

## **Changes to the law on administrative disputes**

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In 2018, the law on administrative disputes<sup>1</sup> was updated<sup>2</sup>. The changes are comprehensive and, above all, practice-relevant. Below, we will discuss the most important aspects.

### **Substantive changes**

The first relevant change refers to the liability for administrative acts. Besides the persons contributing to the preparation, issuance or conclusion of the administrative act, those persons adopting these acts can also be held liable for the damage caused as a consequence.

Additionally, the law now protects<sup>3</sup> officials that do not implement administrative court decisions. Although (up until the summer of 2018) their liability in the case of non-fulfillment was less restrictive, the law now sets forth that the fault of the officials is a decisive criterion for justifying such action.

The consequences of officials and courts applying this change remain to be seen, even if at first sight it might seem justified. We are very curious to see how the courts will handle, for example, cases where officials will invoke the lack of financial means, other types of shortcoming, or the lack of clear regulations when not respecting court decisions.

### **Procedural changes**

The first significant change concerns the moment in which a person affected by an individual, unilateral legal act despite not being its direct target can file an objection with the issuing authority. According to the amended version of the law<sup>4</sup>, the contestation period is the 6 months following the point at which the injured party takes notice of the content of the administrative act, and not the moment of its issuance.

The law<sup>5</sup> states that the reasons brought forward when challenging an administrative act within a legal action are not restricted to the reasons brought forward in the statement of opposition. In other words, before the court, the claimant has the right to bring forward further arguments against the administrative act.

The change is welcome, as there are many situations in which it is difficult to identify all the reasons proving the unlawfulness of an administrative act from the moment the statement of opposition is submitted to the issuing authority. This change makes it impossible for the court to neglect reasons of unlawfulness not included in the statement of opposition, just because they were not analysed by the issuing authority.

The legislative body also sought to speed up the procedure. Among the changes made in this sense are:

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<sup>1</sup> Law 554/2004

<sup>2</sup> By means of Law No 212/2018, in force since 02.08.2018

<sup>3</sup> By means of the changes of art. 24 paragraph 3 and 4

<sup>4</sup> Art. 7 paragraph 3

<sup>5</sup> Art. 8 paragraph 1

- The shortening of the written preliminary procedures by setting the court session on the same day the action is registered, and by carrying out the written procedure by this time. Before these changes were made, the first hearing date was only set after the conclusion of the preliminary procedure;
- The obligation of the authority (as defendant) to attach to the statement of defence the documents underlying the administrative act. This will save, in practice, at least one court hearing (in which the submission should be disposed).

One last aspect that must be mentioned is the transfer of disputes over the execution of administrative contracts to courts' civil departments. Disputes arising before or in connection with the conclusion of such contracts stay in the jurisdiction of the administrative departments. Due to the similarities in the objects of these disputes, this change is thought to be controversial.

Depending on the source of the dispute over an administrative contract, the dispute will be treated by different judges. Disputes regarding the execution of the agreement will be subject to general procedural rules, while the enforcement of the court decision will take place according to the dispositions of the civil procedure code and the special laws on the enforcement of claims against authorities and public institutions. The prescription is determined by the civil code.

## Conclusion

The changes made by the legislative body are mainly positive, since they regulate a series of problems known to arise in practice and in legal discrepancies. They also help to speed up the proceedings, this being one of the most important principles in administrative procedures.

Controversies have arisen as a result of the newsy introduced, varying treatment of disputes over administrative contracts based on whether the dispute is related to their signing or their execution.

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