the burden of proving all the facts underlying the adoption of the administrative act, then in this case, the court places the burden of proving the facts serving as the basis for the adoption of the favorable administrative act on the plaintiff. If such facts are not considered proven, the court no longer bears the obligation to address the examination of the grounds for refusal. Moreover, if within the scope of the type of action to challenge, the lawfulness of an already adopted administrative act is evaluated based on the legislation in force at the time of the adoption of that act, then in the case of the type of action to oblige, when obliging the adoption of a favorable administrative act, the Court relies on the legislation in force at the time of examining the dispute.

Within the framework of the aforementioned interpretations, certain practical problems arise when submitting an action to oblige.

Thus, the first practical problem is that in every case where a person pursues the adoption of a favorable administrative act, they may submit an action to oblige to the court. On the other hand, it is also not excluded that, despite the absence of conditions serving as a basis for a favorable administrative act, a person still has a legal interest in invalidating an unlawful administrative act (for example, if that act established circumstances that violate or may subsequently lead to a violation of the person's rights). Based on the stated, we believe that when an action to oblige is submitted, the court must, in each case, also address the adopted interfering administrative act and, in the presence of grounds, have the authority to partially satisfy the claim by invalidating the adopted administrative act without obliging the administrative body to adopt a favorable administrative act.

The second practical problem is connected with submitting a claim for compensation for damages. The APC does not link the submission of a claim for compensation for damages to any specific type of action; essentially, it can be submitted as a consequence of improper administration established by the court as a result of submitting any type of action, but it cannot be submitted immediately with the initially submitted action.

According to Article 100 of the RA Law "On the Fundamentals of Administration and Administrative Proceedings," the claim for compensation for damages must be submitted to the administrative body whose administration resulted in the damage.

According to Article 102 of the RA Law "On the Fundamentals of Administration and Administrative Proceedings," the claim for compensation for damages is discussed and resolved in the administrative body in accordance with the general rules established by the same law for discussing an application. In case the administrative body fully or partially refuses the claim for compensation or

fails to discuss the application, the person who suffered the damage may appeal this—for appealing the administrative act, the action, or inaction of the administrative body—in the general procedure established by the same law.

As a result of the analysis of the aforementioned provisions, the Court of Cassation has recorded that, for a claim for compensation for damages resulting from administration, it is primarily necessary that the legal act, action, or inaction of the administrative body that caused damage to the person be recognized as unlawful, after which the person is obliged to first apply to the administrative body that caused the damage. If the latter fully or partially refuses the claim for compensation or fails to discuss the application, the person may appeal the administrative act, action, or inaction through a hierarchical or judicial procedure.[3]

The problem is that when a person applies to the court within the framework of an action to challenge or to oblige, and the court establishes the unlawful administration by the administrative body, the compensation for damages becomes a derivative claim arising from the submitted claim. In other words, it is a consequence of the legal violation committed by the administrative body, which is inextricably linked to the main claim. Therefore, we believe that in such cases, when improper administration is established within the framework of any type of action, the conditions stipulated by Article 100 of the RA Law "On Fundamentals of Administration and Administrative Proceedings" should be considered observed, and the person should have the opportunity to submit a derivative claim for compensation for damages without applying to the administrative body.

Legal Characteristics and Grounds for Submission of the Type of Action for Performance:

Article 68 of the APC defines the type of action for performance:

"1. Through an action for performance, the plaintiff may claim the performance of certain actions or abstention from such actions that are not directed at the adoption of an administrative act.

2. Through an action for performance, the plaintiff may also claim the provision of the relevant document prescribed by law in the event that an administrative act is deemed adopted as a result of the failure to adopt an administrative act within the period prescribed by law."

In practice, the problem of differentiating between the action to oblige and the action for performance frequently arises.

Part 1 of Article 67 of the APC stipulates that through an action to oblige, the

[3] Decision of the Court of Cassation dated 03.01.2010 on administrative case No. **VD/0277/05/09**, Zhora Sargsyan v. Kanaker-Zeytun District Municipality of Yerevan.

plaintiff may claim the adoption of the favorable administrative act, the adoption of which was refused by the administrative body.

According to Part 1 of Article 69 of the APC, through an action for performance, the plaintiff may claim the performance of certain actions or abstention from such actions that are not directed at the adoption of an administrative act.

Accordingly, if the plaintiff's goal in the case of an action for performance is to oblige the administrative body to perform a certain action or to abstain from it, then the goal of an action to oblige is inherently to oblige the adoption of an administrative act.

According to Article 53 of the RA Law "On Fundamentals of Administration and Administrative Proceedings":

"An administrative act is the decision, directive, order, or other individual legal act with external impact, which an administrative body has adopted in the field of public law for the purpose of regulating a specific case, and which is directed at establishing, altering, eliminating, or recognizing rights and obligations for persons."

In its decisions, the Court of Cassation has recorded the following characteristic features of an administrative act[4]: *being an individual act of an administrative body, having an external impact, being adopted in the field of public law, regulating a specific case, and establishing, altering, eliminating, or recognizing rights and obligations.*

From the aforementioned legal analyses, it follows that in each case, to consider a decision made by an administrative body as an administrative act, it is primarily necessary to ascertain whether it is adopted by an administrative body in the field of public law, and whether it is directed at establishing, altering, eliminating, or recognizing certain rights or obligations for a specific person within the framework of a specific case.

Accordingly, for the differentiation of the specified types of action, when submitting an action, it is necessary to verify whether the adoption of an administrative act is a prerequisite for the performance of the requested action. If the adoption of an administrative act is necessary, then an action to oblige, rather than an action for performance, must be submitted.[5]

The analysis conducted above does not at all imply that when applying through

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[4] Decision of the Court of Cassation dated 30.04.2015 on administrative case No. **VD/4651/05/12**, Robert Hovhannisyan v. Yerevan Municipality.

[5] **Chilingaryan A.**, Problems of Classification of Administrative Actions, scientific article, YSU Publishing House, pp. 374-375, available at the following link: URL: http://publishing.ysu.am/-files/Iravagitutyan_aspirantner.pdf (last accessed: 22.04.2026).

the type of action for performance, an administrative act must be completely absent from the legal relations; the emergence of such a claim can stem from conditions of both the presence and the absence of administrative acts.

For example, the assignment of a pension entails the adoption of an administrative act, which can be achieved by submitting the type of action to oblige. On the other hand, a dispute related to receiving a payment based on an already assigned pension is subject to examination through the type of action for performance, because the requested action does not entail the adoption of an administrative act, but rather the obligation to make a payment based on an already adopted act.

The former Administrative Procedure Code included within the concept of the action to oblige those cases where a person had applied to an administrative body for the adoption of a favorable administrative act for them, and the administrative body had not adopted it. This, of course, is not identical to a refusal to adopt an administrative act; in this case, the point is that the administrative body has not addressed the person's application at all, and no written refusal exists[6] or there is an indefinite response; for example, the administrative body continuously fails to adopt the favorable administrative act, stating that the person's application will be considered within an indefinite timeframe.

The new Code abandoned this regulation, excluding these cases from the scope of the action to oblige. Article 48 of the RA Law "On Fundamentals of Administration and Administrative Proceedings" provides that, in the event that an administrative body competent to adopt an administrative act fails to make any decision within the period prescribed by law as a result of administrative proceedings initiated on the basis of an application, the administrative act is deemed adopted, and the applicant may proceed with the exercise of the corresponding right.

In the specified cases, we are dealing with the type of action for performance, which establishes the institution of fiction for cases when a person has applied to an administrative body and has not received any response within the period prescribed by law. Consequently, the administrative act is deemed adopted, and the person applies to the administrative body not with a claim for the adoption of an administrative act, but for the provision of the already adopted administrative act.

At the same time, Article 72 of the APC stipulates that, inter alia, the action may be submitted to the administrative court:

(...) c. within a three-month period from the moment the application was

[6] **Danielyan G. B.,** Administrative Procedure and Litigation: Study Guide, Yerevan, "Tigran Mets" Publishing House, 2011, p. 355.

submitted to perform the requested action, provided the cases envisaged by sub-points "a" and "b" of this point are not present.

It follows from the aforementioned that in cases where a person applies to an administrative body for the performance of a certain action but receives indefinite responses, in this case as well, the administrative act requested by the person is not considered refused; rather, the actual response is missing. Therefore, the person must exercise the protection of their rights within the framework of an action for performance, also basing it on sub-point "c", point 3, Part 1 of Article 70 of the APC, which specifically regulates these cases.

In the context of the aforementioned, one of the important questions subject to discussion is whether applying to the administrative body in advance is mandatory for submitting the claim defined by the first part of the type of action for performance. In this context, we deem it necessary to introduce a distinction between the claims to oblige the performance of an action and to oblige the abstention from a certain action.

While it stems from the logic of the law that the performance of an action can be requested from the court in cases where the administrative body fails to perform the action within the appropriate time limits or refuses to perform a certain action, the situation is different in the case of a claim to abstain from actions. Thus, the administrative body might carry out certain implied (conclusive) actions that the person considers unlawful (e.g., eviction). In such cases, demanding the cessation of the action from the administrative body in a written manner prior to applying to the court is no longer mandatory, because the dispute between the parties regarding the given action has already arisen at the moment the action was performed. Consequently, observing an extrajudicial procedure on this ground falls outside the legislator's intent, which is also evidenced by the fact that the APC does not provide for a mandatory extrajudicial procedure for such cases.

In its positions, the Court of Cassation has emphasized[7] that a person, by submitting an action for performance, pursues the goal of achieving the performance of a certain action or the manifestation of an inaction by the administrative body, in which the person has an interest. Therefore, during the examination of the action for performance, the court's task is, first and foremost, to ascertain the lawfulness of the requested action or inaction.

Based on the aforementioned, the Court of Cassation has recorded that, within the framework of the examination of an action for performance, the court must ascertain the following circumstances:

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[7] Decision of the Court of Cassation dated 13.10.2023 on administrative case No. VD/10153/05/19, "Haverzhutyun AM" LLC v. Yerevan Municipality.

1. is the person's claim directed at the adoption of an administrative act or not? That is, will the administrative body adopt a corresponding administrative act as a result of the satisfaction of the person's claim or not?

2. is the requested action or inaction lawful and does it stem from the legislation of the Republic of Armenia?

If we place these criteria in correlation with the questions subject to ascertainment within the framework of examining an action submitted through the type of action to oblige, it will be obvious that, except for the requirement to verify the presence of an administrative act, they are identical.

Taking into account the functional features of the types of action, the purpose of their definition, and their connection with the effectiveness of judicial protection, we believe that such a division of types of action should be in place that will fully reflect the features of the statement of claim as a regime of procedural examination and the criteria for differentiation. Accordingly, the types of action should be defined based on those procedural features of the examination of the case that are necessary for the effective judicial examination of the plaintiff's claim.

The primary difference between these types of action is the substantive law requirement: in one case, a person claims to oblige the administrative body to adopt an administrative act, the adoption of which has been refused; in the other case, to perform an action or abstain from performing an action. However, the procedural features that dictate the necessity of defining the types of action are identical, including in the context of the allocation of the burden of proof and the applicable legislation.

Ultimately, the concept of "action" is much broader and may encompass the adoption of an administrative act by an administrative body, since it is also the result of performing a specific action.

Taking the aforementioned into account, we believe that the separation of the specified types of action is strictly conditional, and the claim to oblige the adoption of an administrative act should be defined as a subtype of the type of action for performance.

Legal Characteristics and Grounds for Submission of the Type of Action for Recognition:

Within the legal system of the Republic of Armenia, the type of action for recognition is perhaps one of the least studied administrative types of action, which establishes three possible claims for applying to the administrative court:

1. Through an action for recognition, the plaintiff may claim the recognition of the existence or absence of any legal relationship if they cannot submit an action in

accordance with Articles 66-68 of this Code.

2. Through an action for recognition, the plaintiff may claim the recognition of an administrative act as void ab initio.

3. Through an action for recognition, the plaintiff may claim the recognition of an interfering administrative act that no longer has legal force, or an action or inaction that has exhausted itself through execution or in any other way, as unlawful, if the plaintiff is legitimately interested in recognizing the act, action, or inaction as unlawful, meaning:

1. there is a danger of adopting a similar interfering administrative act or performing a similar action again in a similar situation;

2. the plaintiff intends to claim compensation for property damage, or

3. it pursues the goal of restoring the plaintiff's honor, dignity, or business reputation.

Driven by the imperative of a systemic analysis of the action for recognition and the extraction of its distinguishing features, let us address each ground separately.

The most important precondition for the admissibility of the first subtype of the action for recognition is the absence of the possibility to submit all other types of action.

In practice, the aforementioned precondition is usually made the subject of discussion purely in the light of performing a procedural action. However, it is very important to record the substantive nature of such a restriction. Thus, it is important to record in which cases there is a factual prohibition to submit the other types of action. We consider it important to divide such a prohibition into two grounds:

1. When, from a substantive point of view, it is impossible to submit any other type of action, and the plaintiff's goal is the recognition of the existence or absence of a specific legal relationship.

2. The person substantiates that the other types of action, although substantively corresponding to the submitted claim, have exhausted themselves as tools of judicial protection.

In the first case, it is important to record the substantive impossibility of submitting another type of action. Thus, a person cannot submit a type of action for recognition instead of a type of action to challenge purely on the ground that they have violated the procedural time limits for submitting a type of action to challenge. This cannot under any circumstances be considered an impossibility to submit another type of action.

According to Doctor of Legal Sciences G. Danielyan, *the term "cannot" should also be understood to include the case where the time limits for the type of action*

to challenge have been missed[8]. However, it is our conviction that the APC provides a person with the opportunity to restore the missed time limit through a corresponding motion, provided there is an appropriate ground. If this provision were to be interpreted in that sense, the institution of recognizing a missed time limit as excusable would be rendered meaningless, as would the very essence of the procedural time limits established for the other type of action in general. Furthermore, in cases where a person, due to circumstances beyond their control, did not know and could not have known about the existence of the administrative act, they may substantiate this fact, and the calculation of the time limit will run from the moment they became aware or could have become aware of the administrative act.

Taking the aforementioned into account, we believe that by establishing this provision, the legislator intended to provide an additional institution for all those cases where the submitted claim does not correspond to any type of action prescribed by legislation; therefore, it can be interpreted solely in the context of impossibility in a substantive sense.

The aforementioned is also substantiated by the practice developed by the Court of Cassation, which states that *"in all those cases where the challenged act is not an administrative act, meaning the material object of the specified types of action is absent, yet the dispute arises from public legal relations subject to the jurisdiction of the Administrative Court of the Republic of Armenia, the examination of the given dispute must be ensured through an administrative procedural order, regardless of the nature of the challenged act, in order to guarantee the realization of the rights to access to court and to a lawful court. According to the consistently developed law-enforcement practice of the Court of Cassation of the Republic of Armenia, in specific cases, under the condition that the challenged act is not an administrative act, the given dispute arising from public legal relations may be examined either under the rules of the action to challenge or within the framework of the action for recognition provided for by Part 1 of Article 69 of the Administrative Procedure Code of the Republic of Armenia."*[9].

At the same time, referring to the position established by the Court of Cassation of the Republic of Armenia, we deem it necessary to record that the assessment of impossibility—conditioned by the claim's non-conformity with the other

[8] **Danielyan G. B.,** Administrative Procedure and Litigation: Study Guide, Yerevan, "Tigran Mets" Publishing House, 2011, p. 360.

[9] Decision of the Court of Cassation dated 25.03.2024 on administrative case No. VD/4748/05/23, Ashot Kocharyan v. Yerevan Municipality.

established types of action—does not stem from the essence of the type of action for recognition. This is because, in order to submit a claim on this ground, the mere substantive existence of impossibility is not sufficient; it can be submitted only if the claim itself is directed at the recognition of the existence or absence of any legal relationship.

Thus, the Court of Cassation has emphasized that *an action regarding the recognition of the existence or absence of a legal relationship may be brought, for example, in the event that the plaintiff pursues the goal of obtaining from the court an answer regarding a specific legal issue with specific factual circumstances that is disputed between them and the administrative body, as a result of which the existence or absence of the legal relationship requested by the plaintiff can be recognized. In other words, when separate rights and obligations stemming from the norms of public law are disputed between a natural or legal person and an administrative body, while simultaneously there is an impossibility of submitting all other types of action*[10].

As a result of the aforementioned analysis, we can record that the impossibility of submitting the type of action for recognition must be interpreted through the Plaintiff's ability to achieve the pursued goal—aside from the claim to recognize the existence or absence of a legal relationship—by means of submitting other types of action.

For example, when the same goal can be achieved both by the recognition of a legal relationship and by the invalidation of an administrative act, there is a possibility to submit another type of action; consequently, the type of action for recognition cannot be submitted. On the other hand, in every case where the protection of a subjective interest can be achieved exclusively by the recognition of the existence or absence of a legal relationship, there is an impossibility to submit another type of action.

Making the revelation of the Plaintiff's goal when submitting an action the subject of discussion in the context of the mentioned conclusion, we deem it necessary to record that impossibility should be considered present also in every case where the person substantiates that the other types of action, although substantively corresponding to the submitted claim, have exhausted themselves as tools of judicial protection.

Thus, in light of the interpretations of the Court of Cassation, the issue subject to ascertainment for recognizing the existence of a legal relationship comes down to *establishing the existence of a legal relationship between the plaintiff and the*

[10] Decision of the Court of Cassation dated 10.05.2022 on administrative case No. **VD/5076/05/20**, "STARLINE" LLC v. Yerevan Municipality.

administrative body in general, which does not exclude the invalidation of any administrative act as a consequence[11]*. Therefore, in parallel with submitting this type of action, the invalidation of an administrative act, or the obligation to adopt a corresponding administrative act, or to perform an action, may also become the subject of examination as a derivative claim.*

In theoretical literature, this subtype of the type of action for recognition is characterized by the differentiation of the subject matter of the dispute, emphasizing that in this case, the subject matter of the dispute is not the administrative act, a specific action, or inaction, but rather the existence of certain public legal relations or the absence of those legal relations[12].

The specified ground of the type of action for recognition is also characteristic of the administrative procedures of other states.

Thus, the Administrative Procedure Code of the Federal Republic of Germany stipulates: *"The plaintiff may apply to the administrative court with a claim for the recognition of the existence or absence of a legal relationship, if the latter has an interest in the recognition of the legal relationship. The action for recognition cannot be submitted if the plaintiff can or could protect their rights through another type of action."*[13].

Similar norms are also contained in the administrative procedural legislation of Croatia[14], Kosovo[15], and Georgia[16].

This type of action can be submitted only in connection with specific legal issues; it cannot pursue the sole objective of establishing facts.

Making this type of action the subject of discussion, the Federal Administrative Court of Germany has emphasized that *an action regarding the recognition of the existence or absence of a legal relationship is admissible in cases where, based on any norm of public law, a legal relationship of one person concerning another person or object arises from a specific factual situation, and there is a dispute between the parties as to which of them has what rights or obligations. This refers to specific legal issues; in such cases, the plaintiff wishes to obtain from the court an answer to the disputed legal issue between them and the administrative body.*

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[11] Decision of the Court of Cassation dated 17.11.2022 on administrative case No. **VD/3138/05/20**, "KMG Consulting" LLC v. State Revenue Committee of the RA.

[12] Administrative Litigation of the Republic of Armenia: Book One / **T. Khachikyan, H. Bedevyan, A. Gharslyan, T. Markosyan, Y. Khundkaryan, V. Hovhannisyan**. - Yerevan: "Hayrapet" Publishing House, 2022, pp. 298-301.

[13] Article 43 of the Administrative Procedure Code of the FRG.

[14] Article 22 of the Law on Administrative Disputes of Croatia (Zakon o upravnim sporovima).

[15] Article 14 of the Law on Administrative Conflicts of Kosovo (Law No. 03/L-202 on Administrative Conflicts).

[16] Article 25 of the Administrative Procedural Code of Georgia.

Such a situation is, for example, the case when separate rights and obligations stemming from legal norms are disputed between a citizen and an administrative body[17].

Having examined the judicial practice and doctrinal sources of the Federal Republic of Germany, we come to the conclusion that the legislator has provided the exception under the discussed claim—in the context of submitting another type of action—for the purpose of concentrating the means of legal protection within a single proceeding[18]. This is because a legal relationship is broader and may exist in parallel with the claims submitted through other types of action, while at the same time acknowledging certain exceptions to the established rule:

- *if the other type of action is available only theoretically but, in correlation, is not the most effective means for the protection of legitimate interests;*
- *if the other type of action becomes possible only as a consequence of the type of action for recognition*[19].

At the same time, German judicial practice defines this type of action by envisaging the existence of an objective to restore a legitimate interest. This abstracts the purpose of the claim from the interpretation of submitting this claim as being conditioned purely by the impossibility of submitting claims not prescribed by law, thereby distinguishing it as a type of action possessing an independent substantive legal claim with the presence of a specific consequence.

The concreteness of the legal issue is manifested in the fact that it refers to a clearly and distinctly outlined factual situation. In particular, when separate rights and obligations stemming from a legal norm are disputed between a citizen and an administrative body[20].

Nevertheless, in practice, there are many cases where a person cannot achieve the desired result merely through the adoption or invalidation of an administrative act, because the pursued goal is broader, encompassing the recognition of a legal relationship in general, which will subsequently preclude the possibility of adopting similar administrative acts. It is in this context that when assessing impossibility, it is necessary to ascertain what goal the plaintiff pursues when submitting the action: merely to invalidate a certain administrative act, or to recognize a legal relationship in order to preclude the possibility of adopting such administrative acts in the future. In the first scenario, the administrative act or

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[17] **Treushnikov M. K.,** Administrative Legal Proceedings: Textbook for students of law universities, faculties, and lawyers improving their qualifications, "Gorodets", 2017, p. 464.

[18] BVerwG, Beschluss vom 14. Dezember 2018 - 6 B 133.18, ECLI:DE: BVerwG:2018:141218B6B133.18.0.

[19] BVerwGE 54, 177 (179) = BVerwG, Urteil vom 23. März 1977 - VII C 2.76.

[20] **Detterbeck**, Allgemeines Verwaltungsrecht mit Verwaltungsprozessrecht, point 1395.

action itself becomes the subject matter of the challenge, in which case an action for recognition cannot be submitted, as the dispute can be resolved through other types of action. Meanwhile, in the second case, the administrative act or action is merely the initial cause of the dispute, whereas the actual dispute between the parties comes down to the clarification of a certain issue stemming from the interpretation of the law. Therefore, in such cases, judicial protection through other types of action has exhausted itself for the person, and the type of action for recognition becomes the sole means of protection.

In other words, in every case where the resolution of the submitted legal dispute is conditioned by the plaintiff not through the continuous appeal of specific administrative acts, but through the recognition of the existence of a specific legal relationship that will preclude the adoption of acts on the same ground in the future, the Court, based on the impossibility of submitting other types of action, must make the type of action for the recognition of a legal relationship the subject of examination.

Taking the aforementioned into account, we believe that judicial practice should not interpret this provision merely by the conformity of the claim with any type of action, but should make it the subject of a substantive examination to determine whether the submission of the corresponding type of action is ultimately directed at the full realization of the plaintiff's goal in applying for judicial protection.

Closely connected with the type of action to challenge is the ground for the type of action for recognition provided by Part 2 of Article 69: through an action for recognition, the plaintiff may claim the recognition of an administrative act as void ab initio. If in the case of an action to challenge the plaintiff claims to invalidate the administrative act, then in an action for recognition, the plaintiff's claim refers to recognizing the administrative act as void ab initio.

An administrative act is void ab initio if it contains, in particular, the following glaring gross errors: *a) it is not clearly evident or unambiguously clear from the act which administrative body adopted it; b) the act was adopted by an incompetent administrative body; c) it is not clear from the act to whom specifically it is addressed, or it is unknown what issue it regulates; d) the act imposes an obviously unlawful obligation on its addressee, or grants them an obviously unlawful right* .

In all those cases where there is any ground for an act to be void ab initio, the plaintiff cannot challenge the same administrative act on another ground, claiming to recognize it as invalid. This is because Article 63 of the RA Law "On Fundamentals of Administration and Administrative Proceedings," while enumerating the grounds for the invalidity of an administrative act, has made an important reservation that an administrative act which is not void ab initio is invalid.

The submission of the proper type of action is particularly important in this case, because the court, upon its own initiative, cannot satisfy the action in the event of the submission of a claim for voidness ab initio by applying the grounds for invalidity rather than those for voidness ab initio.

The Court of Cassation has also addressed this issue, noting that the Administrative Procedure Code of the Republic of Armenia clearly separates the types of action to challenge and for recognition. Therefore, in the event of submitting any of these actions, the Administrative Court of the Republic of Armenia is obliged to determine the issue of fully or partially satisfying the action or dismissing it within its framework[21].

In the context of the cited regulations, the ground that an administrative act is invalid due to being adopted in violation of the law may be problematic. This provides a broad opportunity for evaluating invalidity, stipulating the adoption of an administrative act as a result of the application or misinterpretation of the law.

A detailed study of the aforementioned legislative grounds for invalidity and voidness ab initio allows for a clear distinction: an administrative act can be considered void ab initio if it was also adopted in violation of the law, but within the framework of the established grounds, these violations are so obvious that they are indisputable. That is to say, they are unlawful by the ground of their adoption, from the moment of their adoption, and based on clear grounds established by legislation, which lead to voidness ab initio.

Accordingly, if the consequences of the invalidity of an administrative act arise from the moment the administrative act is recognized as invalid by the court, then in the case of voidness ab initio, the court establishes that the administrative act is void ab initio, but the consequences of the voidness ab initio flow from the moment of the adoption of the administrative act, regardless of the court's recognition of that fact.

At the same time, we deem it necessary to address the following question: when an action for the invalidity of an administrative act is submitted, must the Court address the verification of the ground for voidness ab initio or not?

While in the case of a claim to recognize an administrative act as void ab initio we can clearly state that by establishing invalidity the Court goes beyond the scope of the subject matter of the action, in the opposite scenario, such a conclusion cannot be perceived unequivocally.

Thus, as we noted above, when defining an invalid administrative act, Article 63 of the RA Law "On Fundamentals of Administration and Administrative

[21] Decision of the Court of Cassation dated 02.04.2010 on administrative case No. VD/2514/05/09, Martin Zoroyan v. Traffic Police of the RA Police.

Proceedings" made a specific reservation, namely: an administrative act that is not void ab initio is invalid. This directly implies the court's authority, when verifying the invalidity of an administrative act, to ensure that the grounds for the voidness ab initio of the administrative act are absent. In the event that such grounds are present, we believe that the court's authority to establish the voidness ab initio of the administrative act directly stems from the specified article. This does not imply that the court must have the authority to satisfy the statement of claim by recognizing the administrative act as void ab initio within the framework of the type of action to challenge. No, in this case as well, the court can suggest that the plaintiff choose the proper type of action, as a result of which it will either satisfy or dismiss the action depending on the plaintiff's choice. However, even in the event of rendering a judgment to dismiss the statement of claim, the court is obliged to establish the fact of the administrative act being void ab initio in the judgment, basing this on the corresponding reservation in Article 63 of the RA Law "On Fundamentals of Administration and Administrative Proceedings."

The distinct feature of the third ground of the type of action for recognition is that for the submission of the specified ground, the legislator emphasizes the consequential objective that the plaintiff strives to achieve with the submitted action.

The distinguishing characteristic of this ground is its object: administrative acts that no longer have legal force for the addressee (exhausted acts) and an action (inaction) that has exhausted itself through execution or in any other way. In such cases, submitting an action to challenge or an action for performance is inadmissible because the administrative act or action subject to challenge no longer exists; however, the prerequisites that the legislator establishes to reveal the plaintiff's interest are present.

For administrative acts, the legislator uses the term "no longer having legal force," and for actions or inactions, the term "exhausted through execution or in any other way." From this formulation, it follows that the terms "execution" and "exhaustion" are not identical. An action may be executed, but that does not yet mean it has exhausted itself. The basis for differentiating these concepts is whether the given action can still be reversed or not, meaning whether the interference of that action with the citizens' rights continues.

An administrative act loses its legal force if the period of the act's validity expires or the administrative body revokes it.

If subjected to a literal interpretation, we must address the recognition of an administrative act that no longer has legal force as unlawful, which inherently assumes that a certain administrative act existed that once had legal significance

and now does not, for example, administrative acts conditioned by a certain period.

The purpose of defining such a claim is the consequences in light of the three components of point three of Article 69 of the APC, which generate an interest for the plaintiff: there is a danger of adopting a similar interfering administrative act or performing a similar action again in a similar situation; the plaintiff intends to claim compensation for property damage, or it pursues the goal of restoring the plaintiff's honor, dignity, or business reputation.

Furthermore, it is noteworthy that in light of the interpretation given by the Constitutional Court, the term "action" also encompasses the inaction of the administrative body. Therefore, if a person's rights have been violated by the administrative body manifesting inaction, that is also a ground for submitting this type of action[22].

Making the aforementioned second ground the subject of discussion—namely, that the plaintiff intends to claim compensation for property damage—the Constitutional Court has emphasized that insofar as the legislator does not provide a person with the opportunity to submit an action for recognition on the ground of intending to claim compensation for non-property damage established by law, the specified ground contradicts the Constitution. From this, it follows that the type of action for recognition may be submitted not only in the presence of an intention to claim property damage, but also non-property damage.

Conclusion

Summarizing the research conducted above, in connection with the problems raised in this work, we come to the following main conclusions:

1. In cases where the conditions serving as a basis for the adoption of a favorable administrative act are absent within the framework of an action to oblige, but the person still has a legal interest in invalidating an unlawful administrative act, we believe the Court must address the adopted interfering administrative act. In the presence of grounds, the Court should have the authority to partially satisfy the claim by invalidating the adopted administrative act without obliging the administrative body to adopt a favorable administrative act, if the grounds for the adoption of a favorable administrative act are absent.

2. The APC does not link the submission of a claim for compensation for damages to any specific type of action; essentially, it can be submitted as a consequence of improper administration established by the court as a result of

[22] Decision of the Constitutional Court No. SDO-942 dated 22.02.2011.
[23] Decision of the Constitutional Court No. SDO-1497 dated 17.12.2019.

submitting any type of action. However, according to current practice, it cannot be submitted immediately with the initially submitted action, but only after receiving a refusal from the administrative body based on a judicial act rendered in a separate case on that action and entered into legal force. In our opinion, the institution of compensation for damages entails a consequence of a legal violation in every case. Therefore, when a person applies to the court and unlawful administration by the administrative body is established by the court, the compensation for damages becomes a derivative claim arising from the submitted claim—in other words, a consequence of the legal violation committed by the administrative body, which is dependent on the main claim. Consequently, in such cases, when improper administration is established within the framework of any type of action, the conditions stipulated by Article 100 of the RA Law "On Fundamentals of Administration and Administrative Proceedings" should be considered observed, and the person should have the opportunity to submit a claim for compensation for damages as a derivative claim without applying to the administrative body for a secondary extrajudicial stage.

3. Taking into account the functional features of the types of action, the purpose of their definition, and their connection with the effectiveness of judicial protection, we believe that such a division of types of action should be in place that will fully reflect the features of the statement of claim as a regime of procedural examination and the criteria for differentiation. Accordingly, the types of action should be defined based on those procedural features of the examination of the case that are necessary for the effective examination of the plaintiff's claim. Guided by the aforementioned, we believe that the procedural features for differentiating the types of action to oblige and for performance are absent. The primary difference between these types of action is the substantive law claim; in one case, a person claims to oblige the administrative body to adopt an administrative act, the adoption of which has been refused; in the other case, to perform an action or abstain from performing an action. However, the procedural features that dictate the necessity of defining the types of action are identical, including in the context of the allocation of the burden of proof. Ultimately, the concept of "action" is much broader, and the adoption of an administrative act by an administrative body is also the implementation of a specific action. Therefore, considering that it also includes the claim to challenge an interfering administrative act, we believe the claim to oblige the adoption of an administrative act should be defined as a subtype of the type of action for performance.

4. Guided by the aforementioned goals of defining types of action, we believe it is also essential to interpret the current restriction on submitting the type of

action for the recognition of a legal relationship—in the context of the impossibility of submitting another type of action—with the following two exceptions:

- When, from a substantive point of view, it is impossible to submit any other type of action, and the plaintiff's goal is the recognition of the existence or absence of a specific legal relationship.
- The person substantiates that the other types of action, although substantively corresponding to the submitted claim, have exhausted themselves as tools of judicial protection. Furthermore, the first ground must be interpreted in the context of submitting another possible claim apart from the recognition of the existence or absence of a legal relationship, and not any claim not provided by law. Within the framework of the proposed second ground, the Court must examine the claim through the type of action for recognition of a legal relationship when, despite the possibility to submit another type of action, the resolution of the submitted legal dispute by the plaintiff is not conditioned by the purpose of the claim underlying that type of action, and it does not fully guarantee the protection of the person's rights.

5. While in the case of a claim to recognize an administrative act as void ab initio we can clearly state that by establishing the invalidity of an administrative act the court goes beyond the scope of the subject matter of the action, in the opposite scenario, we believe the court is obliged, when verifying the invalidity of an administrative act, to ensure that the grounds for the voidness ab initio of the administrative act are absent. In the event that such grounds are present, we believe that the Court, even if the Plaintiff does not change the type of action, is obliged to establish the fact of the administrative act being void ab initio in the judgment dismissing the action, basing this on the corresponding reservation in Article 63 of the RA Law "On Fundamentals of Administration and Administrative Proceedings."

Conflict of Interests

The authors declare no ethical issues or conflicts of interest in this research.

Ethical Standards

The authors affirm this research did not involve human subjects.

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