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TYPES OF LEGAL ACTS OF AUTHORITIES IN FINANCIAL LAW

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***Abstract:** The paper presents a concept of the financial public law act as statement of will issued by public authorities, different in scope and effect, which produce financial legal effect. It examines the basic types of such acts in financial law as a branch of public law and the main forms for establishing of prescriptions for conduct (or rules of law) in this legal sphere. The exposition outlines the legal essence and specifics of normative and non-normative (jurisdictional, general and individual) acts, related to the formation, use and control of the public finances, the governance in monetary policy, as well as the regulation and supervision over the private financial sector.*

***Keywords:** finance, prescriptions for conduct, law-making, law enforcement, legal acts, state authorities*

INTRODUCTION

For Bulgarian legal doctrine the branch of financial law has as its subject the legal relations related to the formation, use and control over public finances, the governance in the monetary policy, as well as the regulation and supervision over the private financial sector. The concept of the financial legal acts in the theory usually refers to the individual administrative acts of financial-legal nature. Despite the undoubtedly important role of this category of legal acts, a number of other types of legal acts adopted or issued by public authorities which undeservedly remain outside the theoretical focus of attention, have their place in the mechanism of implementation of financial legal relations.

Legal acts in financial law are generally a type of legal acts issued by public authorities. They are statements of will which establish normative (general) or individual prescriptions for conduct in the sphere of governance and control of public finances, as well as in the sphere of regulation and supervision over the private financial sector. These acts are characterised by the peculiarities of public law acts, which unilaterally establish rules for conduct, including rights, obligations or prohibitions for their addressees, without the need for the latter's counter-consent. This inequality of parties and the granting of the initiative to the authority to establish a legal relationship are at the heart of the imperative method of legal regulation inherent in public law. The other very important aspect of this regulatory method is the non-freedom of the parties to the legal relationship, whose actions, especially those of the authority, are fully conditioned and subordinated to the legal provisions (Valchev, D., 2019, p. 231).

The legal acts of authorities, including those in financial law, are of several main types: normative (law making) acts and non-normative (law enforcement) acts – jurisdictional acts, general and individual legal acts issued by administrative and other types of public bodies. All of these categories of acts can have financial law implications and we will briefly outline some of their main aspects below.

EXPOSITION

§ 1. Normative legal acts

The normative (general) regulation and the normative acts are central to the mechanism for establishing and governance of the public finances. Normative regulation (law-making) is the establishment of permanent prescriptions for conduct in relation to an unlimited number and range of addressees and cases. In Bulgarian financial law doctrine it is generally accepted the so-called legal concept of the essence of public finance developed by M. Kostov, according to which

financial legal relations, unlike, for example, civil legal relations, do not constitute an objective economic category but have the existence of legal relations only (Kostov, M., 1979, pp. 50-91). The laws passed by the National Assembly are the most important normative authoritative legal acts and sources of financial law. These acts regulate entirely financial matters of a public-law nature, such as the Public Finance Act, the substantive tax laws (the Value Added Tax Act, the Excise and Warehouses Tax Act, Local Taxes and Fees Act, Corporate Income Tax Act, Personal Income Tax Act), the Tax and Social Insurance Procedure Code, the State Financial Inspection Act, the Audit Chamber Act, the Bulgarian National Bank Act, etc. Other acts partly contain regulations that can be attributed to financial law as a branch of public law, such as the Credit Institutions Act and the Act on Markets in Financial Instruments.

Financial laws are further developed and specified by subordinate normative regulations (bylaw). Among the subordinate normative act, the main place is occupied by the regulations and ordinances issued by the Council of Ministers and the Minister of Finance – for example, the Regulations for the Implementation of the State Financial Inspection Act, adopted by a Decree of the Council of Ministers, the Regulations for the Implementation of the Value Added Tax Act and Regulation No. N-9 of 7.11.2018 on the registers kept by the Customs Agency, issued by the Minister of Finance and a number of others.

On the basis of their constitutionally established powers municipal councils determine by ordinances (subordinate normative regulations pursuant to Article 8 of the Act on Normative Acts) the rates of local taxes and fees, under the conditions, procedure and within the limits set by the Local Taxes and Fees Act (Article 1, paragraph 2 of the Local Taxes and Fees Act). These powers granted to municipalities represent an expression of fiscal decentralisation within the state and a redistribution of public responsibilities and resources in favour of the lower territorial authorities.

Substantial is the importance of the sub-legislative regulation by specialised state bodies independent of the executive, such as the Bulgarian National Bank (BNB) and the Financial Supervision Commission (FSC), which regulate and supervise the private financial sector - banking and non-banking (capital, insurance and insurance markets) and the operations carried out therein – for example BNB Regulation No 21 of 26 November 2015 on the conditions and procedures for opening payment accounts, for executing payment transactions and for using payment instruments and Regulation No. 13 of the FSC of 22.12.2003 on tender offers for the purchase and exchange of shares, etc.

§ 2. Individual legal acts

Individual regulation of financial legal relations is carried out through individual legal acts that are an expression of law enforcement. An individual act of public law is any volition which, on the basis of the law, establishes an individual prescription of conduct. Individual authoritative legal acts in the Bulgarian legal system are characterized by diversity, but can be reduced to three main groups - jurisdictional acts, which are related to the resolution of legal disputes, administrative acts - individual and general and acts of the main state bodies, which are not administrative acts - for example, the decrees of the President, the decisions of the National Assembly and the Audit Chamber.

All of the above-mentioned public legal acts may have financial law consequences. For example, the acts through which the state bodies exercise control and judicial power in resolving disputes concerning the legality of financial administrative acts through administrative and judicial procedures are jurisdictional. The control- jurisdictional proceedings in the sphere of financial law often have their own specificity compared to administrative law in general - for example, according to the rules of the Tax and Social Insurance Procedure Code (Article 156, paragraphs 2 and 3, Article 266), the acts of the revenue authorities should be appealed administratively first in order for a judicial challenge to be admissible, while the financial legislation in other cases introduces a similar mandatory sequence - for example, Article 206 b(2) and (4) of the Customs Act. As a rule, administrative and judicial challenges do not suspend the

implementation of individual financial acts (Art.153, paragraph 1 of the Tax and Social Insurance Procedure Code, Article 221, paragraph 1 of the Customs Act); with regard to revision acts, restrictions are introduced for their cassation appeal (Article 60, paragraph 7 of the Tax and Social Insurance Procedure Code). In this way, priority is given to the public fiscal interest related to financial claims.

It is a well-established understanding in the legal theory that the penal decrees are jurisdictional acts. Penal decrees are a special category of acts of the administration, including the financial administration, that are of judicial nature. When the state body issues a penal decree, it actually settles an administrative law dispute concerning liability and respective administrative sanctions (Angelov, A, I. Dermendzhiev, G. Kostadinov, p. 447). The implementation of administrative liability in the financial law also has characteristic features - in a number of cases the attempt to commit an administrative offence is subject to sanctions (Article 233, paragraph 1, Article 234, paragraph 1, Article 235 of the Customs Act), administrative liability is introduced for instigators, aiders, concealers and perpetrators of an administrative offence (Article 226 of the Customs Act, Article 18 of the Currency Act), longer periods of statute of limitations are provided for, established both in the Administrative Offences and Penalties Act - Art. 34, para. 1 and para. 2.

The most significant category of legal facts in financial law are individual financial acts (individual administrative act with financial legal consequences). They are statements of will by persons acting in the capacity of a public authority, which unilaterally establish individual prescriptions for conduct with respect to a person or an individualized group of persons. An individual financial act is also the refusal of a public authority with financial competence to issue an act, to perform or to refrain from performing a certain act. The legal effects of an individual administrative act and, respectively, of an individual financial act, may consist in the creation of rights or obligations, the declaration or ascertainment of rights and obligations already created, as well as in the issue of a document relevant for the recognition, exercise or extinction of rights or obligations (Article 21 of the Administrative Procedure Code). Financial individual acts are usually issued and challenged under special procedures governed by financial laws - for example, the Tax and Social Insurance Procedure Code in respect of tax audit acts, acts for deferral and rescheduling of public claims, for set-off and recovery, acts of the public executors in the enforcement and attachment process or the Customs Act for individual authoritative acts relating to customs duties.

As specific features of the financial individual acts it is pointed out that, firstly, they concern financial matters and, secondly, unlike administrative acts, they are a manifestation of bound administration and therefore have declarative effect (Zlatarev, E, Khristoforov, V. pp. 153-154). V. Dimitrov points out that financial obligations related to the collection of funds of public finance arise not at the discretion of the law-enforcing state, municipal or other public authorities, but from factual compositions that precede individual financial acts. In this case, the financial acts acknowledge the pre-existence of the public obligations and only specify their implementation. Thus, the author assumes that declarative financial acts are the main instrument for raising revenues and making expenditures on the budgets and funds of public finances, and the bound jurisdiction is a principled position in the management of public finances (Dimitrov, 2019, pp. 86-87).

The discretionary-constitutive acts have a wider application in the field of organizational financial relations - for example, in financial control relations. The initiation of most forms of financial control is a manifestation of discretion on the part of the authorities with financial powers, there may also be room for discretion within the financial proceedings themselves. For example, in proceedings for the enforcement of public claims the public executor in a number of cases acts under conditions of operational independence - may use any of the enforcement methods together or separately (Article 215, paragraph 3 of the Tax and Social Insurance Procedure Code), may terminate the proceedings if he considers that the claim is uncollectable (art. 225, para. 1 item 4 of the Tax and Social Insurance Procedure Code), has the power to

determine a final assessment of the property sold at public sale, which assessment shall not be subject to appeal (art. 235 of Tax and Social Insurance Procedure Code). Other individual acts with financial legal consequences have also constitutive effect (give rise to rights and obligations) - e.g. the decisions on deferment and rescheduling of public claims (Art. 184 of the Tax and Social Insurance Procedure Code), decisions of the managing authorities on financial correction (Art. 73 of the Management of European Funds under Shared Management Act), the licence of Bulgarian National Bank to carry out banking activities (Art. 13 of the Credit Institutions Act). Although the Bulgarian National Bank is not part of the executive authorities and has the status of an independent state body (similar to the Financial Supervision Commission), its acts are statutorily defined as individual administrative acts (Art. 151, para.1 of the Credit Institutions Act), as a special order is provided for their issuance and legal challenge. The same applies to the acts of the Financial Supervision Commission – see. Article 13, paragraph 3 of the Financial Supervision Commission Act.

§ 3. General legal acts

According to Bulgarian legal order there is also a special group of acts of administration called general administrative acts. They establish prescriptions for conduct, which apply to a non-individualized range of addressees, but issued in a specific case and produce unrepeatable effect. The general administrative act concept is legally defined by the provision of Article 65 of the Administrative Procedure Code.

In the case law, the decisions of the municipal council, which adopt and amend the annual budget of the municipality and adopt the report on its implementation, are considered as general administrative acts - Interpretative Decision No. 2 of the Supreme Administrative Court of 16 April 2013 in case No. 4/2011. According to the reasoning of the Supreme Administrative Court, the reference of this category of decisions to general administrative acts stems from their content and form. They have a single legal effect within the budget year, create rights and obligations for an indefinite number of persons and meet the definition of Article 65 of the Administrative Procedure Code.

Budget laws are also non-normative. This is a well-established understanding in financial legal doctrine, according to which their legal status is that of general acts – management decisions with specific content and one-time enforceability (Angelov, A., M. Kostov, 1972, p.88-89). In the practice of the Constitutional Court, it is accepted that the State Budget Act is not a law in the substantive sense, but is only a formal law (see Decision No. 2 of 12 May 2009 in Case no. 1 of 2009, op. cit. 38 of 22 May 2009). Unlike all other laws, it produces one-year effect – temporary and unrepeatable. However, the Constitutional Court refrains from defining the budget as a general act of management (administrative in content), but accepts that the state budget is a law in a formal sense (Petrov, V., 2017, p. 131.).

§ 4. Individual legal acts by non-executive authorities

The last group of individual authoritative acts with financial legal consequences includes acts of the main state bodies outside the executive branch. These are primarily the presidential decrees and the decisions of the National Assembly. Of importance for financial law are, for example, the Decrees of the President for remission of uncollectible state claims under Article 98, para. 12 of the Constitution of the Republic of Bulgaria and to appoint some of the members of the Bulgarian National Bank under Article 12, para. 3 of the BNB Act in conjunction with Article 98, para.7 of the Constitution. Presidential decrees in these cases are specific individual authoritative acts outside the scope of judicial review within the administrative justice system (Article 2, para. 2, p.1 of the Administrative Procedure Code).

The National Assembly, although the holder of the legislative power in the state, may also adopt non-legislative, individual public acts with financial legal consequences – for example, a decision on the acceptance of the report on the implementation of the budget for the relevant year

or a decision on the election of the heads of the Bulgarian National Bank and the Audit Chamber, as laid down in Article 84, para. 2 and para. 8 and Article 91, para.1 of the Constitution of RB. These decisions are individual legal acts – resolve a specific issue and have a limited range of addressees.

The legal acts of the Court of Auditors – the decisions of the Court of Auditors adopting final audit reports and audit opinions (Articles 48, para.1 and 54, para.14 of the Court of Auditors Act), which are the result of an audit. The Court of Auditors is a constitutionally provided body for control on implementation of the state budget (Article 91 of the Constitution of RB). As a collective supervisory body it is independent in carrying out its duties and is accountable only to the National Assembly (Article 3 of the Court of Auditors Act). The final audit reports are not subject to judicial action (Article 55, para.2 of the Court of Auditors Act). Since they are issued on a case-by-case basis and relate to specific addressees, the Court of Auditors' acts can be classified as individual legal acts with financial legal effect issued by a public authority outside the executive branch.

CONCLUSION

The legal acts of public authorities have a decisive importance and key role in the normative and individual regulation of financial legal relations. In view of the foregoing, a markedly diverse picture of public legal acts in financial law emerges. All categories of such legal acts - normative, general and individual, may have financial law effect.

Such acts may be issued by specialized state authorities with financial competence in public finance governance, as well as by other state and municipal bodies which do not have the features of specialized financial authorities but whose financial powers are important part of their broad administrative competence. In this regard, it is not justified that the theoretical focus is traditionally oriented only on one of the instruments for exercising financial power – the individual financial act. It is hoped herewith that the concept set out in the current paper will contribute to the theoretical understanding of legal acts of public authorities with financial law significance.

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