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THE ESSENCE OF THE INSTITUTE OF SUSPENSION OF EXECUTION OF AN ADMINISTRATIVE ACT[1]

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Administrative acts in the context of the constitutional principle of proper administration are evaluated not only in terms of content but also in making and implementing them within a reasonable period of time. On the other hand, not stopping the application of apparently illegal administrative acts is fraught with the risk of significant violations of fundamental rights and freedoms, which dictates that highly predictable and legitimate grounds for the application of the institution of suspension should be proposed as needed. Choosing between these conflicting factors makes it even more difficult with delays in the litigation process. Unfortunately, a situation is often encountered when a wholly justified and lawful judicial act is held, but on that particular basis, the execution of the administrative act already lacks objective necessity as the challenged administrative act has already been fully executed before the final situation. Thus, the right to judicial protection and one of the essential features of an administrative act, enforceability, inevitably collide at a particular moment in the judicial procedure of challenging the administrative acts. Accordingly, preliminary and intermediate measures of judicial protection in administrative litigation within modern jurisprudence have acquired emphasized relevance.

Unlike civil litigation, where the preliminary and interim measures for the plaintiff's legal defense, namely, the institution of securing the claim, for many years have been an institution with a history and have already been relatively established, the legal foundations of these measures in administrative proceedings were formed relatively later and still are not systematized to the necessary extent. The lack of such measures has led to the fact that in traditional litigation, administrative bodies have been in a more advantageous position for a long time, thus taking advantage of the benefits of enforceability of the administrative act. However, the continued development of social rights and fundamental human rights, especially the right to a fair trial, and, on the other hand, the emphasis on the sociological problems arising due to the length of a trial, led to the introduction of interim measures for the protection of the rights in lawsuits filed against administrative authorities in most national and international legal systems[2].

Currently, the institution of suspension of execution of the challenged administrative act is widespread in administrative proceedings. As one of the fundamental institutions of preliminary or intermediate protection of the plaintiff's rights in administrative proceedings, the suspension of execution of an administrative act is aimed at ensuring a balance between the effectiveness of the law and the

[1] This article was reported in 2022 December 8 at the scientific session of graduate students and applicants at the YSU Faculty of Law.

[2] See **Susana de la Sierra**, Provisional Court Protection in Administrative Disputes in Europe: The Constitutional Status of Interim Measures Deriving from the Right to Effective Court Protection. A Comparative Approach, European Law Journal, Vol. 10, No. 1, January 2004, pp. 42–60. Blackwell Publishing Ltd. 2004, 9600 Garsington Road, Oxford OX4 2DQ, UK and 350 Main Street, Malden, MA 02148, page 1.

fundamental principle of the effectiveness of the protection of rights. In other words, the suspension of execution of an administrative act is initially aimed at ensuring a balance of public and private interests[1].

The study of the institution of suspension of execution of the challenged administrative act presupposes the primary disclosure of this institution's essence and legal nature. Within the framework of this research work, it is necessary to address the following questions: What is the essence and meaning of the suspension of execution of the challenged administrative act? Does the suspension of execution include the suspension of only compulsory enforcement of an administrative act, or does it presume the suspension broader scope of actions? Disclosure of the content of the concept of *"suspension of execution of an administrative act"* implies full disclosure of the legal essence of its components - the terms *"execution of an administrative act"* and *"suspension"*.

In the theory of administrative law, the execution of an administrative act is interpreted in both a broad and a narrow sense. In a narrow sense, *execution of an administrative act* is considered to be the enforcement of an administrative act with administrative coercion aiming at ensuring compliance with the administrative act's requirements to enforce and protect the public interest[2]. However, in a broad sense, the term *execution of an administrative act* includes any action carried out based on an administrative act. More specifically, in addition to actions aimed at ensuring the execution of an administrative act with the use of administrative coercion, the broad sense of this term also includes any action carried out by the addressee of the administrative act and other interested persons based on the administrative act. In other words, the execution of an administrative act in a broad interpretation is an action aimed at exercising the right that is derived from the content of an administrative act, regardless of the subject performing this action. On the other hand, fulfilling an obligation established by an administrative act that imposes a particular obligation on its addressee shall also be considered as an execution of an administrative act. As a result, the execution of an administrative act shall include an exercise by the addressee of the right raising from the administrative act and the fulfilment of the obligation based on that act[3].

In the theory of law, the understanding of the term suspension is generally the same and boils down to the temporary cessation of specific actions. In a Civil procedural science, suspension, for example, according to the definition of P. P. Gureev, is a break in the judicial process for an indefinite period due to the occurrence of circumstances established by law, which prevents further examination of the case. B. Zeider defines *suspension* as the termination of procedural actions during the trial before the occurrence of circumstances established by law. P. Y. Trubnikov characterizes suspension as the interruption of the trial in cases provided for by law[4]. In generalizing these positions, *suspension* can be defined as a temporary termination of procedural or other legal actions.

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[1] Ibid., page 2:

[2] See **Polonca Kovač**, Execution in Administrative Matters: Challenges of the Slovenian Practice and Case Law, UDK 35.077.6(497.4), p. 2, available by the following link; https://hrcak.srce.hr/file/192899.

[3] Ibid., page 8.

[4] See **Аношина Анна Александровна**. Приостановление производства по гражданским делам в судах общей юрисдикции : Дис. ... канд. юрид. наук : 12.00.15 : Саратов, 2006 201 с. РГБ ОД, 61:06-12/927, p. 11:

According to Hrachya Acharyan's explanatory dictionary of modern Armenian[1], the word *suspension* means to hinder, prohibit or stop. Consequently, based on the concept of suspension in procedural science and linguistic analysis of the definition and concept given to the word *suspend*, the concept of *suspension of execution of an administrative act* in the most general form, can be characterized as a temporary cessation of actions to be carried out based on an administrative act, until reaching to the grounds established by law.

Nevertheless, the above definition of the concept in question still needs to be completed since this definition does not provide an opportunity to answer questions about which subjects and which specific actions the suspension of the execution of an administrative act includes.

So, suppose the basis for the disclosure of the essence of the concept of suspension of execution of an administrative act is a narrow interpretation of the concept of execution of an administrative act. In that case, suspension of execution of an interfering administrative act[2] will only apply to the suspension of actions by a competent administrative body aimed at ensuring the compulsory enforcement of an administrative act. In other words, the suspension of the execution of an administrative act in such a perception cannot be interpreted as the suspension of the execution by the addressee of an administrative act of the obligation established by this act. On the other hand, in the case of favorable administrative acts[3] or favorable provisions of combined administrative acts[4], the suspension of the execution of an administrative act will not apply to actions carried out by the addressees of these acts based on this act[5].

The rule on suspending the execution of an appealed administrative act until the entry into force of a substantive judicial act resolving the case is defined by article 83 of the Code of Administrative Procedure of the Republic of Armenia[6]. However, the Code of Administrative Procedure does not determine what entails the suspension of execution of an administrative act. On the other hand, the law "On the Basics of

[1] See ժամանակակից հայոց լեզվի բացատրական բառարան, Երևան, 1969-1980, available by the following link; http://www.nayiri.com/imagedDictionaryBrowser.jsp?dictionaryId=29.

[2] According to para. b of the 2nd part of Article 53th of the Law on Basics of Administration and Administrative Proceedings; interfering administrative act is the administrative act through which administrative bodies refuse, interfere, or right up to restrict the enjoyment of the rights of persons, impose any obligation on them or in any other way aggravate their legal or factual situation;

[3] According to para. a of the 2nd part of Article 53th of the Law on Basics of Administration and Administrative Proceedings; favorable administrative act is the administrative act through which administrative bodies confer rights upon persons or create for them any other condition that improves the legal or factual situation of those persons.

[4] According to para. c of the 2nd part of Article 53th of the Law on Basics of Administration and Administrative Proceedings; combined administrative act is the administrative act which contains provisions laid down both in favorable and interfering administrative acts for a person.

[5] Several problems arising in connection with the interpretation of the concept of "suspension of execution of an administrative act" were also raised in the framework of the application submitted by the Administrative Court to the Constitutional Court on determining the compliance of Article 83 of the Code of Administrative Procedure of the RA with the Constitution. For more details, see the procedural decision of the Constitutional Court ՍԴԱՈ-24 of December 29, 2020, on the termination of proceedings on the case on the specified application.

[6] Adopted on 05.12.2013, entered into force on 07.01.2014. See about ՀՀՊՏ 2013.12.28/73(1013).1 Art.1186.1.

Administration and Administrative Proceedings[1]" also does not disclose the essence of the concept of suspension of execution of an administrative act. Nevertheless, in the same law, the term "execution of an administrative act" is used only in chapters 12 and 13 concerning the compulsory enforcement of administrative acts and public-law monetary claims, from which one can legitimately conclude that in the context of the law, the term "execution of an administrative act" includes only the compulsory enforcement of an administrative act by a competent authority.

The primary purpose of the institution of suspension of execution an administrative act challenged in administrative proceedings is to ensure the protection of the rights of the plaintiff, that is, to prevent excessive damage to the rights and freedoms of the plaintiff before resolving the dispute and to ensure the normal execution of the judicial act rendered in favor of the plaintiff, since the complete execution of an administrative act before the final resolution of the dispute will make the restoration of the violated rights of the plaintiff and the restoration of the situation that existed before the violation of the right much more difficult, in some cases even impossible.

According to Recommendation No. R (89) 8 of the Committee of Ministers to Member States on Provisional Court Protection in Administrative Matters - the immediate execution in full of administrative acts which have been challenged or are about to be challenged may, in certain circumstances, prejudice the interests of persons irreparably in a way which, for the sake of fairness, should be avoided as far as possible. On the other hand, it is underlined in the discussed Recommendation that it is desirable to guarantee individuals, where necessary, provisional protection by the courts without disregarding the need for effective administrative action[2]. Thus, in the context of this Recommendation of the Committee of Ministers, the protection of the person's rights – challenging the administrative act and preventing irreparable harm to interested persons shall be the aims of the institute of suspension of execution of an administrative act.

The right to a fair trial is defined by the first part of article 61st of the Constitution of the Republic of Armenia[3] as a right to everyone for effective means of judicial protection of their rights and freedoms. It is obvious from this constitutional regulation that these regulations are not limited to the mere declaration of the right to appeal to the court (including the Administrative Court). The Constitution also obliges to meet the imperative demand for the effectiveness of the means of judicial protection. On the other hand, the 75th article of the Constitution prescribes that when regulating basic rights and freedoms, laws shall define organizational mechanisms and procedures necessary to exercise these rights and freedoms effectively. Thus, considering these two constitutional regulations, all the essential organizational mechanisms and procedures necessary for the effective exercise of the right to a fair trial shall be regulated by the procedural legislation to meet the Constitutional trampoline.

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[1] Adopted on 18.02.2004թ., entered into force on 31.12.2004. See about ՀՀՊՏ 2004.04.14/21(320) Art.413.

[2] See Recommendation No. R (89) 8 of the Committee of Ministers to Member States on Provisional Court Protection in Administrative Matters1, Adopted by the Committee of Ministers on 13 September 1989 at the 428th meeting of the Ministers' Deputies, available by the following link; https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804f288f.

[3] Constitution of the Republic of Armenia, ՀՀՊՏ 2015.12.21/Special Edition, Art. 1118, adopted on 06.12.2015.

The effectiveness of the right to judicial protection is also a Constitutional demand addressed to the legislative branch of power – to be guided by the inherent criterion of the effectiveness of the right to judicial protection when introducing a new mechanism of exercising the right to a fair trial. However, on the other hand, this principle is equally applicable in the stages of interpretation and revealing the essence of existing legal mechanisms, as the criterion of effectiveness obliges the judicial branch of power and other interested subjects – to choose a kind and method of interpretation that ensures the interpretation that will considerately invest in meeting the requirement of the effectiveness of judicial protection. Thus, the essence of the procedural institute of suspension of execution of an administrative act and its legal regulation shall also be compatible with the idea of the effectiveness of the right to judicial protection.

It can be withdrawn from the aims of the institute of suspension that this institute aims to ensure the effectiveness of the right to judicial protection. To be more specific, the goal of suspension of execution is to exclude a situation when a claimant has already received a judicial act on the recognition of an administrative act as invalid, and that judicial act has entered into legal force, but the claimant, however, cannot achieve the actual restoration of his violated rights because the administrative act has been thoroughly executed before the final judgement and the situation existed before the violation of the claimant's rights cannot be restored.

Secondly, administrative acts are individual legal acts - initially adopted to regulate a particular legal case and have specific addressee(s)[1]. For this reason, prior to the powers of the competent authority aimed at ensuring the enforcement of an administrative act, a right or an obligation of the addressee of an administrative act to perform a particular action arises based on those acts. As a result, as a component of the effectiveness of the right to judicial protection - the suspension of execution of an administrative act can serve its aim only when it will make it possible to maintain the legal and factual situation – existing in the moment of appealing to the court.

On the other hand, it will not be possible for the institute of suspension of execution of an administrative act to effectively serve the goals – mentioned above if the actions by the competent authorities aimed at compulsory enforcement of the act are the only actions included in the scope of this concept. The reason for this is that the factual or legal situation of an addressee of an administrative act is actually changed not only by using means of coercion by the competent authority but also by exercising the raising from that administrative act right or obligation by the addressee. As a result, the institute of suspension of execution of an administrative act can serve its aims only in case when it is able to entitle the person challenging the administrative act the real and practically effective opportunity – to maintain the legal and factual situation existing in the moment of initiating the proceedings of appeal until the final resolution of the case.

As a result of summarization of the analysis above, we can conclude that the appropriate legal interpretation of the concept of "suspension of execution of an administrative act" includes all actions conducted based on the administrative act, which includes the actions conducted by both the addressee of an administrative act, the competent authority an administrative act has been adopted by and other

[1] In this scientific article, we do not address the point of view according to which the normative act having a direct impact on physical and legal entities can also be considered an administrative act. Instead, the definition provided by domestic legislation is taken as a basis in the framework of this article.

competent authorities or interested persons as well [1]. It is noteworthy that the suspension of the execution of an administrative act by such an interpretation can also be identified with the suspension of action of an administrative act.

Thus, based on all the issues discussed above, we can conclude that the appropriate legal interpretation of the "suspension of execution of an administrative act" institute shall include the temporary termination of all the actions conducted based on an administrative act. Accordingly, the mentioned actions include the suspension of both the exercising of authorities or means of coercion by the competent body aimed at ensuring the enforcement of an administrative act and the realization by the addressee of the administrative act of the rights and responsibilities raised from that particular act.

ՎԱՐՉԱԿԱՆ ԱԿՏԻ ԿԱՏԱՐՄԱՆ ԿԱՍԵՑՄԱՆ ԻՆՍՏԻՏՈՒՏԻ ԷՈՒԹՅՈՒՆԸ

Էլինա Գեղամյան
ԵՊՀ սահմանադրական իրավունքի ամբիոնի ասպիրանտ,
ՀՀ արդարադատության նախարարության խորհրդական

Դատական պաշտպանության հիմնարար իրավունքն ու վարչական ակտի կարևորագույն հատկանիշներից մեկը՝ կատարելիությունը, վարչական ակտերի՝ դատական կարգով վիճարկման գործընթացում որոշակի իրավիճակում ու պահի անխուսափելիորեն բախվում են: Այս գործընթացում օրենքի արդյունավետության հիմնարար սկզբունքի և վարչական ակտը վիճարկող անձի իրավունքների պաշտպանության միջև արդյունավետ հավասարակշռության ապահովմանն է միտված վարչական ակտի կատարման կասեցման ինստիտուտը: Չնայած այս հանգամանքին՝ վարչական ակտի կատարման կասեցման ինստիտուտի էությունը թե՛ տեսական մակարդակում, թե՛ իրավակիրառ պրակտիկայում դեռևս համարժեք չի ընկալվում:

Սույն գիտական հոդվածում դատական պաշտպանության հիմնարար իրավունքի, Եվրոպայի խորհրդի հանձնարարականների և Սահմանադրական կարգավորումների համատեքստում բացահայտվում են «վարչական ակտի կատարման կասեցում» հասկացության բաղադրատարրերի էությունը և այդ հասկացության իրավական բովանդակությունը: Արդյունքում հեղինակը եզրահանգում է, որ վարչական ակտի կատարման կասեցումն իր հիմնական նպատակին՝ հայցվորին անհամաչափ վնաս պատճառելը կանխելուն և դատարան դիմելու պահին առկա դրության պահպանմանը կարող է ծառայել միայն այն դեպքում, եթե դրա իրավական մեկնաբանությունն ապահովի վարչական ակտի կատարման կասեցման դեպքում դատարան դիմելու պահին առկա փաստացի և իրավական դրության պահպանումը: Նշվածը հիմք ընդունելով՝ բացահայտվում է քննարկվող ինստիտուտի էությունը, և տրվում դրա բնորոշումը:

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[1] It is noteworthy that the broad interpretation of the concept of "execution of an administrative act" is also reflected in domestic law enforcement practice. See, for example, the decision of the Appeals Commission of the Taxation and Customs authorities of the State Revenue Committee No. 18/3 of 31.03.2017, available by the following link;
https://www.petekamutner.am/Shared/Documents/_ts/_vl/Appeal_Against_Tax_Body_Or_Servant_Actions/2017/vr_gh_2017_03_Anul_Mari.pdf.

СУЩНОСТЬ ИНСТИТУТА ПРИОСТАНОВЛЕНИЯ ИСПОЛНЕНИЯ АДМИНИСТРАТИВНОГО АКТА

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Основополагающее право на судебную защиту и одна из важнейших характеристик административного акта - исполнимость, неизбежно сталкиваются в определенный момент в процессе оспаривания административных актов в судебном порядке. В этом процессе институт приостановления исполнения административного акта направлен на обеспечение эффективного баланса между основополагающим принципом эффективности закона и защитой прав лица, оспаривающего административный акт. Несмотря на это обстоятельство, сущность института приостановления исполнения административного акта как на теоретическом уровне, так и в правоприменительной практике пока не воспринимается однозначно.

В данной научной статье в контексте основополагающего права на судебную защиту, рекомендаций Совета Европы и конституционных регулирований в Республики Армения раскрывается сущность компонентов понятия «приостановление исполнения административного акта» и правовое содержание этого понятия. В результате автор заключает, что приостановление исполнения административного акта может служить своей основной цели-пресечению несоразмерного ущерба истцу и сохранению положения, существующего на момент обращения в суд, только в том случае, если его правовое толкование обеспечивает сохранение фактического и правового положения, существующего на момент обращения в суд. На основании изложенного в научной статье раскрывается сущность рассматриваемого института и дается его определение.

Keywords: *suspension of execution of an administrative act, right to judicial protection, enforceability of an administrative act, effectiveness of the law, effectiveness of the protection of rights, execution of an administrative act, preliminary measures of judicial protection.*

Բանալի բառեր – *վարչական ակտի կատարման կասեցում, դատական պաշտպանության իրավունք, վարչական ակտի կատարելիություն, օրենքի արդյունավետություն, իրավունքների պաշտպանության արդյունավետություն, վարչական ակտի կատարում, դատական պաշտպանության նախնական միջոցներ:*

Ключевые слова: *приостановление исполнения административного акта, право на судебную защиту, исполнимость административного акта, эффективность закона, эффективность защиты прав, исполнение административного акта, предварительные меры судебной защиты.*