

Administrative Proceeding in Connection with Examination of Administrative Suit

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Summary

The issue of perfection of current legal institutions and development of new democratic institutes is greatly focused in the process of establishment of modern type jural state. Administrative proceeding in connection with administrative suit is one of the most significant institutes of jural state, as this institute enables any citizen to claim restoration of his/her restricted rights; institute of administrative appeal is essential for rehabilitation of the mentioned rights as well as for perfection of the ways of those.

Резюме

Проблема совершенства текущих правовых институтов и развития новых демократических институтов очень сосредоточена в процессе учреждения современного типа правовое государство. Административное судопроизводство в связи с административным иском - один из самых существенных институтов правового государства, поскольку этот институт позволяет любому гражданину требовать восстановления его/ее ограниченных прав; институт административного обращения важен для восстановления упомянутых прав так же как для совершенства способов тех.

Right to appeal is one of the most important rights among the recognized human rights; by the mean of the mentioned right citizens maintain defense of their own interests; this right is provided by the Constitution of Georgia, specifically by the article 42 of the Constitution, according to which "Each individual has the right to appeal to the court to protect his rights and freedoms".

[Remedy, i. e. the right to fair trial is the fundamental procedural right and represents one of the most significant principles of fair trial; specifically this principle is the basis for implementation of substantive law].

[According to the article 66 of the Constitution of France nobody will be deprived his freedom, personal freedom defender judicial authority provides with performance of this principle.]

[The article 24 of the Constitution of Italy manifests that any and all individual can act to defend his rights and legal interests].

[Legislation of the Federation republic of Germany provides the citizens with the right to appeal to the competent institutions or public representatives individually as well as collectively etc. This provision proves that every individual can appeal to relevant administrative institutions to restore his violated rights and defense of rights and interests is necessary].⁴

Administrative suit is mainly the Dutch model and is deemed as one of the most significant institutions of administrative law.

Usually administrative suit has three functions: defense of right, self control and courts` relief.

Administrative proceeding over a suit supports to the relief of courts from the cases of administrative category; it is not predecessor of administrative court proceeding; motivation of the decision over the suit clearly shows the reasonability of appealing to court as well as the prospective of satisfaction of this suit.

[Major feature of the jural state is that the interested party is able to claim revision of final decision made as a result of administrative proceeding. According to the article 177 of the General Administrative Code of Georgia, any interested party has the right to appeal administrative-legal act issued by the administrative organ].⁵

[In many countries the right to appeal to court (external control) will be admitted after appealing of the disputable matter in administrative rule; scopes of interagency inspection of lawfulness of a decision will be determined by special legislation (usually administrative inspection confines itself to one or two instance.

Right to directly appeal to the court without administrative suit will be recognized only in the case when administrative-legal act is issued by the administrative agency that is not subordinated to any superior agency, also within the scopes of implementation of exclusive power by a self governmental organ or by an independent organ in any other cases duly provided by this legislation].⁶

Before implementation of legislative amendments, according to the previous legislation an individual could directly refer to the court without prejudicial appealing to defense his/her rights under dispute. According to the amendments made on December 28, 2007 to the Administrative Procedural Code of Georgia no court will accept the suit against administrative organ if the claimant has not applied the opportunity of single submission of administrative suit in the manner envisaged by the General Administrative Code of Georgia.

The institute of preliminary administrative proceeding as a peculiar innovation in Georgian administrative procedural legislation aiming at defense of the rights of citizens, implementation of self control by administrative organs and relief of courts. Besides existence of prejudicial appealing institute will put an obstacle to unjustified appealing to court; the administrative organs will have to opportunity to conduct control over activity by their subordinated administrative organs and correct any and all mistake themselves if any; also it will be the opportunely to avoid possible obligation of remedy of court expenses.

Obligation of prejudicial appeal does not exclude the possibility for the individual to implement defense of his/her violated right by court further, i. e. [he/she will potentially recover such right and this right will be realized after expiration of administrative proceeding, it gives the opportunity to administrative organ to rectify any mistake that was made by it].⁷

[It should be emphasized the rule of appeal in the federal state of Germany: in case if the rights of a citizen are violated by the action of state organ the citizen will have the right to refer to a court to defend his/her rights. As a result of the constitutional principle of federalism Germany has federal and land administrative agencies/organs and courts; superior administrative organs discuss and resolve only the issues resolution of which is not possible on lower level; administrative suits are discussed by the Land Administrative Organs at first and then decisions may be appealed to the Land Administrative Court; final cassation instance is Federal Administrative Court].⁸

[According to general rule an interested individual in Japan may submit his/her administrative suit initially to the relevant administrative organ and in case of its rejection he/she can appeal to court; also they can lodge complaint in the court without the stage of administrative appealing].⁹

Administrative suit is also possible in implementation of administrative realact or in abstaining of such implementation.

In connection with the obligation of prejudicial appealing it is important to separate administrative proceeding and administrative court proceeding. According to the clause "J" of the article II of the General Administrative Code of Georgia administrative proceeding is the activity by the administrative organ aiming at preparation, issue and execution of administrative-legal act, resolution of administrative suit, also preparation, conclusion or annulations of administrative agreement". According to the mentioned the notion of administrative proceeding is quite wide and contains the process of their activity, their work, the process that may be implemented only within the scopes of administrative organs. As about administrative court proceeding, unlike administrative proceeding it has a place in court and aims at resolution of administrative category cases with application of the principles that are characterized for administrative procedural law. With the content administrative proceeding is wider than administrative court proceeding as legality and reasonability of the decision will be examined within the frames of administrative proceeding; scopes of administrative court proceeding covers only inspection of legality.

In administrative proceeding concerning the administrative suit provisions of simple administrative proceeding will be applied.

Administrative proceeding will be initiated in case of submission of administrative suit, i. e. the basis of initiation of administrative proceeding will be only the initiative by an interested party, the suit submitted by it in a written form. Administrative suit will be the basis of initiation of administrative proceeding. Administrative suit should be submitted within one month from the date of publishing of administrative-legal act or the familiarization with it in formal manner in the act issuing administrative organ, if its issuing official or the superior official of a structural unit is in there (the act issuing administrative organ), but in case if the act is issued by the chief of the administrative organ itself – the suit will be submitted to the superior administrative organ. Administrative realact will be appealed within one month from the day when interested party got aware of the fact of implementation of such action or abstaining from such implementation.

[No administrative suit in connection with discussion and resolution of the dispute concerning conclusion, execution or termination of the administrative agreement will be admitted].¹⁰ [Administrative agreement differs from administrative act, particularly it (administrative agreement) does not solely motivate legal consequences but administrative organ establishes equal relationship with a citizen].¹¹ Also, decision by administrative organ made in connection with the issue of administrative proceeding will not be admitted for separate appealing except the cases if the mentioned is directly envisaged by the law or if it infringes the right or legal interests of an individual independently from administrative-legal act.

Right to appeal of administrative-legal act as well as the action by administrative organ has only the interested party. Thus, the suit should be concerned with infringement of rights. The notion of interested party is quite wide, it contains direct addressee, i. e. the subject in connection with which the administrative-legal act is issued, also it contains the third persons, legal interests of which are directly influenced by administrative-legal act or the action by the administrative organ.

[According to Japanese administrative legislation, any and all administrative act may become the subject of appeal to the executive authority except the administrative acts being deemed as s. c. "Special Subject of regulation"].¹²

[According to the effective legislations in the other countries, the parties referring to the courts can demand not making of decision based on the law but they can claim establishment of mediation committee which will offer to the parties a possible amicable agreement].¹³

1. [Submission of administrative suit stipulates arisen of obligation of the administrative organ to initiate administrative proceeding. In such situation administrative proceeding will be the continuation of the proceeding implemented in connection with issue of administrative-legal act; the purpose of the mention is issue of a new decision, i. e. issue of the administrative-legal acti acceptable for the interested party].¹⁴ Submission of administrative suit results in suspension of the appealed act referred to as the "Suspension Effect" in administrative legislation. There are the events duly envisaged by the legislation when effectiveness of administrative-legal act is not suspended.

Effectiveness of the administrative-legal act will not be suspended if:

- a) It result in increase of the expenses of the governmental or self governmental or state organs;
- b) It is the police administrative-legal act adopted in connection with public order protection;
- c) Is issued in emergency or military situation on the basis of the relevant law;
- d) Postponement of execution will result in a significant material damage or it will impose a serious threat to public order and safety.

Administrative proceeding in connection with administrative suit means revision of legality of an individual administrative-legal act.

2. [The precondition for the legality of an individual administrative-legal act is that the administrative organ issuing such act should be authorized to regulate certain specific legal relation by issuing of individual administrative-legal act. In line with selection of a proper right legal form of the activity it should be emphasized that it should be issued in the form duly envisaged by the law concerning the issue of acts and in the form relevant to administrative proceeding].¹⁵

In many European countries abroad there is accepted a suit resolution territorial rule, i. e. the suit will be resolved where the subject of dispute is arisen; besides, there is appellation to court or to specially established organ of administrative justice.

3. Administrative organ will discuss the administrative suit and make appropriate decision within one month. In case of more time is necessary to identify the circumstances of essential importance for the case the administrative organ will be authorized to make motivated decision on prolongation of the suit discussion period in not later than 7 days from the initiation of administrative proceeding. Period of discussion of administrative suit may be extended with not more than one month. As a result of discussion of administrative suit the administrative organ will make one of the below listed decisions:

- Satisfaction of administrative suit;
- Rejection of administrative suit;
- Partial satisfaction of administrative suit.

Decision made over the discussion of administrative suit by the administrative organ is an individual administrative-legal act and it should meet the requirements envisaged for individual administrative-legal act.

According to the above mentioned the role of administrative organs should be risen, in the first we emphasize the obligation of the necessity of submission of claim to the administrative organ; only after the mentioned will be individual authorized to appeal to the court; such measure will relieve the court as well as it will significantly raise the role of administrative organs.

Georgian legislation provides the authorized citizen with absolutely feasible opportunities to enjoy the right recognized by the Constitution of Georgia, international acts and legislation to appeal not only the acts infringing their rights but also illegal action by the public officers and restore in this manner the initial condition acceptable for them.

On the basis of the practice of European court and European human rights intensive work over development of administrative law joint system is underway; in this manner development of complex approaches to human rights defense will be particularly focused.

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