

ADMINISTRATIVE APPEAL

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Abstract

The term public administration in the Albanian legal system identifies the group of state administration bodies / public entities that contribute to the performance and functioning of state administration in matters of its competencies.

The provision for the first time defined by the bodies that are part of the public administration is Article 3 of the Code of Administrative Procedure, 1999, repealed by the new Administrative Procedure Code, which provides in Article 3, point 6, "the public organ" bodies that are part of the public administration are those exercising administrative functions. The new Code of Administrative Procedures shall designate as a public administrative body any central administration body, local authority, law enforcement authorities, as long as they perform administrative functions, public entities and any natural or legal person who has been given by law, statute or any other form provided by the legislation in force, the right to exercise administrative functions. All public bodies that do not exercise administrative functions are excluded from this definition.

1.1 An appeal against the Administrative Act

Against the administrative acts, the legislator has recognized the right to appeal any entity that claims to have violated the subjective right and legitimate interest. Administrative appeal against the lawlessness of administrative act and administrative inaction is divided:

According to the Code of Administrative Procedures, an Administrative Complaint can be addressed to the competent body and the superior body. According to Article (134/a) the appeal should be proposed to the body that issued the outlawed administrative act and not to the superior organ because competent to review the administrative appeal is the body that issued the unlawful administrative act. If the appeal has been addressed to the hierarchical body and not to the body that issued the unlawful administrative act, it shall without delay forward the body that issued the unlawful administrative act. The appeal is proposed for motives of legality under Article 109 of the Code of Conduct and suitability, from which any subject that claims to have been subjected to subjective

rights or legitimate interests by the action of administrative bodies during the exercise of administrative functions.

Article 134/1 of the Code of Administrative Procedure excludes the application of the provisions of this Code on the administrative appeal against the act and administrative inaction whenever otherwise provided by the law, in this case the rule prevails, the special legal rule on the general rule. Entities affected by the activity of public bodies exercising administrative functions should take into account the law of the body regulating its activity and the manner of administrative appeal.

This exception is defined in point "c" of this article, which expressly states; another public body explicitly designated by law. The lawyer has established the code of administrative procedures on the administrative appeal in a second position with purpose to ensure the legal protection of all interested parties whenever the organic law of creation and function of the public body does not expressly state the appeal against the activity the body to whom the appeal is addressed or the law itself determines that the appeal is in conformity with the rules of the administrative procedure code.

Article 134 of the Code of Administrative Procedure does not clarify the cases when we do not have a hierarchy of relations between public bodies and to which body is addressed the administrative appeal. The answer to Article 129 in point "a" of the Code of Administrative Procedure foresees cases of exhaustion of administrative appeal and exclusion from this rule under point "a", the law does not provide for a higher body for filing an administrative appeal or when this body is not constituted. " It is clear that the administrative appeal under the code of administrative procedures is exercised whenever there is a hierarchical relationship between the administrative bodies and if this is not the case, the parties are addressed directly to the administrative court or acted according to the substantive law of the respective public organ.

While for administrative inaction, the code clearly defines the competent body for reviewing the administrative appeal, which is the supreme organ of the body that did not act. In both cases, the hierarchy of administrative acts must exist between the administrative bodies. The field of application of an administrative appeal has a general character, which is permitted against all acts and administrative inactions (e.g. issued by bodies in respect of which a hierarchical superior exists), and in cases in which the law does not exclude the possibility of appeal.

The Code of Administrative Procedures in the chapter on administrative appeal has not envisioned as a way of annulling, abrogating or amending an administrative act or issuing a rejected act "Informal Request", provided by the Code of Administrative Procedure of 1999 and then abolished.

For the first time, the new Code of Administrative Procedures provided for the right of appeal against procedural actions. According to Article 130/2/3 of the Code of Civil

Procedure, procedural action is any act, act or omission of a public body undertaken during the administrative procedure but which is not an administrative act. This right of appeal with the object of unlawful procedural actions is exercised only if the law allows it to be appealed separately; otherwise these procedural actions are appealed together with the complaint on the illegality of the administrative act for the motives of legality or conformity.

In the Code of Administrative Procedure, the appeal to the same body that issued the administrative decision cannot be done if it does not have a superior above him.

The Administrative Complaint creates the obligation for the administrative body to make a decision at the end of the review of the appeal.

The administrative appeal against the administrative act has a suspense effect on its execution until the notification of the appeal decision. On the other hand, the Code has foreseen in cases where the appeal has no suspense effect on the administrative act when it is for object:

- i) Collecting taxes, taxes and budget revenues;
- ii) Police measures;
- iii) Implementation of the administrative act is in the interest of public order, public health and other interests.

Against the act imposing the prohibition on the suspense effect of the appeal, the code gave the party the right to appeal to the administrative court within 5 days from the date of notification of the decision.

- According to the Law on the Establishment and Functioning of Public Bodies, which performs administrative functions during decision-making, this is an exception to the general rule that applies whenever the special law clearly and expressly defines the right of appeal, the manner of appeal and the body whose appeal is directed. Otherwise, the provisions of the Administrative Procedure Code are applied on an administrative complaint. The appeal is directed to the motives of legality or appropriateness in ways that are defined in the organic law for each administrative body, e.g., against administrative acts of Ministers, public entities or other collegial bodies. We can mention, for example:

- Law no. 9643, dated 20.11.2006, Article 63, "On Public Procurement", which provides for two levels of administrative appeal. The first appeal is addressed to the contracting authority within 5 days and during the appeal review procedure he suspends the procurement procedure. the contracting authority has the right to review the administrative appeal within 5 days and to conclude the decision on the receipt of the complaint by deciding or repealing the contested act as illegal or issuing the act required by the interested party, refused by this body or if it does not receive it for review or does not receive any allowance within the 5 day time limit. After this degree of complaint has been consumed the party has the right to address a complaint to the Public

Procurement Agency within 5 days from the day of receipt of the decision of the refusal by the contracting authority or from the day of the 5 day deadline that this authority had available for reviewing the administrative appeal.

By deciding to accept the administrative appeal by abolishing the administrative act as an outlaw or by issuing the required act, the body issues a new act with legal effects of a lawful act, which regulates the consequences, previously created by the illegal act.

- Law no. 9000, dated 30/1/2003, "On the organization and functioning of the Council of Ministers" has given the Prime Minister the right to control the work of members of the Council of Ministers and other central administration institutions. The Prime Minister has the power to suspend the implementation of the acts of the ministers, other central governors in his or her ministry, on his own initiative or with the appeal of interested parties when the subjective rights of the ministers or central institutions have been violated. The Prime Minister shall present the reasons and the concrete solution to the Minister or the Central Institution in order to amend or repeal the acts suspended by the Administration. If the Minister or the Central Institution does not respect the Prime Minister's request for a concrete solution of the disputed problem, which consists of issuing a new act or acting in accordance with the law, then he acts according to law no. 90/2012 "On the Organization and Functioning of the State Administration" which allows the superior body in our case the Prime Minister to act by exercising the powers of the inferior authority until the resolution of the case by amending or abolishing the unlawful administrative act.

The Prime Minister has the authority to review the administrative appeal against the acts of the Minister or the heads of the central institutions in the direction of the Prime Minister according to Law no. 9000, dated 30/1/2003, "On the organization and functioning of the Council of Ministers and Law no. 90/2012 "On the Organization and Functioning of the State Administration" which acts according to the Code of Administrative Procedures on Administrative Complaint, as provided for in Article 30 of Law no. 9000, dated 30/1/2003. The specific law itself invokes the provisions of the administrative code as long as it does not explicitly define the manner, deadline and review of the administrative appeal.

It is clear that the special laws regulate the specific administrative relationship for each public body exercising administrative functions, whereby the body is provided with the compensation for filing the complaint, the attendance of its grades, the deadline for filing the appeal, the filing date of the appeal and the format of the decision he takes. Exhaustion of administrative appeal as a condition set forth by law no. 49/2012 for the administrative court to instructs the party to address the administrative lawsuit, the administrative court of the district where the authority is part.

- With regard to the suspense effect of the administrative appeal under the code of administrative procedures and exceptional cases, other bodies established by special law provide for the means of delimitation of the administrative act when exercising the

administrative recourse. If it is not foreseen otherwise, it is operated according to the code of administrative procedures.

1.2 Proposal of Administrative Complaint

An administrative recourse may be proposed for the protection of subjective rights and the protection of legitimate interests under Article 128 of the Code of Civil Procedure, which legitimizes any entity that, by administrative action or inaction, claims that its rights and legitimate interests have been violated.

- The proposal for administrative appeal against the administrative act and the refusal to issue the administrative act must be submitted within the general deadline provided for in Article 132 of the Code of Conduct within 30 days. This period starts from the date of notification or when the subject is known on the enacting clause of the administrative act or refusal to issue the administrative act by the competent body. So from the moment in which the person in question has knowledge of the administrative decision to issue the administrative act and the decision to refuse to issue the administrative act.

- The appeal proposal in the case of administrative inaction, except when silent approval is enforceable, the appeal is filed no earlier than 7 days and no later than 45 days from the date of expiry of the deadline set at the end of the administrative procedure under section 91.92 of Administrative Code of Procedure. The deadline for the completion of the administrative procedure is 60 days or extended for justified purposes. Excluded from this rule, unless otherwise provided in the special law of a public body exercising administrative functions.

- An administrative appeal to an administrative act involving two or more parties of the same interest can be submitted by a party or by all parties, extending the effect also to other parties if only one party has filed.

- An appeal under Article 134 / a of the Code of Conduct is addressed to the competent body that issued the administrative act, by depositing in the secretary, which appoints and delivers the verbal process to the complainant.

- An appeal under Article 134 / a / b of the Code of Canon Law may be directed through the postal service, with notification that the body has received the complaint on date x.

- Appeal to another body designated by law, which determines the body to whom the appeal is addressed.

- The Code of Administrative Procedures does not foresee as an obligation for the complainant to be provided with a lawyer during the procedures governing the

administrative appeal but does not preclude the right of anyone to be represented by which through an act of representation.

If an administrative recourse has been proposed to another body established by law from the one set forth in the administrative procedure code, it shall immediately forward it to the competent body without delay. This omission is also the supreme organ of the body that issued the administrative act.

- The administrative appeal against administrative inaction under Article 134/3 of the Code of Administrative Procedure is addressed to the supreme organ of the body that has not issued the administrative act, by depositing it in the secretary, which issues and delivers the verbal process to the complainant.

-The administrative appeal against administrative inaction under Article 134/3 of the Code of Conduct is addressed to the supreme organ of the body that has not issued the administrative act, through the postal service, with the notification that the body has received the complaint on x date.

If the appeal against administrative inaction is directed to the competent body that has not issued the administrative act or another body created by the special law, it shall forward it without delay to the competent body, ie to the superior organ, together with the case file and a written report on the reasons silence.

1.3 Effect of Administrative complaint with an Administrative Act

The administrative appeal against the administrative act for the motives of legality and the lawfulness brings legal consequences provided by Article 133 of the Code of Administrative Procedure, suspending the execution of the administrative act of pork in the notification of the administrative appeal decision. The competent body after having received the complaint also considers the nature of the appealed administrative act regarding the suspense effect of the execution of the administrative act under Article 133 of the Code of Administrative Procedure. As the case may be, decide on the suspension of execution or forbidding the suspension of the execution of the appealed pork act at the conclusion of the administrative review until the notification of the appeal decision.

Article 133 of the Code of Administrative Procedure, is a general administrative norm, which is applied whenever otherwise provided in the special law. Suspension of the execution of an administrative act applies only to an administrative act that is presumed to be illegal, and not to the case of "rejection of the issuance of administrative act" and "administrative inaction." If the administrative act includes two or more parties with the same, the administrative appeal against the act submitted by one of the parties extends the effects of the suspension to all parties involved, so if the administrative act has violated the interests of two or more parties where one party has the right to submit an administrative complaint in its interest and not act on behalf of all parties, since it needs an act of representation to act in the name and on behalf of everyone, the complaint challenges the execution of the administrative act for all subjects of plagued

by administrative action. The Code of Administrative Procedure in paragraph 3 of this Article provides for taxation cases of exclusion from the execution of the administrative act when:

- a) The administrative act aims at collection of tax and other budget revenues;
- b) The administrative act relates to police measures;
- c) The public body, which reviews the complaint, considers that the immediate application is in the public interest, public health and other public interests, in which case the public body that examines the administrative appeal has a power in assessing the purpose it seeks for gold administrative act (o public order or health or other interests), respecting the principle of proportionality under Article 12 of the Code of Administrative Procedure, in taking a decision on the suspension of the execution of the administrative act. The protection of the public interest or other rights may limit an individual's right.

Referring to points 1 and 4 of Article 133 of the Code of Administrative Procedure, I think that they are contradictory because paragraph 1 of this article states that "the appeal suspends the execution of the act", whereas point 4 gives the right to the competent body after having received the administrative appeal to consider the "motives for suspension" for those complaints that have the administrative acts that are suspended, so that they do not fall under the provisions of paragraph 3 of this article and the special law. According to point 4, the administrative body has the right to decide "the prohibition of the suspense effect of the appeal", but this point does not state the reasons or more precisely the motives that lead the body to make such a decision. It is clear that this point leaves a wide scope for the interpretation of the factual and legal consequences that will produce the administrative act and the "suspension of the execution of the act" on the assessment of motives that do not allow the body to take a decision to ban the effect of a suspense act.

Article 133 must be interpreted in this form by the public authority before accepting the administrative appeal in the first order of:

- i) Verify the exception from the general rule, so the special law prevails over the code of administrative procedure regarding the suspension of the execution of the administrative act;
- ii) Verify the exceptional cases provided for in point 3 of this Article;
- iii) Verify the cases provided for in point 3, letter "c", of this Article, for motives of public order, public health and other interests;
- IV) At the conclusion of the above-mentioned projections, if the case does not exist before these exceptions, then application 1 of this Article applies.

The public body shall decide on the suspension of execution under paragraph 1 of this article without the need for motives or analysis of circumstances, as this right is known to the complainant and is compulsory for the public organ.

The complainant has the right under point 4 of this Article to address to the Administrative Court within 5 days from the date of notification, only in cases when:

- i) The public body decides the prohibition of the suspense effect under point 3, letter "c", when it considers that the public interest prevails over the personal interest, but always in the assessment of the "public interest" must act according to article 12 of the Code of Administrative Procedure, on the principle of subsidiarity, that in fact the assessment of the motives was not made in observance of the legal provisions, Article 133 and 12 of the Code of Administrative Procedure, to justify the decision to suspend the suspension because the grounds set out in Article 133 of the Code of Administrative Procedure do not stay and the procedure followed does not respect article 12 of this Code. Prohibition of suspense effect is another administrative action but is not an administrative act. Another administrative action is part of the administrative action category.
- ii) The body decides the prohibition of the suspense effect because it is before the cases provided for in paragraph 3 of Article 133 of the Code of Administrative Procedure, but the party alleges that the administrative complaint has an administrative act for which no prohibition of effects is foreseen suspension.

Conclusions

The violation of legitimate interests in administrative law occurs when the citizen and the public administration are located in two different levels and especially when the latter acts as a subject of public law through the issuance of an administrative act, other administrative act or adoption of an administrative measure. In these cases, a citizen cannot claim the protection of a subjective right to public administration, but only the protection of legitimate interest. His position is protected, regarding the protection of the primary interest in the legality and accuracy of the public administration's action. Against the public administration are also protected the subjective rights which are the advantageous legal situations that the law attributes to a subject, knowing certain legal rights and its ability to protect these legal situations directly and immediately without mediation of public or private entities. Real rights or credit rights are part of the concept of subjective law and are legally protected even if the legal entity that has violated these rights is a public administration. Everyone has the right to address to the public administration or the Administrative Court according to the case and the provisions of the law with the right legal remedies.

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