



Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

Association des Conseils d'Etat et des Juridictions administratives suprêmes de l'Union européenne a.i.s.b.l.



**Council of State of Belgium**

**Association of the Councils of State and the Supreme  
Administrative Jurisdictions of the European Union  
With the collaboration of the Council of State of Belgium**

**Increasing the efficiency of the  
Supreme Administrative Courts' powers**

**LITHUANIA**

**Brussels  
- 1 and 2 March 2012 -**

(simultaneous interpretation English/French)

**Seminar organised with the support of the European Commission**



## ISSUE 1: The ‘administrative loop’, or the power to rectify the legality of an administrative decision

What is meant by ‘administrative loop’, or the power to rectify?

In the Netherlands, an administrative court can invite (court) an administrative body by means of an interlocutory judgment or enjoin it (Litigation Division of the Council of State and Central Council of Appeal) to rectify or have rectified, within a set period, an infringement in the disputed decision unless such rectification would result in unfair treatment of the parties concerned who are not party to the case. The interlocutory judgment indicates insofar as possible how to rectify the infringement. In this case, the administrative body must inform the administrative court as soon as possible whether it intends to take up the option, offered by the court, of rectifying the infringement or having it rectified. Where the administrative body accedes to the request to rectify the infringement, it shall indicate in writing as soon as possible how it is going to rectify it. The parties may, within a set period following said written notification being sent, indicate their attitude to rectification of the infringement. A final judgment shall be handed down upon the first appeal against the flawed decision that has been (or has not been) rectified.

**Question 1:** In your country’s legal system do you know of a mechanism laid down in the constitution, in law or in regulations, or borne out of established case-law, that confers on an administrative court, in the course of proceedings, the power to *rectify* a flaw in a disputed decision rather than have that decision quashed and proceedings reopened? If so, what does this power consist of? How is it organised?

If not, what are the reasons that, in your country’s law, lead to the power of the court to be limited to solely annulling the disputed decision or to denying the court the power to rectify an infringement that has been established or have it rectified?

If so, what specific powers does the administrative court have to rectify an infringement that has been established or have it rectified? Explain your answer.

Do these specific powers of the court apply to any infringement that has been applied and to all decisions of the authority? Explain your answer.

At what stage of the proceedings and under what conditions can the administrative court exercise its power to rectify a flawed decision? Explain your answer.

*Administrative courts in Lithuania do not hold the power to rectify administrative decisions similar to the one established in the Netherlands.*

*Pursuant to Article 88 of the Law on Administrative Proceedings, by adopting final judgments administrative courts revoke contested administrative decisions (or part thereof) or obligate the respective administrative agency to remedy the committed violation or carry out other orders of the court.*

*The rationale of denying the court the power to rectify an infringement that has been established is based on the assumptions concerning the roles of court and administration. Administrative courts recognize areas that are reserved to the exercise of official powers by administrative authorities. There may be various ways in which the infringement may be remedied and these decisions are therefore best left to the competence of administrative agencies. Thus, it is not*

*for the court to issue specific instructions how to rectify a flawed decision in this regard. Providing fairly specific guidance as to what the institutions should do could encroach the prerogatives of the institution which is required by the law to take necessary steps. Having said this, it should be noted that in practice administrative courts in some cases amend and modify the appealed decision themselves, e.g. if the disciplinary measure imposed on civil servant is too severe, it can change it to the milder one.*

*The powers of the court might be seen slightly different as it regards the cases relating to the omission by administrative agency, i.e. failure to perform official duties or delay in settling the matters. In the cases relating to the omission administrative courts may obligate the appropriate entity of administration to make certain decision or comply with any other court order within the prescribed time limits. In this regard more specific guidance as to what the institution should do to comply with the law may be issued.*

**Question 2:** Can the administrative court itself exercise its power to rectify a flawed decision and itself rectify the infringement that has been identified (power to reverse decisions)?

If so, explain in brief how this mechanism works.

If not, is the authority required (obligation) – in the context of the exercise of this specific power to rectify a flawed decision– to rectify the infringement determined by the court?

Explain your answer.

*Administrative courts shall refrain from adopting a respective administrative decision themselves since it is not compatible with the court's functions to act as a public administration institution. Any alleged failure of administrative agency to undertake its duties duly as a general rule cannot be dealt with by means of a judicial remedy which would implement the measures conferred by the law to the administrative agency. Thus, it is only for the administrative agency to take respective steps to rectify the infringement pursuant to the finding of illegality. Still one should note that in some cases administrative courts by adopting final judgment amend and modify the appealed decision themselves. As there are no express rules or case-law on this issue, one may assume that administrative court is ready to make such decision in exceptional cases, e. g., when it is likely that an administrative agency will not (be able to) rectify flawed decision effectively.*

**Question 3:** How is the action to quash affected if the decision involving an infringement is rectified? Is the appeal still valid? Must or can the rectified decision be disputed in another appeal? How do the proceedings continue once the court decides to exercise or has exercised its power to rectify a flawed decision? Explain your answer.

*In most of the cases the recovery of the infringement will be followed by the application submitted by the person affected asking to discontinue the initiated proceedings. In the latter case the court shall terminate the proceedings. The person who withdraws his claim has no right to file it de novo.*

*If no request to withdraw the complaint is submitted, the court may terminate proceedings sua sponte. The decision of the administrative agency to rectify its*

*previous flawed decision usually will mean that this decision has been cancelled or changed. So if the appealed decision is cancelled or changed by the new (rectifying) decision of the administrative agency, the object of the appeal evaporates and there is no reason to pursue adjudication of such appeal.*

*Should the person affected be dissatisfied with the outcome of how the infringement is rectified it is subject to the possibility of further recourse against the new (rectifying) decision of administrative authority.*

*If disputed decision of administrative agency is amended or changed by the judgment of administrative court of first instance, this judgment is subject to appeal by an interested party to the Supreme Administrative Court.*

**Question 4:** What are your experiences of the administrative court having such a power to rectify? Is it implemented successfully?

NA.

**Question 5:** Does your court hear appeals against decisions that are rectified in this way and, if so, how are such appeals dealt with?

NA.

## **ISSUE 2: Power to award compensation and action for annulment**

**Question 1:** Are you familiar with the system of compensation as an alternative to annulment?

If so, is this system applied to the exclusion of annulment? Does the system only work for certain illegalities or only the most serious ones? Is it available in appeals on any grounds or is it limited to appeals on only the most serious grounds? Is it applied to regulations and individual decisions? Is a choice between annulment and compensation available and if so, based on what criteria and who makes this choice (the legislator through the effect of the law, one of the parties, the court?) and when (at the time the appeal is lodged, during proceedings (how does this impact on adversarial proceedings))? Does the administrative body itself still have the option to annul its decision when compensation is asked or granted in Court?

*The party which suffers damage caused by illegal actions of administrative authorities may institute the proceedings concerning the state responsibility. Under general rule, according to Article 86 of the Law on Administrative Proceedings national courts have to decide on all basic requirements of the party, presumably, all questions including an action of damages against the state, should be decided in a single process. However, proceedings concerning the state liability may be started separately and thus action for damages is regarded as independent and autonomous from action of annulment.*

*National law contains no provisions concerning the degree of illegality limiting the right of the person affected to claim damages. Legal regulation expressly and*

*specifically does not establish that actions for damages are limited by the factors such as serious illegalities. However, administrative courts in their jurisprudence have developed different tests for state liability depending upon whether the administrative agency exercises discretion. Where the contested administrative decision concerns a failure by the administrative agency to fulfil its legal obligation it is normally suffice to show illegality per se. The seriousness of the breach may be taken into account while calculating the compensation; however, it cannot exclude the state from incurring the non-contractual liability. As regards the state liability stemming from discretionary acts, administrative courts in Lithuania use similar test to the one developed in the ECJ's more recent jurisprudence. The system of rules which the administrative courts have worked out in relation to discretionary powers of the administrative agencies takes into account, inter alia, the seriousness of the breach. Where the legal measure is relied on the exercise of discretionary powers, that measure, in order to be capable of causing the state to incur non-contractual liability, must constitute a sufficiently serious breach of a rule of law. The decisive criterion in that regard is whether the administrative institution concerned manifestly and gravely disregarded the limits on its discretion.*

*The rules on the state liability is equally applied to regulations and individual decisions since the non-contractual liability of the state depends on the nature of the measure rather than the legal form in which it is expressed. If the illegality of individual decision is concerned, finding that the contested individual decision is in conflict with the rule of law may give rise to compensation to the aggrieved individual. The same applies where the illegitimacy of normative acts and even failure to adopt them is concerned.*

*The choice among remedies available is left to the party initiating the proceedings. Therefore, if an applicant asked only for annulment of an administrative decision, as a general rule administrative court will not consider and will not award compensation (e. g., as alternative to annulment). It should be noted that the party has the right to specify or change the subject matter of the complaint at any stage of the proceedings before the court retires to the conference room. However, claims, inter alia the request to award compensation, which were not filed when the case was heard at the court of first instance, shall not be permitted in the appeal.*

*One of the main factors influencing the choice between remedies is the limitation period. Even though both proceedings should be carried out in administrative courts the time limits for the annulment of respective administrative decision or court order may be recognized as considerably short (within one month if the case concerns the annulment of the decision or within two months if the claim concerns the omission by the administrative agency) while the proceedings concerning the state liability for damages can be started within 3 years.*

*The administrative body has a very limited possibility to annul its own decision even where the compensation is granted. Under general rule it is for administrative courts to rule on the question of the illegality of administrative decision. It should be born in mind that the illegality giving rise to the state liability per se does not mean the illegality of administrative decision leading to*

*the annulment. Thus, if the party brings action for damages and the court grants them the court on its own motion has no power to annul the decision that gives rise to the state liability.*

**Question 2:** What is the extent of the compensation and how is it calculated?

Does it cover all the damage sustained or is a lump sum awarded, e.g. in the case of a fair satisfaction?

In the latter case, does the award of the lump sum preclude action for further compensation to cover all the damage caused or may such action still be taken, where appropriate before another court? Can the plaintiff or the defendant initially request a decision *in principle* as regards compensation and only move to proceedings concerning the actual amount thereof once the principle has been acknowledged by the court?

*Awarding compensation for loss is a constitutional principle. The general objective of this principle is to provide a full (adequate) recovery of damage for the victim (restitutio in integrum). As far as state liability is concerned, there are no provisions on lump sum awards of damage. Administrative courts will grant damages for losses (pecuniary and non-pecuniary kind) actually sustained. The concept of damage sustained covers both a material loss stricto sensu and lost profit. However, the injured party has the onus of proving that the damage occurred. Administrative courts have developed a sound body of case-law claiming that losses will be recovered if they are certain, specific and proven. Where the amount of damages cannot be proved by the party with precision, it shall be assessed by the court. In this regard the court will grant a fair compensation.*

*One should also note the peculiarities concerning the assessment of non-pecuniary damage since material compensation for the non-pecuniary damage sustained virtually differs by its content. Non-pecuniary loss refers to those losses which cannot immediately be calculated, as they do not amount to a tangible or material economic loss. As the Constitutional Court of the Republic of Lithuania has noted, in this regard the sustained offence by the person, cannot be in general replaced, because it is impossible to return back the emotional and other condition of the person, which had existed before the spiritual offence took place. The purpose of such material (first of all, monetary) compensation for moral damage is to create material preconditions to newly create what is impossible to return, and to compensate as justly as possible for the person something that often may not in general be replaced by anything—neither money nor any material property. Therefore, it should be recognized that there will inevitably be a degree of inaccuracy, precisely because non-pecuniary damage can be assessed and compensated materially on condition.*

*National law confers the right to compensation where three conditions are met: the administrative agency's conduct must be unlawful, actual damage must have been suffered and there must be a causal link between the conduct and the damage pleaded. If all three conditions are satisfied, the court considers the amount of compensation to be awarded for the victim. All these questions are resolved in a single process by administrative courts. The parties are not entitled*

*to request the court for a prejudicial decision on the right for compensation in principal and postponement of the quantification of damages.*

**Question 3:** What is the impact of penalising an unlawful decision by awarding compensation on the decision itself?

Is an unlawful decision which has been penalised in the form of the award of compensation subsequently assumed to comply with the law? What is the extent of this assumption? To what extent does a final decision awarding compensation impact on the power of other courts to control the lawfulness of that decision?

*Finding that the damage resulted from the breach of a respective rule of law does not affect the status of the decision that the applicant relies on in submitting action for the damage sustained. The rationale of this assumption is based on the imperative of legal stability. Legal certainty requires that the events which have already been concluded and were not challenged within prescribed time limits would not be amended out of a sudden. The legal situation must be clear and predictable for those who are subject to it and the legitimate expectations of those affected by the decision shall be duly respected. In those conditions the review of decisions in question can be carried out in the case for damages without calling in question the annulment of the relevant decision. Nonetheless, the Law on Administrative Proceedings provides that the findings and assessments of facts established by the effective court decision in one administrative case shall not be required to be proved in other administrative proceedings if the same persons are participating. However, it is for the court hearing the request for the annulment of the decision to decide whether the breach of a respective rule of law established in the case concerning the damage claimed is a sufficient background to withdraw the contested decision.*

**Question 4:** Does your court have the power to settle compensation for the damage caused by the unlawful decision it has previously annulled? If so, is this an exclusive power or is that power also granted to other courts?

Does the plaintiff have to submit the application for compensation at the same time as the annulment request or can it be made subsequently, after annulment?

*The Law on Administrative Proceedings provides that the cases concerning the compensation for pecuniary and non pecuniary damage inflicted in the sphere of public administration and office-related disputes shall be heard by administrative courts. Regional administrative courts hear the cases concerning the compensation for damage as courts of first instance. Meanwhile, the Supreme Administrative Court of Lithuania is an appellate instance. The fact that the same administrative court has previously annulled the unlawful decision does not preclude the same court from hearing the request for compensation. Violation of a right or interests may subsequently lead to annulment actions brought by the aggrieved individual as well as to damages actions leading to compensation. In this regard it should be noted that the action for damages can be submitted at the same time as the annulment request. However, it may be made subsequently pursuant to the annulment since the action for damages is regarded as independent and autonomous.*

**Question 5:** What is the extent of the compensation and how is it calculated?

Does this compensation have to be fault-based? Does it have to remedy all the damage? Is a lump sum involved and if so, can an action for compensation to cover all damage incurred subsequently be brought before another court?

*State liability is incurred regardless of fault. National law establishes that the state shall make good any damage caused by its institutions if three conditions are satisfied: the institution's conduct must be unlawful, actual damage must have been suffered and there must be a causal link between the conduct and the damage pleaded. The fundamental principle underlying the award of compensation for loss is that the court shall achieve a full (adequate) recovery of damage for the victim (restitutio in integrum). The victim should in so far as this is possible be placed in the same position as if his rights or interests had not been infringed. Please also see answer to Question 2 for further details.*

### **ISSUE 3: The effectiveness of enforcement of the rulings of administrative courts**

**Question 1:** Do the administrative courts in your country have the means to ensure actual implementation of their rulings and judgments by the authorities?

If so, describe in brief these means and how exactly they are implemented. If not, what are the reasons for the absence of such means?

*According to Article 97 of the Law on Administrative Proceedings, once a court decision concerning the complaint (petition) becomes effective, the transcript of the decision is to be sent for execution to the entity of administration whose actions or omission have been complained about, and to the claimant. If the decision is not executed within fifteen days or within the time limit set by law, the appropriate administrative court shall issue the claimant, at his request, an order of enforcement, which is subject to execution by the bailiff in accordance with the procedure established by the Civil Procedure Code.*

**Question 2:** Do the administrative courts have the power to order the authority to enforce their rulings and judgments (power of injunction)?

If so, at what stage of the action can this power of injunction be asserted?

Where the court can decide to issue such an injunction at the time of handing down its ruling, who may apply for such an injunction and by what means, and what will its scope be (can the court indicate to the authority how it can rectify the illegality)? Can a deadline be imposed in respect of such an injunction and what happens if the authority fails to adhere to the stipulated deadline?

Where the injunction can be implemented at the stage of enforcement of the ruling or of the judgment, who can request it, by what means and at what time? What scope will it have? Does the authority have a certain period to enforce it? What happens if it has to be enforced urgently?

Is this power of injunction also applied when the authority in question is ordered to pay a sum of money (e.g. damages) and if not, how does this recovery work?

*The judicial decision may be implemented where administrative agencies will simply carry the decision of the court into effect. Only on those occasions when the administrative agency does not perform court's judgment will compulsory legal enforcement be necessary. Under general rule, the compulsory legal enforcement is initiated where the individual in question applies to the administrative court of first instance for the issue of enforcement order.*

*The enforcement order will be issued if the following conditions are met:*

- the judicial decision is not implemented voluntarily within the limitation period of fifteen days or within the prescribed time limit;*
- the judicial decision is final. This general rule is, however, subject to exceptions. The enforcement order may be issued for the judicial decision which is not final and subject to appeal if it is recognized that the enforcement shall be urgent.*

*As regards the content of the enforcement order it should be noted that it includes all information relevant for the process of enforcement, i.e. the information concerning the litigants in question, the requisites of the court which issued the order, the operative part of the judicial decision into effect and other relevant information. The orders to the administrative institution are prescribed only in the operative part of the decision to be enforced.*

*Depending on the decision in question, enforcement orders may be submitted for the enforcement within five years of the decision coming into effect. Meanwhile, the time limit for submitting enforcement orders in respect of judicial decisions which need to be enforced urgently runs from the day after the decision was adopted. Enforcement instruments regarding the reinstatement in employment may be submitted for enforcement within one month of the day after the decision was adopted.*

*Administrative courts in Lithuania do not have a specific and separate power of injunction ordering the authority to enforce administrative court's judgment. One may argue that there is no need for such a mechanism, because, as described above, if the judgment of the court is not complied with voluntarily, an interested person may receive enforcement order and submit it for compulsory execution to the bailiff.*

**Question 3:** Have all your country's administrative courts been granted this power of injunction?

Can an injunction be enforced even in case of appeal or cassation complaint? In other words, in the case of an appeal or cassation complaint does the administrative court of first instance retain the power to ensure that its ruling is enforced or does the higher court become competent? Where the court of first instance court retains this power, what happens if the decision in respect of which it is seeking enforcement is annulled on appeal or quashed following a cassation complaint?

*Under general rule the enforcement orders shall be issued where the decision (a part thereof) becomes final. The enforcement orders are issued by the court of first instance. This general rule, however, is subject to exceptions. Thus the*

*enforcement may be issued where the decision is not final but it is necessary to enforce it urgently due to peculiar circumstances of the case. The general objective of the urgent procedure is to prevent greater damage occurring as a result of delay. The urgent enforcement procedure does not lead to the final determination of the legal situation but rather is designated to protect provisionally the interests at stake. This would be the case where the applicant seeks the reinstatement into his previous job or the payment in a damages action for the health impairment etc. In this regard the enforcement orders to be carried out in urgent procedure may be issued by both courts of first instance and appellate court.*

*If the decision in respect of which the court of first instance is seeking enforcement is annulled on appeal, all consequences related to the actions carried out shall be liquidated. The appropriate recourse procedure shall be initiated. The goal of this procedure is to provide restitution in the sense of placing the parties to the dispute in the situation that would have pertained if the urgent enforcement of the decision had not been carried out. Application of this procedure is based on the principle *ex iniuria ius non oritur* or, in other words, on the idea that the illegality of the judgement makes the execution of this particular judgement also illegal; consequently the parties must be returned to the situation that had existed before the illegal judgement was adopted (executed). The question concerning the restoration of status quo ante shall be decided by the court which rules definitively on the claims presented and adopts the final decision.*

*In this regard the defendant is entitled to recover the sums that should not have been paid. The exception applies to the amounts paid as remuneration to the employee. These sums may be recovered only if the employee had acted dishonestly or mistakes of accountancy had occurred (Article 762 (4) of the Civil Procedure Code). The defendant is also entitled to lodge the action for damages sustained due to urgent enforcement procedure if the latter procedure was initiated by the applicant.*

**Question 4:** Can your country's administrative courts sentence the offending authority to pay a penalty or a fine?

If so, is this penalty or fine independent of the court's power of injunction? Explain the mechanism that has been put in place and the conditions under which the penalty or fine will be imposed. If this penalty is combined with implementation of a power of injunction, explain how the two mechanisms interact. Does this penalty or fine benefit solely the litigant who has won the case?

*The execution of nearly all decisions of the administrative courts is entirely in the hands of the administrative decision-maker who made the original decision. Administrative agencies normally would not decline to carry a judicial decision into effect. However, if the institutions fail to carry non-monetary decision ordering to do or refrain from something into effect voluntarily and through court enforcement proceedings, the law provides respective measures. A fine in the amount of up to LTL 1 000 (around EUR 290) for every day of delay to enforce the decision may be imposed. The fine is imposed in favour of the*

*individual in question. If the defendant fails without a good reason to take steps required, the bailiff shall apply to the district court of general jurisdiction which is entitled to impose aforementioned fines in accordance with the rules set in the Civil Procedure Code. Paying the fine does not exempt the institution from the duty to carry the decision into effect. In addition, criminal prosecution may be instigated against the persons (state officials and servants too), who does not comply with the final judgment of the court. An offender may be sentenced up to arrest for 45 days.*

**Question 5:** What happens where the authority has enforced the ruling or judgment but this enforcement is not in line with the authority of *res judicata*?

Can the litigant in the case in question make an application for enforcement of the judgment or ruling to the competent court? Furthermore, if the administrative court considers that it cannot implement the power of injunction because the judgment or ruling has been enforced, can the litigant lodge an appeal against this decision? And to conclude, are there circumstances in which an authority can refuse to enforce a judgment or ruling despite an injunction to enforce having been issued?

*The fact that the decision is enforced voluntarily does not preclude the litigant from submitting an application to the court asking for the enforcement order if he thinks that the decision is not enforced duly. The court's decision rejecting the application to issue the enforcement order is subject to further recourse. If the court rejects the application stating that the decision had been enforced, the applicant is entitled to appeal against this decision.*

*Under general rule, an effective court decision, ruling or an order has a binding effect on all state institutions, officers and public servants, enterprises, agencies, organizations, other natural and legal persons and must be executed within the entire territory of the Republic of Lithuania (Article 14 of the Law on Administrative Proceedings). The parties to the dispute may, however, request to change the way the decision is to be implemented (Article 284 of the Civil Procedure Code). The courts will change the course of the enforcement, e.g. postpone it, where exceptionally adverse circumstances precluding the enforcement in a regular way are established. However, in deciding whether to change the course of the enforcement, the courts shall take a proper account of the imperatives of legal certainty, proportionality, legal expectations and the equality of the parties. Moreover, it is for the court, where it makes use of Article 284 of the Civil Procedure Code, to ensure that the new course of the enforcement is necessary and does not infringe the interests of the party who won the case. It should be noted that the court is not allowed to change the course of the enforcement in the way that would change the essence of the decision, inter alia its arguments and motives on which it was based.*

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