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Legal Acts, Forms and Methods of Public Government in Georgia

Malkhaz CHAKHNASHVILI

Abstract

In contradiction to the concept, which prevailed in Georgian administrative law we think that public government includes representative, executive and judicial government with typical hierarchical verticals, similar stages of activity, order of establishment and financing, territory of operation, as well as common nature of internal relationships, common ground of classification and forms of activity, but with their own diversification features, like legal regulation of social life by legislative organs, performance of laws and by-laws by executory-ordering agencies and protection of law by means of justice and constitutional control. Despite these distinguishing features, legal acts issued in the sphere of representative, executive and judicial governments have identical characteristics classified upon their competence and receiving bodies, legal nature and juridical force, order of adoption, purposefulness and forms of expression, operation on the territory and in time. Similar form and methods of governing underline belonging of representative, executive and judicial government to the entire public government. Law-making and law-enforcement form of operation is typical for internal and external activity of legislative, executive and judicial bodies with their own peculiarities, as well as common methods of governing, like persuasion, compulsion, administrative, organizational, psychological and many others.

Keywords: *legal acts, forms, methods, public government*

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Introduction

Social management and especially public government cannot be carried out without legal acts, certain forms of activity and methods of interaction with natural and legal persons in their internal and external relations. Public government, which includes representative, executive and judicial governments, as entire form of governing, issues legal acts and puts into practice similar forms and methods of activity, which ensures achievement of goals, faced to the state.

The theory of law defines, that legal act of any type reflects the will and decision of the subject of governing. In the modern administrative law of Georgia only legal act of executive power is recognized as act of governance. Analyses of general indications of public government and legal acts, used by representative, executive and judicial authorities give us right to come to conclusion that legal act can be distinguished by such features, as: competence and receiving bodies, legal nature and juridical force, order of adoption, purposefulness, forms of expression, operation on the territory and in time. [1]

As a whole, we classify legal acts of public government in that way:

1. In accordance with their juridical nature:

a) Normative acts (e.g. a law adopted by the Parliament, Decree of the President);

b) Individual acts (e.g. order on appointment or dismissal of public official);

c) Procedural acts (e.g. decision of the court, examination record of police);

d) Internal acts of governance (e.g. order of the Chairman of Supreme Court on the disciplinary punishment of executive employee of administration)

e) Special acts; (e.g. conclusion or recommendation of the Constitutional Court).

2. In accordance with their juridical force:

a) Legal acts of upper bodies;

[1] Legal act of judicial branch cannot be classified upon their competence and operation on the territory, because any individual legal act, adopted by the court do not work generally in all field of governing or in some of them or in exact one as well as they cannot have certain and limited territory of operation.

b) Legal acts of lower bodies;

c) Legislative acts;

d) Local law-establishing acts (e.g. decision of City Halls);

e) Acts of representative governance (e.g. order of the Speaker of Parliament on internal matters);

f) Acts of Constitutional control (e.g. decision of the Constitutional Court);

g) Acts of the first instance (e.g. adjudication of Common Courts or Supreme Court);

h) Acts of the second instance (e.g. adjudication of appeal instance);

j) Acts of the last resort (e.g. adjudication of Appellate or Supreme Courts).

3. In accordance with operation on the territory:

a) Central legal acts (e.g. Legal acts of the President, Government, Minister);

b) Regional legal acts (e.g. Legal acts of the Governors);

c) Local legal acts (e.g. acts adopted by local bodies of governing or self-governing);

d) Legal acts of highest representative bodies (e.g. law adopted by the Parliament);

e) Legal acts of Supreme Councils of AR

4. In accordance with operation in time:

a) Fixed-date legal acts;

b) Legal acts with no fixed-term.

5. In accordance with their competence:

a) Legal acts of general competence (e.g. Direction of Prime-Minister, which works in all spheres of activity of executive branch);

b) Intersectoral legal acts (e.g. act, which work in many field of activity);

c) Sectoral legal act (e.g. acts, which work in the certain branch, like order of the Minister of Education)

6. In accordance with order of adoption:

a) One-man decision legal acts (e.g. order of the Minister, act of police on the imposing of administrative penalty, adjudication of the judge);

b) Collegiate legal acts (e. g a law adopted by the Parliament, Conclusion of the Constitutional Court).

7. In accordance with purposefulness:

a) Legal acts aimed for internal application (e.g. Charter of the Ministry or order of the Minister);

b) Legal acts applied outside of the system (e. g. a law adopted by the Parliament, order of the President, adjudication of the Court)

8. In accordance with receiving bodies:

a) The Law, adopted by the Parliament of Georgia;

b) The Law, adopted by Supreme Councils of AR

c) Decision of the City Halls;

d) Order, direction, decision, resolution, decree, charter, instruction of executive bodies.

e) Adjudication or decision of the Court;

f) Acts of the plenary session of Supreme and Constitutional Courts;

g) Legal acts Chairmen of the Courts and heads of logistic and other services;

h) Legal acts of conferences of judges.

9. In accordance with their obligatory character:

a) Obligatory legal acts;

b) Recommendational legal acts.

10. In accordance with the form of expression:

a) Written legal acts;

b) Oral legal acts;

c) Concludentive legal acts.[2]

Some comments to this classification. All of these acts are obligatory act, which prescribe certain conduct from those subjects of law, to whom they concern (except recommendational acts, issued by the Courts. Author). Execution of these acts is ensured by state compulsion and its breaching may cause imposing of punishment. At the same time, legal acts of public government are unilateral acts, which have two aspects: formal and substantial, but substantial aspect of legal acts of representative government have some specification: any law or decision of the Parliament or City Halls is a result of law-making activity of deputies, as state functionaries, which representative of their electors and act on their name and mandate. So, formally legal acts of representative government are

[2] E.g. moving of the hand of policemen to stop the car, which brakes traffic rules or is an object of legal interest, whistling of soccer referee, or special sounds, used by police or servicemen or special detachment in case of secret operations(author)

unilateral, like those of executive and judicial bodies, because non-performance or breaching of them may cause punishment, but unlike of later, they reflect not only the will those agencies, which adopt them, but also the will of electors, as "consumers" of above mentioned acts.

Judicial acts also have some peculiarities, because of their context and order of adoption:

- judicial acts deals with breaching of law and legal disputes, while executive acts mostly concern with so – called current "positive" activity and representative acts - with legal disputes only in case of consideration of impeachment procedure by the Parliament;
- nobody has right to interfere in decision-making procedures of judicial legal act, while executive acts can be adopted upon direct order of upper organs;
- judicial act is issued on the name of Georgia, while executive acts- on the name of relevant agency.

Forms of governing or outward objective appearance of actions carried out by subjects of legal relations underlines and emphasizes functional entirety of representative, executive and judicial government. Among well-known forms of governing, like law- making, law-enforcement, written, oral, concludentive activity or organizational and logistic actions, the first two should be particularly distinguished, because others are inseparable and essential indications of every managerial system. The form of governing reflects specifications of certain type of public government. E.g. upon basic function of representative government, in everyday activity of the Parliament and City Halls priority is granted to *law-making*[3] form of activity, while judicial government entirely deals with *law-enforcement* form of activity[4]. Both forms are applied in internal and external relations, held by state bodies.

Internal law-enforcement form of activity of *organizational* type is typical for all three types of public government. In executive government this form of activity deals with everyday execution of current legislation including appointment and dismissal of public officials. As regards to

[3] Law – making form of activity deals with adoption of a new individual and normative acts of state bodies (author)

[4] Law-enforcement forms of activity deals with application of established laws and by-laws (author).

internal law-enforcement activity of *protectional* type – only law-enforcement bodies, like police, courts, procurator's office and especially entitled departments of state agencies (like general inspection or human resources dept. author.) or managing functionaries of state bodies have right to use such type of activity in case of disciplinary and administrative offences, committed by public officials.

In representative and judicial government both types of internal law-enforcement form of activity is applied that is necessary for normal functioning of the whole system.

External law-enforcement form of activity is main form of activity for executive and judicial government, because exactly in these types of public government functionaries interact with natural and legal persons directly, unlike of representative government, where such intercommunication bear indirect character.

Law-making activity is main form of activity in representative government inside and outside of the system. Internal law-making form of activity in Georgian Parliament concerns with determination of internal structure of the Parliament, rights, duties and working regime of administrative services, recognition of authority of the Member of Parliament and termination of above mentioned authority before fixed time. Beside this, the Speaker of the Parliament proves Charter of apparatus, its structure, staff schedule, wages and etc. At the same time, everyday operation of the Parliament mainly deals with external law-making form of activity, like adoption of legislation and:

- determination of the structure, authorities and order of activity of the Government;
- ratification of International instruments;
- delimitation of state borders;
- determination of maximum numerous of military forces and many other functions outside of the system.

Internal law-making activity of City-Halls is limited in comparison with Parliament and concerns with determination of order of the meetings, regime of working and other rules of internal application and mostly is connected with external law-making activity, like: adoption of budget, establishing of local duties and fines, approvement of general plan and plan

of social-economic development of relevant territory and so on.

The most important indication of executive branch of state power is ordering character of activity. So, law-making form of activity has to be recognized as essential type of operation for executive bodies. Internal law-making activity of the President concerns with promulgation of the laws adopted by the Parliament and by-laws (e.g. charters of the law enforcement Ministries. author), while external law-making form is appeared in the right of the President to initiate draft law. Internal law-making activity of Georgian Government concerns with adoption of by-laws, which regulate activity of the Government and Prime-Minister, while external law-making form – with legislative initiating and approvement of Charters of the Ministries. If internal law-making activity of Ministers is a bit wider and deals with approvement of the Charters of structural and territorial agencies, their external law-making form is more limited by preparation and adoption of by-laws. Same situation we meet in case of lower bodies of executive agencies.

In case of judicial bodies external relations usually deals with protectional law-enforcement forms of activity, predetermined by basic function of judicial system in the country, while internal law-enforcement functions of the courts usually deals with organizational type of law-enforcement activity.

Nor Parliament neither Ministry with its lower agencies or the court of any level are able to perform their functions without compulsion and persuasion, without administrative, economical, psychological and other methods. E.g.:

- administrative orders and decisions as administrative methods of governing are applied in all three types of public government to assure orderliness in internal governing relations;
- juridical responsibility (e.g. disciplinary penalties. Author) is applied again in all three types of public government in internal regulations, but outside of governing system only executive bodies (e.g. police and other subjects of administrative jurisdiction. author) and courts are empowered to use them, while members of the Parliament and City Halls do not have such rights;
- with the same success are used administrative-organizational methods, when coordination, endorsement, control is carried out in internal and

external relation;

- there's not any official agency in public government, where methods of economic stimulation (salary, premium. Author), psychological and professional selection, or regulation of functional duties and employees quota setting are not applied;
- Liberal, democratic and authoritarian methods of governing does not depend on the occupied position or type of public government but on the personal style of governing used by the Minister, Chairman of City Hall or court or by any subject of managerial system.

It is well-known fact, that persuasion is the key method of governing, because responsible managing leader, judge, policeman have to apply in their everyday activity economical and psychological methods, personal experience, encouragement and maybe warning about negative consequences of wrong behavior. Unfortunately, methods of compulsion are more effective in the public governing, because legal awareness of people is not yet so high and real foundation of their lawful behavior concerns with the fear of possible punishment or varies negative consequences in case breaching of law.

Compulsion is applied in every type of public government and first of all in internal relations as disciplinary responsibility, but outside of the managerial system, juridical responsibility as method of compulsion is applied only by public officials of executive and judicial government, because members and functionaries of representative bodies do not have direct connections with wrongdoers

Thus, we can make a conclusion, that in public government are used one and the same methods of governing, including methods of direct influence on the object of governing, like individual influence on the object, by means of order, personal example, talking face-to-face, encouragement or imposing of punishment or general influence carried out by means of implementation in society of repeated legal rules stipulated in laws, decisions, orders, charters and etc. Successful application of direct influence of the subject of government on the sense of the object depends on the professional skills and experience of managing functionaries of either type of public government, while great effect of general influence of current legislation mostly depends on the legal awareness of the whole

society.

Conclusion

Representative, executive and judicial government as types of public government create entire apparatus of state bodies which applies governing as universal method of achievement of goals of activity of state machinery. Despite of different basic functions, all three forms of public government:

- issue similar types of legal acts with some exceptions[5];
- carry out law-making and law-enforcement form of activity in their internal and external relations with distinctive priorities for this or that form of public government;
- use similar methods of persuasion and compulsion combined with administrative, organizational, psychological, sociological, statistical and many other methods of governing that accentuate entirety of public government as the key type of social management.

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