Consiglio di Stato

ACA EUROPE

Seminar organized by the Council of State of Italy and ACA-Europe

"Techniques for the protection of private subjects in contrast with public authorities: actions and remedies – liability and compliance"

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Answers to questionnaire: Latvia

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"TECHNIQUES FOR THE PROTECTION OF PRIVATE SUBJECTS IN CONTRAST WITH PUBLIC AUTHORITIES: ACTIONS AND REMEDIES - LIABILITY AND COMPLIANCE".

INTRODUCTION

The seminar will analyse the types of actions that can be brought before the administrative judge: action of annulment, action of declaration and action of condemnation. With particular reference to the latter, the seminar will focus on compensatory measures, including damages for loss of opportunity and damages as a result of delay.

The seminar also intends to examine the possibility of any and eventual special or fast-track procedure, for introductory terms and methods which pertain to certain subjects under consideration, for example, for their economic or political relevance, such as those to be found in the sphere of public contracts (see also transversal analysis).

The aim of this questionnaire and of the subsequent seminar is to provide a wider comprehension of the similarities and differences that exist among the various legal systems of the member States insofar as they apply to the situations to be dealt with by the administrative court, paying particular attention to the content and subject matter of the relative rulings.

SESSION I

LEGAL PROCEEDINGS THAT CAN BE BROUGHT BEFORE THE ADMINISTRATIVE COURT

1. **In your legal system, which judges are competent to pronounce on disputes in which one of the parties is the public administration?**
   - An ordinary judge
   - An administrative judge
   - A judge who deals with special areas
   - Others

According to Section 7 of Law On Judicial Power the administrative courts shall exercise control over an activity of the executive power which relates to the lawfulness and validity of a specific public law relation.

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2. **Which actions can be brought before the administrative court in view of the exercise of administrative powers?**
   - Annulment of administrative acts
   - action of condemnation
   - Other actions

If you have replied 'other actions', please clarify which.

According to Administrative Procedure Law actions may be submitted regarding:

1) the issue, setting aside (setting aside in full or in part, including amendment) or validity (invalidation, revocation, also validation) of an administrative act;
2) actual action of an institution;
3) the existence, non-existence or the substance of specific public legal relations arising directly from an external legal act, if it is not possible to exercise the relevant legal interests by means of an application referred to in Clauses 1 and 2;
4) the conformity of a contract governed by public law with legal provisions, the validity, conclusion or correctness of fulfilment thereof.

3. **From which sources can actions be ~~proposed~~ brought before the administrative court?**
   - Law
   - Public authority regulations
   - Guidelines
   - Supreme Court rulings
   - Other

4. **Which administrative decisions can be challenged?**
   - Administrative acts which have a specific recipient
   - General acts and regulations
   - Acts inherent to the procedure
   - Political acts

All administrative acts can be challenged. According to Administrative Procedure Law (*Section 1*) an administrative act is a legal act directed externally which is issued by an institution in the field of public law with regard to an individually indicated person or individually indicated persons establishing, altering, determining or terminating specific legal relations or determining an actual situation. The administrative act is also a decision issued by an institution in the cases provided for in the law with regard to an individually undetermined range of persons who are under specific and identifiable circumstances (general administrative act). The administrative act is also a decision on the establishment, alteration or termination of the legal status of an official or a person specially

subordinate to the institution, or the disciplinary punishment of this person, and also any other decision if it significantly restricts the human rights of the official or the person specially subordinate to the institution. Within the meaning of this Paragraph an official is not an employee of the institution with whom employment relationships are to be established in accordance with laws and regulations. The administrative act is not the following (cannot be challenged):

1) a decision or another action of an institution in the field of private law;
2) an internal decision of an institution which only affects the institution itself, an institution subordinate to it or a person specially subordinate to it;
3) an interim decision (including a procedural decision) within the framework of administrative proceedings, except for the case where it in itself affects significant rights or legal interests of a person or significantly impedes the exercise thereof;
4) a political decision of the Parliament, the President, the Cabinet or a local government council (a political statement, declaration, invitation, and notification of the election of officials, etc.);
5) a court ruling, a decision in criminal proceedings, and also a decision taken in the proceedings of an administrative offence case.

5. **On the grounds of which defects can the annulment of an administrative act be requested?**
   - Breaches of the law
   - Breaches of competence
   - Technicalities and procedural defects
   - Breaches of general principles
   - Other

A court shall render a judgment having examined whether:

1) the administrative act has been issued in compliance with procedural and formal preconditions;
2) the administrative act conforms to the norms of substantive law;
3) the basis for an administrative act justifies the obligation imposed on the addressee or rights granted, approved or refused to such addressee (*Administrative Procedure Law, Section 250*).

6. **Can the judge partially annul the challenged administrative act?**
   - Yes
   - No

If a court finds an application for setting aside or invalidation of an administrative act as founded, it shall set aside the relevant administrative act in full or in part.

7. **Can the judge substitute the Administration by modifying the content of the administrative act?**
   - Yes
   - No

If your reply is yes, please elaborate.

In cases provided for by law a court may amend an administrative act and determine the specific content thereof. However, until now, the legislator has not adopted such special legal provisions (*Administrative Procedure Law, Section 253 (3)*).

8. **When the judge annuls the challenged act, can he dictate provisions which the P.A. must abide by in the review proceedings of the subject-matter of the litigation?**
   - Yes
   - No

If your reply is affirmative, please elaborate.

Where necessary, a court shall assign an institution to issue a new administrative act that replaces the administrative act which has been set aside or declared invalid. In deciding to issue a new administrative act, the institution shall take into account the facts and legal considerations established in a court ruling (*Administrative Procedure Law, Section 253 (6)*).

9. **When do the effects of the jurisdictional annulment of an administrative act become applicable?**
   - From the date of the adoption of the act (*ex tunc*)
   - From the date on which the judgement becomes final (*ex nunc*)
   - Other

In a case where an administrative act is set aside, the court shall determine the day as of which the administrative act is to be considered set aside. In most cases an administrative act shall be set aside from the date of its adoption (*Administrative Procedure Law, Section 253 (1)*).

10. **Can the judge modulate the effects over time of the ruling of annulment of an administrative act?**
    - Yes
    - No
    - Other

See reply to question 9.

11. **Can the act of ordering payments for damages be proposed autonomously or must it always be proposed together with other kinds of actions?**
    - Yes
    - No
    - Only in certain cases

If your reply is yes, please elaborate

A compensation may be claimed concurrently with submitting a submission on the contestation of an administrative act or actual action. If the compensation has not been claimed concurrently with the contestation or appeal of an administrative act or actual action, a submission on the compensation may be submitted to the institution which has caused losses or damage. The compensation may be claimed from the institution if the examination of the relevant administrative case has been completed on the merits. The decision of an institution may be appealed to a court. (*Administrative Procedure Law, Section 93*).

12. **In the light of what kind of behaviour is the compensatory action for damages feasible when dealing with a Public Administration?**
    - Implementation of an illegal and detrimental administrative act
    - Non-observance of the deadline of the procedure
    - Lesion of good faith and trust
    - Resultant behaviour of the public administration
    - Other

Please elaborate

Everyone is entitled to claim due compensation for any loss or damage, which has been caused to him or her by unlawful administrative act or unlawful actual action of an institution or procedural mistakes made by the institution. According to the special rules the right to claim compensation in accordance with the procedures of administrative proceedings shall also be applicable to the cases where losses or damage has been caused in criminal proceeding and administrative offence proceeding.

13. **Which are the different kinds of reimbursable damages?**
    - Material damage
    - Non-material damage
    - Loss of opportunity

Everyone is entitled to claim due compensation for any financial loss or personal damage, including moral damage.

14. **Does the omission of lodging an action of annulment result in elision or reduction of the compensatory damages?**
    - Yes
    - No
    - Other

A compensation may not be claimed independently but only concurrently with submitting a submission on the contestation of an administrative act or actual action or if the examination of the relevant administrative case has been completed on the merits. If an application for the contestation of an administrative act or actual action is not submitted a compensation may not be claimed.

15. **In order to award compensatory damages, is proof of the responsibility of the public administration required? If your reply is affirmative, which party is obliged to provide said proof?**
    - Yes – the party with burden of proof is…
    - No

In order to award compensatory damages, need be proven the existence of a causal relationship between the unlawful conduct of the institution and the damage.

An institution shall prove the facts upon which it relies as the grounds for its objections. An applicant, according to his or her capacity, shall participate in gathering evidence. If the evidence submitted by participants to administrative proceedings is not sufficient, the court shall gather it upon its own initiative.

16. **Can the judge convert *ex officio* one action into another?**
    - Yes
    - No

If the reply is yes, please elaborate

The court may clarify the claim according to the applicant's will and purpose. However, if the applicant insists on a specific claim, the court must take it into account and decide the relevant claim.

17. **Is there a time-limit for the proposition of the compensatory action?**
    - Yes
    - No

If the reply is yes, please elaborate

A compensation may not be claimed independently. If the compensation has not been claimed concurrently with the contestation or appeal of an administrative act or actual action, the

compensation may be claimed from the institution (if the examination of the relevant administrative case has been completed on the merits) within one year from the day when a person found out or was supposed to find out the loss, but not later than within five years from the day the relevant administrative act comes into effect. The decision of an institution may be appealed to a court within one month from the day the decision comes into effect.

18. **Can the judge rule that the Administration implement an administrative act? If your reply is affirmative, what are the prerequisites for implementation?**
    - Yes – explain
    - No

If an institution fails to properly execute an administrative act favourable to an addressee or a third person, the relevant person may submit a complaint regarding this fact to a higher institution, if any, and then to a court. In examining such complaint, the court may decide to impose an obligation on the institution to execute the administrative act within a specific term (*Administrative Procedure Law, section 358 (5)*).

SESSION II – SPECIAL PROCEDURES

1. **Does your administration have provisions for special procedures**
    - Yes
    - No

If the reply is yes, please elaborate

There are provisions for the special procedures in the administrative process according to Administrative Procedure Law:

1) Procedure regarding applications for interception or resumption of operation of administrative act, as well as application of temporary regulation
2) Procedure regarding applications on re-examination of a case after a judgment or decision comes into effect due to newly discovered circumstances
3) Execution of an administrative act and enforcement of a court ruling

There are also special procedures according to special legal provisions of other laws. For example, procedure regarding applications according Law on Submissions and Freedom of Information Law, Public Procurement Law, Law on Meetings, Processions, and Pickets, in cases related to the Parliament elections, in cases related to decisions of regulatory authorities.

2. **What do the specialities consist of?**
   - Ways of introducing the appeal
   - Procedural time-limits
   - Jurisdiction of the court
   - Other

In most cases the special procedure is related to appeal procedures for an institution decision or court judgment. For example, cases related to the Parliament elections and cases related to decisions of the Minister of Interior on entering foreigners in the list of the persons who are prohibited to enter the Republic of Latvia, the Supreme Court examines as the court of the first (and the only) instance. An application in cases related to Law on Submissions may be submitted to the Administrative District Court (court of first instance) and a judgement shall not be subject to appeal. The decisions of regulatory authorities may be appealed to a regional administrative court (court of appeal) and a judgement may be appealed by submitting a cassation complaint.

A request for provisional remedies and cases related to rights of the child shall be examined out of order in accordance with urgent procedures.

A re-examination of the case due to newly discovered circumstances shall be initiated upon application of a participant to the case. The application shall be examined by the same court by a judgment or decision of which examination of the case on the merits has been completed. The application may be submitted within three months from the day when the circumstances forming the basis for re-examination of the case have been established.

3. **The special rites are established:**
   - According to subject (for example, tenders, procedures of expropriation, independent administration authorities)
   - According to actions
   - Both of the above

Please elaborate

Special provisions specified in the Administrative Procedure Law are related to a specific action, while special procedures according to special legal provisions of other laws mostly are related to particular subject.

4. **Does your system provide for appeals against the silence of the Administration at the request for an administrative provision presented by a private individual?**
   - Yes
   - No

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If the reply is yes, please elaborate

A private person has the right to appeal to a court the failure to act of an institution if the institution, in accordance with the legal provisions, had or has an obligation to perform some action (*Administrative Procedure Law, section 89 (2)*).

If an institution fails to comply with the time limit specified in Administrative Procedure Law or another external legal act within which, in the course of administrative proceedings, it is required to perform a procedural action on behalf of a participant to the administrative proceedings, this participant to the administrative proceedings may submit a complaint to a higher institution but if there is no higher institution - to a court. The higher institution shall, within seven days, but the court shall, within a reasonable time limit, take a decision by which it assigns the authority to perform the relevant procedural action by setting a specific time limit (*Administrative Procedure Law, Section 49 (2)*).

If an institution fails, within a specific term, to execute the decision of a higher institution or the court, the relevant procedural action shall be deemed to have been performed, if that is practically and legally possible. If that is not practically or legally possible, a participant to the administrative proceedings for whose benefit the relevant time limit has been stipulated has the right to claim compensation, moreover, failure to comply with the time limit shall of itself be considered as moral harm (*Administrative Procedure Law, Section 49 (3)*).

However, to be noted silence of the Administration is not a common problem in Latvia.

5. **Do the Administrations comply spontaneously with the decisions of the administrative courts?**
   - Yes, always
   - No, never
   - In the majority of cases, in any case more than in 50% of cases
   - Hardly ever, in any case less than in 50% of cases

A court judgment which has come into effect shall be mandatorily enforced. Institutions enforce court judgments in the absolute majority of cases.

6. **In your legal system, is there a special procedure for ensuring the integral execution of the sentence**?

   - Yes

   - No

If the reply is yes, please elaborate

It is the obligation of an institution to properly and in good time enforce a judgment or another decision (ruling) directed against it, rendered or taken by a court in an administrative case. A participant to the administrative proceedings may submit a complaint regarding improper or non-conforming enforcement of a court ruling. In deciding a complaint, a court may impose a pecuniary penalty on the responsible official (*Administrative Procedure Law, Section 375 (1), 376 (2), (3)*).

7. **Are the judge's decisions which are not of the last resort immediately enforceable?**
   - Yes
   - No

If the reply is yes, please elaborate

A court judgment shall come into effect after the term for the appeal thereof in accordance with appellate procedures has expired and a notice of appeal has not been submitted. If the law prescribes that a judgment of a court of first instance is not subject to appeal, such judgment shall come into effect on the day it is pronounced (*Administrative Procedure Law, Section 363 (1)*).

8. **Following the annulment of a decision characterized by discretionary power, the interested party is forced to challenge each of the ulterior negative decisions which have been deemed illegitimate by dint of defects which are different to those identified by the judge or, in alternative, are there certain mechanisms of "reduction" of the aforesaid discretionary power which ensure the definition of the litigation once and for all?**

   - Yes – elaborate

   - No

If we have understood the question correctly, in the Latvian legal system court control must be carried out in each case in order to assess the legality and considerations of usefulness of an administrative act issued by an institution or of the actual action of an institution within the scope of discretionary powers. At the same time, authorities must take into account the judgment of the court when dealing with a similar case.

SESSION III – PRECAUTIONARY MEASURES

1. **Does the proposition of an appeal automatically suspend the effectiveness of the administrative act?**
   - Yes
   - No

Submission of an application to a court for the setting aside of an administrative act or revocation or invalidation thereof shall suspend the operation of the administrative act from the day the court receives the application (*Administrative Procedure Law, Section 185 (1)*). This provision does not apply to the following cases (*Administrative Procedure Law, Section 185 (4)*):

1) an administrative act imposes an obligation to pay a tax, fee or make any other payment into the State or local government budget, except for punitive payments (fines and penalties);
2) it is provided for by other laws;
3) on the basis of urgency of the execution of an administrative act in a specific case, an institution has especially determined that operation of an administrative is not suspended by the submission of an application to a court;
4) administrative acts of the police, border guard, State Fire and Rescue Service and other officials authorised by law have been issued in order to immediately prevent a direct danger to the national security, public order, environment, or the life, health or property of persons;
5) an application has been submitted by an addressee of a favourable administrative act in order to achieve the issue of a more favourable administrative act;
6) an administrative act establishes, changes or terminates the legal status of an official of an institution;
7) an actual action is appealed;
8) it is refused to establish legal relations under an administrative act;
9) an application has been submitted regarding a general administrative act;
10) an administrative act sets aside, cancels or suspends a special permit (licence, certificate, accreditation, etc.);
11) an application has been submitted regarding an administrative act which sets aside an unlawful administrative act favourable to the addressee.

In the mentioned cases the applicant may, while the examination of the case on the merits is not completed, request a court, by a reasoned request, to suspend the operation of an administrative act or actual action (*Administrative Procedure Law, Section 185 (5)*).

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2. **In your legal system, are precautionary measures provided for?**
   - Yes
   - No

3. **What kinds of decisions can the judge apply as a precautionary measure?**
   - The suspension of the challenged act;
   - (if the subject of the challenge is the refusal of an application) a positive measure which provisionally anticipates the effects of the administrative act being contested;
   - The order to the administration to re-examine the application on the strength of indications contextually provided by the judge;
   - Whatever measure necessary to satisfy, in each case, the precautionary requests presented by both parties

In the Latvian legal system, on the basis of a request of the applicant the judge may apply the following provisional remedies:

1) Suspension or renewal of operation of an appealed administrative act or actual action (*Administrative Procedure Law, Section 185, 185[1]*).
2) Interim measure (*Administrative Procedure Law, Section 195 -202*). Means of an interim measure may be as follows:
   1) a court decision which substitutes for the requested administrative act or actual action of an institution until a court judgment;
   2) a court decision which imposes an obligation on the relevant institution to perform a specific action within a specific term or prohibits a specific action;
   3) a court decision by which the Land Register is assigned to register a prohibition to act with the immovable property of a person.
3) Judgments to be Enforced Immediately (*Administrative Procedure Law, Section 265*).

4. **What are the conditions for the acceptance of a precautionary request?**
   - The probable validity of the action
   - The probable validity of the action together with a serious prejudice
   - The prevalence of public or private interest, based on the results of the equilibrium/assessment
   - The required prerequisites of trial law to accord precautionary measures vary according to the different types of litigation
   - Other prerequisites (please specify)

If there are grounds to believe that the appealed administrative act or consequences of non-issue of the administrative act might cause significant damage or losses the prevention or compensation of

which would be significantly hindered or would require unreasonable resources, and if, upon evaluating information at the disposal of the court, it may be established that the appealed administrative act is *prima facie* unlawful, the court may, upon a reasoned request of the applicant, take a decision on an interim measure or suspension or renewal of operation of an appealed administrative act or actual action.

On the basis of a request of the applicant, a court may determine that a judgment is to be enforced immediately in full or in part if due to special circumstances the delay in the enforcement of the judgment may cause substantial losses to the applicant or the enforcement of the judgment may become impossible.

5. **Can the judge force the petitioner to pay bail?**
   - Yes
   - No
   - If yes, in which cases?

The only security deposit in the amount of EUR 15 shall be paid for a request for temporary protection. A security deposit shall be repaid in full if a request for temporary protection is satisfied in full or in part.

6. **Are precautionary measures generic?**
   - Yes
   - No – are there some subjects in which precautionary measures are not admitted? Which?

7. **Can a precautionary request be introduced autonomously before the presentation of the main trial proceedings (*ante causam*)?**
   - Yes
   - No

A request for provisional remedies is only possible after initiation of a case before a court.

8. **In the event of cautionary request *ante causam*, does the precautionary decision of the judge lose effectiveness?**
   - Yes, in the event that the interested party does not initiate main trial proceedings within the mandatory time-limit
   - No, its effectiveness remains intact even if the main trial proceedings have not been initiated within the mandatory time-limit or even if the time-limit has expired

A request for provisional remedies is not acceptable *ante causam.*

9. **When dealing with the precautionary request, does your legal system provide for specific procedure?**
   - Yes (give details of the main characteristics with regard to : trial deadlines, type of decision, motivational burden, ways for establishing debate)
   - No

A request for a provisional remedy shall be examined in the written procedure. A court shall examine the request within a reasonable time limit by taking into account the urgency of the situation but not later than within one month from the day of initiation of the case but if the case has been initiated - from the day of receipt of the request.

10. **Is the precautionary decision taken unilaterally or collegiately?**
    - Unilaterally;
    - Collegiately;
    - Collegiately, but in the event of extreme urgency, the precautionary decision can be taken temporarily by means of a simple unilateral decree;

At a court of first instance a decision shall be taken by a judge sitting alone. In an appellate court and in a court of cassation – collegially in the composition of three judges.

11. **During the discussion of the precautionary request, can the judge directly define the judgement on the merit?**
    - Yes (explain in which conditions)
    - No

The decision on the provisional remedy shall contain only a *prima facie* assessment of a case on the merits.

12. **Can precautionary measures be challenged before the Supreme Court /Council of State?**
    - Yes
    - Yes, but only if they pass a test of eligibility
    - No

An ancillary complaint may be submitted regarding a decision regarding the issue of a provisional remedy.

13. **Can the Supreme Administrative Court / Council of State, as a precautionary measure, suspend the judgements on the merit of a judge of a lower level?**
    - Yes
    - No

14. On average, how many precautionary decisions are taken every year by the Supreme Court/ Council of State in comparison to the overall number of decisions taken?

Unfortunately, such statistics are not available. Supreme court decisions regarding the issue of a provisional remedy in comparison to the overall number of decisions is approximately 4%.

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