

ADMINISTRATIVE PROCEEDINGS AND ITS NATURE

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Abstract. Administrative law is a branch of law that deals with management in contrast to other areas of law. Publicly important administrative activity or administrative management is the main function of the state. While legislative and judicial functions are performed from time to time, administrative action is performed at all times. Management arises in the process of social activity of people and regulates social relations arising from that process. Management consists of activities with organizational content. The concepts of administration, administrative proceedings, and administrative management are used in the theory. Administrative proceedings are activities carried out within the procedural rules established by this Law by the relevant administrative bodies based on the application of natural or legal persons or the initiative of the administrative bodies on the adoption, implementation, change or, cancellation of an administrative act, as well as on the consideration of administrative complaints. It is understood. Although the concept and characteristics of administrative proceedings are provided for in the law, it is possible to discover gaps in the activity of administrative bodies in practice. In this area, the adoption of the Law "On Administrative Proceedings" should be considered as an expression of the necessity of solving the problems arising during the relations between the state and citizens. The adoption of that Law is aimed at the perfect regulation of legal rules and, most importantly, at determining legal beginnings and guidelines for all administrative law. The goal of the legislator is to ensure uniformity of law in this area by adopting a law common to all state bodies. Some provisions, for example, the principles of the rule of law in administrative proceedings, were defined for the first time at the level of a single law. The principles of the legal state constitute the core of modern society. Without observing these principles, it is impossible to achieve neither the economic development of the state nor the general well-being of people.

On the other hand, this Law serves to simplify and rationalize administrative proceedings. The main importance of the law is undoubtedly expressed in the strengthening of the position of the citizens whose rights are precisely and determined in the administrative proceedings. The citizen can now be sure that his rights established in that Law should be ensured to a minimum extent in his relations with state administrative bodies in any field.

Keywords: administrative law, administrative proceedings, administrative body

INTRODUCTION

Administrative law is the by-product of the growing socio-economic functions of the State and the increased powers of the government. Administrative

law has become very necessary in developed society, and the relationship between the administrative authorities and the people have become very complex. To regulate these complex, relations, some law is necessary, which may bring about regularity and certainty and may check at the same time the misuse of powers vested in the administration. With the growth of society, its complexity increased thereby presenting new challenges to the administration we can appraise of the same only when we make a comparative study of the duties of the administration in ancient times with that of the modern times. In the ancient society, the functions of the state were very few the prominent among them being protection from foreign invasion, levying of Taxes and maintenance of internal peace & order. It does not mean, however, that there was no administrative law before the 20th century. Administration itself is concomitant of organized Administration. In modern society, the functions of the state are manifold, In fact, the modern state is regarded as the custodian of social welfare and consequently, there is not a single field of activity that is free from direct or indirect interference by the state. Along with duties, and powers the state has to shoulder new responsibilities. The growth in the range of responsibilities of the state thus ushered in an administrative age and an era of Administrative law.

The purpose of writing this article is to consider the problems that arise during the regulation of relations between the citizen and the state administrative body. Relations between a citizen and a state body are defined as imperative relations, not equal relations, unlike civil law relations. For this reason, we can detect several problems during the formation of these relations, as the powers of the state body are more imperative than those of the citizen. In this regard, first of all, the concept of administrative proceedings should be considered and its true essence should be investigated.

MATERIALS AND METHODS

In theory, administrative proceeding is a comprehensive term and defies exact definition. The administrative process is a by-product of the intensive form of government and is traditionally exercised by three different organs of the State. They have their classification of governmental powers and also combine into one all the powers. Therefore, there is general agreement among scholars on administrative law that any attempt to classify administrative functions or any conceptual basis is not only impossible but also useless.

The term “administration” in English, “администрация” in Russian, and generally translated as “administration” in Azerbaijani is used in two senses, such as state and social management. Administration (department) refers to certain types of state bodies and institutions, the legislation on them (Law on Administrative Proceedings) uses the term “administrative bodies”. So in an organic sense; means the same as the terms “administration”, “administrative body” or “managing body” (Mehdiyev, 2010: 5).

In this sense, administrative activity is mainly performed by governing bodies, but it can also define some work and activities in some rare cases, in legislative and legislative bodies. Legislatures are not only engaged in legislative activities; For example, the accounting operations of the parliament, the management of the people controlled by the parliament, and the removal of the territorial division of the administration. Although this type of activity,

which is not essentially included in the legislative function of the Constitution (general rule), is performed by the parliament, it is included in the administrative function. The existence of an administrative justice system allows the courts to supervise disputes arising from such activities. Judicial authorities may also have cases that are not included in the scope of judicial functions (related to court staff) and may issue certain administrative acts.

Legislators throughout the nation have seen fit to entrust administrative determinations to almost every conceivable type of administrative body, particularly during the last fifty years. Executive officials have been loaded with duties ranging from questions of changes in personnel within their staff to matters affecting the life and health of the general public. Boards and commissions of all sizes have sprung up like mushrooms. These agencies have been utilized not only to formulate rules and regulations, but to investigate, prosecute, and adjudicate claims. Thus the scope ranges from settling claims of the immediate parties involved, to affecting the rights of the entire consuming public, and from dealing with completed events to establishing a course of future conduct (H. Seefeld, 1940: 16).

According to our legislation administrative proceeding activities are carried out by the relevant administrative bodies on the basis of the application of individuals or legal entities or on the initiative of administrative bodies on the adoption, execution, change or annulment of administrative acts, as well as consideration of administrative complaints within the procedural rules established by Law.

Administrative agencies make individual decisions affecting citizens' lives and they set general policies affecting an entire economy through they are usually headed by officials who are neither elected nor directly accountable to the public.

Agencies may be defined as governmental entities, although they affect the rights and duties of persons are neither courts nor legislatures. For one thing, indeed agencies are not located within the legislative or judicial organ of the government. Although they are within the executive branch, most of them are not mainly accountable to the executive branch. The term executive branch of government is used either to refer to the president (e.g. in the U.S.), or the prime minister and the council of ministers (e.g. Ethiopia). This definition lacks some precision. A government entity outside of the judiciary or the legislature does not necessarily qualify as an administrative agency. This does not mean that the legislature for some public policy reasons may not opt for a wider inclusive approach in determining which agency may properly be called an agency. The American Administrative Procedure Act adopts this and defines agency as any U.S. governmental authority that does not include Congress, the courts, the government of the District of Columbia, the government of any territory or possession, courts martial, or military authority. In this definition, the reference to —authority signifies a restriction on the scope of government entities that may be properly called as agency. Authority refers to the power to make a binding decision. Therefore, only entities with such power constitute an agency. Similarly, the Black's Law dictionary defines agency as a governmental body with the authority to implement and administer particular legislation. Generally, it can be said that the authority or power of the entity is a common denominator for a precise definition of an agency (Yohannes, 2009: 70).

The Law of the Republic of Azerbaijan “On Administrative Proceedings” is a general law regulating relations arising in connection with administrative proceedings. The adoption of this law played an important role in solving the existing problems in this field and provided legal uniformity for all administrative bodies by reflecting the legal beginnings and main directions. The said law includes two main goals, which are the provision of human rights and freedoms, which are considered as the basic principle and beginning of law, and the rule of law. The principle of the rule of law includes the implementation of the activities of administrative bodies under the legislation and the prevention of citizens from their illegal actions.

Our legislation states that the administrative body is a relevant executive authority of the Azerbaijan Republic, their local (structural) and other bodies, municipalities, as well as any natural or legal person authorized by law to adopt an administrative act.

Administrative law is included in the field of public law and regulates relations between the state and its citizens. Administrative law is a set of rules and principles that regulate how the executive state bodies and other bodies established by law or authorized by law should behave when performing their functions. It ensures that government actions are authorized and that laws are administered fairly and reasonably. Administrative law also includes the power of superior courts to review how departments and agencies exercise their powers and the remedies that courts can provide when departments act outside their authority.

In the science of administrative law, administrative proceedings are understood as activities that include the rules for reviewing citizens' appeals and adopting administrative acts that create or cancel rights for them. The concept of administrative proceedings is concretely reflected in the legislation. According to Article 2.0.6 of the Law of the Republic of Azerbaijan “On Administrative Proceedings”, administrative proceedings are based on the application of natural or legal persons or on the initiative of administrative bodies on the adoption, execution, modification or cancellation of an administrative act, as well as on the consideration of administrative complaints. It is an activity carried out by the relevant administrative bodies within the procedural rules established by this Law.

The Law of the Republic of Azerbaijan “On Administrative Proceedings” is a general law regulating relations arising in connection with administrative proceedings. The adoption of this law played an important role in solving the existing problems in this field and provided legal uniformity for all administrative bodies by reflecting the legal beginnings and main directions. The said law includes two main goals, which are the provision of human rights and freedoms, which are considered as the basic principle and beginning of law, and the rule of law. The establishment of general relations (subordination relations) between the administrative body and the citizen makes the provision of human rights and freedoms a must. This is since the administrative body should not interfere with the rights and freedoms of citizens protected by law by abusing their duties and powers. Ensuring human rights and freedoms has been accepted as the main principle of every legal state. For this reason, we cannot talk about the economic development of any state and the welfare of people by avoiding this principle. The principle of the rule of law includes the implementation of the activities of administrative bodies in accordance with the legislation and the prevention of citizens from their illegal actions.

Article 2 of the Law “On Administrative Proceedings” defines some concepts. There is the concept of “administrative action”, which was used somewhere in the same sense as “administrative action”. However, the administrative procedure in this Law has a relatively narrower meaning. According to Article 2 of the Law, administrative action is the adoption - execution - change - cancellation of an administrative act based on the request of interested persons or the initiative of administrative bodies, as well as the activity carried out in connection with administrative complaints. The definition is not restrictive and does not generally reveal the ingredients. However, the following characteristics of administrative activity, i.e. management function, can be indicated:

- administrative activities, as a rule, are carried out by state management bodies;
- the subject of administrative activity is “public service”;
- the purpose of administrative activity is always “public interest and profit” (public interest”);
- means of administrative activity are administrative-legal acts and actions;
- administrative activity recognizes the authority of administrative bodies (administration) to use “state hegemony and power”;
- administrative activity, as a rule, which is the field of common law the rules of administrative law must be applied (Mehdiyev, 2010: 23).

The subject of the administrative proceedings is the administrative legal issue determined by the relevant decision in a specific case by the application, in cases where it arises from the duty of the administrative body (Karimov, 2006: 79).

RESULTS AND DISCUSSION

There are 3 grounds for initiating administration: application of an individual or legal entity, initiative of the administrative body or the obligation of the administrative body to adopt an administrative act in cases provided by law, administrative complaint in case of appeal against the administrative act.

The administrative body must accept the application submitted by the applicant in person or by mail and register it on the same day. The administrative body shall be obliged to issue or send a reference to the applicant on the registration date and number of the application no later than three days from the date of receipt of the application. The administrative body is obliged to accept the petition and attach it to the proceedings.

One of the grounds for the initiation of administrative proceedings is the application of a citizen or an interested person. The duration of the administrative procedure is calculated from the date of registration of the application. The initiation of administrative proceedings on the initiative of the administrative bodies, which is another basis, is understood as the appropriate action of the official of the administrative body. It can often be called a preparatory action. At this time, the administrative body is not required to adopt an administrative act on the initiation of administrative proceedings. The reason for this is to prevent the prolongation of the activity of the administrative body and to ensure the faster implementation of the citizen's rights. The performance of certain formal actions within the powers of the administrative body is considered the

basis for the initiation of administrative proceedings, and the duration of the administrative proceedings is calculated from that day.

If the applicant fails to submit the documents or information required by law and other normative legal acts necessary for the resolution of the case, the administrative body may require the submission of additional documents or information. The administrative body may not require the applicant to obtain documents or information necessary for administrative proceedings and at the disposal of another administrative body. Documents or information necessary for administrative proceedings and at the disposal of another administrative body shall be obtained by the administrative body itself. The fact that the administrative body requires the applicant to obtain these documents or information shall give rise to administrative liability under the Code of Administrative Offenses of the Republic of Azerbaijan. The administrative body may not request from the applicant any other documents or information other than those provided for in the legislation of the Republic of Azerbaijan. Unless otherwise provided by law, the period set by the administrative body for the submission of additional documents or information shall not exceed 15 days. Unless otherwise provided by law, the period for consideration of the application shall be suspended if additional documents or information are not submitted to the administrative body. The period is resumed from the moment of submission of additional documents or information to the administrative body.

An interested person has the right to be represented by a lawyer in administrative proceedings and to use the assistance of a lawyer. Lawyers acting following the legislation of the Republic of Azerbaijan may participate in administrative proceedings as advocates. Unless otherwise provided by the legislation of the Azerbaijan Republic, expenses related to administrative proceedings shall be reimbursed by the relevant administrative body. Unless otherwise provided by the legislation of the Azerbaijan Republic, the expenses incurred by the interested person or his / her representative in connection with the administrative proceedings, as well as the representation fee shall be paid at the expense of the interested person. In cases where an administrative complaint is upheld, the costs of the proceedings shall be reimbursed by the relevant administrative body.

An interested person participating in the administrative proceedings who does not have a permanent residence in the Azerbaijan Republic must appoint an authorized person registered at the place of residence in the Azerbaijan Republic within three days from the date of notification of the administrative body. The administrative body shall be obliged to send all the documents intended for the interested person to that commissioner.

During the administrative proceedings, the administrative body may, at the request of interested persons or on its initiative, involve an expert or specialist to explain the facts of the case. The administrative body shall decide on the appointment of an expert examination and shall determine the scope of questions (subject of expert examination) in which the expert opinion is required. Interested persons have the right to submit additional questions to be investigated during the examination and additional documents related to these questions to the administrative body. The administrative body is obliged to justify the rejection of the questions submitted by the interested persons. The examination shall be carried out by experts of forensic examinations or

private forensic experts or specialists based on a decision of an administrative body or a contract concluded with interested persons.

The administrative body shall independently collect and take into account the evidence deemed useful and necessary for the determination of the facts of the case. During the administrative proceedings, the administrative body may use documents, explanations of the parties and third parties involved in the case, testimony of witnesses, relevant examinations, expert opinions, and other evidence relevant to the proper resolution of the case.

Based on the above-mentioned concept, we should consider a number of features of administrative proceedings. The first feature of administrative proceedings is one of 2 grounds for its initiation and implementation: a) Application of natural or legal persons and b) Self-initiative of administrative bodies. One of the grounds for the initiation of administrative proceedings is the application of a citizen or an interested person. The duration of the administrative procedure is calculated from the date of registration of the application. The initiation of administrative proceedings on the initiative of the administrative bodies, which is another basis, is understood as the taking of relevant actions by the official of the administrative body. It can often be called a preparatory action. At this time, the administrative body is not required to adopt an administrative act on the initiation of administrative proceedings. The reason for this is to prevent the prolongation of the activity of the administrative body and to ensure the faster implementation of the citizen's rights. The performance of certain formal actions within the powers of the administrative body is considered the basis for the initiation of administrative proceedings, and the duration of the administrative proceedings is calculated from that day.

The second feature of administrative proceedings is that it is carried out only by administrative bodies. According to Article 2.0.1 of the Law of the Republic of Azerbaijan "On Administrative Proceedings", the administrative body is the relevant executive power bodies of the Republic of Azerbaijan, their local (structural) and other institutions, municipalities, as well as any physical or legal entity authorized to adopt an administrative act according to the law. is a person. The list of administrative bodies was approved according to the decision of the Cabinet of Ministers No. 136 dated August 28, 2007, on the approval of the "Classification of Administrative Bodies". According to the Decree No. 345 of the President of the Republic of Azerbaijan dated December 28, 2005, on the application of the Law of the Republic of Azerbaijan "On Administrative Proceedings", the powers of the relevant executive authorities provided for in Article 2.0.1 of that Law are transferred to the Cabinet of Ministers of the Republic of Azerbaijan, central and local executive power. bodies perform. Natural or legal entities authorized to adopt an administrative act are determined by legislation. Although on the one hand, there are participants of the civil circulation with this subject, on the other hand, they are the persons authorized to adopt an administrative act. It is possible to assess the status of legislative and judicial authorities as administrative bodies, which is reflected in the administrative management of those bodies. Thus, the act adopted by the chairman of the court regarding the division of work is considered an administrative act.

In addition to clarifying the concept of an administrative body, a number of its features should also be reviewed. First of all, an administrative

body cannot be defined as a political body. Accepting some state bodies as political bodies is not excluded. Those bodies are considered the subject of constitutional law, not administrative law. At this time, a number of signs should be taken into account for the management body to be accepted as the subject of administrative proceedings. The administrative body should have relative organizational independence. This means that the administrative body is responsible for its decision, action or inaction. Another feature of the administrative body is that its activities are directed abroad. In other words, its activity should be considered not the internal activity of that body, but the external activity.

The second feature is that the administrative body carries out not internal but external activities. The activity of the administrative body is related to the fact that it affects the rights and interests of citizens in one way or another while adopting any administrative act or performing any administrative action. Thus, the decisions he makes regarding his internal activities are related to the organization of his activities within himself. For example, structural change in any Ministry. Here, there can be no talk of relations arising from administrative proceedings. Relationships related to administrative proceedings are formed if the decision taken by the administrative body creates rights for any citizen or restricts his rights. For example, assigning a labor pension to a citizen, or refusing to issue a license to a citizen.

Another feature of the administrative body is that it has relative independence. One of the indicators that administrative bodies are carriers of public interests and subjects of public law is their discretionary powers. According to the legislation in force, discretionary powers are the granting by law to an administrative body or an official of the right to choose one of the possible legal decisions (Aliyev, 2016: 433).

In Anglo-Saxon countries, the control of courts over administrative bodies is considered more ineffective. There are several reasons for this:

Nature of the court- Judges, when making a decision, first rely on precedents related to cases similar to that dispute. For this reason, the court is viewed not as a policy-making institution, but as a means of dispute resolution.

Delay of knowledge or experience in this field - judicial practice in the field of administrative law has come a long way throughout history. We can see this if we consider various cases. Thus, in 1986-1987, more than 70 percent of the decisions of the US Supreme Court were decisions made in favor of administrative bodies. Later, this practice began to change. That is, the experience of the courts in this area is formed later.

Passive decision-making - If we look at the case of *Clinton v. New York*, even if the US Supreme Court wants to make an unconstitutional decision in the mentioned case, it was stated that it will be possible after the relevant Act of Congress is amended. As it can be seen, the judicial norm plays a passive role in creative activity.

Limitation of judicial power- Although the court may have to wait before making a decision, it may sometimes face a number of institutional limitations in the implementation of the decisions made (J.Cann, 2006: 112).

The exercise of discretionary powers by administrative bodies is one of the main principles of administrative proceedings. According to Article 14 of the Law of the Republic of Azerbaijan "On Administrative Proceedings", the administrative body is obliged to exercise its discretionary powers within the

limits established by the law (within the powers granted to it by the law). Decisions made based on discretionary powers must be consistent with the purpose of those powers. During the exercise of discretionary powers, decisions aimed at unreasonably restricting the rights and freedoms of individuals or legal entities cannot be made.

Unfortunately, the concept of agency discretion is one of the least studied and most poorly understood aspects of administrative law. It is so little analyzed that it is frequently referred to as “the hidden component” of administrative law. The first step is realizing that the vast majority of agency decisions are never reviewed by either the courts or the legislature. Other parts of the executive branch, such as the president, governor, or attorney general, occasionally get involved with agency action, but for the most part, agencies function on their own, often with only sporadic outside scrutiny and accountability (F. Fox, 2000: 5).

Another feature of the administrative procedure is the actions included in the activity of the administrative body in its implementation. This includes the adoption of an administrative act, the execution of an administrative act, the modification or cancellation of an administrative act, and the consideration of administrative complaints.

The last feature of administrative proceedings is that it is an activity carried out within the procedural rules established by the Law of the Republic of Azerbaijan “On Administrative Proceedings”.

The Law of the Republic of Azerbaijan “On Administrative Proceedings” is a general law regulating relations arising in connection with administrative proceedings. The adoption of this law played an important role in solving the existing problems in this field and provided legal uniformity for all administrative bodies by reflecting the legal beginnings and main directions. The said law includes two main goals, which are the provision of human rights and freedoms, which are considered as the basic principle and beginning of law, and the rule of law. The establishment of general relations (subordination relations) between the administrative body and the citizen makes the provision of human rights and freedoms a must. This is due to the fact that the administrative body should not interfere with the rights and freedoms of citizens protected by law by abusing their duties and powers. Ensuring human rights and freedoms has been accepted as the main principle of every legal state. For this reason, we cannot talk about the economic development of any state and the welfare of people by avoiding this principle. The principle of the rule of law includes the implementation of the activities of administrative bodies in accordance with the legislation and the prevention of citizens from their illegal actions.

Administrative proceedings by administrative bodies are carried out on the basis of certain principles. In legislation, the principles of administrative action are divided into two classifications: General and procedural principles. General principles include the rule of law, the rule of law, equality, the protection of the right to trust, the exercise of discretionary powers, the prohibition of abuse of formal requirements, the prohibition of waiver of the application of the law, the principle of the least, and the presumption of credibility. Procedural principles include the right to appeal to the administrative body, the participation of interested parties in administrative proceedings, impartiality in the consideration of the case, the provision of advice and necessary information

by administrative bodies, the objective investigation of the circumstances of the case, the right to get acquainted with the materials of administrative proceedings, the language in which the administrative proceedings are conducted, the content of which is protected by law the principle of ensuring the confidentiality of confidential documents or information is applied.

Administrative law is founded on six fundamental principles:

1. Decision-makers who exercise powers granted by statute (“administrators”) must stay within their legal authority or jurisdiction.

2. Administrators must reasonably exercise their judgment when they have discretion in making decisions.

3. Administrators must follow fair procedures when making decisions that affect a person’s rights or interests. This principle is known as “procedural fairness” or, in some cases, “natural justice.” Procedural fairness protects the rights and interests of persons affected by a decision by providing for

- the right of persons to be given notice of intended decisions that may affect them and the right to be heard before such decisions are put into effect; and
- the right to an impartial decision-maker.

4. A person to whom the legislature has delegated authority to carry out a function may not delegate it to someone else. There are some exceptions to this principle, which is known as the “rule against subdelegation” and which is important but less central to administrative law than the first three principles.

5. To be valid, subordinate (or delegated) legislation must conform to the statute under which it is passed. In other words, regulations and by-laws must be consistent with the objectives of their enabling statutes and the scope of the regulatory powers set out in those statutes. This is an important check on the power of the executive branch of government to make laws that are not subject to review by the legislature.

6. If decision-makers violate any of the above principles, the superior courts have the inherent power to intervene to rectify this failure. This intervention is called “judicial review.” It is an important mechanism for preventing abuse of executive power because it is available even when the legislature has made no provision for an appeal of executive action. As well, any law that a legislature passes to prevent judicial review is unconstitutional and therefore invalid (Nastasi, 2020: 50).

CONCLUSION

It is possible to consider the concept of administrative proceedings both theoretically and practically. At this time, although we find that the administrative bodies operate per the law, in some cases we come across cases of abuse of the law. The reason for this can be seen in the predominance of dispositive norms in the law and the fact that the powers of administrative bodies are not contained more precisely. For this reason, the improvement of legislative acts and the creation of a control mechanism for administrative bodies when carrying out administrative proceedings can prevent such cases.

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