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The Role of the Administrative Action Types in the Context of Exercising the Right to a Court

Key words: *Administrative action, types of action, right to a court, right to fair trial, right to judicial protection, limitation of right to a court*

Abstract: *The article tries to bring to the light the specifics of exercising the right to apply to the court within the frameworks of the action types in administrative proceedings in general, deeply analyzing Armenian practice within the framework of international best practice.*

Defining the types of action in administrative proceedings as a procedural mode of case investigation is important for the proper investigation of the claim, but it cannot predetermine whether the claim is subject to examination in the court or not.

In the light of the above, the subject of this study is the essence of the administrative action, the purpose of defining the action types, their influence on the investigation of the case, both in practice and in the theoretical literature, within the framework of the principle of finding out the factual circumstances of the case ex officio specific to administrative proceedings, the powers of the court when filing an inappropriate type of action and its consequences on the investigation of the case.

The administrative procedural process starts upon submitting an administrative action, but the nature of the administrative action is manifested with some features, due to the legal mechanisms of exercising the right to apply to the administrative court and various judicial-scientific interpretations.

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As a result of the textual interpretation of the international best practice, we can state that a number of states condition the legal mechanisms for applying to the administrative court with specific types of administrative actions, while some other states condition this process with general claims that can be submitted to the administrative court. The nature of the above-mentioned concepts should be revealed by the purpose of these concepts.

The possibility of filing an administrative action implies a special procedure for administrative proceedings, yet it is a part of the right to apply to the court as part of a fair trial in the context of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention), and possible legislative restrictions to be applied to it are subject to study in that context.

Introduction

Disclosure of the nature of the administrative action and its types in the context of exercising the right to the court is of particular importance, considering the range of relations that are subject to examination and resolution in the administrative court.

> "Judicial review is most justifiable not when it is directed at substantive policy choices that occur in exercising discretion, but rather when it draws on values which form part of the constitutional framework within which discretion occurs. The justification for review lies in the assertion of certain values as sufficiently important to be constraints on the exercise of discretion"[1].

In administrative-legal relations, when the protection of one's rights from the actions of administrative bodies often places the parties in the framework of unequal factual opportunities, formal equality, that is, ensuring equal opportunities in the court, is an important procedural function. That was one of the main reasons for stipulating separate procedure for administrative proceedings in separate courts.

Thus, in Germany, where the administrative procedure has years of experience due to the failure of the constitutional reforms administrative law developed independently from constitutional law. The development of the strong administrative law tradition can therefore be seen as compensation for the political and constitutional shortcomings after the revolution. The monarchy, the aristocracy, the army and the church represented the state. On the other side was the bourgeoisie who wanted to ensure that the state fulfilled its functions and at the same time kept within the legal boundaries. Administrative

[1] D.J. Galligan, *Discretionary Powers*, Clarendon Press, Oxford 1986, p. 32.

law was separated from the difficult question of constitutional law and after 1850 it developed into its own science[2].

When it comes to the equality of means in the court, it also refers to the right of applying to the court, therefore this research becomes essential at the initial stage of accepting the claim, from the moment the legal opportunity of a person to receive protection actually begins to be realized by the party.

The study of international best practice allows us to state that, as much as there are studies of the problem raised in individual legal systems, they are not systematic in the context of possible restrictions on the realization of the right of a person to apply to the court at the theoretical level.

Taking into account the foregoing, this research tries to coordinate the study and experience of different legal systems through the method of comparative legal analysis in the light of the implementation of the Convention law.

As an international best practice, the legislations of Germany, Ukraine, Russia and Georgia have been studied in this article.

The German practice was studied due to the high level of development of the legislation of administrative proceedings in Germany, the experience of Russia was studied taking into account the similarity of the Russian legislation to the Armenian legislation in this regard, the legislations of Georgia and Ukraine were studied, based on the special regulations, which are interesting combinations of Russian and European practices.

The practice of the European Court of Human Rights is of essential importance in the context of the discussion of possible limitations of the right to apply to the court.

In this regard the subject of this article is:

1. Peculiarities of legislative stipulation of action types in different legal systems.
2. Whether the application of a proper action type can be a subject of assessment when accepting a claim or not?
3. What ratio is there in the claims submitted to the administrative court and the types of actions defined by legislation?

As a result of the study of the above-mentioned legal practices, main assumption of this research is, that the definition of administrative action types cannot be a basis for limiting the right of a person to apply to the court in the light of the following grounds.

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2 M. Kiinnecke, *Tradition and Change in Administrative Law, An Anglo-German Comparison*, Springer 2007, p. 23.

The Essence of Claim in Administrative procedure

Under German law the constitutional basis for judicial review of administrative action is Art. 19 IV of the Basic Law which is of great importance in administrative law and reads as follows: "should any person's rights be violated by public authority, re- course to the court shall be open to him …".

Article 61 of the Constitution[3] of the Republic of Armenia (RA) stipulates the right of each person to effective judicial protection of his or her rights and freedoms. The ongoing mechanism of addressing the right to effective judicial protection in administrative procedure is the expression of one's will through submitting an administrative action to the Court[4].

The administrative action, as a mechanism of applying to the administrative court with a request to protect the violated right, leads to the establishment of a higher guarantee level of protection of the parties' rights and legal interests involved in the administrative proceedings. It presumes the possibility of providing different means of legal protection to the parties. Such an approach, as noted by I. Zaitsev, is "an opportunity for the plaintiff to withdraw the claim, change its basis or object, and if the issue of compensation for damages is raised, determine the amount of the claim".

Under German law for an action to be successful, it has to meet all the procedural (Zulässigkeit) and substantive (Begründetheit) requirements of the particular type of action. In case of any procedural shortcoming, the action must be dismissed on procedural grounds without a decision on the merits unless otherwise stated by the law, which is only the case in respect of questions of jurisdiction and competence (see below supra 3.1 and 3.2). Only if all procedural requirements are fulfilled, the judge can pass on to an appraisal of the facts of the case[5].

While the main procedural requirements are merely the same or at least very similar for most actions, only differing in certain details, the substantive requirements depend on the particular type of action. Though, generally speaking, for an action against the state to be well founded, the act or omission in question must conflict with corresponding legal rules and violate the

[3] Addopted on December 6, 2015: ՀՀՊՏ 2015.12.21/Հատուկ թողարկում Հոդ. 1118 (Special edition, Art. 1118).

[4] The Administrative Procedure Code of the RA, article 65. Addopted on May 5, 2012: ՀՀՊՏ 2013.12.28/73(1013).1 Հոդ.1186.1.

[5] U. Kramer, T. Hinrichsen, *German Law of Administrative Court Procedure: An Overview*, «Journal of Siberian Federal University. Humanities & Social Sciences» 2015, No. 8 (10), p. 2052.

plaintiff's rights. There are no further procedural requirements like administrative preliminary proceedings or a certain preclusion period for filing the action.

In jurisprudence, the following features of an administrative claim are distinguished:

- the subject of the claim (disputes arising from public legal relations, which are applicable to the administrative court),
- the exhaustion of administrative nonjudicial remedies for some particular cases,
- the right to submit an action arising from administrative legal relations,
- the permissible grounds for submitting an administrative action,
- the procedural time-frames for applying to the administrative court[6].

As stated by G.L. Osokina: "administrative claim is a request to protect the established legal order, the rights and liberties of citizens, organizations and the state from administrative offenses arised from public legal relations"[7].

The Russian judicial-scientific interpretations suggest classifying the administrative claim according to the actions arising from the interests of a) society and b) legality.

Unlike other types, an administrative claim is defined as a claim to resolve a public law dispute[8].

The general point of the administrative claim definitions is its interpretation as a procedural requirement (means). However, they differ in the interpretation of the subject matter and purpose of the claim. U.A. Popova describes the administrative claim in its narrow sense, excluding the organizations from the parties allowed to apply to the administrative court, concluding that "the main purpose of the administrative claim is the verification of the legality of administrative acts"[9].

Meanwhile, the current legislative regulations define a much wider range of parties and claims subject to examination before the administrative court. One applies to the court not only to verify the legality of administrative acts,

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6 А.Б. Зеленцов, *Понятие и виды административного иска*, Кафедра административного и финансового права Российский университет дружбы народов, p. 1 (A.B. Zelentsov, *The concept and types of administrative claim*, Department of Administrative and Financial Law, Peoples' Friendship University of Russia, p. 1).

7 Г.Л. Осокина, *Иск: (теория и практика)*, Москва 2000, p. 56 (G.L. Osokina, *Claim: (theory and practice)*, Moscow 2000, p. 56).

8 И.В. Фадеева, Т.А. Лахтина, *Административный иск как средство защиты публичных прав и разрешения административно-правового спора*, «Вестник экономической безопасности», Москва 2017, No. 2, p. 3 (I.V. Fadeeva, T.A. Lakhtina, *Administrative claim as a means of protecting public rights and resolving an administrative legal dispute*, «Bulletin of Economic Security» Moscow 2017, No. 2, p. 3).

9 А.Б. Зеленцов, *Понятие и виды*, p. 2.

but also to protect the violated right, his personal interest, as well as other claims.

The administrative action as a procedural measure is the applicant's request to the Court about the protection of public rights – subjective and objective[10].

It directly follows from the abovementioned that the public legal relations does not only imply the protection of the objective rights of a specific person, it also implies the procedural protection of private rights arising from the public legal relations.

The difference between the essence of administrative action and action types

In the Code of Administrative proceedings of the RA and jurisprudence in general, the "type of action" is also distinguished, which appear to predetermine the legal regime of the examination of the case.

The Code of Administrative Procedure of the RA delineates four distinct types of claims: contesting, enforcement, commission and recognition.

In practice, the limits of applicability of these concepts are not specified, they are often dissolved, often interpreted separately from each other, but they are not identical, neither in practice nor in theoretical literature.

The International best practice is also ambiguous in this regard. The classification of the administrative actions is not specific to all countries. For example, the administrative procedure codes of Germany[11] and Georgia[12] establish the types of actions, but the right to apply to the court is determined by the content of the subject of the claim arising from the nature of the dispute, which implies that the legislation does not limit a person to apply to the court with other actions not in correspondence to the types of action established by law[13].

The Administrative Procedure Codes of Ukraine[14] and the Russian Federation do not establish separate types of actions, but if the Administrative

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10 Ibidem, p. 3.

11 D. Loll, H. Schutt, *Das offentiche Recht und Wirtschaftswissenschaftler*, Ein klausurorientiertes Lehrbuch, 2004, pp. 48–50 (*Public law and economists.* An exam-oriented textbook, 2004, pp. 48–50).

12 Л. Чантурия, *Система и компетенция административных судов в Грузии* (L. Chanturia, *System and competence of administrative courts in Georgia*), http://refdb.ru/look/2552342.html (29.04.2024).

13 Code of Administrative Court Procedure of Germany, https://www.gesetze-im-internet.de/englisch_vwgo/englisch_vwgo.html (29.04.2024).

14 А. Константый, *Сравнительно-правовой анализ видов исков в административном судопроизводстве Украины и зарубежных государств*, «Legea Si Viata», сентябрь

Procedure Code of Ukraine states that in the case of disputes arising from public legal relations, a general claim must be applied to the Administrative Court within six months from the day when a person knew or should have known about the violation of his or her right[15], then Article 124 of the Code of Administrative Procedure of the RF[16] establishes the general scope of claims that can be submitted to the Administrative Court[17].

In fact, international best practice is being developed in two directions: a) defining claims that can be submitted to the administrative court, b) along with the claims, also defining certain types of actions, which determine the legal regime of the case examination in the court.

By localizing the theory in practice, we can conclude that Article 3 of the RA Administrative procedure code, defines the right to apply to the Administrative Court, /who, in which cases and on what grounds one can apply to the Administrative Court?/, defines the scope of claims, which can be submitted to the Administrative Court. Article 65 of the Code defines the claim as a start of the administrative procedure process, Chapter 12 of the Code, defines the basis for the administrative procedure process and the types of action, limits a person's right to apply to the Court with specific types of action that can be submitted to the Administrative Court. In practice, there are many cases when a person is unable to exercise his/her right to judicial protection, because his right is limited by certain types of action, none of which corresponds to the claim that he wants and is allowed to submit to the Administrative Court, while the endless legal changes of defining new types of action is not a systematic solution for this legal gap.

The Cassation Court of the RA, addressing this issue[18], states that the definitions of the types of action provided by the RA Administrative Procedure Code cannot be interpreted or used as a tool to actually eliminate judicial protection of a person. The Cassation Court of the RA interprets such an approach as a consequence of the mechanical understanding and application of proce-

2014, p. 61–64 (A. Konstanty, *Comparative legal analysis of types of claims in administrative proceedings of Ukraine and foreign countries*, «Legea Si Viata», September 2014, p. 61–64).

15 Code of administrative justice of Ukraine, https://www.global-regulation.com/translation/ukraine/570127/the-code-of-administrative-procedure-of-ukraine.html (29.04.2024).

16 Code of administrative procedure of Russia, https://www.consultant.ru/document/cons_doc_LAW_176147/, (29.04.2024).

17 Ա. Չիլինգարյան, Վարչական հայցերի դասակարգման հիմնախնդիրները, գիտ.հոդված, ԵՊՀ հրատ., էջ 374–375 (A. Chilingaryan, *Problems of classification of administrative claims, scientific article, YSU publishing house*, pp. 374–375), http://publications.ysu.am/wp-content/uploads/2015/06/364-377.pdf (29.04.2024).

18 Cassation Court of the RA, case N. ՎԴ/10875/05/18, October 10, 2022.

dural norms, as a result of which the nature of the right to judicial protection is violated[19].

Under German law the principle of the "Rechtsstaat" as applied today contains the guarantee to effective judicial protection (Art. 19 IV Basic Law), the independence of the judiciary (Arts. 92 and 97 Basic Law), the guarantee of the jurisdiction by a lawful judge (Art. 101 Basic Law), the right to a court hearing (Art. 103 Basic Law), the principle of equality (Art. 3 Basic Law) and the principle of proportionality and legitimate expectation (see Arts. 48 and 49 Law on Administrative Procedure).

The European Court of Human Rights states that within the context of the right to a fair trial, there cannot be a right without proper legislative guarantees for its realization.

Whether is the type of a action – mechanism justified under such conditions, or is it necessary to tie the examination of a case only with the subject of the claims that arise from public legal relations and are subject to examination in the administrative procedure?

In order to get the answer to the mentioned question, it is necessary to study the guarantees and possible limitations of the right to apply to the court, which is part of the right to a fair trial defined by the Convention.

The definition of the right to a court within the context of the implementations of European Court of Human Rights

Thus, the systematic study of the decisions made by the European Court of Human Rights (ECHR) allows us to record the following criteria for exercising the right to apply to the court:

- The right to a trial within the meaning of Article 6 of the Convention was confirmed by the case Golder v. United Kingdom, 1975, §§ 28–36[20]. Referring to the principles of the rule of law and the exclusion of arbitrariness underlying the Convention, the Court held that the right to apply to court is an integral part of the guarantees provided for in Article 6[21].
- "Right to a Court" and right of access to a court are not absolute. They may be subject to restrictions, but this should not limit or diminish the right of

[19] European Court judgement for the case of Dumitru Gheorghe v. Romania, https://hudoc.echr.coe.int/rus?i=001-162003, (29.04.2024).

[20] European Court judgement No. 4451/70 for the case of Golder v. The United Kingdom, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57496%22]} (29.04.2024).

[21] European Court judgement for the case of Zubac v. Croatia [GC], 2018, § 76, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-181821%22]} (29.04.2024).

access granted to the individual in such a way or to such an extent that the very essence of that right is violated[22].

- Moreover, a restriction will not comply with Article 6 point 1 if it does not pursue a legitimate aim and if there is no compatibility between the means used and the aims pursued[23].
- The right to a court must be "practical and effective"[24].
- Thus, the rules in question or their applicability should not prevent the parties from using available means[25].
- In particular, each case must be evaluated in the light of the specific features of the respective proceedings[26].
- When applying procedural rules, courts must avoid either excessive formality, which may affect the impartiality of the examination, or excessive flexibility, which may render the prescribed procedural requirements useless[27].
- The right to a court is not absolute. The court may reject the complaint on exhaustive and reasoned grounds[28], and in this regard there is a presumptive limitation framework[29]. It is used especially when the conditions of admissibility of the complaint are discussed.

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22 European Court judgements for the cases of Baka v. Hungary [IC], 2016, § 120, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-164530%22]}; De Geoffre de la Pradelle v. France, 1992, § 28, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57778%22]} (29.04.2024).

23 European Court judgements for the cases of Lupeni Greek Catholic Parish and others v. Romania [MC], 2016, § 89, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-169054%22]}, Naït-Liman v. Switzerland [GC], 2018, § 115, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-181789%22]} (29.04.2024).

24 European Court judgements for the cases of Zubac v. Croatia [MC], 2018, §§ 76–79, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-181821%22]}; Bellet v. France, 1995, § 38, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57952%22]} (29.04.2024).

25 European Court judgements for the cases of Miragall Escolano and others v. Spain, 2000, § 36, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58451%22]}; Zvolský and Zvolská v. Czech Republic, 2002, § 51, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-60749%22]} (29.04.2024).

26 European Court judgement for the case of Kurşun v. Turkey, 2018, §§ 103–104, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-187482%22]} (29.04.2024).

27 European Court judgement for the case of Hasan Tunç and others v. Turkey, 2017, §§ 32–33, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-170591%22]} (29.04.2024).

28 European Court judgement for the case of Ali Riza v. Switzerland, 2021, §§ 94–96, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-211021%22]} (29.04.2024).

29 European Court judgements for the cases of Stanev v. Bulgaria [GC], 2012, § 230, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-108690%22]}; Zubac v. Croatia [GC], 2018, § 78, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-181821%22]}; Golder v. The United Kingdom, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57496%22]}, 1975, § 38 (29.04.2024).

- However, the right to a court is violated when the rules cease to serve the purposes of "legal certainty" and "due administration of justice" and form a so-called obstacle that prevents a party from defending his rights through a court with jurisdiction[30].
- Moreover, when a person complains about the right to a court, that Convention right may come into conflict with the opposite party's right to legal certainty, which is also guaranteed by the Convention. Such a situation requires ensuring a balance between conflicting interests, and the Court provides a wide range of permissible discretion for the state[31].
- However, the restrictions applied should not limit or reduce the right of a person to a court in such a way or to such an extent that the very essence of the right is violated. Furthermore, a restriction will contravene Article 6 § 1 if it "does not pursue a legitimate aim"[32] and if "there is no reasonable proportionality between the means employed and the aim pursued"[33].

The ECHR provides still another and more specific rationale because Article 6 recognizes and protects the right to a fair trial. From this point of view, Article 6 goes far beyond the necessary coherence between the conduct of a public authority and the standards of conduct previously set out. It emphasizes the importance that those standards have for human beings[34].

Taking into account the mentioned conditions established by the ECHR in the context of maintaining the guarantees of the right to apply to the court, we can state, that despite the conclusion, that the right to apply to the court may be subject to restrictions, including in the context of the observance of formal rules related to the stage of accepting the claim, such restrictions are provided by law in the context of maintaining the principle of certainty, in order to balance the protection of the rights between the plaintiff and the defendant and never provide for the creation of such obstacles from a substantive point of view, which nullify the procedural possibility of a person to

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30 European Court judgement for the case of Zubac v. of Croatia [MP], 2018, § 98, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-181821%22]} (29.04.2024).

31 European Court judgement for the case of Sanofi Pasteur v. France, 2020, §§ 56–58, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-200818%22]} (29.04.2024).

32 European Court judgement for the case of Oorzhak v. Russia, 2021, §§ 20–22, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-208885%22]} (29.04.2024).

33 European Court judgement for the case of Markovic and others v. Italy [GC] 2006, § 99, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-78623%22]}, Naït-Liman v. Switzerland [GC], 2018, §§ 114–115, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-181789%22]}; Ashingdane v. United Kingdom, 1985, § 57, Fayed v. the United Kingdom, 1994, § 65, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57890%22]} (29.04.2024).

34 G.D. Cananea, *Requirements of Administrative Procedure, due process of law beyond the state*, Oxford University Press 2016, p. 108.

apply to the court with a claim that, although subject to the court within the given proceedings, cannot be examined in the context of barriers formed as a result of formal foundations.

If we make the institution of action types the object of analysis in the context of the above discussed, we will face that these are aimed at defining the procedural regime of examining a specific claim, in the context of allocating the burden of proof, the content of the judicial act, and the execution of other procedural actions. Apart from the types of action, the range of claims and possible disputes that can be examined in the administrative court are defined. As a result, there can be a situation, when the dispute is subject to examination in the administrative court, but taking into account the fact that it can be presented to the court only within the framework of a certain type of action, and the given dispute does not correspond to any type of action, the person is actually deprived of the opportunity to file an action.

The ECHR practice distinguishes two important preconditions for limiting the right to a court, thus: the restriction must pursue a legitimate goal and there must be a reasonable correspondence between the means used and the goals pursued.

The purpose of defining action types in administrative procedure

The study of the nature of claims, including in the context of international best practice, allows us to state, that the legislative purpose of defining the types of actions is not their evaluation at the stage of accepting the claim, from the point of view of admission criteria, but the provision of a procedural regime for the examination of the claim later in court.

Considering all the above mentioned, we can clearly point out the fact that the type of a action should not in any way limit the right of the person to apply to the court, however, the types of action are important to define the legal regime of the examination of case, if not at the stage of filling a case, then during trial.

The nature and features of administrative-legal relations determine the specifics of the legal requests, which are formulated in the claim and determine the procedural characteristics of its proceedings[35].

[35] А.Б. Зеленцов, *Понятие и виды административного иска*, Кафедра административного и финансового права Российский университет дружбы народов, p. 5 (A.B. Zelentsov, *The concept and types of administrative claim*, Department of Administrative and Financial Law, Peoples' Friendship University of Russia, p. 5).

In the light of abovementioned, one can say that although the legal request and the types of action are not identical, the choice of the proper type of action directly depends on the subject of the claim, but the very person's obligation to make that choice directly depends on the very purpose of defining the types of action.

Thus, first of all, the establishment of administrative action types is necessary, because they are directly related to the judicial acts regarding administrative disputes and the rules of their execution, which are also part of the right to fair trial. On the other hand, the action-type mechanism is also important for the court when assigning the burden of proof: „the features of the assignment of the burden of proof in the administrative proceedings are mainly determined by the types of action, which predetermine not only the principles of establishing the burden of proof, but also introduce a marked distinction into the scope of the procedural actions, aimed at proof"[36].

Under German law, the scope of the court's decision is bound by the plaintiff's application (sec. 88). On the other hand, the court is obliged to investigate the facts and gather evidence ex officio (sec. 86 para. 1).

Many scientists on judicial procedure claim that the examination of proceedings in cases arising from public legal relations without action-types-determination does not guarantee full protection of rights, because the abstract nature of the claim significantly limits the rights of citizens and other parties of public legal relations. In the absence of action types, as noted by T.V. Sakhnova, "one still does not have a right protected in court, but only a legally protected interest"[37].

The principle of finding out the factual circumstances of the case ex officio is specific to administrative proceedings. Article 5 of the Administrative procedure Code of the RA determines that, among other things, within the framework of the "ex officio" principle, the Court is given the opportunity to offer to change the wrong action type with a proper one, which allows us to conclude that in the light of the current regulations, the final choice of the type of action is imposed on the person applying to the court, but the wrong choice of the type of action will ultimately lead to rejection of the claim, which

[36] Հ. Բեդևյան, «Պարտավորեցման հայցերով ապացուցման բեռի բաշխման հիմնախնդիրները վարչական դատավարությունում», Պետություն և իրավունք, թիվ 2–3 (84–85), Երևան, 2019, էջ 70–81 (H. Bedevyan, *Problems of distribution of cargo evidence on claims obligations in administrative proceedings*, «State and Law», Yerevan 2019, No. 2–3, pp. 70–81).

[37] I quote from: А.В. Торопов, *Исковая форма в административном судопроизводстве: новое в законодательстве*, «Административное и муниципальное право» 2014, № 4, p. 361 (A.V. Toropov, *Claim form in administrative proceedings: new in legislation*, «Administrative and municipal law» 2014, No. 4, p. 361).

implies a limitation of the person's right to realize the judicial protection of his rights.

The legal possibility of the person applying to the court to choose the types of action is mainly connected with the implementation of the unwritten principle of "disposition".

Many scientists on judicial procedure consider the bringing an action before the court as an exercise of the principle of disposition. It should be noted that such an approach is mainly specific to those authors who consider procedural disposition as a substantive disposition manifest and its direct consequence. S.A. Sapozhnikov believes that "disposition expresses the dependence of judicial protection on the expression of will of the parties interested in the case"[38].

Under German law of administrative court procedure an action may never be brought on behalf of someone else or even the public. There is no actio popularis. For a rescissory action to be permissible the plaintiff therefore must claim a right to sue, i.e. that the administrative act potentially violates his rights, while the actual violation is a substantive requirement[39].

The proceedings are never commenced ex officio, but can only be initiated by the plaintiff by lodging a claim or an application. The plaintiff may at any time alter or withdraw his action with the consent of the defendant as long as the judgment has not gained legal force[40].

The right to judicial protection is exercised by a person at his/her own discretion, "no one can be forced to bring an action against his will" (*Nemo invitus agere cogitur*), and in this sense, the exercise of the right to judicial protection is of extreme importance for the start of the proceedings, however a number of scientists on judicial procedure, taking into account the public nature of administrative legal relations, emphasize that the examination of the case in the administrative court should be carried out *actio popularis*. This idea was defended, in particular, by V.V. Skitovich, who "considers it inappropriate to limit the right to appeal against illegal administrative acts only to the personal interest of the citizen"[41].

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38 Վ. Եսայան, «Ցնօրինչականության սկզբունքը և տնօրինչական գործողությունները քաղաքացիական դատավարությունում», Երևան, Հայրապետ հրատարակչություն, 2015թ., էջ 46 (V. Yesayan, *The principle of management and management actions in civil proceedings*, Yerevan, Hayrapet publishing house 2015, p. 46).

39 S. Detterbeck, *General Administrative Law with Law of Administrative Court Procedure* [Allgemeines Verwaltungsrecht mit Verwaltungsprozessrecht], (12th edition, Munich 2014, pp. 559–560).

40 U. Kramer, T. Hinrichsen, *German Law*…, p. 2052.

41 В.В. Скитович, *Судебный контроль за законностью действий должностных лиц*: Автореф. дис… канд. юрид. наук., Москва 1983, p. 17 (V.V. Skitovich, *Judicial control*

Supporters of this approach claim that "a struggle for the right is at the same time a struggle for the law"[42].

However, the purpose of the administrative claim is not only to confirm the legality of the act, but also to protect the rights of private persons in the field of public legal relations, therefore, in the conditions of violation of the rights of private persons, at least at the stage of bringing an action, the exercise of the principle of disposition, in our opinion, has no alternative.

Conclusion

Summarizing the above-discussed nature and purpose of the claim institute and the types of action, we believe that the institute of bringing an action in administrative proceedings includes, but is not limited by the types of action. The types of action should not predetermine the examination of case in the administrative court, but the legal regime in which the case is subject to examination. The nature of the action type is not related to the restriction of the person's right to apply to the Court, it implies the examination of the case and the making of a judicial act according to certain procedural rules discussed above, but the limitation of the right of a person to judicial protection by the types of action will contradict the nature of the institution of fair trial.

Taking into account the status feature of the administrative court and the "*ex officio*" examination of the case, we believe that the court *should determine* the legal regime by which the specific claim should be examined, and if the bringing an action is conditioned only by the person's expression of will, then the the professional burden of the legal regime selection, in our opinion, should not predetermine whether the case can be examined in the administrative court or not.

One can exercise his rights within the framework of the "disposition" principle in each case by submitting a motion to the court, if he has sufficient professional skills to determine the legal regime in which he wants the case to be examined in court, and the court is obliged to determine, among other things, the type of action during the preliminary court session. One of the fea-

over the legality of the actions of officials: Author's abstract. dis… cand. legal sci., Moscow 1983, p. 17).

[42] А.Б. Зеленцов, *Понятие и виды административного иска*, Кафедра административного и финансового права Российский университет дружбы народов, p. 7 (A.B. Zelentsov, *The concept and types of administrative claim*, Department of Administrative and Financial Law, Peoples' Friendship University of Russia, p. 7).

tures of the administrative proceedings is that the judicial representation can be carried out without lawyers involvement, therefore placing such a burden on the plaintiff from the beginning contradicts the principle of a fair trial, and judicial accessibility, which is an integral part of it.

We find, that regardless the measures of bringing an action established by the states, it is clear that the establishment of the types of action should not under any circumstances hinder the realization of the right of a person to judicial protection, and the legislative mechanisms should be defined so flexibly, that each in such a case, do not deprive a person of the right to judicial protection on formal grounds.

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