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Definition of Legal Norms by Administrative Court

The court system is independent and it is exercised by the Constitutional Court of Georgia and the General Courts of Georgia.¹ As it is well known, the function of the court is to decide the disputed issue in favor of the side towards which the scales of law and justice lean, and not only to control the relevant systems, but also to promote their formation and development². Court independence is a prerequisite for the fundamental guarantee of the rule of law and due process. A judge must inspire public confidence in the independence, fairness and impartiality of the law.³

The purpose of this article is to determine the peculiarity of the interpretation of the administrative norm by the court. A parallel will be made with the approaches established in the European experience and literature.

Key words: court, administrative board, definition of norm, role of judge.

1. Introduction

Law is a complex science field, where the analysis of the theories of legal norms is aimed at reducing and studying each norm to small parts, therefore the question of interpretation of a legal norm by a judge causes a discussion among scientists⁴. First of all, in each definition, it is interesting how the identification criteria were established during the formation of the norm, which norm we are dealing with, and whether there is extensive realism, which, in other words, is an expression of the true will of the norm.⁵ In addition, jurisprudence analyzes such legal relations that are regulated by relevant norms and constituent elements. which finds itself in constant renewal and development.⁶

In the legal literature, a number of types of norm definitions are distinguished, including: official and unofficial, authentic, legal definition, casual definition, subjective, objective, word-for-word definition, grammatical, logical, historical definition, teleological, spatial, restrictive and others.⁷ However, it is interesting to see what methodology the court applies when interpreting the relevant norms, whether there is a methodology used by the judge.

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¹ Constitution of Georgia, Art. 59.

² *Bator M.*, What is wrong with Supreme Court, University of Pittsburgh Law Review, Vol. 51, Issue 3, 1990, 697.

³ Ethics of Judge <<http://hcoj.gov.ge/ka/>> [06.08.2023].

⁴ *Walt B., Bonczek G., Scepankova E., Matthes F.*, Semantic Types of Legal Norms in German Laws: Classification and Analysis Using Local Linear Explanations, Law Journal Library, 43, 2019.

⁵ *Narvaez M. M.*, Expressing Norms Theory of Norms, Journal for Constitutional Theory and Philosophy of Law, Vol. 25, 43-100, 2015.

⁶ *Dewitt A.*, Classification and Restatement of the Law, Illinois Law Review, 622, 1919-1920.

⁷ *Tumanishvili G.*, Introduction in Civil law of Georgia, Tbilisi, 2012, 23 (in Georgian).

Court interpretation means clarifying the meaning of the legal norm by the court, which is carried out in order to correctly apply the norm in the court. Such definitions are also important for subordinate bodies. Thus, the court resolves this or that disputed legal relationship on the basis of the relation of the relevant law, which is carried out through the correct interpretation of the law, i.e. clarifying the true meaning, solving the intention of the legislator revealed in the appropriate set of words. The interpretation of the law is accompanied by a kind of difficulty in the case when the norm is not clear and consistent in meaning, its literal application contradicts the purpose of the law, and cannot provide a correct, fair solution to a specific relationship. However, it is interesting to see the practice established by the Supreme Court regarding the interpretation of certain norms and the precedents of the correct understanding and application of this practice by the courts of first and second instance.⁸

The mentioned issue is quite important both in labor and other categories of administrative disputes. In particular, recent judicial practice has shown that the majority of judges do not use the prerogative to return the case, unless the specific evidence or a certain part of the case is so unexamined that it is practically impossible to make a decision. On the other hand, there are frequent cases when, during the consideration of the cases of two persons dismissed on the basis of one act, one judge invalidated the dismissal and fully satisfied the claim, while the other judge invalidated the order of dismissal and returned the case to the administrative body without deciding the issue. In practice, there are decisions of 2023, where the legal entity won the case in all three instances, the administrative body issued a new act, which was completely invalidated by the court of first instance, and the appellate court partially satisfied it and returned the case back to the administrative body. Full interpretation of the norm is extremely dangerous both in terms of appeal to the court and in terms of its effectiveness. What is a reasonable period of time from the application to the court until the final decision is made, has become the basis of many discussions and discussions, but it depends on the judge how to use the discretion granted to him by law.⁹

2. The “Final Word” of the Court and the Prerogative of Returning the Case Back

The court has the prerogative of the “final word” in administrative cases, which means that if the disputed act is against the law and it harms the legal right or interest of the claimant, the court will issue a decision to declare the act unconditionally null and void. This rule also applies to a binding lawsuit, within the scope of which the court is authorized to settle the disputed issue with its decision, if the aforementioned does not require an additional examination of the circumstances of the case and the decision of the issue does not belong to the discretionary authority of the administrative body.

The full control of the court is even when the court cancels the repealed act without deciding the issue and returns it to the administrative body for a new decision with specific instructions. If the court considers that the disputed act was issued without investigating and assessing the circumstances essential to the case, the court is entitled to declare the act as invalid without any clarification of the

⁸ Supreme Court of Georgia, Decision №1246-821(K-05).

⁹ This case has been appealed to the court of appeals. It will be quite interesting what will be the decision of the Supreme Court and how the practice will follow.

disputed issue and instruct the administrative body to issue a new act after investigating and assessing the circumstances. The same rule applies to a binding lawsuit, when the disputed issue requires additional investigation of the circumstances of the case, therefore the court verifies the legality of the refusal and instructs the administrative body to issue the act requested by the plaintiff with a specific reference. In this case, the administrative body does not have the prerogative of the final decision, because the right of full content control ultimately remains with the court.¹⁰ However, the court always tries to make a decision on the case where all the facts and details are investigated.¹¹

Defects in the law are revealed during the implementation of law enforcement activities, where the activity of the courts occupies a special place, since it is at their disposal that they have real opportunities to identify and overcome the deficiencies in the legal norms, through their interpretation.¹² Courts are trying to eliminate existing judicial defects. In the professional interpretation of the legal norm, the judge is bound by both procedural (principles of procedural law) and substantive legal restrictions (obligation to make a reasonable decision). Without applying the mentioned principles, any definition will be arbitrary. If a corresponding norm of law or law is found, the judge checks its effectiveness in time and according to the circle of persons, determines the conditions of its unified interpretation in court decisions. If the judge determines that the interpreted legal norm is not flawed, the adequate interpretation is used. When one or another uncertainty is found in a legal norm, its expansive definition is used, when the norm is interpreted more broadly than its literal meaning, or restrictive definition, when the norm is interpreted narrower than its literal meaning, as a result of which the true content of the norm is determined.¹³ The norm interpreted by the judge should not leave the parties feeling unclear about this decision, but his interpretation should strengthen the idea of the law more.¹⁴

The approach of the Supreme Court is also interesting, where it is emphasized that the definition of the Court of Cassation is casual. The Supreme Court does not make an abstract, general definition of the norms, if the factual circumstances important for the resolution of the dispute need to be examined by the body, the court is deprived of the opportunity to discuss the correctness of the definition of the norms, because the first test for the implementation of subsumption is to determine the perfection of the factual circumstances.¹⁵ The cassation chamber also explained that the law is a means of implementing the purpose of the legislator and it must be interpreted within the scope of the purpose of the legislator and its implementation, at which point the will of the legislator must be determined. The definition of the law is based on certain principles: the principle of objectivity – that the definition should be based on the text of the law and express the will of the legislator; The principle of unity – every norm should be read systematically, in the logical context of the text of the law; The principle of genetic definition – the goal and intention of the legislator must be taken into

¹⁰ *Kalichava K.*, Justice and Law, Tbilisi, 2021, 20 (in Georgian).

¹¹ *Carter F.*, Mechanical Details of Opinion Writing, Nebraska Law Review, Vol. 20, Issue 1, 76

¹² *Kokhreidze L.*, Problems of Interpretation of Some Civil-legal Norms in the Consideration of Disputes Related to Inheritance, Justice and Law, 2014, 11.

¹³ *Ibid*, 13.

¹⁴ *Palmer J.*, A Definition of Law, American Bar Association Journal, Vol. 22, Issue 1, 69-70.

¹⁵ Supreme Court of Georgia, Decision №BS-309-309 (2K-18).

account. Thus, the law should be interpreted in accordance with the mentioned principles. Specification of the norm, its factual elements and legal consequences is carried out through the definition of the concepts used in the norm.¹⁶ With a similar approach, the judge becomes the “author” and “writer” of democracy, who has assumed the role of “education” of the society.¹⁷

2.1. The Definition of the Norm by the Judge as a Ground for the Developing Law

A judge should not refrain from engaging in prohibited activities that will contribute to the development of legislation and the legal system¹⁸. In the modern conditions of the formation of the legal state, the problem of defining the norms of the law is particularly relevant, as it is related to the raising of the legal culture and legal consciousness of the society. Interpretation of the law involves explaining the vague norms of the law and determining the meaning of the words. Law expresses legal concepts in words. Understanding the law means that the words of the law are given the general representational content that these words are meant to convey. If the law gives the judge some freedom in making a decision, then the decision should be made based on the judge's legal awareness. For the judiciary, acting in accordance with the law means making a judicial decision only within the framework of the applicable law. Norms should be interpreted only on the basis of legal methodology. If there is a flaw in the legislation, the judge's argumentation should be made only in accordance with the immanent principles of the Constitution. It should be noted here that the judge, while interpreting the norm, is not free in every way to arbitrarily decide the case based on his personal legal feelings. At this time, he is obliged to first exhaust all the possibilities of knowledge in order to find the way of the error, which is the most relevant in relation to a specific case or corresponds to the existing judicial practice. As the Federal Constitutional Court of Germany has established, “the law enforcer obeys not only the law, but also justice”. Accordingly, the interpretation of the norm by judges during the implementation of judicial activities is a legitimate basis for the development of law, which derives from the “principle of justice of the law.”¹⁹

In a democratic state, it is the duty of the court that the judge upholds the law impartially and without prejudice. The judicial functions of a judge are of paramount importance compared to all other types of his activities, the primary duty of a judge is to perform judicial powers, the main element of which is the consideration of cases and the rendering of decisions, which require the interpretation of the law and the application of the norms provided by the law. On the other hand, the acts of explanation of the legal norm represent a process formed by the combination of three main elements: understanding, explanation and the act of explanation of their accumulation.²⁰

In the theory, the explanatory act (interpretive act) is considered as a legally important document, which includes specific normative correspondence and is aimed at determining the true meaning

¹⁶ Supreme Court of Georgia, Decision №BS-942-938 (K-17).

¹⁷ *Strawn U.*, The Judge's Role as an Educator, *University of Bridgeport Law Review*, 1987, 371.

¹⁸ *Dreher C.*, The Judge's Role, *Judges Journal*, Vol. 35, Issue 3, 1996, 16.

¹⁹ *Kipshidze Sh.*, The Judicial Law as a Source of Legislation, *Journal of Law*, №1, 2018, 209-210 (in Georgian).

²⁰ *Bangalore Principles of Judicial Conduct and Commentaries*, German Society for International Cooperation

of the content of the legal norm. Official explanatory acts, along with normative-legal and judicial acts, are legal acts, therefore they are characterized by the same features that characterize legal acts in general. Those administrative bodies that do not have a law-making function should interpret legal norms only within and within the scope of the norm to be explained. It is not allowed to establish new norms by them.²¹

In society, there is a clear opinion about various events, the interests of minorities and majorities, the interests of vulnerable groups, and at least objective approaches to issues, however, the judge must be able to interpret the norm in such a way that his decision forms a strong and united society through ethics and sociological aspects.²² The final word received by the judge should not create new ambiguities and uncertainties, especially when the court sends the act back to the administrative body for consideration.

Parallel to this principle, the principle of comprehensive and objective investigation of the circumstances of the case by the administrative court based on the public interest, to collect factual circumstances and evidence on its own initiative, to make a decision to present additional information and evidence. The administrative process is distinguished by its inquisitorial nature, as it is focused on the protection of public norms, thus it differs from the civil process, where private legal interests are protected. If in the process of considering the administrative dispute the court is not satisfied with the evidence presented by the parties and considers that it is insufficient for the objective investigation of the facts of the case and the determination of the objective truth in the case, it shall, on its own initiative, ensure the search for evidence and the examination of the circumstances. It should also be taken into account that the court may focus on such circumstances and evidence that the parties did not present to the court during the process.²³

2.2. Definition of the Norm in Terms of Enforcement of Rulings and Decisions in Administrative Cases

The discretionary rights of the judge in the consideration of administrative cases are particularly important, and the more democratic the state is, the more the role of the judge increases.²⁴ Although the judge, due to the performance of the function assigned to him, cannot take the place of the administrative body, he is obliged to provide reasonable control over the exercise of discretionary powers by the administrative body, in particular, the principle of proportionality. It is important to ensure that every right is protected as much as possible during the process, as mentioned in Article 13 of the European Convention of Human Rights. The remedy must meet the requirements of Article 6 of the Convention, it must ensure a fair and proper hearing. It is impossible for the remedy to be effective if the judge cannot make a decision within a reasonable time. Moreover, it cannot be effective if the

²¹ *Mosulishvili A.*, Concept of law, essence, necessity of content fulfillment – A prerequisite for strengthening the authority of law, Academic Bulletin, Grigol Robakidze University, No. 4, 2015, 62 (in Georgian).

²² *Laub R.*, The Judge's Role in a Changing Society, *Judicature*, Vol. 53, 1969, 140.

²³ *Gvamichava T.*, Admissibility of the Cassation Complaint in the Administrative process, (comparative analysis), Dissertation, Tbilisi, 2017, 52 (in Georgian).

²⁴ *Schwarzer W.*, Managing Civil Litigation: The Trial Judge's Role, *Judicature*, Vol. 61, Issue 9, 1978, 402.

judge's decision is not executed in a timely manner, according to the law. Therefore, the judge should play an active role in the enforcement of the decision he has made, using various means.²⁵

The role of judges in the execution of the decisions made in administrative cases is very important. The Consultative Council of European Judges (CCJE) believes that the principles of “mutatis mutandis” applicable to enforcement related to civil cases also apply to administrative cases, regardless of whether the case is brought against an individual or a public institution. In a state where the principle of the rule of law is respected, public institutions are most obliged to respect the decisions made by the court and “ex officio” are obliged to execute such a decision in a timely manner. The European Court of Human Rights has considered the application submitted by the applicants who either have not yet applied for enforcement proceedings or have to apply for this procedure. In this regard, the court stated that “a person who has obtained an enforceable decision as a result of successfully winning a dispute against the state should not be obliged to apply for enforcement proceedings in order to enforce such a decision.” When recourse to enforcement becomes necessary, States should ensure that their national legislation provides for disciplinary and civil proceedings against public officials who refuse or delay the enforcement of a judgment. In such cases, the issue of civil liability of the civil servant may also arise.²⁶

The principle – “The court knows the law” – gives rise to certain contradictions in practice.²⁷ A dispute resolved in favor of that side may have a long way to go, as even a slight ambiguity in the resolution part can cause problems at the enforcement stage. To summarize, it should be said that the enforcement mechanism should be very fast and flexible, so that non-enforcement of the decision does not create a feeling of inefficiency in the court. The efficiency of the enforcement mechanism contributes to the integration of society and reduces potential criticism,²⁸ which is based on clear and transparent decisions by the court.

3. Interpretation of the Acts by the Administrative Bodies and Control of the Court

According to the legislation, There are difference between individual administrative-legal act and normative acts. An individual administrative-legal act is addressed to a person or a limited circle of persons, while a normative act contains a general rule of conduct for permanent or temporary and multiple use. According to the content of the relationship regulated by the administrative act, it is separated into imperative character, specific legal relationship-determining character, right or legal relationship-determining existence-absence, preventive, repressive, equipping, limiting, etc.²⁹ Those mentioned acts are issued by administrative bodies.

²⁵ Young Lawyers Association of Georgia., The right to a fair court, Tbilisi, 2001, 194 <http://old.supremecourt.ge/files/upload-file/pdf/mosamartleta.qcevis-wes1.pdf> last verified [10.08.2023]

²⁶ Consultative Council of European Judges, Decision No. 10, 2010, 9.

²⁷ *Chachava S.*, Competition of Claims and Claim Basis in Private Law Dissertation Thesis, 2010, 42 (in Georgian).

²⁸ *Bridges C.*, Enforcing Integrity, Indiana Law Journal, Vol. 87, 2012, 1083.

²⁹ *Turava P.*, Handbook of General Administrative Law, Tbilisi, 2005, 120 (in Georgian).

Administrative body, this is every state or municipality body/institution, a legal entity under public law (except for political and religious associations), as well as any other entity that performs public legal authority based on the legislation of Georgia.³⁰ In addition, it should be noted that the administrative bodies carry out their activities within the scope of their powers and discretion. Discretionary power gives the administrative body or official the freedom to choose the most acceptable decision from several decisions in accordance with the law based on the protection of public and private interests. The control of relevant decisions belongs to the sphere of activities of the judiciary.

Discretionary authority is understood as legally “bounded freedom”, since it is limited by the purpose and scope of the norm of discretionary authority. In the administrative legislation of Georgia, such norms, which talk about the exercise of discretionary powers, dominate in the Code of Administrative Offenses of Georgia, which refers to the authority of the administrative body to use the possibility of imposing a monetary fine for an administrative offense. In such a situation, the discretionary power provides more scope for exercise of internal belief, at which point the administrative body is obliged to act in accordance with its duty and to use said scope for the purposes and within the scope of the law. Such application of the legal norm derives from the mandatory principles of the rule of law and, in particular, from the principle of equality. Incorrect use of internal beliefs is subject to verification by administrative courts.³¹

3.1. Decisions Made in the Frames of Discretion

For the first time, the term “discretion” was used in the United States of America in the Fox Act of 1792, which gave judges the right to refer to the jury and interpret both the content of the applicable norm and to express their own opinion about the case.³²

Decisions made within the framework of discretionary authority belong to the field of actions that are carried out on the basis of legal authority. Actions taken on the basis of discretionary authority are legally significant if they lead to the creation, modification or termination of obligations. Thus, for example, the constitution gives the parliament the power to make laws, and the legislation on local self-government gives these bodies the right to make legal decisions within the scope of their powers. As for the limitation of discretionary powers, it is done not only on the basis of the enabling norm, but also by the legal context. It follows from the principle of the superior legal force of the law that the decision made on the basis of discretionary authority should not contradict the norms of the law. First, the constitutional provision that all people are equal before the law. The limits of discretionary authority, at least for administrative discretionary authority, are traditionally established in the norm providing the authority itself.³³

³⁰ General Administrative Code of Georgia, Art. 2, Par. “A”.

³¹ *Tskhadadze K.*, Relevance of Constitutional-legal Principles for Administrative law, *Administrative Law*, 2016, 11 (in Georgian).

³² *Bingham L.*, The discretion of the Judge, *Denning Law Journal*, 1990, 27.

³³ *Cipelius R.*, *Doctrine of Legal Methods*, 10th Edition, Munich, 2006, 113.

An important factor is to distinguish between the administrative bodies themselves, which carry out public administration. The process of forming the will of a specific administrative body is important in the organizational arrangement of public administration. The will of a monocratically organized institution is determined by one head. In the case of a collegial body, the decision is made on the basis of the will of the majority of equal, authorized persons. In a monocratic system, the leader has the right to make sole decisions, he is also the superior official of the employees in the institution. The decision-making process is fast and the entity responsible for the decision is clearly defined. In a collegial body, its chairman is only the first among equals (*primus inter pares*). The decision-making process is defined by law. The decision is not taken individually, but collegially. A necessary element is the quorum, which implies the prerequisite for the authority to hold a meeting to make a decision, that the meeting must be attended by more than half of the members, and the prerequisite for making a decision, that it must be supported by more than half of the members present at the meeting. It is not the individual member who is responsible for the decision made, but the body, regardless of the position of its individual member.³⁴

3.2. Control Types of Public Governance

It is known that there are separate types of public governance control, including official and disciplinary control (the right of a superior official to control employees); Sectoral and legal control (implemented by the principle of subordination); Parliamentary control (the Government of Georgia is accountable only to the Parliament) and judicial control.

Judicial control of public administration differs from all the above-mentioned types of control, it is more directed to the protection of the subjective rights of citizens and other persons of private law. The main guarantee of achieving this is the independence of the court from other bodies of government. At the same time, lawsuits regarding the annulment of an administrative act or the issuance of such an act, in addition to the protection of individual rights, also imply an objective verification of the legality of public administration. And if the judge finds signs of a crime in a given case, then he has the right to apply to the relevant law enforcement authorities for further action. It should also be taken into account that the court is not authorized to check disputed acts in all cases. Control of the legality of public administration in the court should be carried out under the condition of full observance of the principle of separation of powers. Georgian law only in certain exceptional cases allows the so-called “popular lawsuit” authority (eg, in the field of environmental protection). From this point of view, Georgian law is more oriented towards the French model (which recognizes the extended right of action based on interest) and differs from the model of right of action based on the principle of the norm of protection established in German law (which in German law is compensated by the altruistic right of action of environmental organizations).³⁵

³⁴ *Turava P.*, *Administrative Proceedings in Public Service*, Tbilisi 2020, 156 (in Georgian).

³⁵ *Kalichava K.*, *Head of Administrative Science*, Tbilisi, 2018, 362.

4. Conclusion

The result of the explanation should be clear, understandable and there should not be any doubts about the accuracy of the conclusion. The definition does not create new legal provisions, it provides redundant information. The result of the interpretation is different depending on the relationship between the textual expression of the norm and its true content.

The analysis of the practice of the Court of Cassation gives us a full reason to conclude that most often the importance of the case for the development of law is due to a gap in the legislation. Considering that the court of cassation was created not only for the protection of individuals but also public interests, the establishment of a uniform judicial practice, as well as the development of law, serves the realization of the public purpose of the court of cassation.

There is no hierarchy of definitions, there are reasonable steps: grammatical definition, systematic definition and teleological, if necessary, historical (when the correctness of the norm is in doubt), legislative and judicial definition. In the process of the relationship, the definition of the legislator is of decisive importance (definitional norms, general binding force). The definition of the court is not the law and the judge uses it without explaining the norm. If the interpretation of the law produces an unjust result, then it must be interpreted against the meaning of the statute.³⁶

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³⁶ *Khubua G.*, Methods of law, Tbilisi, 2018, 1 (in georgian).

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