

Law

Jurisdictional Legal Act as a Legal Form of Response to Administrative Offense

Kakha Kurashvili

Faculty of Law, Caucasus International University, Tbilisi, Georgia

(Presented by Academy Member Joni Khetsuriani)

The study discusses the problematic of distinguishing the legal forms of response measures to administrative offenses by Police. The given theme is relevant to the extent that the legal form of Police repressive measure – response to an administrative offense is not specified by the legislation. Therefore, when responding to an offense Police, uses the legal form of activity provided by the General Administrative Code of Georgia – an Individual Administrative-Legal Act. Police preventive measures carried out on the basis of an Individual Administrative-Legal Act issued as a result of administrative proceedings, are conducted where a law violation occurs and the response to the incident begins. The subject remains the same, the administrative body in the organizational sense. The legal instrument changes – administrative proceeding is transferred to the administrative offense proceeding, at which point the Subject – the administrative body, appears as a judicial body (in the functional sense). In the framework of the research, the elements of Police preventive measures and the existing offense response legal forms were studied in detail and a new scientific term was introduced – Jurisdictional Legal Act, as a legal form of response to an administrative offense and one of the versions of an administrative-legal act. As a result, the legal forms of response to Police preventive and administrative offense measures were distinguished. © 2024 Bull. Georg. Natl. Acad. Sci.

administrative offense, response to offense, legal form of response, jurisdictional legal act

Based on the principle of separation of powers, public administration is a part of the executive branch implementing governance [1]. Our research area is the public-legal function performed by the governing body, namely Police, as a part of the executive branch. The precondition for the implementation of public legal activities by Police is the relevant powers granted by the law, within the framework of which it will implement preventive and crime response measures [2].

The main directions of state governance are defined in the state goals approved by the Constitution, which represent the goal of state governance and are essential for the interpretation of the norm, which also makes it important for the law-making activities of governing bodies [1]. However, the Constitution is not a complete collection of the state law of a country. Announcement of the main principles and provisions in the Constitution should be followed by their detailed presentation and imple-

mentation in other legal acts [3]. Accordingly, based on the First Article of the General Administrative Code of Georgia, the Police, within the scope of the right granted to it by law, ensures the protection of human rights and freedoms, public interests and the rule of law. The main function of Police bodies, as of a constituent part of the executive branch is law-enforcement and norm-relation activity, the scope of which is set by the normative act, which aims to enforce this action [4].

A Police officer can only carry out the action provided for by the normative act, which is the basis of modern Western democracy [5]. Accordingly, based on subsection “d” of Article 16 of the Law of Georgia “on Police”, one of the functions of the Police is “detection of crimes and other violations and appropriate legal response based on the powers delegated by the Criminal Procedure Code of Georgia, Administrative Offenses Code of Georgia and other normative acts”. According to Article 18, Part 2 of the same law, “the Police implement responsive measures to violations of law based on this law, the legislation of Georgia in the field of administrative offenses and criminal law and other normative acts”. Accordingly, Police bodies are not authorized to use only the provisions of the General Administrative Code of Georgia for responsive activity to a crime. Therefore, it is necessary to establish special norms, which will be specified in separate laws, for example, Administrative Offenses Code of Georgia and special laws identifying administrative offenses. Based on the aforementioned, the activity of the Police as of an administrative body, functionally and legally, does not always represent a governance activity. When responding to an administrative offense, it acquires a jurisdictional function, thereby going beyond the scope of action regulated by the General Administrative Code of Georgia and transferring to the area regulated by Administrative Offenses Code of Georgia. Which means that the administrative body, when responding to the violation of the law, acts as a judicial body and the authority to respond

to the violation of the law is given to the person by the administrative body, which the legal term of the authorized person of the body is derived from [6]. Accordingly, the preventive function of the Police defined by the Law of Georgia “on Police” is carried out using the legal forms of activity defined by the General Administrative Code of Georgia; and the Police body implementing the repressive functions established by the Law of Georgia “on Police” is not an administrative body, but a justice body [7]. Considering the aforementioned, the organizational-legal sign of the authorized official of the Police body does not change and in the process of implementation of governance, it appears as an administrative body. As for the functional-legal sign: in one case we have the implementation of public administration functions of a preventive nature using the legal forms of the General Administrative Code of Georgia and in the other case there is a jurisdictional function in the form of a response to a violation of law. For the purposes of the study, the jurisdictional activity of an authorized official of a Police body is a response to an administrative offense regulated by Administrative Offenses Code of Georgia, in the process of which they are presented as a jurisdictional authority and perform the legal functions granted to them by law [6]. Accordingly, the Police body is represented as a jurisdiction administrative body (Jurisdiction administrative) [8].

The legal nature of the response to administrative offenses affects the regulation of production and the appropriate means of the production process. In order to regulate administrative-legal relations, it is necessary to have special administrative legislation and procedures, differing it from private legal relations. It is noteworthy that in European Union states, where the administrative-delict law is separated, the procedure for the application of sanctions is derived from the general administrative procedure; and, where criminal administrative-delict law applies – criminal procedural acts apply to the procedure of using administrative fines [9].

According to the administrative procedure legislation of Georgia, the issues of jurisdiction and departmental subordination are not specifically distinguished from each other. Due to the confusion of terms, every issue related to the competence of the court is associated with the issue of jurisdiction review in administrative proceedings, due to which the issue of jurisdiction review includes the issues of the court's departmental subordination and jurisdiction review [7]. As an example, we can cite Article 2 of the Administrative Procedure Code of Georgia [10]. Administrative process is related to administrative jurisdiction. Jurisdiction is defined as legal proceedings (lat. Jurisdiction – proceedings, jus – law and dico – I say) [11]. Jurisdiction is the set of powers of the relevant state bodies established by law (or other normative act) to resolve legal disputes and decide on law violation cases, i.e. to evaluate the actions of a person or other subject of law considering their lawfulness, to apply legal sanctions in relation to law violators [12]. Simply put, in the legal literature, administrative jurisdiction is clarified as the direct resolution of subordinate issues by state governance bodies without applying to the courts and, if necessary, the use of administrative sanctions [13]. Accordingly, enforcement of the rule of law is achieved through the implementation of governance functions and control within the state apparatus; while outside of the apparatus – through the review of law violations by means of special bodies, i.e. by implementing administrative justice. Both types of activity are jurisdictional activities of administrative coercion.

The non-procedural activity of Police and some other administrative bodies in the implementation of legal proceedings is an administrative process carried out by the governing bodies, one of the important types of which is the proceeding of administrative offense cases, which is regulated by Administrative Offenses Code of Georgia and other normative acts defining administrative offenses [13]. Accordingly, the product obtained as a result

of the administrative justice activities carried out by these bodies must be relevantly reflected in the systematization of acts, which is the main goal of this research.

In the modern administrative law studies, there is no unified approach to the understanding of an administrative-jurisdictional act [14], scientists mainly focus on studying resolutions issued on administrative offense cases, which are limited to the “collection“ of specified acts defined by authorized bodies. Each of those acts have different functional meaning. Here we mean the acts that are adopted in the process of consideration of the case of an administrative offense by the bodies authorized to apply an administrative penalty and institutional dualism of which clearly reveals the specificity of the field of administrative jurisdiction [15]. Administrative Offenses Code of Georgia includes a special type of administrative proceedings regarding the imposition of administrative sanctions, which, from a material and legal point of view, based on the specificity of the governance function, establishes different types of administrative proceedings. However, Administrative Offenses Code does not define the appropriate type of proceedings and the legal form of response to an administrative offense, due to which it becomes problematic to select the mechanisms for protecting the rights of individuals, as the correct legal assessment of the measure implemented by the administrative body is essential for determining the correct form of the protection of the right [16]. This also against the main goal of the principle of the unity of law and order – to ensure the guarantee function of the law [17]. Accordingly, from the legal point of view, the jurisdiction of the above-mentioned administrative bodies is a special jurisdiction (jurisdiction d'exception) [18]. It is noteworthy that in the EU countries, administrative and administrative offense proceedings are distinguished from each other and are regulated by independent legislative acts, which differentiates the processes of organizational and functional

activity of an administrative body. For example, the legal practice of Germany: “The Administrative Procedure Law does not apply to criminal proceedings, administrative offense proceedings and punishment“ [19].

Despite the fact that Police and other administrative bodies (authorized officials of the body) perform a jurisdictional function in the litigation process, due to their affiliation to the executive branch of government, they cannot leave the scope of administrative proceedings. Accordingly, it would be appropriate to define administrative offense proceedings as one of the varieties of simple administrative proceedings, as it is the base and foundation for all types of administrative proceedings [20]. Depending on the object of regulation, administrative offense proceedings need to be regulated by Administrative Offenses Code of Georgia and other legislative acts defining administrative offenses. However, for the purposes of this study, I will focus on the legal form of response to an administrative offense. The guarantees of the protection of law violator’s rights in the event of offense are derived from Article 6 of the European Convention on Human Rights. In this regard, there is an obligation for Georgia to harmonize legislation with the European Union. The recommendations of the Committee of Ministers of the Council of Europe (1991 No. R (91)1, Rec (2004)5) establish a similar obligation, the purpose of which is to define compliance of the existing laws and administrative practices of the member states with the standards [21]. In framework of the Association Agreement of Georgia with the European Union, the strategy of the Government of Georgia envisages modernization of the legislation on administrative offenses and the development of a new Code of Administrative Offenses [6]. Therefore, it is appropriate for the legal act (acte de juridiction) [18] created as a result of jurisdictional activity (on response to an administrative offense) which is issued in legal form by a state body, as well as an official within the scope of their

competence [11] – to be included in Administrative Offenses Code of Georgia. This is justified by the legal instrument of use, which represents the implementation of an auxiliary function for the judiciary branch (court) (acte de juridictionnel – implementing the function of judiciary) [18]. For the purposes of the research, to clarify the said legal act, based on the function of the implementation of justice, it is appropriate to use a new term – Jurisdictional Legal Act, which, according to the proceedings, should be systematized as a different type of administrative-legal act. It is noteworthy that in the German legal literature, in relation to the subject of the research, the term “judicial legal act“ is used [22].

The key purpose of an administrative-legal act is to bring the public governance carried out by Police under the rule of law of a legal state. The presented Jurisdictional Legal Act is aimed at a specific person – law offender; concretizes the legislative arrangement and is obtained as a result of the administrative offense proceedings. Based the above, following four functions are distinguished: a) material-legal, b) execution-legal, c) proceeding-legal, d) procedural legal [4].

Material-legal function. For the purposes of the research, the basis of the material-legal functions of the Jurisdictional Legal Act is the legislation on administrative offenses. It establishes restrictions (prohibitions) for individual subjects and is a means of enforcement of requirement of material laws and in specific cases against individuals.

Enforcement-legal function. The rule of enforcement of a Jurisdictional Legal Act is specified in the Administrative Offenses Code and is one of the means of enforcement of execution – suspension of a special right. The basis of enforcement is Administrative Offenses Code of Georgia, the legislation of Georgia “about enforcement proceedings” and other legislative acts.

Proceeding-legal function. Administrative offense proceedings are carried out on the

Administrative Offenses Code of Georgia and other legislative acts defining administrative offenses, in order to issue a Jurisdictional Legal Act.

Procedural legal function. The procedural-legal function of the Jurisdictional Legal Act is aimed at addressee of an administrative offense proceeding, who is an offender. Determination of its form defines the rights and duties of the subject of the administrative offense, gives the addressee the opportunity to choose the administrative-legal means of protection of the right – the appropriate type of lawsuit.

The afore mentioned shows that the functions of the Jurisdictional Legal Act are radically different in their content from the functions of an individual administrative legal act, which once again confirms the need to distinguish the Jurisdictional Legal Act as a legal form of administrative offense proceedings as a separate act. According to the study, the definition of a Jurisdictional Legal Act consists of four elements: an authorized official of an administrative body; based on the legislation on administrative offense; Jurisdictional Legal Act; arrange-

ment. Accordingly, a Jurisdictional Legal Act is a different type of administrative-legal act, which is issued as a result of an administrative offense proceedings, in written form, by an authorized official of an administrative body, on the basis of the legislation on administrative offenses, which imposes the administrative responsibility of a person and causes legal consequences. As for the technical means of recording law offenses, such as “speedometer” and the so-called “Smart cameras” – a Jurisdictional Legal Act issued by an authorized official of Police or other administrative body, through their use – we can call it a Jurisdictional Legal Act issued on the basis of the use of technical means of detecting a law offense [6].

Conclusion

We can state that the proposed term currently has no analogue in the Georgian legislative space, and considering the obligation to harmonize legislation with the European Union, it is advisable to timely reflect it in the Administrative Offenses Code of Georgia.

სამართალი

იურისდიქციული სამართლებრივი აქტი, როგორც ადმინისტრაციულ სამართალდარღვევაზე რეაგირების სამართლებრივი ფორმა

კ. ყურამვილი

კავკასიის საერთაშორისო უნივერსიტეტი, სამართლის ფაკულტეტი, თბილისი, საქართველო

(წარმოდგენილია აკადემიის წევრის ჯ. ხეცურიანის მიერ)

კვლევა შეეხება პოლიციის ადმინისტრაციულ სამართალდარღვევაზე რეაგირების ღონისძიებების სამართლებრივი ფორმების გამიჯვნის პრობლემატიკას. აღნიშნული თემა აქტუალურია იმდენად, რომ პოლიციის რეპრესიული ღონისძიების – ადმინისტრაციულ სამართალდარღვევაზე რეაგირების სამართლებრივი ფორმა არ არის განსაზღვრული კანონმდებლობით, ამიტომ პოლიცია სამართალდარღვევაზე რეაგირებისას იყენებს საქართველოს ზოგადი ადმინისტრაციული კოდექსით გათვალისწინებული საქმიანობის სამართლებრივ ფორმას – ინდივიდუალურ ადმინისტრაციულ-სამართლებრივ აქტს. პოლიციის პრევენციული ღონისძიება, რომელიც ხორციელდება ადმინისტრაციული წარმოების შედეგად გამოცემული ინდივიდუალური ადმინისტრაციულ-სამართლებრივი აქტის საფუძველზე, სრულდება იქ, სადაც მოხდება სამართალდარღვევა და იწყება უკვე მომხდარზე რეაგირება. სუბიექტი ადმინისტრაციული ორგანო ორგანიზაციული გაგებით რჩება იგივე. იცვლება სამართლებრივი ინსტრუმენტი – ადმინისტრაციული წარმოება გადადის ადმინისტრაციული სამართალდარღვევის წარმოებაში, რა დროსაც სუბიექტი – ადმინისტრაციული ორგანო წარმოგვიდგება როგორც იუსტიციური ორგანო (ფუნქციური გაგებით). კვლევის ფარგლებში დეტალურად იქნა შესწავლილი პოლიციის პრევენციული ღონისძიებების და სამართალდარღვევაზე რეაგირების არსებული სამართლებრივი ფორმების ელემენტები და შემუშავდა ახალი სამეცნიერო ტერმინი – იურისდიქციული სამართლებრივი აქტი, როგორც ადმინისტრაციულ სამართალდარღვევაზე რეაგირების სამართლებრივი ფორმა და ადმინისტრაციულ-სამართლებრივი აქტის ერთ-ერთი სახესხვაობა, რითაც გაიმიჯნა პოლიციის პრევენციული და ადმინისტრაციულ სამართალდარღვევაზე რეაგირების ღონისძიებების სამართლებრივი ფორმები.

REFERENCES

1. (Eds.) Khubua G., Zomerman K.-P. (2016) Legal base of public administration, **3**: 30, 106; *ibid.* 62-63, "Samshoblo", Tbilisi (in Georgian).
2. Law of Georgia "on Police" (2013) Article 3 (in Georgian).
3. Gogiashvili G. (2019) Comparative constitutional law, 2nd ed.: 53, "World of lawyers", Tbilisi (in Georgian).
4. Turava P. (2016) General administrative law, 55; *ibid.* 85-87, "World of Lawyers", Tbilisi (in Georgian).
5. (Eds.) Khubua G., Kalichava K. (2018) Administrative science handbook, **4**: 38 "Petite", Tbilisi (in Georgian).
6. Kurashvili K. (2019) "Distinguishing legal forms of response to the police prevention and administrative offenses", 124, 125; *ibid.* 102, 136. Doct. Thesis. Caucasus International University, Tbilisi (in Georgian).
7. Kopaleishvili M., Skhirtladze N., Kardava E., (2016) Administrative procedure law handbook, 249-250; *ibid.* 33-34, "Bona Causa", Tbilisi (in Georgian).
8. Machkovski G. I. (2000) Frantsuzsko-russkii iuridicheskii slovar', str. 251, 3-e izd. stereotypnoe, "Russo", M. (in Russian).
9. Banchuk A.A. (2011) Administrativno-deliktnoe zakonodatel' stvo zarubezhnykh stran, str. 62, "Volters Kluver", M. (in Russian).
10. (Ed.) Loria V. (2004) Comments to the administrative procedure code of Georgia, 13, "Meridiani", Tbilisi (in Georgian).
11. (Eds.) Sukhareva A. IA., Krutskiykh B.E. (2000) Bol'shoi iuridicheskii slovar', **2**: 696; *ibid.* 22. pererabotannoe i dopolnennoe, "Ynfra-M", M (in Russian).
12. Tezelishvili S. (2008) Legal encyclopedia, 266, "Meridiani", Tbilisi (in Georgian).
13. Loria V. (2002) Administrative procedure law of Georgia, 15, 16; *ibid.* 51, 54, "Meridiani", Tbilisi (in Georgian).
14. Khazanov S. D. (2004) Obshchaia kharakteristika stadii peresmotra v proizvodstve po delam ob administrativnykh pravonarusheniakh. *Zhurnal Rossiiskogo Prava*, №10 (in Russian).
15. Ovcharova A.S. (2009) Administrativno-iurisdiktsionnye akty, dissertatsiia <http://www.dissercat.com/content/administrativno-yurisdiktsionnye-akty> (view date 17.01.23) M. (in Russian).
16. Turava P., Tskepladze N. (2013) General administrative law handbook, 2nd ed.: 262, "World of Lawyers", Tbilisi (in Georgian).
17. Maisuradze D. (2019) The principle of unity of law and order and its understanding in Georgian literature. *Comparative law Georgian-German magazine*, 2:3. *German Cooperation*, Tbilisi (in Georgian).
18. Machkovski G. I. (2000) Russko-Frantsuzskii iuridicheskii slovar', str. 564; *ibid.* 7; *ibid.* 253, "Russo", M. (in Russian).
19. Zakon ob administrativnom proizvodstve Germanii (2013) 2-e izd. pererabotannoe, "Infotropik Media", M. (in Russian).
20. Turava P. (2018) General administrative law, 2nd ed.: 219, "World of Lawyers", Tbilisi (in Georgian).
21. Kharshiladze I. (2016) Legal problems of differentiating administrative and criminal offenses. *Scientific-Popular Magazine "Administrative law"*, 2: 62-78, "Siesta", Tbilisi (in Georgian).
22. Hansen P. (2002) Allgemeines verwaltungsrecht der polizei, 123-126, terms "Justizverwaltungsakt" and "Justizbehoerde" in German literature (in German).

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