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The present publication includes reports presented during the Conference devoted to the 85th Anniversary of the Faculty of Law of the Yerevan State University. Articles relate to different fields of jurisprudence and represent the main line of legal thought in Armenia. Authors of the articles are the members of the Faculty of Law of the Yerevan State University. The present volume can be useful for legal scholars, legal professionals, Ph.D. students, as well as others who are interested in different legal issues relating to the legal system of Armenia.

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GENERAL LEGAL CHARACTERISTICS AND FEATURES OF OBLIGATORY ACTION

Tigran Markosyan¹

Lilit Petrosyan²

Administrative justice is deemed to be comparatively the "youngest" and at the same time one of the least studied law fields not only in the Republic of Armenia but also in the whole post-Soviet region. From this perspective, administrative actions are not exclusions either.

The submission of administrative action is the jural fact, after which the administrative litigation process "being in passive state" before that, launches and starts proceeding, including the relevant legal consequences. The submission of administrative action is the stimulus and motive power, which "puts into action" the administrative litigation process³.

It should be emphasized that in comparison with civil procedure all types of administrative actions are prescribed in the legislation. Specifically, the 66-69 articles of current code of Administrative Procedure of the Republic of Armenia⁴ define the administrative actions, which can be filed in Administrative Court. The stipulated actions are the action for challenging the administrative act, necessary action, action for the performance of a certain action and

¹ Candidate of Legal Sciences, Assistant Professor of the Chair of Civil Procedure of the Yerevan State University, Director of "Center of Legislation Development and Legal Research" fund of RA Ministry of Justice, e-mail: t.markosyan@mail.ru

² PhD Student of the Chair of Civil Procedure of the Yerevan State University, Public law expert of "Center of Legislation Development and Legal Research" fund of RA Ministry of Justice, e-mail: petrosyan.lilit94@gmail.com

³ **Mughnetsyan G.**, Certain consideration of the institution of administrative claims and the implementation thereof, Materials of the conference devoted to the 80th anniversary of the Faculty of Law of Yerevan State University, Yerevan, YSU, press 2014, page 113.

⁴ Adopted in 05.12.2013. ՀՀՊՏ 2013.12.28/73(1013).1 article.1186.1.

action for recognition.

According to the 67th article of the Administrative Procedure code- based on the obligatory action a person can ask to adopt the administrative act, which has been declined by the administrative body. In other words, the essence of the required action is to force the administrative body to adopt the favorable administrative act which the administrative body refused to adopt.

Furthermore, the mandatory precondition allowing to file this action to the Administrative Court is defined in the Administrative Procedure code, based on which, a person can file an obligatory action in the Administrative Court if prior to applying to the Court he has requested the administrative body to adopt the favorable administrative act and his request was declined.

The discussed precondition has been considered in different judicial decisions of the Administrative Court. Thus, the Administrative Court of the Republic of Armenia, having examined the claim on forcing the administrative body to register the citizen's rights towards the land, found that the filed action cannot be deemed as an obligatory action since the administrative body has not declined the citizen's request in this particular case¹. Later this position was elaborated in the decisions of the Administrative Court of Appeals. The Court found, that it is obvious from the text of the Administrative procedure code, that in order to file an obligatory action the person should have prior applied to the administrative body and been refused².

It is worth to mention that the obligatory action also includes the request to challenge the administrative act by which the administrative body refused to adopt the plaintiff's favorable administrative act. In the described case we deal with a non-seperate

¹ Administrative Court of the Republic of Armenia. Case number VD/1041/05/10, decision made in 22.06.2010.

² Administrative Court of Appeals of the Republic of Armenia. Decision made in 16.09.2014 on administrative case N VD/2228/05/14.

action for challenging the administrative act. By the way it is not obligatory to include such a separate claim in plaintiff's obligatory action.

The obligatory action is automatically directed against the administrative act based on which the administrative body declined the plaintiff's claim and in that respect a non-separate action for challenging the administrative action is always connected to the obligatory action¹. Moreover, if the Administrative Court satisfies the claim based on the obligatory action, it obliges the administrative body to adopt the favorable administrative act which was expected².

We are inclined to believe that there is no necessity to file a separate claim for challenging the administrative act, since in that case there is no need to protect the persons rights.

Examining the general characteristics of the obligatory action it should be mentioned, that at first the question whether a separate claim for challenging the administrative action should be filed along with the obligatory action, raised certain issues among the practitioners. That is the reason why the second code of Administrative Procedure³ defined, that the obligatory action includes the request to eliminate the administrative act adopted by the administrative body which was directed to refusing the plaintiff's request.

Summarizing the above mentioned, we would like to state, that when examining the case based on the obligatory action the Administrative Court should take into account the tight bond between the obligatory action and the action for challenging the administrative

¹ **Тунина Н.А.**, Административный иск как средство защиты нарушенного публичного права, Москва, 2011 (Tunina N.A., Administrative Suite As a Means of Protection of Breached Public Right, Moscow 2011), P. 15.

² **Попова Ю.А.** Административный иск и процессуальная форма его разрешения, Екатеринбург, 2000 (Popova U.A. Administrative Suite and Procedural Form of Resolution, Yekaterinburg, 2000), P.440.

³ Administrative Procedure code, article 67.2.

act and in a case, where action for challenging the administrative act is missing the obligatory action should not be accepted by the Court.

In this respect, the following case of Administrative Court practice should be discussed. The Administrative Court examining the person's claims to eliminate the Yerevan Municipality's 29.04.2014 N 04/Վ-472 decision and to oblige the Municipality to adopt a relevant decision, in 17.12.2014 decided to terminate the case partially-related to the obligatory action. The Court's reasoning was based on the fact that the mandatory precondition for filing an obligatory action is the refusal of the plaintiff's request by the administrative body, but in this case, the Municipality did not refuse to adopt the expected administrative act.¹ Although the Court's finding is well reasoned and it generally derives from the essence of obligatory action, the Court continued examining the case based on the action for challenging the administrative act, which in our view is not acceptable since the obligatory action cannot be separated from the action for challenging the administrative act.

The next question which is essential when analyzing the obligatory action is related to the claim deriving from this action. It should be noted, that when filing an obligatory action, the claim to oblige the administrative body to adopt the favorable decision should derive from and correspond to the legislation and jurisdiction of the administrative body and what is more important it should not violate other people's rights². This issue was addressed by the

¹ Administrative Court of the Republic of Armenia, 17.12.2014 decision on N VD/2659/05/14 administrative case. According to the facts of the case in response to the plaintiff's request the Yerevan Municipality addressed a letter to the plaintiff stating that at the moment the Municipality is not able to make a decision on the relevant matter, since there is a pending case in the Court, which should be settled and afterwards addressed by the Municipality.

² **Константыи А.**, Сравнительно-правовой анализ видов исков в административном судопроизводстве Украины и зарубежных государств, 2014 (Konstantyi A. Comparative-legal Analysis of types of suits in the Administrative proceedings in Ukraine and Foreign Countries, 2014), page 4.

Administrative Court of Appeals of the Republic of Armenia. Thus, the Court stated. “An obligatory action can be filed against an administrative body, which has the competence to adopt the requested administrative act. Moreover, the requested administrative act should be legal and should not violate other’s rights. In other words, when filing an obligatory action, the plaintiff should not only pursue the goal to reach to the adoption of the favorable administrative act, but also pursue the elimination of the consequences not beneficial for him, which is only possible by forcing the competent administrative body”.¹

During the short period of applying the obligatory action practice, specific issues were raised related to the decision made by the administrative body based on which the latter declined the plaintiff’s request.

The question is whether the decisions on suspension or termination of administrative proceedings can be deemed as administrative acts refusing to adopt the favorable administrative act and be the basis for filing an obligatory action.

Though there are different contradicting opinions concerning this question, we are inclined to believe, that only the refusal of requested administrative act, which concludes the administrative proceedings, can be the ground of filing the obligatory action.

It should be mentioned, that the Administrative Court evaluated the administrative body’s decision on suspension of the administrative proceedings as an administrative act, which declined the plaintiff’s request and, consequently the Court found that the filed action was obligatory action².

In our opinion in the above mentioned administrative case, although the plaintiff demanded to adopt an administrative act, the

¹ Administrative Court of Appeals of the Republic of Armenia. Decision made in 16.09.2014 on administrative case N VD/2228/05/14.

² Administrative Court, decision made in 17.03.2015 concerning N VD/1251/05/14 administrative case.

decision to suspend the administrative proceedings cannot be deemed as an administrative act by which the administrative body denies the plaintiff's request.

Our position is supplemented with the analysis based on the grounds for suspending the administrative proceedings stipulated in Armenian legislation on administrative procedure. As a result, we conclude that the grounds for suspending the administrative proceedings are grounds which create barriers for the proceedings to proceed, and only the elimination of these grounds can cause the continuation of administrative proceedings. Besides, when the decision on suspending the administrative proceedings is being adopted, and the ground for which that decision is adopted eliminates the administrative proceedings restarts.

Summarizing the above-mentioned findings, it can be asserted that the decision on suspending the administrative proceedings does not decline the adoption of the requested administrative act, but rather delays the adoption or refusal of adopting the administrative act till the elimination of ground for suspension.

It has to be mentioned that a person is not deprived of the opportunity to challenge the decisions on suspending or terminating the administrative proceedings, since an administrative body could have wrongly applied or interpreted the grounds for suspension or termination¹. In any case that decisions cannot be regarded as decisions refusing to adopt the requested administrative act also because if the claim of obligatory action is satisfied, the Court obliges the administrative body to adopt the requested and denied administrative act, nonetheless in this case that kind of administrative act is missing.

The next issue connected with the application of the obligatory

¹ Administrative Court, decision made in 03.03.2016 concerning N VD/5249/05/15 administrative case. According to the facts of the case the Court declared invalid the decision about Terminating the proceedings on the execution of judicial acts.

action is the following- whether a person can file an obligatory action also in the case, when the administrative body does not refuse to adopt an administrative act but adopts another administrative act in its competence, which for the person is still not favorable.

In our opinion taking into account the Germany's experience¹ in this respect, a person should be given an opportunity to file an obligatory claim also in the case, when he wants the administrative body not to adopt a certain administrative act but to consider his request once more and to properly evaluate the facts of his case and apply the law. In the discussed case a person also pursues the adoption of the administrative act, since if the Court satisfies his claim of an obligatory action, the administrative body will once more adopt a decision but taking into account the Administrative Court's findings on the case.

Summarizing general legal characteristics and features of the obligatory action it can be concluded.

1) The mandatory precondition allowing to file the obligatory action should be met, that is a person can file an obligatory action in the Administrative Court if prior he has requested the administrative body to adopt the favorable administrative act and his request was declined.

2) The obligatory action includes the request to eliminate the administrative act adopted by the administrative body which was directed to refusing the plaintiff's request. Therefore the Administrative Court should take into account the bond between the action of challenging the administrative act and the obligatory action.

3) The request deriving from the obligatory action to force the administrative body to adopt an administrative act should derive from the authorities of that administrative body, should comply with the law and not violate other's rights.

¹ Herbert G., Administrative justice in Europe, report for Germany, Leipzig, http://www.juradmin.eu/en/eurtour/i/countries/germany/germany_en.pdf

4) The decisions made during the administrative proceedings, such as the decisions about suspending or terminating the administrative proceedings, cannot be deemed as administrative acts which deny adopting the favorable administrative act and be a ground for filing an obligatory action.

5) A person should be ensured with the opportunity to request the administrative body to examine his case once more and adopt the requested administrative act.