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CRITERIA

FOR IDENTIFICATION OF LOCAL LEGAL ACTS IN THE REPUBLIC OF ARMENIA

CRITERIOS PARA LA IDENTIFICACIÓN DE ACTOS JURÍDICOS LOCALES EN LA REPÚBLICA DE ARMENIA

Rafik Khandanyan[1]
E-mail: rkhandanyan@yahoo.com
ORCID: https://orcid.org/0000-0001-7543-8793
[1] Department of Theory of Law and Constitutional Law, Russian-Armenian University, Yerevan,Armenia.

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ABSTRACT

The paper examines the concept of local legal acts and their nature in the Republic of Armenia. The author analyzes the application of the relations criterion to identify local acts, noting that these acts can be adopted by both public and private bodies and organizations. It is indicated that such relations may exist both between public bodies and their employees and between non-state institutions and their members. Judicial practice supporting the qualification of acts as local and explaining the reasons for such qualification is presented. The primary method of research is deduction, employed in investigating the legal and social nature of criteria for identifying local legal acts in Armenia. The study concludes that local legal acts can regulate relations in various spheres and that their nature is determined by the relationship between the body adopting the act and its addressees.

Keywords: Normative act, local act, legal act, qualification commission, order, National Assembly of the Republic of Armenia, Administrative Court of the Republic of Armenia, organizations.

RESUMEN

El artículo examina el concepto de actos jurídicos locales y su naturaleza en la República de Armenia. El autor analiza la aplicación del criterio de relaciones para identificar actos locales, señalando que estos actos pueden ser adoptados por organismos y organizaciones tanto públicos como privados. Se indica que tales relaciones pueden existir tanto entre organismos públicos y sus empleados como entre instituciones no estatales y sus miembros. Se presenta la práctica judicial que respalda la calificación de actos como locales y explica las razones de dicha calificación. El principal método de investigación es la deducción, que se emplea para investigar la naturaleza jurídica y social de los criterios para identificar los actos jurídicos locales en Armenia. El estudio concluye que los actos jurídicos locales pueden regular las relaciones en diversos ámbitos y que su naturaleza está determinada por la relación entre el órgano que adopta el acto y sus destinatarios.

Palabras clave: Acto normativo, acto local, acto jurídico, comisión de calificación, orden, Asamblea Nacional de la República de Armenia, Tribunal Administrativo de la República de Armenia, organizaciones.

INTRODUCTION

In European literature, the concept of a local legal act is replaced with the expressions "internal law" and "internal acts", while Soviet and post-Soviet legal sources predominantly use the wording "local legal acts". According to Article 2, Part 1, Paragraph 6 of the Law of the Republic of Armenia (RA) "On normative legal acts".

An internal legal act is a legal act adopted based on a normative legal act that establishes rules of conduct for a group of persons in labor or administrative relations with the body adopting the act or using the services or works of this body (National Assembly of the Republic of Armenia, 2018).

In today's scientific discourse in Russia, local (intra-organizational) legal acts are considered a type of subordinate legal acts. Russian theorists understand local legal acts as acts that are adopted by the management of enterprises, institutions, and organizations within their authority and are meant to regulate the internal activities of the organization (organization of work, internal discipline) and apply to employees of these enterprises, institutions, and organizations, respectively (Solovev et al., 2022).

It is also indicated that local acts possess all the primary characteristics of normative legal acts: they are adopted under a specific procedure, contain generally binding rules of conduct, and are intended to be applied repeatedly and to an indefinite number of persons (Zenin et al., 2022).

The purpose of this study is to analyze the classification and characteristics of local legal acts in Armenia in terms of their compliance with the Law "On normative legal acts". The research aims to distinguish local legal acts and establish their legal status, areas of application, and possibilities of their adoption by both public and non-governmental bodies.

DEVELOPMENT

In the framework of the study, legal doctrines, theories, and concepts relating to normative and individual legal acts were analyzed to identify their nature and distinctive features.

The main emphasis was placed on the study and interpretation of legal norms in Armenia, particularly the Law "On normative legal acts", to uncover the criteria and rules governing the creation and application of local legal acts.

Adherents to the view of local legal acts as a variety of subordinate legal acts point out that local normative legal acts demonstrate all features of subordinate acts: they are adopted by an authorized body or official, are consistent with the law, and have no contradiction to it (Khandanyan, 2022).

The legal characteristic of local legal acts does not specify the range of subjects authorized to pass such acts (Law "On normative legal acts", Article 2, Part 1, Paragraph 6). This suggests that local legal acts can be adopted by both state and non-governmental bodies and organizations.

The doctrine also specifies that local legal acts can be adopted by both public and non-governmental enterprises and organizations regardless of the form of ownership (Ivanov et al., 2022). Sometimes, local legal acts adopted by public authorities to regulate intra-agency relations are referred to as departmental acts (Belyaeva et al., 2023). The Law "On normative legal acts" abandoned the term "departmental act", meaning that it does not matter whether the local legal act was adopted by a state body or a non-governmental organization. The RA legislature has unified the name of this group of acts, calling them local legal acts.

Can local legal acts by their nature be considered normative or individual legal acts? From the standpoint of regulation by the Law "On normative legal acts", a legal act cannot be local and normative or local and individual at the same time. Per this law, a legal act can only be either local, normative, or individual.

The answer from the doctrinal point of view differs from that provided by the Law "On normative legal acts". Oftentimes, theoretical sources use the terms "individual local act" and "normative local act" (Agafonov et al., 2023).

From the doctrinal perspective, legal acts by their nature can be 1) local normative legal acts, which mainly cover local legal norms, i.e., rules of conduct regulating intra-organizational relations; 2) local individual legal acts, which contain individual legal regulations addressed personally to specific employees; 3) mixed-type local legal acts, which contain both local norms and individual legal regulations (Tomashevsky, 2019).

Adamyan (2015), also believes that local acts can be normative or individual and notes that legal acts are categorized by the number of persons they cover into normative legal acts (applying to an indefinite number of persons), local normative legal acts (applying to members of an organization), and individual acts (applying to a personified subject). Thus, among the types of legal acts, Adamyan (2015), distinguishes normative legal acts, on the one hand, and local normative legal acts, on the other hand. Such a classification is debatable because it is unclear on

what criterion normative and local normative legal acts are differentiated.

From the doctrinal point of view, legal acts can be normative, i.e., applying to persons in the organization not identified personally, and individual, addressing specific members of the organization (more on that later).

Addressees of local legal acts in the doctrine

In the differentiation of local legal acts and acts of external action, the issue of determining the addressees of local legal acts is of fundamental importance. Theoretical sources contain various definitions of the addressees of local legal acts, e.g., "persons in an organizational legal relationship with the issuing body", "members of the organization", "fixed members in the organization", etc. For example, the following is noted in theory:

Intra-organizational acts are those that apply exclusively to members in the organization (enterprises, parties, or other structural units). The intra-organizational nature of local acts implies that they extend to the members of this organization and implies membership in the organization and the existence of an organizational and legal relationship between the issuing body and the subject of law themselves (Adamyan, 2015).

It is sometimes stressed that "an organization cannot apply local legal acts to persons who are not considered to be its fixed members" (Sorokin 2020, p. 318). From this, we can gather that local acts apply only to fixed members of the organization. However, it is not specified what is meant by "fixed member of the organization".

Within the framework of labor relations, it is not difficult to identify the parties to the employer-employee relationship. However, there are organizations whose relationships with their members are difficult to identify. For example, it is a challenge to identify members of religious organizations and the nature of the relationship between the head of the organization and its members.

In the RA, the internal effect of local legal acts is determined not by membership but by the so-called "relations" criterion: an act is considered local if there are "labor, civil, or administrative relations" between the adopting body and the addressee of the act.

Theory of relations to determine addressees of local legal acts of regulatory nature

As previously noted, RA legislation sees internal (local) legal acts as those establishing rules of conduct for a group of persons who have labor, civil, or administrative relations with the adopting body or use the services or works provided by this body (Law "On normative legal acts", Article 2, Part 1, Paragraph 6). It follows from this characteristic that to define the addressees of local legal acts, it is necessary to establish the presence of labor, civil law, or administrative relations between the body adopting the act and its addressees, as well as usage of the services or works of the issuing body.

(a) Persons in labor relations

Labor relations are relations based on a mutual agreement between an employee and an employer, under which the employee personally performs job functions (work in a certain specialty, qualification, or position) for a certain remuneration, subject to the rules of internal regulations, and the employer provides working conditions stipulated by labor legislation, other normative legal acts containing norms of labor law, and collective and labor agreements (National Assembly of the Republic of Armenia, 2004).

Labor relations between an employee and an employer emerge from an employment contract concluded in accordance with the procedure established by labor legislation and the individual legal act of employment.

The provisions of this code governing contractual relations apply to the regulation of labor relations resulting from an individual act of employment (National Assembly of the Republic of Armenia, 2004).

(b) Persons in civil law relations

Article 2, Part 6 of the Law of the RA "On legal acts" of 2002 establishes that domestic legal acts apply only indefinitely or definitely (but not individually) to persons who are in a civil law relationship with the body adopting the act. The Law "On normative legal acts" adopted in 2018 does not have a provision on the existence of a civil law relationship in the characteristic of internal legal acts. Pursuant to the amendments made to the Law "On normative legal acts" on April 19, 2021, the words "civil law" was added after the word "labor" in Article 2, Part 1, Paragraph 6. In other words, the regulation under the Law "On legal acts" was restored.

This raises the question of the legislature's rationale for adding the provision about being in a civil law relationship on April 19, 2020. There is no judgment on adding the term "civil legal acts" in the justifications of the project on amending the Law "On normative legal acts" (NO-180-N, 2018), nor was this issue discussed in the Republic of Armenia (National Assembly of the Republic of Armenia, 2021).

There are cases when a person holds a position in an organization under a civil law contract rather than an employment contract. This brings up the issue of extending local

legal acts of the organization to a person working under a civil law contract. In such cases, although the person in question has no labor relations with the body adopting the local legal act (legally, these acts do not apply to them), in practice, these acts do apply to the person working under a civil law contract.

(c) Persons using services or works

The criterion of using a service or work for identifying legal acts of internal effect applies not to employer-employee relations but to relations associated with the use of services and works provided by the body adopting the act.

How should the concept of service or work be interpreted in terms of determining the scope of local legal acts (identification of addressees)? The scope of this concept can be interpreted in various ways. For example, the concept of service or work can be understood in terms of civil law only or as services provided as part of public legal relations.

(1) Civil law interpretation of the concept of service or work. From a civil law perspective, the concept of service or work can be construed in a narrow and broad sense.

With service or work in the narrow sense, the persons using services are only those who use said services under services contracts specified in subsection 5 of the RA Civil Code (Service contracts). Subsection 5 of the RA Civil Code provides for the types of service contracts: paid services agreement (Chapter 39), contract of agency (Chapter 40), contract of factorage (Chapter 41), agreement for distribution (Chapter 42), bailment for hire (Chapter 43), contract of carriage (Chapter 44), freight forwarding agreement (Chapter 45), loan contract (Chapter 46), credit agreement (Chapter 47), etc.

A drawback of the broad interpretation of service or work is that it creates a conflict between criteria for determining the addressees of local legal acts – a person in civil law relations and a person using a service or work. Although differentiated by legislation, these two criteria are essentially equated if the civil law concept of service or work is used in the broad sense.

(2) Public law interpretation of the concept of service or work. A question arising here is whether the concept of service or work can also be interpreted in the sense of public services rendered by public authorities to identify a local legal act.

According to Article 3, Part 1 of the Law of the RA "On public service", public service means the exercise of the powers vested in the public authorities by the Constitution and laws of the RA. Although this characteristic essentially implies that public authorities render public services to RA citizens as a result of exercising their powers, it is fundamentally erroneous to consider the relations arising from the use of public services provided by public authorities in the context of identifying local legal acts.

Taking the use of public services provided by public authorities as a criterion for determining the addressee of a local legal act would mean that the normative legal acts of competent authorities, which also provide for the exercise of the functions of the state (provision of public services), have to be considered as local legal acts. Judicial practice in the RA does not always adhere to this approach. In this regard, it is notable that the Administrative Court of the RA qualified an order of the Chairman of the RA Investigative Committee regarding the competitive selection of applicants for service in the RA Investigative Committee as a local legal act based on the criterion of the use of works of the organization of said competition.

(d) Persons in administrative relations

(1) Administrative relations in the doctrine

In terms of the Law "On normative legal acts", the concept of administrative relations is not to be interpreted strictly from the perspective of the administrative law regime, i.e., as relations between administrative (public) bodies and their officials.

First, in the theory of administrative law, the internal activity of an administrative body is characterized as the regulation of hierarchical relations with public servants and other employment relations within the administrative body, which provides for the management of said body and the necessary contacts with other bodies without a direct interaction with the rights and obligations of legal persons. Some simple examples of this activity of an administrative body are orders and instructions given by superiors to subordinate officers in accordance with the rules and subordination of the distribution of work (Belyaeva et al., 2023).

Relationships between state bodies and their subordinate officers are a classic example of subordinate administrative relationships. In the context of the Law "On normative legal acts", administrative relations should also be considered subordinate relations of non-governmental institutions and their members.

Second, in terms of the identification of local legal acts, administrative relations should be considered not only the subordinate relations arising within certain state bodies but also the subordinate relations of two independent state bodies. For example, subordinate administrative relations may arise between the Government of the RA and a ministry, and thereby a legal act adopted by the

Government of the RA in the framework of these relations would be considered a local legal act.

(2) Administrative relations between marzpets and territorial authorities

According to Article 160, Part 2 of the RA Constitution, marzpets (governors) coordinate the activities of territorial subdivisions of public administration bodies, excluding cases prescribed by law.

The question arises, from the point of view of the Law "On normative legal acts": What authority to adopt legal acts should be vested in the marzpet for exercising the function of coordinating the activities of territorial subdivisions – only local (internal) and individual or normative legal acts as well?

In practice, the marzpets surprisingly classify some legal acts arising from the coordination function, which are not individual, as individual acts, or simply bypass identifying the type of legal act. For example, on March 16, 2020, the Marzpet of the Lori Province adopted Decision No. 327-I "On approval of the emergency response plan for secondary cases (cluster cases) of the coronavirus disease (COVID-19) introduced into the Lori Province of Armenia" (Marzpet of the Lori Province, 2020). The marzpet, marking the decision with the letter "I", deemed it an individual legal act. The content of the approved plan makes it clear that it has nothing to do with an individual legal act since it is addressed not to a specific official or persons but to non-individualized institutions – heads of territorial subdivisions.

Thus, Decision No. 327-I, regardless of the qualification given by the author of the decision, is not an individual legal act. Therefore, it should be clarified what type of act this decision is in terms of the Law "On normative legal acts" – internal or normative.

To answer this question, it is essential whether or not the relations arising as part of the coordination function between the marzpet and territorial subdivisions of public authorities are administrative. The matter is that from the point of the positive law of the RA, an internal (local) legal act establishes a rule of conduct for the group of persons who are in administrative relations with the body that adopts the act (Law "On normative legal acts", Article 2, Part 1, Paragraph 6).

Coordination activity is undoubtedly a power activity. Therefore, the participants in joint activities should obey the will of the coordinating subject (Isaev et al., 2023). However, the degree of power of competent state bodies in separate types of administrative activity varies. For example, the doctrine characterizes the degree of authority in relation to coordination activity as "reduced" (Adygezalova et al., 2023). In public administration, in contrast to the coordination of activities of internal divisions (e.g., coordination of the operation of various subdivisions of the marzpetaran (regional administration) by the marzpet), the function of coordinating the work of various public administration bodies is very uncharacteristic of strictly subordinate relations. Thus, the relations between the marzpet and territorial subdivisions of other executive authorities (for example, the marzpet and the head of the territorial police unit) are neither sub-agency nor supra-agency – these are departmental relations. In this respect, an appropriate approach existing in the science of administrative law is as follows:

In cases when the coordination powers of coordinating subjects have elements of departmental subordination relations and not supra-agency ones, they are always exercised not in the classical forms of 'power-subordination', but have a specific 'coordination tone' and are aimed at coordination rather than only command-and-control management (Maksurov & Makarov, 2012).

Thus, coordination is predominantly inherent in those administrative relations that do not have classic relations of subordination.

Moreover, Armenian specialists in administrative law note the following in the context of the principle of concentration in the sphere of public administration:

Marzpets can perform coordination activities in marzer because the territorial offices of central bodies (ministries, etc.) are represented in regional bodies and thus subordinated to marzpets (Tovmasyan et al., 2011).

The authors do not specify what they mean when speaking about representation in regional bodies. If this implies that territorial services of central bodies (e.g., ministries) are represented in the structures of the marzpetaran as its subdivisions, they are undoubtedly subordinated to the marzpet in this way. For example, structural subdivisions of the marzpetaran, such as the departments of urban development, agriculture and ecology, financial management and socio-economic development, health and social security, and education, culture, and sports are subordinated to the marzpet.

Returning to the question under discussion, depending on the interpretation given to the concept of administrative relations, there may be two answers.

First answer: If we attempt to unravel the content of the term "administrative relations" as applied in the context of internal (local) acts (Law "On normative legal acts", Article 2, Part 1, Paragraph 6) from the point of administrative

law subordination of bodies in the public administration system, as prescribed by the Law of the RA "On state administration bodies", then the territorial subdivisions of several public administration bodies, such as regional units of the RA Police or the RA National Security Services, are not subordinate to the marzpet. In this sense, no administrative relations emerge between them, and thus the marzpet needs to adopt normative legal acts to regulate their operations.

Second answer: if we try to disclose the content of the term "administrative relations" from the standpoint of the Law of the "On territorial administration", it becomes clear that in some relations between the marzpet and the heads of territorial subdivisions of territorial administrative bodies in the framework of the coordination function, the administrative legal power is reduced. This stems from the fact that the marzpet is authorized by law to give instructions to the head of the territorial subdivision of another state body.

Thus, within the coordination function, the marzpet can adopt legal acts binding for the heads of territorial subdivisions of public authorities, which from the perspective of the Law "On normative legal acts" are considered internal legal acts rather than individual acts (Constitutional Court of the RA, 2022).

(3) Administrative relations between the RA Chamber of Advocates and advocates

The Law of the RA "On Advocacy" provides those various legal relations may arise between the RA Chamber of Advocates and advocates, including public legal (administrative) relations. In the area of advocacy as a human rights activity, administrative relations cannot arise between the Chamber and advocates. However, administrative relations do emerge between the Chamber and advocates as part of licensing, retraining, and disciplinary relations.

In cases provided for by law, the Chamber has the power to establish binding rules of conduct for advocates by adopting local legal acts. In turn, the bodies of the Chamber have the authority to impose liability measures on advocates. In addition, the organization of the licensing process is a classic public authority function, which the state has delegated to the Chamber to ensure the independence of lawyers. In other words, a significant part of the Chamber's functions is comprised of delegated state functions.

(4) Administrative relations between a public organization and its members

A public organization is a non-governmental organization; therefore, classic administrative legal relations do not arise between the latter and its members. In the context of the Law "On normative legal acts", the relations between a public organization and its members can be classified as administrative subordination relations, and the acts adopted by the head of the organization – as local legal acts. As per Article 23, Part 3 of the Law of the RA "On public organizations", the executive body of an organization, in accordance with the charter of the organization and the decisions of the assembly, issues orders and instructions, gives binding directions, and controls their implementation within its authority. Under Article 15, Part 2 of the same law, a member of an organization is obliged: 1) to comply with the statutory requirements of the organization and the decisions of its management bodies; 2) to perform the duties imposed on them by the management bodies in good faith.

(5) Administrative relations between a political party and its members

The rights and obligations of the members of a political party are laid down by law and the statute (Constitutional Law of the RA "On parties", Article 16, Part 2). Party members have the right to receive copies of decisions adopted by party bodies and appeal against decisions and actions of party bodies (Constitutional Law "On parties", Article 12, Part 6). The legislature also prescribes that in case of non-fulfillment or improper fulfillment of their statutory duties, party members may be subjected to disciplinary liability, up to and including expulsion from the party, in accordance with the procedure prescribed by the statute (Constitutional Law "On parties", Article 12, Part 8).

(6) Judicial practice

(a) Relationships between the Investigative Committee and applicants for service

An applicant to serve in the Investigation Committee appealed to the Republic of Armenia Administrative Court against paragraphs 12-42 of Order No. 49-L of the Chairman of the RA Investigation Committee dated April 5, 2019 on the grounds that the act is inherently normative, and the Chairman of the Investigative Committee does not have the authority to adopt normative legal acts.

By decision of April 20, 2020 in case No. AD/2225/05/20, the Republic of Armenia Administrative Court disagreed with the applicant with the following reasoning: "Legal definitions of the concepts 'normative legal act', 'subordinate act', and 'internal legal act' stipulate that the difference between a normative (subordinate) legal act and an internal legal act lies in the range of their addressees (i.e.,

subject structure). While a normative legal act contains mandatory rules of conduct for an indeterminate number of persons, an internal legal act establishes rules of conduct applying only to the group of persons that have some labor or administrative relationships with the body that adopted the act or use the services or works of this body. In this case, from the Order of the Chairman of the RA Investigative Committee No. 18-L of December 27, 2014, it follows that it applies only to the following subjects: the applicant, i.e., a person who has applied for inclusion in the list of candidates, and the commission that checks the applicant's professional training and practical skills and compliance of the submitted documents with other stipulated requirements".

Factually, the Republic of Armenia Administrative Court deemed the Order of the Chairman of the RA Investigative Committee No. 18-L of December 27, 2014 to be a local legal act on the grounds that applicants use works performed by the RA Investigative Committee. This commentary by the Republic of Armenia Administrative Court falls outside the civil-law understanding of services and works. Competitions for public office are not regulated by civil law norms. Thus, in this case, applicants for service could not be considered as persons using the work of the RA Investigative Committee.

In one of the dissenting opinions on the court case, a judge of the Republic of Armenia Administrative Court noted:

The qualifications commission of the RA Investigative Committee and the applicants requesting to be added to the list of candidates for civil servants have no official, employment, or other type of subordinate relationship. An applicant, when applying to be added to the list of candidates for service, does not use the work or services of a public body but realizes their right to enter the public service on a general basis enshrined in Article 49 of the RA Constitution. The Investigative Committee represented by the qualifications commission does not perform services or works for the candidates but ensures the realization of this constitutional right through executive powers. (Administrative Court judge Karen Zarikian, 2020).

(b) Relationships between the RA National Assembly and journalists

A non-governmental organization filed an appeal to the Republic of Armenia Administrative Court against Subparagraph 4.1 of Paragraph 22 of the Annex to the Decision of the RA National Assembly Council No. RSNS-44-L. The Administrative Court of the RA did not accept the appeal arguing that the challenged act is not a normative but a local legal act, and thus cannot be appealed in the order prescribed by Chapter 26 of the Code of Civil Procedure of the RA. Subparagraph 4.1 of Paragraph 22 of the Annex to the Decision of the RA National Assembly Council No. RSNS-44-L prescribes that a journalist may carry out their professional activities in specially designated places in the residence of the National Assembly: in the hallway in front of the assembly hall, the lodge, and the park of the National Assembly.

In the decision of September 13, 2021 in case No. AD/9758/05/21, the AR Administrative Court recognized this paragraph as a local act, simply noting: "Under these circumstances, the court considers the decision under appeal to be an internal (local) legal act".

In essence, the Republic of Armenia Administrative Court did not specify the reason why it deemed the decision in question to be a local legal act, nor did it indicate the type of relationship between the RA National Assembly and journalists on this issue. It appears that the Republic of Armenia Administrative Court qualified the decision of the Council of the RA National Assembly as a local legal act purely on a territorial basis. In other words, once journalists set foot on the territory of the RA National Assembly, they may become subject to local legal acts (the Law "On normative legal acts" does not provide a criterion for identifying local legal acts).

CONCLUSIONS

From the point of view of the doctrine, local legal acts can be normative or individual. Under the Law "On normative legal acts", a legal act cannot be local and normative or local and individual simultaneously. The law stipulates that a legal act can be either local, normative, or individual.

Local legal acts can be adopted by state and non-governmental bodies and organizations alike. The legislature does not use the term "departmental act" in the Law "On normative legal acts" and has unified the naming of internal legal acts of a normative nature by calling them local legal acts.

In the RA, the internal effect of local legal acts is defined by the relations criterion: an act is considered local if there are "labor, civil, or administrative relations" between the body that adopted it and the addressee of the act.

In the Law "On normative legal acts", the term "service or work" should be interpreted in the sense of providing services under contracts listed in Subsection 5 of the RA Civil Code. In turn, the legal acts adopted in the framework of service or work relationships under contracts other than those specified in Subsection 5 of the RA Civil Code should be considered local legal acts on the criterion of participation in civil-law relations.

The concept of administrative relations in the sense of the Law "On normative legal acts" denotes 1) classic subordinate administrative relations between public authorities and their employees; 2) subordinate relationship between two independent state bodies; 3) subordinate relations between non-governmental institutions and their members.

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