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GROUNDS FOR RESUMPTION OF PROCEEDINGS FOR ISSUANCE OF ADMINISTRATIVE ACTS ACCORDING TO THE CODE OF ADMINISTRATIVE PROCEDURE

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Abstract: *In 2006 the first Code of Administrative Procedure was finally prepared and adopted. As a result the codification and improvement of the administrative process in Bulgaria was largely completed. In order to ensure that people who are affected by the actions and decisions of administrative institutions are treated properly and fairly, the Code of Administrative Procedure consistently develops a number of extraordinary control methods.*

This report aims to make a summary analysis of the grounds for resumption of proceedings for issuance of administrative acts according to the Code of Administrative Procedure and their significance with providing an appropriate set of administrative remedies, which is offered as the most effective way to ensure the integrity of the administrative process, the strict observance of the principles of legality, and the expeditious recovery of lawful complaints. More importantly, the Code confirms strictly the conditions under which the reconsideration of an effective administrative act will be permitted due to the nature of the reopening proceedings as an extraordinary remedy which directly affects the stability of the issued acts..

Key words: *administrative process, extraordinary method of control, resumption, grounds*

The resumption of proceedings for issuance of administrative acts established in Chapter Seven of the Code of Administrative Procedure has its own appearance and place in the general system of the administrative extraordinary methods of control, enabling a review of an issue which is already authorized by an effective administrative act. 'In this sense, the resumption of proceedings is overcoming the so-called "formal legal force" of the administrative acts. It is a kind of sequel of the administrative proceedings, re-raising substantive issues that were the main matter of the proceedings and were already resolved by issued administrative act. It is possible in the presence of an effective individual or general administrative act which has not been contested whenever any of the exhaustively listed in Art. 99, items 1 - 7 of Code of Administrative Procedure legal prerequisites are fulfilled.

However, the scope of the institute of renewal is limited, both in terms of the possible range of administrative acts and in terms of their legality and correctness. Thus, to 'reopen' a proceeding means to revoke or modify the issued act by the immediately superior administrative authority. A subject to this control method can be any effective individual or general administrative act, which has not been contested before The procedure is exhaustively regulated by the norms of Art. 99 to Art. 106 of the Code, which should be strictly applied.

Due to the need for legal stability in the public relations, the resumption of the proceedings cannot take place indefinitely in time, but only in the preclusive terms, determined by the Code in art. 102, and under the radically formulated grounds for renewal. It is inadmissible to annul an effective administrative act on grounds other than those indicated by the Code or to broad interpretation them, as the revocation or modification encroaches on the stability of the issued act in an already completed administrative procedure.

The resumption of administrative proceedings is a strictly formal procedure, related to precisely defined deadlines, legal and technical means for its initiation and a limited range of decision-making bodies. Unlike the regular, each extraordinary control method requires special grounds or prerequisites for its implementation. Such decisions and determinations cannot be freely reconsidered. Most of these powers are continuing or repetitive, and tend to be exercised within the larger framework.

According to Article 99 of the Code of Administrative Procedure 'Any effective individual or general administrative act, which has not been contested before the court, may be revoked or modified by the immediately superior administrative authority, and if the act was not subject to administrative contestation, by the authority which issued the said act:

1. where some of the requirements for the legal conformity of the said act has been materially breached;

2. upon discovery of any new circumstances or new written evidence of material relevance to the issuance of the act, which could not have been known to the party to the administrative proceeding when the administrative authority addressed the matter;

3. upon ascertainment, according to the duly established judicial procedure, of a criminal act committed by the party, by the representative thereof or by the administrative authority, where single-person, or of a member of the composition thereof, where collective, which has had an impact on the addressing of the subject matter of the administrative proceeding;

4. if the administrative act is based on a document which has been pronounced forged according to the duly established judicial procedure, or on an act of a court or another institution of State which was subsequently revoked;

5. if the identical administrative authority has issued another effective administrative act on the identical matter and on identical grounds in respect of the identical persons which is in conflict with the administrative act concerned;

6. if, consequent to the breach of the administrative procedure rules, the party was deprived of the possibility to participate in the administrative proceeding or was not duly represented, as well as where the party was unable to participate in person or through an authorized representative by reason of an obstacle that the party cannot remove;

7. if the European Court of Human Rights has found, by judgment, any violation of the Convention for the Protection of Human Rights and Fundamental Freedoms.'

Mentioned provisions clearly states that an authority exercising legislative or nonlegislative powers may revise, revoke or amend any of its acts. Only when the listed grounds are present the authority is able to supervise the legality of an administrative action in an already completed and finished administrative proceedings. The analyzed extraordinary procedure allows the formal legal force to be overcome. As a result, the administrative authority would be able to rule again on an issue already resolved by him with a final and stable administrative act, binding in terms of its addressees, and in terms of the authority that issued it.

According to Art. 99, item 1 of the Code the first listed ground refers to the cases in which the issued administrative act has not been issued by a competent administrative authority; there is a non-compliance with the established law form; there are material breach of administrative procedure rules; conflict with provisions of substantive law or non-conformity with the purpose of the law. The indicated violation must be substantial, covering all the requirements for legality of the individual and general administrative acts, which are derived from the norm of the legislative provision of Art. 146 Code. Failure to comply with these requirements reveals the possibility of the administrative act to be revised, revoked or amended.

It should be noted that the violation is significant when, if not commited, the consequences would be different, ie. the authority could have resolved the matter before in a different way. Strictly speaking, the question of administrative reconsiderations cannot arise when a prior act is a nullity, any second consideration is legally only the original exercise of an authority's power. In administrative law, unlike civil law, there is no special legal provision to regulate when the respective act is 'null and void'.

However, in legal theory, the main distinction between the vicious administrative acts is made depending on the degree of vice. The problem of 'null and void' administrative acts is faced when radical, fundamental and grave defects are commited regarding them which disqualifies them as legal acts in general and they are treated as non-existent by the law. Therefore they cannot generate, change or extinguish any rights at all and are the subject of another proceeding.

According to the law, the existence of significant violations of the requirements of legality can be assessed by the administrative authority, author of the act, the competent prosecutor or by the ombudsman. Therefore the resumption of administrative proceedings in the cases of art. 99, item 1 of the Code cannot be carried out at the request of a party in the proceedings.

Unlike the first ground, which covers all (any) of the requirements for legality of individual or general administrative acts, the grounds for resumption of administrative proceedings under Art. 99, items 2-7 are comprehensively and precisely formulated and do not require a in-depth analysis.

The ground for resumption of the administrative proceedings under Article 99, item 2 concerns the discovery of new facts and circumstances that existed at the time of the issuance of the administrative act, but the party could not have known about them, or due to objectively reasons has to been able to obtain evidence of their existence. This case refers to the incompleteness of the evidence in the proceedings for issuance of administrative act. The newly discovered circumstances or written evidence must have the significance of legal facts or evidentiary facts in relation to the disputed legal relationship. However, in order to have the legally required prerequisites of Art. 99, item 2 of the Code, so the administrative proceedings can be resumed on this basis, these new circumstances or new written evidence of essential importance must not have been able to be known to the party to the administrative proceeding when the administrative authority addressed the matter. It is irrelevant whether the new written evidence as a ground for resumption is newly discovered or newly created. It should refer to facts that existed at the time of the issuance of the administrative act, but the party could not prove them. The Law requires that the newly discovered circumstances are essential for the operative part of the administrative act and that their presence or absence is decisive for the decision-making authority and determines the content of the issued act.

Article 99, item 3 of the Code provides that an effective individual or general administrative act, which has not been contested before the court, may be revoked or modified by the immediately superior administrative authority, and if the act was not subject to administrative contestation, by the authority which issued the said act when a criminal act committed by the party, by the representative thereof or by the administrative authority, where single-person, or of a member of the composition thereof, where collective, which has had an impact on the addressing of the subject matter of the administrative proceeding. This must have been ascertained, according to the duly established judicial procedure.

According to the provision of Art. 99, item 4, proposition 1 of the Code the resumption of proceedings for issuance of administrative acts is allowed if the administrative act is based on a document which has been pronounced forged according to the duly established judicial procedure.

The common between the two legal hypotheses is the existence of completed composition of a criminal act regarding the evidence, which has reflected to the main issue or directly determined the outcome of the disputed administrative proceedings. It must be noted that a criminal act is an act that is socially dangerous and therefore declared prohibited and punishable by law. When proven in a duly established judicial procedure, it is a ground for resumption of administrative proceedings.

Thus, in the event of a subsequent conviction in the opposite sense (after the issuance of the challenged administrative act), the discrepancy is overcome by the order of resumption of the administrative proceedings in case the administrative act has not been appealed in court.

Thus, in the event of a subsequent conviction in the opposite sense (after the issuance of the contested administrative act), the discrepancy is overcome in the order of resumption of the administrative proceedings in case the administrative act has not been appealed in court. Furthermore, it is indisputable that if a fraud is perpetrated upon an authority, or if it acts ultra vires, it should have the power to reconsider its action, for, in such cases, the issue is validity, not finality.

According to Art. 99, item 4, proposition 2 of the Code, the revocation of a court decision or an act of a public body serves as a ground for resumption of the proceedings when the annulment

of these acts has been retroactive, their legal consequences determine the decision of the body and their repeal came into force after the decision of the competent administrative body. The vicious administrative act should be revoked or modified by the immediately superior administrative authority, and if the act was not subject to administrative contestation, by the authority which issued it.

According to Art. 99, item 5 of the Code, if the identical administrative authority has issued another effective administrative act on the identical matter and on identical grounds in respect of the identical persons which is in conflict with the administrative act concerned, firstable the issued administrative acts should be assessed if the requirement for legality of the both act are completed. If there is illegality in respect of any of them - the illegal act is always revoked, whether or not it is the originally issued. In case the issued acts are lawful, the second issued act shall be revoked, as undoubtedly it has been issued in inadmissible administrative proceedings, according to the provision of Art. 27, para. 2, items 1-2 of the Code.

The grounds specified in the provision of Art. 99, item 6 of the Code may have both objective and subjective nature.

In the first case, the breach of the administrative procedure rules has resulted in depriving the party of the opportunity to participate in it, which in turn deprives her of her right to a defense and is always essential, for example, the concerned citizens and organizations have not been notified by the administrative body regarding the initiation of the proceedings. In any case, the non-involvement of the party in the administrative proceedings should not have been a result of its fault.

According to the second hypothesis of Art. 99, item 6 of the Code, the party was unable to participate in the administrative proceeding in person or through an authorized representative by reason of an obstacle that the party cannot remove. - an obstacle that it could not remove, for example a sudden illness of the part or his authorized representative.

In both cases, the request to reopen the proceedings on that ground can only be made by the party in respect of whom the breach has occurred.

According to of Article 99, item 7 of the Code, the last ground for resumption of the administrative proceedings could be a decision from the European Court of Human Rights and Fundamental Freedoms, which established a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms. Undoubtedly, in order to prove this precondition, it will be necessary the relevant decision of the European Court of Human Rights and Fundamental Freedoms to be attached to the request for reopening.

Only when the listed grounds are present the authority is able to supervise the effective administrative act in an already completed and finished administrative proceedings. In support of the power to the reopening proceedings as an extraordinary control remedy which directly affects the stability of the issued acts, it is accepted that the original decision maker is better situated than anyone else to comprehensively review his own determinations. Moreover, delay and expense can be avoided by resubmitting a question to an institution that has the power to make a decision on the merits, rather than seeking jurisdictional control from a body whose powers are restricted to requiring a redetermination of the issue.

The renewal is an extraordinary way of influencing administrative acts that have entered into force and it is applicable only under the exhaustively listed groundc in the Code of Administrative Procedure. Its main purpose is not only to modify or revoke the issued vicious administrative act, but also to annual the whole vicious proceedings on the basis of which the contested act was issued. As a further matter, it seeks to initiate a brand new proceedings within which a defect-free act will be issued in order to guarantee the the principles of legality and the rights of interested parties.

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