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## **Legal Nature of Individual Administrative – Legal Act**

*The article relates to the legal nature of individual administrative-legal act and its significance in administrative law science. The following issues are considered in the paper: brief background of origination of individual administrative-legal act; definition of the notion of individual administrative-legal act in Georgian and German legislation, their similarities and differences; problems of inter-delimitation of individual and normative administrative-legal acts and the need of introduction of terminological difference in regard to them; promotion of the institution of the judge, as the subject, authorized for issuance of individual administrative-legal act and expedience of its existence.*

**Key words:** *general administrative code of georgia, individual administrative-legal act, normative administrative-legal act, terminological difference, administrative justice.*

### **1. Introduction**

Actuality of the studied topic is conditioned by the circumstance that administrative-legal act is one of the most important instruments of implementation on power by administrative body. Consideration of the issued act as individual by the administrative body is of decisive importance for the interested person, whose interests are directly touched by it. Origination of certain right or liability of the person, as well as enforcement of mechanism for protection of such right is related to it, if the person has the feeling that his/her right is encroached by this act. Administrative act is one of the most important legal forms of implementation of public governance.<sup>1</sup> Thus, following from the principles of legal state, one of the most important components, guiding the activities of administrative bodies is important – legislative basis, regulating issuance of individual- administrative legal acts shall be as well-formulated, clear and unequivocal as possible; it will also allow the stakeholders to protect their rights and interests, if they are damaged by these acts.

Problematic issues, related to the individual administrative legal act are discussed in the paper; the mechanism of operation of similar instruments of foreign countries (basically those of German Federative Republic, as Georgian institutions of administrative law are mostly regulated like German legal system)<sup>2</sup> and the methods of resolution of problems are offered.

## **2. General Characteristics of Administrative – Legal Acts**

### **2.1. Origination of Administrative Legal Act**

The purpose of the field of administrative law is to regulate legal bases of administration, subjects, equipped with governmental functions and their relation with the parties, involved in this proc-

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<sup>1</sup> *Adeishvili Z., Vardiashvili K., Izoria L., Kalandadze N., Kopaleishvili M., Skhirtladze N., Turava P., Kitoshvili D.*, Handbook of General Administrative Law, Tbilisi, 2005, 99-100 (in Georgian).

<sup>2</sup> *Winter G.*, Development of Administrative Law and Legal Consulting on the Example of Georgia, as Transitional Country, Magazine Administrative Law, 1, 2013, Tbilisi, 2013, 70.

ess; and implementation of this function mainly depends on implementation of administrative action, which is expressed in issuance of administrative legal acts. Administrative legal doctrine of foreign countries is based on the concept, that administrative act is the manifestation of the will of public administration; legal acts of public administration represent manifestation of the will of the relevant bodies in the process of implementation of the functions, assigned to them. They, as a rule, aim at introduction of certain change in administrative legal relations.<sup>3</sup> The group of authors present administrative act as one of the forms of manifestation of the will of administrative body.<sup>4</sup>

In different law doctrines implementation of functions, governance measures by administrative organs and other subjects, equipped with public powers<sup>5</sup> in relation to other persons is regarded as the key function of administrative legal acts. Obviously, it is a justified approach, nevertheless, the function of administrative acts cannot be exhausted by only this attitude. As the practice shows, in some cases the purpose of administrative acts is also to regulation the action of the administration itself, its procedures and form of relation with citizens and/or other parties. Thus, the function of administrative acts shall also be ensuring of proper operation of public administration and shall be directed towards rising of efficiency and perfection of its activities.

The problem of mutual relation of internal and external acts has special place in the doctrine on administrative acts. Administrative legal science of foreign countries identify the acts, issued by administrative body on the basis of public power, assigned to them and the acts, which refer only to internal relation of the administrative body. The formers are referred to as external acts, and the latter- as internal. External acts are considered to be the acts, which have impact on the relations of the persons, who are not involved in the implementation of public administration. Such acts can be directed towards the defined, as well as undefined circle of persons. Internal acts, primarily, have impact inside the mechanisms of state (public) governance itself. The acts, which refer only to internal relations of administrative bodies (internal acts), are not considered by foreign administrative legal scientists as the administrative acts in the exact meaning of this word. Nevertheless, recently, administrative legal science of the west pays more attention to the research of internal acts.<sup>6</sup>

## **2.2. The Notion of Individual Administrative Legal Act**

As it was already mentioned in the Introduction, the main topic of the study is individual administrative legal acts. Thus special attention is paid to its definition and clarification – what is means under this term in different systems of law.

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<sup>3</sup> *Kozirin A., Shmamina M., Zenentsov A., Bogdanovskaya I.S., Danilov, Sazhina V., Raytelmayer K., Shaikh K., Nikerov G., translators: Kharchiladze I., Ovsyanikova N., Administrative Law of Foreign Countries, Tbilisi, 2014, 195 (in Georgian).*

<sup>4</sup> *Adeishvili Z., Vardiashvili K., Izoria L., Kalandadze N., Kopaleishvili M., Skhirtladze N., Turava P., Kitoshvili D., Handbook of General Administrative Law, Tbilisi, 2005, 99 (in Georgian).*

<sup>5</sup> *Makaridze D., Khazaradze G., Responsibility of Administrative Body Responsibility of Administrative Body in Health Protection Law, Publishing House of David Batonishvili Institute of Law, Tbilisi, 2014, 37 (in Georgian).*

<sup>6</sup> *Kozirin A., Shmamina M., Zenentsov A., Bogdanovskaya I., S. Danilov, Sazhina V., Raytelmayer K., Shaikh K., Nikerov G., translators: Kharchiladze I., Ovsyanikova N., Administrative Law of Foreign Countries, Tbilisi, 2014, 198 (in Georgian).*

Great importance is given to classification of administrative acts into normative and specific (individual acts). Normative acts are the acts, adopted by the public administrative bodies in the process of administrative activities, which are directed towards not specific case, but public relations abstractly, regulation in general. They establish the rules of behavior for unspecified circle of persons and are intended for multiple uses. Specific (individual) administrative acts, on the contrary, are directed towards regulation of individual specific matters (subjects). They are characterized by specificity of instruction and specific person or circle of persons, who may be mentioned in the act itself. Division of administrative acts into normative and specific (individual) acts is characteristic for France and the countries, which took French model, which we don't see in German Law. Executive administrative acts have special place in the legal mechanism of administrative activities in France.

They include "acts, issued by the administration unilaterally, by which, through imposition of obligations or granting the rights, change of legal status is achieved". Not all administrative acts, adopted on the basis of unilateral will, represent executive administrative act. Among unilateral administrative acts, together with executive acts, there are such acts, which are issued by the administrative body, but they don't change the existing norms and legal status. Thus, the main characteristic of executive individual acts, which differs them from other unilateral acts, is that such acts result into change of the existing legal status.<sup>7</sup>

Administrative act is a classical tool of German law. It includes single measures of the government, which obey common law rules. The above mentioned in manifested through the circumstance that administrative actions obey the established legal norms; e.g. traffic signs, construction permit, permit or rejection of activities, trade, imposition of taxes, appointment of officials, issuance of weapon permit. Administrative acts were introduced in German legal regime by *Otto Meyer*. He copies the content-related element from French law with consideration of German administrative law of the 19<sup>th</sup> century. The basis of legislative innovation was granting of the opportunity of legal protection against governmental measures to citizens, so it was necessary to take the measures, as a result of which the goal – establishment of perfect legal protection mechanism would be achieved. As a result of introduction of administrative acts, the action of administration was placed in frames; and procedural meaning of administrative acts was limited in the opportunity of appeal. Consequently, the main function of administrative act is introduction of uniform legal regime, common for various governance-related measures. Old laws used terms like decree, permit. This terminology became common and was given the name of administrative act. The definition of administrative act is provided in p. 35 of the Law of Administrative Procedures and it unifies each of old terms and includes scientific definition of these notions.<sup>8</sup>

Anglo-Saxon states are characterized by division of administrative acts into final and preliminary acts, e.g. Professor *Gallegan* of Oxford University provides one of the variants of division of specific administrative acts: final decisions on individual cases; preliminary or interim decisions,

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<sup>7</sup> Ibid, 376-377.

<sup>8</sup> *Peine F.J.*, Allgemeines Verwaltungsrecht 7, neu bearbeitete Auflage, schwerpunkte *Muller C.F.*, Heidelberg 2004, §7, 102, 103.

preceding final decisions; preliminary or interim decisions, preceding acts, but not followed by decision, i.e. investigation; act, which is not a decision (e.g. protocols of administrative violations); acts, preceding or preparing final decisions; impossibility of making decision or rejection on making decision or implementation of action (act, implemented by absence of action).<sup>9</sup>

### 3. Individual Administrative Legal Act in Georgian and German Law

#### 3.1. Legislative Definition of Individual Administrative Legal Act (According to Georgian Legislation)

According to Georgian legislative definition, individual administrative legal act is the “individual legal act, issued by administrative body on the basis of administrative legislation, which establishes, changes, terminates or confirms the rights and obligations of a person or limited circle of persons. The decision, made by administrative body on rejection of applicant’s satisfaction on the issue, assigned to its authorities, as well as the document, issued or approved by the administrative body, which may be followed by legal consequences, shall also be deemed as individual administrative legal act”.<sup>10</sup>

This legal definition of individual administrative legal act allows its division into four components. The elements of the notion are: administrative body, on the basis of administrative legislation; individual legal act; establishes, changes, terminates or confirms.<sup>11</sup> In accordance with the existing legislation, for the act to be considered s individual administrative legal act, it shall meet the above-mentioned conditions. Let us discuss each of them.

*Administrative body.* Individual administrative legal act can only be issued by administrative body; and administrative body is the public or local self-governance body or institution, legal entity of public law (with the exception of political and religious associations), as well as any other person, implementing public legal authorities on the basis of Georgian legislation.<sup>12</sup>

Legal definition of the notion of administrative body consists of two parts. The first part of definition includes organizational legal notion of administrative body, which delimits administrative body from governmental, legislative and judicial authorities, as organizational legal understanding of administrative body covers only the bodies, included in the public administration system – i.e. all public and local self-governance and governance bodies and institutions. Functional understanding of administrative body, given in the second part of the definition of the notion, unifies administrative bodies in organizational legal sense, as well as physical and legal entities, which are not the subjects of the system of state bodies, but implement public legal authorities on the basis of legislation and issue administrative acts in its framework.<sup>13</sup>

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<sup>9</sup> Kozirin A., Shmamina M., Zenentsov A., Bogdanovskaya I., Danilov S., Sazhina V., Raytelmayer K., Shaikh K., Nikerov G., translators: Kharchiladze I., Ovsyanikova N., *Administrative Law of Foreign Countries*, Tbilisi, 2014, 197 (in Georgian).

<sup>10</sup> General Administrative Code of Georgia, (hereinafter – GACG), Article 2.1 (d).

<sup>11</sup> Turava P., Tskepladze N., *Handbook of General Administrative Code*, Tbilisi, 2013, 69.

<sup>12</sup> GACG, Article 2.1 (a) (in Georgian).

<sup>13</sup> Adeishvili Z., Vardiashvili K., Izoria L., Kalandadze N., Kopaleishvili M., Skhirtladze N., Turava P., Kitoshvili D., *Handbook of General Administrative Law*, Tbilisi, 2005, 108 (in Georgian).

It shall be mentioned, that the term „carrier of public authorities” exist in German law, which means that all entities, equipped with public legal authorities, i.e. who have been given the right of carrying and implementing public authority, are considered as administrative bodies. This notion, as well as German law, shall be considered to cover all persons, equipped with public legal authorities.<sup>14</sup>

On the basis of administrative legislation. GACG determines that the measure, implemented by the administrative body for regulation of specific legal relation, shall follow from the sphere of administrative law. This condition, determined by the law, which shall be met by the administrative act, is related to the general problem, existing in law science like delimitation of public and private law and, consequently, division of the forms of activities of the administrative body into public legal and private legal forms. The presence of this condition can be easily checked in the case where administrative body is authorized for public legal activities, as specific legal relations between it and a citizen in regulated by administrative law, like in police law.<sup>15</sup>

*Individual legal act.* We deal with administrative act, when the measure of administrative body is directed towards a person or limited circle of persons. The circle of persons is specific when, at the time of making the decision, it is determined whom it concerns. Administrative act shall be directed towards individually determined persons, or shall be related to individual specific cases. Legal act has individual nature, when it is directed towards specific person, which the act described by name, or directly applies to it. Its example is issuance of permit for construction of private house to a person. In the case of general regulation, legal act is related to undefined circle of persons. It is characterized by being directed towards “everybody”; by the time of its issuance the specific circle of subjects, towards which it is directed, is not determined. Legal act is specific, when it reflects the circumstances of specific case and is a “single-time” by its nature.<sup>16</sup>

*Establishes, changes, terminates or confirms.* The action of administrative body may be considered as administrative act, when this action is directed unilaterally towards strictly determined legal result (i.e. the result of action – regulation). This element of the notion of administrative act describes its nature, as the measure, directed towards legal regulation of relation, i.e. it establishes, changes, terminates or confirms legal status of person. The essence of legal regulation is that the measure, implemented through issuance of administrative act, in accordance with the will of the administrative body, is directed towards origination of direct legal result unilaterally and mandatory power for execution. Such regulation is primarily characterized by obtaining of outcome as a result of the will of administrative body directly: because administrative body wants so and not by the virtue of law only. The unilateral nature of administrative act and its mandatory power for execution are the elements of this notion, which differ it from other forms of activities of administrative body.<sup>17</sup>

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<sup>14</sup> Makaridze D., Khazaradze G., Responsibility of Administrative Body Responsibility of Administrative Body in Health Protection Law, Publishing House of David Batonishvili Institute of Law, Tbilisi, 2014, 36-37 (in Georgian).

<sup>15</sup> Adeishvili Z., Vardiashvili K., Izoria L., Kalandadze N., Kopaleishvili M., Skhirtladze N., Turava P., Kitoshvili D., Handbook of General Administrative Law, Tbilisi, 2005, 110-111 (in Georgian).

<sup>16</sup> Ibid, 115-116.

<sup>17</sup> Ibid, 118-119.

### 3.2. Individual Administrative Legal Act in German Legislation

As it was mentioned in the introduction, Georgian administrative law is quite close to German, for better demonstration if this issue it is appropriate to review how the institute of administrative act is regulated in German administrative law.

Legal definition of administrative acts is provided in p. 35 of the Law on Administrative Procedures of German Federative Republic,<sup>18</sup> according to which administrative act is a resolution, decision or other action of authorities, which is implemented by governing body on the basis of public legislation and for regulation of single cases and which is directed towards external legal impact. General resolution is a legal act, which is directed towards the group of persons, defined or definable by general features and contains the manifestation of will.

Administrative act has regulative nature. Regulation is a legal action, expression of will, directed towards the implementation of legal results. Legal result may be the origination or change of right or obligation. Attention shall be paid to the two-sided expression of regulation. It concerns, on the one hand, to the action, and, on the other hand, to the outcome of this action, but usually final result is mainly implied in administrative act. In this aspect, acts may be divided as follows:

- a) Purely factual administrative actions (real acts);
- b) Preliminary (preparatory) or interim acts, when final decision is not made;
- c) Expression of legally important will.<sup>19</sup>

Besides, the following elements of the notion of administrative acts can be outlined:

*Administration, administrative body.* Administrative act may originate only as a result of action, implemented by governing body. Administration is an instance (service, position) which protects the interests of public administration. It includes united instances and positions of public administrative organizations (bodies).

*Sovereign legal act, issued by administrative body.* The function of this element is to select from the types of diverse actions of administrative body the action, which is considered as administrative act. It comes to the determination of the type of action. Administrative action is the expression of the will of administrative law. The action relies on two components: formation of will and expression of will. Administrative act shall be understood as independent unilateral expression of will which is preceded by the formation of will.<sup>20</sup> Regulation shall be sovereign. It happens in the case where action is directed towards regulation of public law sphere. It makes public and private law important. The act, regulating private law can't be considered as an administrative act.

*Individual case.* One of the features of administrative act is that it regulates individual case. The purpose of this element of the notion is delimitation of defined and undefined circles of persons. We deal with administrative act when the regulation refers to the defined circle and it has specific-individual nature. The above mentioned doesn't imply that the act shall be directed towards one per-

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<sup>18</sup> Specify the source *Verwaltungsverfahrensgesetz (VwVfG)*, <<http://www.gesetze-im-internet.de/bundesrecht/vwvfg/gesamt.pdf>>, [11.11.2015].

<sup>19</sup> *Maurer H.*, *Allgemeines Verwaltungsrecht*, 15. Auflage, *Verlang C.H. Beck*, Munchen 2004, 190.

<sup>20</sup> *Peine F.J.*, *Allgemeines Verwaltungsrecht 7.. neu bearbeitete Auflage, schwerpunkte Muller C.F.*, Heidelberg 2004, §7, 110.

son, but that the defined circle of persons shall be outlined. The situation, when the act regulates undefined number of persons, i.e. when the act has specific-general nature, is problematic.

*Presence of external action*, Administrative act is only the act, having regulation, which determined the rights and obligations for other, external legal entities. The term itself indicates that the administrative act shall be directed externally. It occurs only in the case where the regulation, by its objective content, is defined according to the circumstance that it can trigger the impact; not only develop, instigate external impact, but develop it legally. Important feature of this reference is legislation, which shall be specifies and executed. According to the above mentioned, there are the following:

- a) Internal instructions for personnel. The head (high official) is authorized to give instructions to the subordinated administrations and personnel with consideration of official positions and activities. They don't have external impact and consequently, they don't represent administrative acts. Instructions are intended for internal use only when they are meant for personnel, as public servants and vice versa, they are normative acts, if they are directed towards independent legal entities; in the first case the personnel is inside the administration, and in the second case outside the administrative sphere. Rotation of personnel or change of tasks inside the administration is also important. According to the old legislation, rotation was only internal act of administration.
- b) Consent from administrative service or other administrative person (multi-stage administrative act). There exists the number of administrative acts, which, before implementation, require consent from other administrative body or entity. The consent shall be classified as the act only if it develops personal and direct legal impact for the citizen. It is marked by the right of protection of special interests and demonstration of its own interests is transferred to the body, providing consent. As a rule, the consent has only internal administrative explanation, allowed only for the organization and, consequently, it is not administrative. The act, requiring obtaining of consent – due to internal impact from other body is considered as a multi-stage administrative act.<sup>21</sup>

As it is seen from the discussed cases, Georgian and German legislation basically, uniformly regulates the definition of administrative acts on legislative level. And the main difference is that Georgian legislation doesn't imply the sign of external legal impact under the notion of the administrative act. And while discussing German legal system it became obvious how important this element of the notion is in the aspect of considering the act as administrative. Just on the basis of introduction of external legal impact for administrative acts, it will be possible to divide the legal acts, issued by administration into internal departmental, interim and administrative acts. Introduction of this institution will significantly simplify work for administration in the sense that in the case of its formulation in details, it will be possible to determine when the act, issued by administration, is individual and when – it not. If we rely on legal practice, established in Georgian reality, we will see that the acts, issued by administration, whether they are internal departmental or interim by the con-

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<sup>21</sup> Maurer H., Allgemeines Verwaltungsrecht, 15, Auflage, Verlag C.H., Beck, München, 2004, 192, 194, 196, 199-210.

tent, are represented with the properties and rules, determined for the issuance of individual administrative legal act. E.g. internal departmental act like temporary imposition of his/her obligations by head of department on other employee, shall be issued in accordance with the procedure, determined for individual administrative legal act.<sup>22</sup> Besides, according to GACG, “administrative body is obliged to investigate, in the course of administrative proceedings, all circumstance, important for the case and make decision on the basis of assessment and comparison of these circumstances. For achievement of this goal, the body can request documents.”<sup>23</sup> The action of the mentioned content on the part of administrative body represent interim act for making final decision, although the form and content of the letter is the same as that of the individual administrative legal act. Thus, if the forms of activities of administrative body are determined according to this sign and introduced in the legislation on the level of terminology, it will be possible to differ the acts, issued by administration, according to their content – whether they are “internal departmental”, interim or individual acts. The above mentioned will simplify the work of administration, as well as perception of stakeholders in regard to administrative acts.

#### **4. Individual Administrative Legal Act and Normative Administrative Legal Act**

Normative administrative legal act is defined as the legal act, issued by the authorized administrative body on the basis of legislative act, which includes general rule of conduct of its permanent or temporary and multiple uses.<sup>24</sup> The elements of the notion of normative act are:

*Authorized administrative body* – the body, authorized for issuance of normative administrative act is determined by the law, which equips the relevant bodies with the authority of issuance of such act. Administrative legal norms have two types of loading – law enforcement and constitutive; these norms serve for the purpose of law enforcement, i.e. execution, due to which, according to the existing legislation, executive normative acts are issued for the purpose of law execution, i.e. they are bylaw acts.

*Legislative basis for issuance of normative administrative legal act* – general bases of authorities for issuance of normative administrative legal act are specifies in the Constitution of Georgia, Law of Georgia “On Normative Acts” and GACG. In the case of issuance of normative administrative legal act on the basis of legislative act it is important to determine the “content, purpose and volume” of authority of issuance of normative administrative legal act in this Law, i.e. the legislator itself shall determine the frames and direction of legal regulation, implemented through issuance of

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<sup>22</sup> 4 of the Article 3 of the Regulation of the Legal Entity of Public Law – Center for Development of Electoral Systems, Reforms and Training, approved by Resolution №7 dated February 3, 2013 of the Central Electoral Commission of Georgia rules, that the Director of the Training Center shall issue individual administrative- legal act – order on internal departmental, staff-related and other issued, following from the activities of the Center, and in accordance with p. 11 of the same Article, in the case of annual leave, official trip or impossibility of implementation of his obligation, the Director of the Training Center shall impose implementation of his obligation on any of the members of the Center staff, <<https://matsne.gov.ge/ka/document/view/1576925>>, [11.11.2015].

<sup>23</sup> GACG, Articles 96-97.

<sup>24</sup> GACG, Article 2 (I).



normative administrative legal act in the future so that the governing body is able to act in the framework and in compliance with the legislator's will.

*General rule of conduct* – this element of normative administrative legal act delimits it from individual administrative legal act. Normative administrative legal act determines general rule of conduct, which is intended for indefinite number of participants of indefinitely many relations at the time of its issuance.

Primarily, while discussing the connection between individual acts, it shall be mentioned that individual legal acts is a single-time act and it shall comply with normative act. Individual legal act shall be adopted (issued) only on the basis of normative act and within the limits, determined by it.<sup>25</sup>

At first glance, the difference between individual and normative acts is obvious and there shall be no problems in the aspect of difference. Nevertheless, I would like to outline the issue, which will show the problem and the necessity of its regulation from this angle.

As it was already mentioned, individual, as well as normative act is one of the most important institutes of activities of administrative body. The title of individual and normative acts is often similar; e.g. orders, issued by the Minister of Georgia, which in some cases are of individual, and in other cases – of normative nature. P.1 of the Article 13 of the Law of Georgia “On Normative Acts” determines order as the normative act of the Minister of Georgia. Besides, in accordance with subparagraph “m” of p. 2 of the Article 5 of the “Regulations of the Ministry of Justice of Georgia”, approved by the Resolution №389 dated December 30, 2013 of the Government of Georgia,<sup>26</sup> the Minister, by normative acts, issues normative and individual legal acts – orders in the cases and frames, determined by normative acts of the Government of Georgia. The similar situation applies to the acts to be issued by the President of Georgia. In accordance with p.p. 3 and 4 of the Article 11 of the Law of Georgia “On Normative Acts”, the Decree of the President of Georgia is a normative act (only the decrees, related to human resources and personal issues, constitute the exception); the decree of the President of Georgia, as the Supreme Commander-in- Chief of the Military Forces of Georgia, can be either normative act or individual legal act. As it was mentioned in p. 3.2, the difference of administrative acts according to their content would simplify their understanding terminologically. The similar position may apply in this case – it would be good is the difference between individual and normative acts, from terminological viewpoint, in regulated on legislative level as well; it would help to avoid the situation, where the interested party fails to determine – whether the act is really individual or normative. The problem of identification of these acts is more clearly visible, when the act with one and the same content is treated as individual act in one case and as normative – in the other. The following cases could serve and an example:

The Regulations of the Legal Entity of Public Law – Revenue Service – is approved by the Order № 34134 dated July 18, 2014 of the Head of Revenue Service; the mentioned act is published in Georgian Legislative Herald and the type of the document is specified as the individual act of the Revenue Service.<sup>27</sup>

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<sup>25</sup> Article 2.4 of the Law of Georgia On Normative Acts.

<sup>26</sup> <<https://matsne.gov.ge/ka/document/view/2177616>>, [11.11.2015].

<sup>27</sup> Internal Regulation of the Legal Entity of Public Law – Revenue Service, <<https://matsne.gov.ge/ka/document/view/2426434>>, [11.11.2015].

Regulation of the State Audit Service, approved by the Order #122/37 dated June 18, 2013 of the General Auditor of the State Audit Service.<sup>28</sup> In the column of the legal basis of the above mentioned act, p. “m” of the Article 10 of the Law of Georgia “On the State Audit Service” is specified, authorizing the General Auditor to issue the normative act – order.<sup>29</sup>

As we can see, the act, carrying one and the same content – the regulations – is individual act in one case and normative act – in the other case.

It could be concluded that the cases of issuance of individual and normative acts shall be regulated in more details on legislative level. Mechanism, clearly delimiting individual and normative acts, shall be developed. As it was already mentioned, one of the ways of resolution of this problem is determination of terminological difference.

### **5. Judge, as the Subject, Authorized for Issuance of Individual Administrative Legal Act (Special Case)**

It is very important to discuss the institute, determined by the Code of Administrative Offences of Georgia (hereinafter – COAG). In particular, the mentioned Code determines the cases of administrative offences, subject to consideration by District (City) Court,<sup>30</sup> considered by the Court on the basis of the Protocols of Administrative Offences.<sup>31</sup> It should be noted that several administrative bodies are authorized to draw up administrative offence protocols subject to court consideration. As an example, I would mention some of them: for the offence, specified in the Article 52 of the Code of Administrative Offences – contamination, degradation or making useless otherwise – the protocol of administrative offence will be drawn up by the authorized personnel of the organization under the Ministry of Environment and Natural Resources Protection of Georgia; for the offence, specified in the Article 159<sup>1</sup> – placement (dissemination) of improper advertisement – the protocol of administrative offence shall be drawn up by the authorized officials of local self-governance bodies. Following consideration of the case of administrative offence the body (authorized official shall make a ruling on the mentioned case. The ruling shall include: the name of the body (official) making the ruling; date of hearing; information about the person in regard to whom the case is heard; description of the circumstances, identified in the course of hearing of the case; specification of the normative act, which provides for responsibility for the given administrative offence; the decision, made in regard to the case.<sup>32</sup> Legal nature of the ruling, in accordance with the above specified criteria, indicates that it represents individual administrative legal act. Thus, it comes out that the court, by the virtue of the above Law, is equipped with the authority of issuance of the act, having the content of individual administrative legal content. As it became clear during discussion of the notion of administrative act, implementation of the functions, governance measures by administrative bodies

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<sup>28</sup> <<https://matsne.gov.ge/ka/document/view/1948536>>, [11.11.2015].

<sup>29</sup> <<https://matsne.gov.ge/ka/document/view/17506>>, [11.11.2015].

<sup>30</sup> Article 208 of the CAOG.

<sup>31</sup> Article 239 of the CAOG.

<sup>32</sup> Article 266 of CAOG.

and other subject, equipped with public powers in regard to other entities is considered to be the key function of administrative legal acts. Thus, administrative acts shall be related to the implementation of governance measures by the administration. In compliance with Georgian Constitution, state governance in Georgia shall be implemented on the basis of the principle of distribution of powers.<sup>33</sup> Besides, the authorities are divided into judicial, legislative and executive authorities, thus ensuring mutual control and balance of the branches of authorities. The goal of administrative justice is to resolve the dispute between the private person and administration in the sphere of governance through judicial procedures.<sup>34</sup> Thus, through the introduction of the above mentioned institute by the Code of Administrative Offences, the court actually solves the issues, resolution of which is the competence of administrative bodies on departmental basis, this infringing the essence of Administrative justice.

## 6. Conclusion

The notion and general characteristics of administrative acts on the basis of the example foreign countries (basically, Germany and France) was discussed in the paper.

As a result of discussion it was demonstrated that the purpose of the field of administrative law is to regulate legal bases of administration, subjects, equipped with governmental functions and their relation with the parties, involved in this process; and implementation of this function mainly depends on implementation of administrative action, which is expressed in issuance of administrative legal acts.

Legal doctrines of foreign countries specify difference among several types of acts, like internal and external acts, internal departmental, interim, preliminary. The main feature of executive administrative acts, making them different from other unilateral acts is that such acts are followed by change of the existing legal status.

Regulation of individual administrative act in Georgian and German legislation was considered. Unlike German legislation, Georgian legislation doesn't provide for any external regulation mechanism, in regard to which an opinion was expressed that division of legal acts, issued by administration, into internal departmental, interim and individual administrative legal acts would be possible only on by introduction of external legal impact for the administrative act; and introduction of this institute will significantly simplify work for the administration in the sense that in the case of its detailed formulation it would be possible to determine – when the act, issued by the administration is an individual act and when – it is not.

When comparing individual and normative acts it became obvious that certain problematic issues exist, related to circumstance that these acts are referred to as one term and the acts with similar content are issued as normative form in one case and individual form in the other. In regard for regu-

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<sup>33</sup> Article 5 (4) of the Constitution of Georgia.

<sup>34</sup> *Kozirin A., Shmamina M., Zenentsov A., Bogdanovskaya I., Danilov S., Sazhina V., Raytelmayer K., Shaikh K., Nikerov G., translators: Kharchiladze I., Ovsyanikova N., Administrative Law of Foreign Countries, Tbilisi, 2014, 281 (in Georgian).*

lation of the problem a recommendation was made to introduce terminological difference of these acts and the mechanism, which would clearly delimit these two types of acts.

In the last chapter of the paper, attention was drawn to the possibility of issuance of the acts, having individual administrative legal content, by the court, which was assessed negatively, as the mentioned ruling contradicts the principle of administrative justice and represents interference of judicial authorities in the activities of administration.

As a final conclusion, it could be stated that legal nature of administrative acts is outlined in the paper; shortcomings of certain type are identified, certain remarks are expressed and recommendations are made in the aspect of improvement of this legal institute and its better understanding.