CONCEPT AND TYPES OF JUDICIAL ACTS: HISTORICAL-LEGAL APPROACH

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Abstract. Judicial reforms in our country, their goals and results strengthen the attention to judicial documents issued by courts – judicial bodies of independent judiciary, and highlight their importance. This situation is also one of the factors for researching the judicial acts. Judicial acts are one of the important types of law-enforcement acts. Therefore, all requirements set before law-enforcement documents are applicable for this type of documents as well. At the end of the article, one can read the author’s description of judicial acts; it says “Judicial act is an official decree of a court which describes state-ruling content and opened in accordance with procedural legal legislation standards for certain occurrence by authorized persons, and directed to the solution of social relations on individual-severable basis”.

Keywords: judicial acts, “legal power” of judicial acts, relevance of judicial acts, prejudicialness of judicial acts, interpretative judicial acts, motivational state of judicial acts.

Judicial acts are important elements of the system of legal regulation of social relations. Judicial acts are of special status because they are issued by courts – judicial bodies of government system (Karimov I. A., 2010). Because, by judicial acts legal norms are implemented and “defects” occurred in the system of legal regulation are removed. Therefore researching the role of judicial acts in the system of human rights protection and issues related to the influence of judicial acts on the social relations participants is not only of scientific but also of practical importance. It is necessary to state that in the Turon area, particularly in our country, there is an accumulated positive experience on qazi (judge) works and related documentation. Institution of qazi was practiced as a form of system of justice based on sharia standards. Our ancestors like Amir Timur, Sultan Ulugbek, Zahiriddin Muhammad Bobur focused on the principle of justice for solving disputes and providing human rights. All our greatest thinkers in their works wrote precious ideas about the responsibility of qazi works, requirements set before them and issues related to personal responsibility over dispute settlement and violation of one’s rights. We believe that special courses should be organized to instill precious ideas written in these sources about qazi’s activities, requirements set before qazi’s personality because all these ideas didn’t lose their importance today yet they are of more importance in current justice system. Such courses, first of all, are appropriate to be organized Republican Center for Retraining the lawyers before the Ministry of Justice of the Republic of Uzbekistan, and should be taught to groups designed for teaching judge nominees.

While studying judicial acts, initially, it is necessary to answer to a question “what is judicial act?”.

It is important to state that word “act” in English language has many meanings, but mostly used to indicate certain “action”. Here, one has to pay attention to “legal act” which also used to indicate behavior of legal entities and/or law abiding behavior of legal entity and/or legal document.

“Legal act’s” third meaning that is “legal document” is mostly used in law books and legal practice. When used as “legal document”, we can see the unity of form and content; because, here action finds its word-documented meaning.

As S.S. Alekseev states that this expression, exactly in this place, is presented as an external judicial presentation of such comprehensive elements’ creation and practice as legal rules of legal framework, individual order, rules and people’s individual decision (Alekseev, 1982). Along with this, there is a need to add this above given idea, because certain behavior of a legal entity, particularly intellectual acts of will and its results can be expressed in a verbal form or symbolical-pictorial (implied) actions. For example, even if manager’s verbal order or road police officers instructions towards vehicle’s driver (regarding stopping or driving the vehicle) are made in a verbal form, but considering their juridical consequences such orders are
equated to legal documents. Therefore, when legal entities’ actions are directed to perform certain juridical rules, they have the legal power of juridical document.

There are many types of legal documents in scientific literature; they are commonly divided into three types: juridical, interpretative and individual. It is wise to state that normative-legal documents include juridical norms using which social relations are governed. At the same time, government of social relations is not limited by these norms only. Individual documents govern social relations on individual basis and rights and responsibilities of legal entities are exercised.

In turn, interpretative documents through explanation of normative and individual juridical documents’ meaning to legal entities provide their equal exercise.

Based on the above given, here we will try to give an answer to a question “what is judicial act?” Judicial acts are individual exact document based on law requirements on a certain case, directed to provide a protection of interests of parties whose rights were violated.

Judicial act is document that always brings certain juridical consequence. In the decree of the court, every dispute shall be considered based on the argument and order defined in laws and procedural legislation, and described in the given court decree.

Judicial act is a law-enforcement document issued as a result of criminal, civil, economical and administrative cases trial on according court houses. Judicial acts are of special status because they are issued by courts – judicial bodies of government system. Judicial government carries out public justice – its main duty assigned by the Constitution and laws through its documents (Kashanina, 2008).

It is necessary state that two features in judicial acts can be differentiated: internal and external. Internal feature of the judicial act is described in such a way that court while considering certain juridical case performs intellectual acts of will, defines the legal norm’s content and sphere, investigates the matters and classifies them accordingly, and only then makes decision.

External feature of the judicial act can be seen in the practical actions of a court, focused on impartial expression of the results of intellectual acts of will.

At the same time, intellectual acts of will and practical actions are interconnected. Except some cases in the procedural legislation, in most cases court’s intellectual acts of will are described in the juridical documents. It is known that judicial acts are procedural documents issued based on procedural legislation. Judicial act, in general, can be classified as external legal expressed form of court’s activity governed by procedural legislation in effect.

In scientific literature, terms like “judicial acts” and “court decision” are used. I think it is appropriate to use “judicial act” because this term is used in the article 114 of the Constitution of the Republic of Uzbekistan on the mandatory nature of court documents: “Judicial acts issued by judicial government are mandatory for all state bodies, non-governmental organizations, organizations, institutions, officials and citizens”. At the same time, sometimes, such term like “judicial government documents” is used. Considering the fact that judicial government is carried out by judges and people involved by law, these two terms can be stated as synonyms (Mustafoev, 2009). However, I think, “judicial acts” are better to use than “judicial government documents” because the term “judicial government” is wider term in the simple judicial system.

Judicial law-enforcement documents generally are one of the juridical individual documents, and are applied to exact situations, cases and person; certain conditions and legal norms serve as bases to issue them. Their content and consequences have individual hue.

At the same time court decree can be described as both action and document. Really, while making certain decision, the court works based on certain norms, i.e. enforces the law; this all flows as a process and as a result of this process court makes decision and this decision is described in its mandatory decree. This decree is of individual form. In this way, court’s decree is the last level and consequence of a complex and multilevel law-enforcement process (Razhabova, 2003).

Court decree as a document can be described as follows: textual-documented form of individual order, individually directed to govern social relations based on procedural norms.

Among court documents, there are content-decisive documents on the merits, court’s decisive decree, court decreet, injunction are of special importance. Moreover, there are several documents to assist in governing the revision of cases; one of them is a writ. Usually writ is used to govern cases of procedural nature.
Content-decisive documents on the merits, which are court’s decision, decreed and decrees, are used by courts of justice to carry out their assigned duties and authorities.

Such judicial acts are quite complicated and composed of introduction, explanatory and justification part and decision part. Introduction part of the judicial act includes information about the date and place of its issuance, name of the court judge and its content, subject of the dispute and participants of the discussion. Explanatory part includes the reason for cases and requirements indicated to the case, appeals, request of the participants and facts related to the case.

Justification part includes the states that define if to accept or deny the determined details and fact by the court, and conclusions about using corresponding legal norms and making decisions. In such a way, the decree of the court will be justified by facts and by law.

Decision part includes the last conclusion – court’s decree and the consequences of this decree. Here, one shall not think that the court’s decree part is the most important part, because its power is taken from all preceding parts.

Judicial order can be considered as one of the law-enforcement documents (Aripov, 2004). The difference of this judicial act from other is that it is an enforcement document at the same time. Decrees and other orders of the courts shall be legal and justified. Legality of a court documents means their concordance to material and procedural legal norms. And its reasonableness means that it was grounded on discussed materials and conclusions are made not based on guesses but on accumulated and checked facts.

Motivational state of judicial acts shall answer to such questions like why court made such decision instead of another one, on what basis and so on.

Here, we have to pay attention to the expression of “legal power of a judicial act”. This term includes such features like its mandatory nature, undeniable, prejudicial nature and a must.

Among law-enforcement documents, controlling documents of legal norms have their significant place. Through such control, the appropriateness of several types of norms is checked for their conformity to laws by other higher standing legal norms. In connection with this, these documents will have certain content and importance. The reason why such judicial acts are made is to stop the validity of certain low-standing legal norms if they are found invalid compared to higher-standing legal norms. The order of losing such type of low-standing legal norms is indicated in authorized normative-legal documents, for instance law on the Constitutional Court (O’zbekiston Respublikasi Oliy Majlisi Ahborotnomasi, 2001).

Grounded on the above stated, we can elaborate a name entry: “Judicial act is an official decree of a court which describes state-ruling content and opened in accordance with procedural legal legislation standards for certain occurrence by authorized persons, and directed to the solution of social relations on individual-severable basis”.

References


