

Voluntary and Compulsory Implementation of an Administrative Act

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ABSTRACT

This article describes the issue of voluntary and mandatory execution of administrative acts. Administrative acts are of great importance in ensuring the effective functioning of the state administration and legal system. The article examines the differences between mandatory and voluntary execution, as well as legal norms related to the legal force and enforceability of acts in both cases. Based on the experience of foreign countries, the article highlights the state policy, economic and social conditions, as well as the features of the legal system as an important factor in the implementation of acts. The article also provides recommendations for ensuring the effectiveness of execution of administrative acts.

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Execution of administrative acts is an integral part of the state management system. In any country, laws, decrees and other administrative documents define obligations to state bodies, in particular, citizens and organizations, and their implementation is guaranteed. Voluntary or mandatory execution of these documents on the basis of the Constitution and other legal norms includes many legal requirements and standards.

The Constitution of the Republic of Uzbekistan regulates the legal foundations of the state, as well as relations between its citizens and state bodies. Article 15 of the Constitution states that "The state and its bodies, as well as all citizens and organizations, are obliged to carry out their activities in accordance with the Constitution and laws." This norm emphasizes the mandatory execution of administrative acts and determines their important role in public life [1].

Decrees, orders and other regulatory documents issued by the President of the Republic of Uzbekistan define the directions of development of the country. In particular, the words of President Shavkat Mirziyoyev: "Administrative acts must be executed on time and in full, which will ensure the effectiveness of public administration" confirm that the implementation of these documents is an urgent task for the state.

The procedure for execution of an administrative act is provided for in Chapter VI of the Law of the Republic of Uzbekistan "On Administrative Procedures," adopted on December 14, 2017, "Executive Proceedings" (Articles 71-83) [2].

In addition, the Law of the Republic of Uzbekistan dated August 29, 2001 No. 258-II "On the Execution of Judicial Acts and Acts of Other Authorities" also provides for the enforcement of administrative acts.

The most fundamental part of the Law "On Administrative Procedures" consists of norms related to the

acceptance, annulment, amendment, invalidation of administrative acts. Article 4 of this Law defines the concept of "administrative act" as follows:

An administrative act is a measure of influence of an administrative body aimed at creating, changing or eliminating social and legal relations and causing certain legal consequences for certain individuals and legal entities or a group of persons who are distinguished by certain personal characteristics [3].

If the legislation does not provide for otherwise, the administrative body that adopted the administrative act shall ensure its execution.

The period established by the administrative body for voluntary execution of an administrative act shall not be less than five calendar days from the date of notification of the addressee of the adopted administrative act, unless otherwise provided by law.

The addressee shall have the right to execute the administrative act within the order of execution established by the administrative act through the most convenient for him legal methods and means.

The method of voluntary execution should ensure proper and timely execution of the requirements of the administrative act.

Mandatory execution of an administrative act shall be carried out in the manner prescribed by law.

A measure of enforcement of any administrative act may not be applied to a person who voluntarily, duly and within a specified period fulfills his obligations under an administrative act.

If the addressee agrees to voluntary execution of an administrative act under the risk of applying measures of enforcement and enters into the execution of his/her duties, the specified enforcement measure shall not be executed while the addressee is conscientiously and properly executing the administrative act.

The fact that the addressee has fully fulfilled his obligations immediately cancels the application of the enforcement measure.

The administrative body shall have the right to apply the following enforcement measures in cases provided for by law:

- monetary coercion;
- to carry out the actions provided for in the administrative act by the administrative body or other person at the expense of the debtor;
- direct coercion.

The enforcement measure must be formalized by an executive document of the administrative body. It is not allowed to apply enforcement measures without accepting the relevant enforcement document.

The executive act of the administrative body shall be a procedural document ensuring the mandatory execution of the administrative act in case of non-fulfillment of the administrative act by the addressee in due form and within a reasonable period.

Unless otherwise provided by law, an executive act shall be accepted by the administrative body on its own initiative or within three working days after the expiration of the period of voluntary execution on the basis of the request of the other participant in the administrative proceedings for which the executive act was adopted.

The executive document of the administrative body shall be accepted only in writing and shall be sent within one working day to the addressee in order to notify in the manner prescribed by Article 33 of the Law "On Administrative Procedure," as well as to the person requesting the mandatory execution of the executive document.

In the course of the enforcement proceedings, the addressee to whom the enforcement act addressed is accepted for non-performance or improper performance of its obligations under the administrative act shall be the obligated person, the person in whose favor or in the interests of whom the enforcement act was adopted shall be the enforcer.

If the law does not provide otherwise, the executive document shall be executed not later than five days after the time when the obliged person is duly notified of its acceptance. In the event that it is impossible to properly inform the compulsory person, the fact of the impossibility of properly informing the executive document shall enter into force and be executed after five days from the date of its formalization [4].

Voluntary and mandatory execution of administrative acts is an issue that affects legal theories and practice. Various scientists have put forward their views on this issue. Below are the opinions of some famous scientists.

B.K.Jumanov in his work "Fundamentals of jurisprudence" describes the difference between compulsory and voluntary execution of administrative acts as follows: "Acts issued by the executive branch of the state, if they are normative documents, are mandatory for all organizations and citizens. Delay in the execution or non-fulfillment of such documents entails legal liability. However, some voluntary proposals or instructions may be voluntary. In such cases, state bodies grant citizens and organizations the right to choose the implementation of proposals [5].

S.Sh. Khusanov, in his work "State Administration and Administrative Documents," explains his opinion on the execution of administrative documents as follows: "In the system of state administration, the execution of administrative documents occupies an important place. Their mandatory implementation will lead to the effective functioning of the legal system of the state. Any circumstances of execution arise only when there are suggestions or instructions. However, such documents are also of great importance in the implementation of social goals, as they are often developed in accordance with the state strategy [6].

Various lawyers and public administration specialists have expressed their views on the voluntary and mandatory execution of administrative documents in foreign countries. The issue of execution of administrative acts is directly related to the legal system and the structure of state administration of each state. Below are the opinions of scientists from a number of countries of the world.

Jean-Marc Sorel, a well-known French scholar of administrative law, in his work "Administrative Documents in France and Their Execution" expressed the following opinion on the execution of administrative documents: "In France, the execution of administrative documents is often carried out in a forced manner. Administrative acts, especially laws and resolutions issued by state bodies, are binding on citizens and organizations, and their implementation may lead to legal liability. However, some documents issued as recommendations or instructions may be executed voluntarily. At the same time, the circumstances of voluntary execution vary depending on the general state policy" [7].

Giuseppe Franco Ferrari, a well-known scholar of administrative law in Italy, in his work "Administrative Documents in Italy and Their Execution" puts forward the following opinion: "In Italy, administrative documents, based on the legal system of the country, should be enforced in most cases. This situation, of course, can be flexible for the norms and regulatory documents established by the state. However, in some cases, for example, proposals or documents intended for informational purposes are executed voluntarily. At the same time, it is required to comply with administrative documents and decisions and laws issued by the highest official bodies of the state" [8].

The issue of voluntary and mandatory execution of administrative acts plays an important role in ensuring the effectiveness of state administration and the legal system. The difference between voluntary and mandatory execution depends on the type of document and its legal force. Enforcement creates legal responsibility and serves to strengthen the discipline of the state. Laws, decrees and resolutions issued by state bodies should be enforced in principle, as they are the main means of carrying out the activities of state administration. However, in some cases, for example, documents issued as a proposal or instruction may be executed voluntarily.

The experience of foreign countries shows that differences in the execution of administrative acts are related to the legal system, social requirements and political decisions of each country. At the same time, in both cases, the execution of documents serves to ensure the effective functioning of the state administration and legal system.

In the course of studying the relationship between voluntary and mandatory execution of administrative

acts, the following proposals can be put forward:

First, it is necessary to develop clear legal norms on administrative acts. States should develop clear and transparent legal norms on the implementation of administrative acts. Clearly defining the difference between compulsory and voluntary execution will help to regulate the execution process and ensure legal responsibility.

Secondly, it is necessary to develop effective cooperation between the state and society in cases of voluntary execution. Due to the fact that the circumstances of voluntary execution depend more on advice or instructions, it is necessary to develop effective cooperation between the state and society. This will ensure that the documents are implemented in accordance with social requirements.

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