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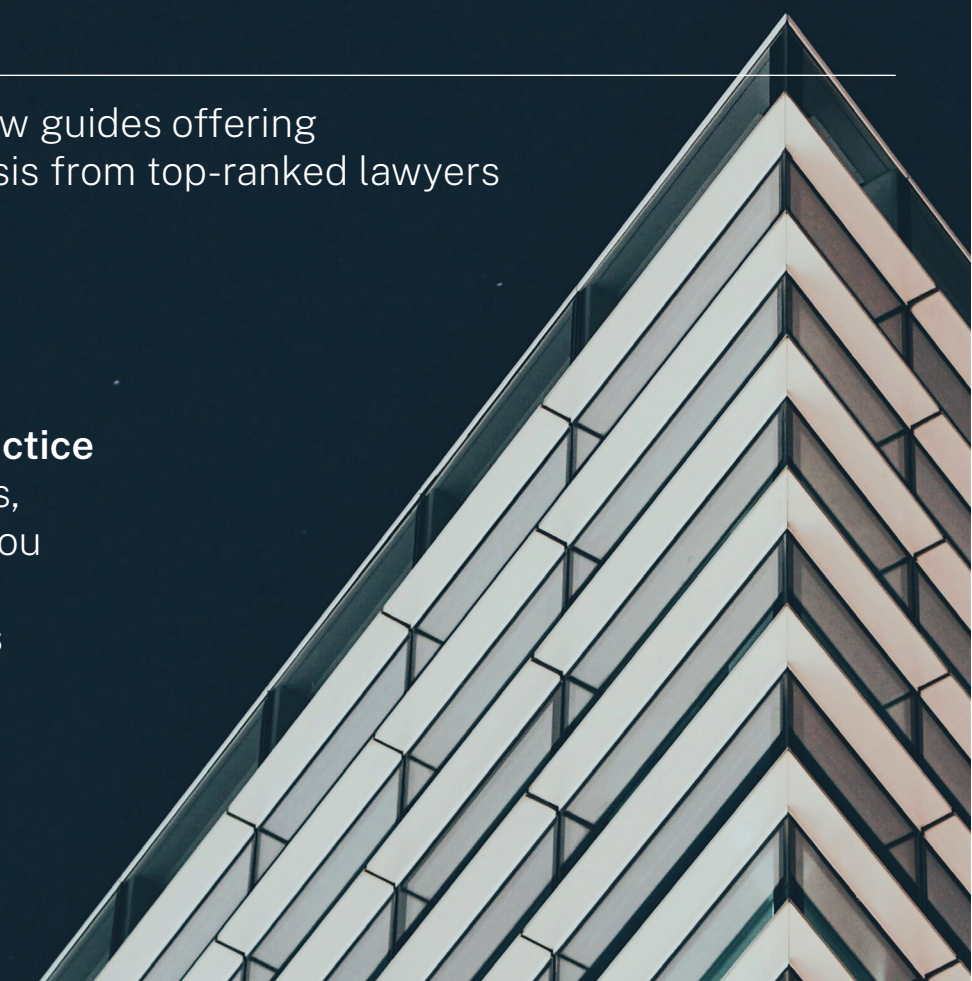

Greece: Law & Practice

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GREECE

Law and Practice

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Machas & Partners was established in 2011 by Petros Machas. Known for its commercial pragmatism and pro-business approach, the firm serves both corporate and private clients across a wide range of legal matters, as well as public entities, public bodies and Greek government ministries. The firm has gained significant recognition in the field of public/administrative law, public procurement law and infrastructure in the last few years. The firm's core values of professional excellence, value-added service and ethical integrity along with the adoption of best practices have helped it grow and earn a solid reputation in Greece and abroad. Its multi-jurisdictional exposure as a law firm goes side by side with a team of lawyers who are qualified to practice under Greek, UK and US law.

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1. Jurisdiction

1.1 General Rules or Specific Regimes?

There are specific rules and principles governing the procedure for the exercising of remedies (and any subsequent appeals) against decisions issued by the administration.

Specifically, in the Greek procedural system of administrative justice, a rule of one-time exercise of remedies and appeals applies. In addition, administrative proceedings are governed by the principle:

- of the free disposition of the subject matter of the court proceedings;
- of a court ruling within the limits of the application;
- that the court proceedings may be terminated on the motion of the party lodging the appeal, whereby the court must ensure the proper conduct of the proceedings;
- of interrogation;
- of concentration;
- of public disclosure;
- of written preliminary proceedings;
- of oral argument in the proceedings;
- of the statement of the grounds for court decisions;
- of equality of the opposing parties;
- that both parties must be heard; and
- of the bona fide conduct of proceedings.

However, in addition to these general principles, there are also special rules governing the judicial review of administrative decisions, which relate to distinguishing administrative disputes in terms of disputes for the annulment of administrative decisions and disputes of substance challenging administrative decisions on their merits.

In particular, according to the approach that corresponds most closely to the provisions of Greek law, the main criterion for distinguishing administrative disputes into annulment and substantive disputes are:

- the authority of the court to adjudicate the dispute submitted before it (ie, the extent of the review of the facts of the dispute which the court may or is obliged to undertake); and
- the consequences of its decision.

In annulment proceedings the court may annul the contested act/decision taken by the administration in whole or in part, while in substantive proceedings the court may annul or even modify the contested act/decision.

As a result of this distinction, there are two procedural systems, in the sense that the adjudication of annulment proceedings and substantive proceedings are governed by separate procedural provisions.

1.2 Forum for Judicial Review

According to Article 94(1) of the Constitution, administrative disputes are referred to the Council of State and the ordinary administrative courts, as provided by law, without prejudice to the powers of the Court of Audit.

As a general rule, annulment disputes are heard by the Council of State. However, by express constitutional provision, certain categories of cases that fall under the competence of the Council of State to annul may, depending on their nature or importance, be referred to the ordinary administrative courts, by law. The Council of State will hear cases at second instance, as provided by law.

Substantive disputes will be assigned to the ordinary administrative courts (Administrative Courts of First Instance and Administrative Courts of Appeal), except for substantive administrative disputes, which the Constitution itself or the law assigns to the Council of State or other courts.

2. Target of Challenge

2.1 Determining Susceptibility

In order for an administrative act to be admissibly and legally challengeable, it must constitute an enforceable administrative act. Enforceability refers to the binding nature of an administrative act, which does not require a prior court decision.

In contrast, non-enforceable acts that are not susceptible to challenge are internal administrative acts, informational documents, recommendations, opinions, preparatory acts, confirmatory measures of the administration as well as interim acts leading to the adoption of a final enforceable administrative act.

Moreover, formal laws cannot be challenged directly in court. However, the constitutionality of these laws is reviewed as an incidental matter. Furthermore, governmental acts, ie, acts relating to the administration of political power or the operation of government, cannot be challenged in court.

3. Nature of the Decision

3.1 Challenging Primary Legislation

In line with Article 95(1)(a) of the Constitution and Article 45(1) of Presidential Decree No 18/1989, an application for annulment may be brought against acts of the administrative authorities and legal persons under public law. In providing for the annulment of acts of the administrative authorities by means of an application for annulment, the Constitution excludes the possibility of an application for annulment being brought against legislative acts and against provisions of a formal law of a regulatory nature in particular. Consequently, in the Greek procedural system, no one may directly challenge a formal law or primary legislation. In addition, there is no Constitutional Court in the Greek legal system.

However, the constitutionality of a provision of a formal law (primary legislation) may be reviewed in an incidental manner. This court authority derives from an express provision in the Constitution and means the courts must not apply a law whose content is contrary to the Constitution. The incidental review of constitutionality can therefore be carried out by any court at any level (diffused constitutional review).

If, in the context of the incidental constitutional review, the law is found to be unconstitutional, then it is not applied in the specific case, but this inapplicability does not mean it is abolished, as under Greek law, court decisions do not constitute a source of law.

3.2 Challenging Secondary Legislation

Unlike primary legislation, it is possible to challenge secondary legislation before the administrative courts. In particular, ministerial decisions, joint ministerial decisions and Presidential Decrees or other regulatory administrative acts may be challenged by means of an application for annulment before the ordinary administrative courts or the Council of State.

The grounds on which these acts may be annulled by the courts are:

- the lack of competence of the authority which issued the act;
- violation of an essential procedural requirement;
- violation of an essential provision of law; and
- misuse of powers.

3.3 Government Decisions Affecting Sole Individuals

In addition to administrative acts that create impersonal rules of law, ie, regulatory administrative acts, individual administrative acts, ie, those containing an individual rule or a regulation that is completely individualised and specific, addressed to a particular person and that refer to details that are specific to them, may also be challenged before the court.

However, the legality of individual administrative acts is not, as a rule, subject to incidental review. Once the time limit for direct challenge has expired, it is not possible to review their legality in an incidental manner.

The period for legal challenge of individual administrative acts will commence from the time of their notification or full knowledge thereof, while for those that are by law subject to public disclosure, the period will commence, for the addressees, from the notification or full knowledge thereof, and for any third party, from their disclosure.

3.4 Agreements Between Private Entities and Public Bodies

The contractual activities of the administration are reflected in the conclusion of private law, public law or administrative contracts.

In order for a contract to be classified as an administrative contract:

- at least one of the parties to the contract has to be the State or a legal entity under public law, which exercises public authority;
- the subject matter of the contract has to be related to the exercise of a public service or to serve a public purpose; or
- the drawing up and performance of the contract has to be governed, at least in part, by rules of administrative law, or the contract has to contain terms which create an exceptional contractual regime in favour of the State or the legal entity under public law, in particular the possibility of intervening unilaterally in the contract and imposing penalties.

If none of these three elements is satisfied, the contract in question does not constitute an administrative contract but a private law contract. In light of Article 94(3) of the Constitution and Article 1(a) of the Code of Civil Procedure, private law contracts between the State, acting as fiscus, and individuals may be challenged before the ordinary civil courts.

3.5 Challenging Decisions Without Legal Effect

Only enforceable administrative acts are admissible and can be legally challenged before the administrative courts.

In contrast, non-enforceable administrative acts, which do not give rise to legal effects, may not be challenged in the administrative courts. Typical examples of non-enforceable administrative acts include, inter alia:

- internal administrative acts;
- information documents;
- recommendations;
- simple opinions;
- interpretative circulars;
- confirmatory administrative measures; and

- interim acts that result in the adoption of a final enforceable administrative act.

4. Nature of the Decision-Maker

4.1 Judicial Review of Commercial and Non-Governmental Decisions

It is possible to take legal action in the courts against a person or entity engaged in commercial or non-governmental activities. However, this is only possible, where:

- the person or body is not acting under public authority; and
- the act or activities do not serve a public purpose and are not related to the exercise of a public service.

The dispute in question will be brought before the civil courts and not before the administrative courts.

5. Ouster

5.1 Legislative or Contractual Limits on Judicial Review

The competence of the ordinary administrative courts and the Council of State to hear administrative disputes is enshrined in Article 94(1) of the Constitution. The jurisdiction of administrative courts cannot therefore be abolished by law or by contract.

Both express and implied agreements by the opposing parties to extend the jurisdiction of the court, either in terms of substance or locality, is prohibited. However, Article 94(3) of the Constitution provides that it may be possible to entrust the hearing of private disputes to administrative courts by law or of substantive administrative disputes to civil courts by law in special cases and in order to achieve uniform application of this legislation.

6. Standing

6.1 Requirements for Administrative Law Challenges

One of the prerequisites for an admissible challenge to acts/decisions taken by the administration is that the claimant has a legitimate interest. A legitimate interest is an interest that:

- is not contrary to law (a conflict with the law occurs in particular where the interest invoked is contrary to a prohibitive provision of law or to the provisions on good faith and abuse of procedural rights);
- is recognised by the court as deserving legal protection. Deserving legal protection includes an interest based on a right, as well as an interest in respecting the limits of the administration's discretionary powers. Neither the simple expectation of financial benefits nor a general interest in political or social life constitutes an interest deserving legal protection; and
- is in need of this legal protection.

The legitimate interest must meet the following criteria.

- It must be directly attributable to the claimant and not to a third party.
- It must be an interest that is linked to the claimant by a special connection by reason of the claimant's relationship to the legal and/or factual situation adversely affected by the act or omission challenged.
- It exists cumulatively at the time:

(a) of the issuance of the act of the administration;
(b) the appeal is lodged; and
(c) of the last hearing of the appeal.

If the court finds that the appeal is brought without a legitimate interest, it will dismiss it as inadmissible.

6.2 Charities and NGOs

Under the procedural rules for administrative disputes, an individual or a legal person affected by an administrative act or whose legal interests, even if non-monetary, are affected by it, may bring an appeal.

Within the meaning of the law, the legitimate interest of a legal person in challenging an administrative act is to be assessed on a case-by-case basis, particularly in light of the purpose of the legal person and the content of the act.

In the case of NGOs dealing with human rights, the case law of the Council of State has not clarified the concept of a legitimate interest in the intervention of associations or NGOs in annulment proceedings.

However, the case law of the Council of State is completely different in environmental annulment proceedings. The Council of State has extended the legitimate interest of environmental NGOs in applying for annulment or intervention if the protection of the environment is the main or even secondary reason for the existence and operation of the NGOs.

7. Other Parties

7.1 Joinder

A third natural or legal person may participate in pending proceedings by way of an intervention. The type of intervention and the procedure to be followed depend on the nature of the case, ie, whether it is a dispute on the merits or a dispute for annulment.

In annulment proceedings, additional intervention is only provided for in favour of the State, which is to say, only in favour of maintaining the validity of the administrative act challenged. The intervention is made under penalty of inadmissibility by means of a separate pleading, lodged within a specific time limit laid down in Presidential Decree 18/1989 and notified to the parties by the intervener.

In substantive proceedings, there are two types of third-party intervention. These are:

- the main intervention; and
- the additional intervention.

In a main intervention, the third-party claims, in whole or in part, the subject matter of the proceedings pending following an action. A third party may intervene by way of additional intervention in pending proceedings following an application or action in support of a party in whose favour they have an interest in the outcome of the proceedings. In particular, additional intervention is permitted both in favour of the applicant/appellant and in favour of maintaining the validity of the administrative act.

The intervention is made, under penalty of inadmissibility, by means of a separate pleading, lodged within a specific time limit laid down in the Code of Administrative Procedure or CAP

and notified by the intervener to the opposing parties.

In any kind of intervention, the intervener must demonstrate a legitimate interest. Special forms of intervention are also provided for under:

- Article 1 of Law 2479/1997: in proceedings before the Supreme Special Court, the Plenary of the Council of State, the Plenary of the Supreme Court or the Plenary of the Court of Audit, which raise the question of whether a provision of a formal law conforms with the Constitution or not, natural or legal persons or associations of persons who have a legitimate interest in the resolution of that question may intervene if the same question is pending before another court or judicial body of the same judicial branch to which they are opposing parties; and
- the additional intervention provided for in Article 1 of Law 3900/2010 (model/pilot proceedings), where the intervener is required to be a party to pending proceedings in which the same issue is raised, as determined in the act of the Commission that initiated the proceedings under Law 3900/2010.

By lawfully intervening, the third party becomes a party to the pending proceedings.

In addition to these cases of participation of a third party in pending proceedings, joint legal remedies (concurrence) may be exercised, according to the specific provisions of the law.

7.2 Roles of Additional Parties

Third parties in administrative proceedings can be:

- the third party opposing (caveator): a third party who is adversely affected by a decision issued in a court proceeding among others, and who has not filed an intervention, even though they have a legitimate interest in intervening, may file a third-party application to have the adverse decision set aside and the case reheard;
- third parties involved in the evidentiary procedure: the conduct of the evidentiary proceedings needs the assistance of third persons, such as witnesses and experts. Their status as third parties, vis-à-vis the opposing parties, is decisive for the credibility of the respective evidence; and
- third parties who, by virtue of their status as third parties, are placed in the position of an original party to the proceedings. These persons are the universal or special successors of natural persons, the administrator of the bankrupt party, the insurer in the event of an insurance substitution and, in the case of legal persons, the corporate scheme resulting from a merger, absorption, conversion, dissolution or transfer of a legal person. It is also common for another legal person to take the place of the defendant as a result of organisational changes in the management or the transfer of the relevant powers.

8. Evidence

8.1 Disclosure/Discovery

In administrative law, the principle of interrogation generally applies. The court will take all measures it considers appropriate to establish the truth, including, inter alia, taking evidence on its own initiative and drawing conclusions from it which are not necessarily proposed by the parties.

However, the principle of interrogation is linked to the principle of the free disposal of the subject

matter of the proceedings. This means that the commencement, substance, scope and conclusion of the administrative proceedings depend on the will of the parties and not on the court'

s own initiative. The principle of interrogation is also linked to the principle of a court decision within the limits of the application (in the sense of not aggravating the situation of the parties).

8.2 Alternatives to Disclosure/Discovery

In light of the fact that administrative proceedings are governed by the investigative system, but without prejudice to the free disposal of the subject matter of the proceedings and the limits of review set by the party in their appeal, there are specific procedural rules (legal rules of evidence) which ensure that the court has all the relevant information at its disposal.

In particular, the party (individual) is obliged to provide all the evidence supporting their claims within a certain time limit before the case is heard.

Similarly, the administration is obliged to send a report of the administration's opinions and the case file to the court within three months from the service of the appeal (for annulment proceedings) or at least 30 days before the hearing (for substantive proceedings).

The law provides for specific means of evidence which may be used by the parties to prove their claims, namely:

- the inspection;
- expert evidence;
- documents;
- the confession of the opposing party (individual);
- the statements of the parties;
- the witnesses; and
- the court documents.

8.3 Live Evidence and Cross-Examination

One of the means of evidence provided for in administrative proceedings is witnesses. The court may order the examination of witnesses not only on its own initiative but also following the request of a party. The proposal to examine witnesses may be made in writing at the preliminary hearing or by oral proposal in court.

If the proposal is made by oral proposal in court, the examination of a witness may be requested at the case hearing, provided that all parties are present and do not object to it. The witness may not only be questioned by the court but also by the parties, with the permission of the person conducting the examination.

Each witness will generally be questioned separately from the others. The examination of a witness in cross-examination with another witness or party may only be conducted before the court or the Judge-Rapporteur.

9. Time Limits and Preliminary Steps

9.1 Preliminary Requirements

In principle, the party whose interests are affected is not obliged to follow any preliminary procedures before bringing a case before the courts. However, preliminary proceedings must be followed where the law specifically provides for this, ie, the filing of an administrative appeal.

If the prescribed procedure for an administrative appeal is not followed, any appeal lodged is deemed inadmissible and will not be exam-

ined by the court. Where the law provides for an administrative appeal, the appeal or application for annulment is only admissible against the act or omission to act on the appeal.

In particular, in the field of public procurement, for contracts exceeding certain monetary thresholds, a special appeal procedure before the Hellenic Single Public Procurement Authority (HSPPA) is provided for. In this procedure, the tenderer is obliged to lodge an appeal before addressing the courts. Any direct appeal to the courts is otherwise considered inadmissible.

9.2 Exhausting Internal Appeals

See **9.1 Preliminary Requirements**.

9.3 Time Limits

In administrative proceedings, there are specific time limits for appeals. In substantive proceedings, an appeal against an administrative act or omission may be brought within 60 days of notification or full knowledge of the act, or within 60 days of the omission.

In tax and customs disputes, an appeal must be lodged within 30 days of notification or full knowledge of the act.

In annulment proceedings, the application for annulment must be lodged within 60 days of notification or full knowledge of the act, or within 60 days of the omission.

These time limits are extended if the party is domiciled abroad.

In particular, an action must be brought before the limitation period for the claim in question expires, according to the specific provisions of the law.

9.4 Evidence Required to Initiate a Claim

The information a claimant is required to provide to initiate a claim is contained in the opening statement of the pleading filed with the court.

In particular, the statement of claim must specify its nature, ie, whether it is an appeal or remedy and specify the type. The statement must also indicate the time and place it was drawn up and the particulars of the applicant (inter alia the applicant's VAT number is required) and the opposing party. In addition to these general particulars, each pleading must state the:

- authority which issued the act or omitted to issue it;
- act or omission challenged; and
- grounds on which the claimant bases their claim.

Evidence in support of the claimant's allegations do not have to be submitted with the opening statement of claim at the time of filing the pleading/intervention but are required to be submitted to the court within a certain time limit before the hearing of the case.

9.5 Procedural Stages

The party bringing the appeal raises the legal and factual pleas in law and main arguments in support of their claim as early as the introductory pleading of the appeal. The appellant may submit additional grounds for annulment of the contested act or omission to the court, within a specified period.

In addition, in actions for annulment and substantive proceedings, the party may submit pleadings in support of their claims or in rebuttal of those of the administration.

It is for each party to prove the facts relied on in support of its claims.

The evidence to prove the claimant's allegations does not have to be submitted with the opening statement when filing the appeal or remedy but is required to be submitted to the court within a certain period of time before the case is heard.

The administration is required to introduce a file into the proceedings, which contains its opinion report. The administrative file contains both public and private documents relating to the case and held by the public authority.

The administration is required to send the report of the administration's opinions and the case file to the court within three months of the service of the appeal (for annulment proceedings) or at least 30 days before the hearing (for substantive proceedings).

9.6 Initial Sifting Process

In order for the administrative court to proceed to a review of the merits of the case, it must examine whether the appeal is admissible. It does so, by examining whether the conditions of admissibility are fulfilled. In particular, it examines the:

- capacity of the party;
- capacity to bring legal proceedings;
- nature of the contested act;
- existence of a legitimate interest of the person bringing the appeal;
- observance, if any, of the procedure for administrative appeals (if provided for by law);
- timely lodging of the appeal; and
- payment of any administrative or court fee.

In particular, where the law provides for the observance of an administrative appeal procedure, the party must comply with that procedure before bringing an action before the court. If they do not, any appeal lodged will be inadmissible and will not be considered by the court. The purpose of observing the administrative appeals procedure is to assist the work of the courts, in the sense that the cases are brought before them in their actual and legal aspects, in addition to protecting the rights of the administered persons.

9.7 Expedited Proceedings

In line with the provisions of Law 4055/2012, if a case has not been heard for a period of more than 24 months from the filing of the initial statement of claim, any of the parties may, by application to the court, request that the proceedings be expedited. The sole criterion for submitting an application for expedition is that the case has not been heard for more than 24 months from the beginning of the proceedings. In other words, it is not necessary to put forward reasons of a substantive nature to justify the request.

Furthermore, Articles 211 et seq of the CAP provide for the institution of the provisional adjudication of a claim. Under those Articles, where an action to set aside a claim arising out of pecuniary damages has been brought, the court may, at the request of the plaintiff, provisionally award them the part of the claim they brought the action for. If the application is granted, part of the claim will be provisionally awarded, but not more than half of the claim in respect of which the action was brought.

In the case of natural persons, the impossibility or particular difficulty of the claimant to meet their own and their family's immediate living requirements may constitute grounds for provisional enforcement of a claim. In the case of

legal persons, the grounds may be based on the risk of serious financial distress.

10. Grounds

10.1 Scope of Judicial Review: Merits v Process

The extent of the court's jurisdiction depends on the nature of the dispute under examination, ie, whether it is an administrative substantive dispute or an administrative annulment dispute.

In particular, an application for annulment seeks the total or partial annulment and not the modification of an administrative act. The court hearing an action for annulment therefore only reviews the act in terms of its legality and not its substance. In annulment proceedings the court may annul the administrative act in whole or in part.

In contrast, in substantive disputes, the court may either annul the administrative act in whole or in part or modify it.

This applies in the case of the admission of an appeal, as the court may reject the appeal lodged in both types of dispute.

10.2 Constitutional Challenge

The Greek Constitution is written and strict and has supremacy compared to the common law. While the review of the constitutionality of formal laws is always incidental, the review of the constitutionality of substantive laws, especially with regard to regulatory acts, is not always conducted by way of incidental review. The review of the annulment of regulatory acts carried out by the Council of State concerns, inter alia, the review of the *"violation of the law"*.

This means the violation of the legal rules which derive from any source of administrative law, ie, even from the Constitution directly and EU or international law. This means that, especially for regulatory acts directly challenged before the Council of State, the annulment of a substantive law may be sought on the grounds of its unconstitutionality.

When a regulatory administrative act is challenged by an application for annulment directly before the Council of State and arguments of unconstitutionality are raised, these may relate to the unconstitutionality of its legal basis, ie, its authorising statutory provision. In these cases, the constitutionality of the authorising formal law is examined in passing on the occasion of the challenge to the regulatory act. In other words, there is no direct constitutional review.

10.3 Procedural Errors

One of the grounds for the annulment of administrative acts is the violation of an essential procedural requirement.

Administrative procedure is defined as the set of administrative actions aimed at checking the legal requirements, preparing and issuing an administrative act. All rules relating to the administrative procedure as defined above in the preamble to the adoption of an administrative act may be characterised as formal procedural rules or *"types of procedure for the adoption of an administrative act"*.

The violation of any procedural rule constitutes a breach of a rule of law and should, in principle, lead to the annulment of the act. However, for administrative efficiency reasons, Greek administrative law considers, exceptionally, that the infringement of minor procedural rules does not

constitute grounds for the annulment of the act adopted.

It is up to the court to assess whether or not the procedural rule is essential.

10.4 Factual Errors

The infringement of a provision of law in substance is another ground for annulment. According to legal doctrine, infringement of a provision of law in substance includes an incorrect substantive assessment of the existence or non-existence of facts as a ground for annulment in administrative substantive disputes.

However, as case law has consistently held, the substantive assessment by the administration of the facts constituting the legal requirements for the adoption of the administrative act is not subject to review for annulment.

10.5 Abdication or Fettering of Discretion

The administration will exercise its authority on a binding or discretionary basis. Binding authority is when the law fully binds the administration as to whether, how and when to act. Discretionary authority, by contrast, is exercised when the rule of law governing the administration's action gives it the discretion to decide when and what to do, and sometimes even whether to do it.

Violation of a substantive provision of law is a ground for annulment. Infringement of a provision of law occurs when:

- the administration does not comply with an express requirement or prohibition of a rule of law which establishes a binding power or discretion; or
- in a rule which provides for a discretionary power, the administration infringes the lessons of common experience and reason, the principle of equality, the principle of good administration and, in particular, the principle of proportionality.

Furthermore, judicial review of the administration's decisions concerning the use of discretionary powers lies in checking that the extreme legal limits of discretion have not been exceeded.

In any case, in line with the principle of legality, the administration must issue decisions in a competent manner, as expressly provided for by the relevant legislation. Any decision or act adopted without authority will constitute grounds for its annulment.

10.6 Bias

The principle of impartiality of administrative bodies is enshrined in Article 7 of the CAP. Accordingly, administrative bodies, whether unilateral or collective, must provide guarantees of impartial judgment in the exercise of their powers.

Administrative bodies, and members of the collective bodies of the administration, in particular, do not provide guarantees of impartial judgment only where they have a personal interest in the outcome of a particular case or a special connection or a special relationship or enmity with the persons concerned. They also do so where there is a reasonable suspicion of bias, such as where the members have an already formed and irreversible, ie, prejudiced, opinion about the case or the person they are about to judge.

Where an administrative act has been adopted in breach of the principle of impartiality, that act may be challenged on that ground. This falls within the broader category of grounds for

annulment and constitutes a breach of a provision of law in substance, in particular.

10.7 Unequal Treatment

From a legal perspective, equality is a general principle and an individual right. Article 4(1) of the Constitution states that: *"Greek citizens are equal before the law"*. This establishes a legal rule that requires the equal treatment of persons in the same or similar circumstances. Equality is not a formality, but proportional, in the sense of equal treatment of similar cases and dissimilar treatment of dissimilar cases, as has also been held by the settled case law of the Court of Justice of the European Union.

Different treatment is warranted if it is based on an objective and reasonable criterion. This is to say, if it is related to an objective which is legitimately pursued by the legislation in question, and the difference is proportionate to the objective pursued by the treatment in question.

In terms of procedural law, judicial review of the principle of equality is a review of the limits and not of the fairness of legislative choices. It is a review of whether there is manifestly unequal treatment of persons in the same or similar circumstances or arbitrary assimilation of persons in different circumstances.

An administrative act or decision adopted in breach of the principle of equal treatment (principle of equality) may be subject to review before the competent court.

10.8 Human Rights

The European Convention on Human Rights (ECHR) was adopted under the auspices of the Council of Europe in 1950 to protect human rights and fundamental freedoms. It entered into force on 3 September 1953. In the same year Greece ratified the ECHR (Law 2329/1953). Historically, there was a gap in the implementation of the ECHR by Greece. Greece withdrew from the Council of Europe in December 1969. It re-entered the Council of Europe with the restoration of democratic legitimacy in 1974 and had to re-ratify the ECHR which it did by Law Decree 53/19.9.1974.

Bearing in mind that the ECHR has been ratified by the Greek legislature, an administrative act issued in violation of the relevant provisions of the ECHR can be annulled by the court on the ground of violation of a substantive provision of law.

Of course, any individual, group of individuals or NGO which considers that its rights under the ECHR have been violated by a member state and which has exhausted all domestic remedies may appeal to the European Court of Human Rights (ECtHR). The ECtHR has jurisdiction to award *"fair compensation"* where a violation of ECHR provisions is found to have occurred.

10.9 Proportionality

The principle of proportionality is constitutionally protected. In particular, this principle is enshrined in Article 25(1) of the Constitution. The Constitution enshrines proportionality as a general limitation of restrictions on fundamental constitutional rights. More specific manifestations of the principle of proportionality are the principle of appropriateness, the principle of necessity and stricto sensu proportionality.

According to the principle of appropriateness, the restriction imposed must be appropriate to the result sought, while according to the principle of necessity it must be necessary to achieve the objective pursued. In the strict sense of proportionality, the restriction must not be more

onerous than the measure necessary to achieve the intended result, ie, the benefits of the restriction must outweigh the damage resulting from it.

On the basis of the above, an act may be challenged on the basis of a breach of the constitutional principle of proportionality and may be a ground for annulment.

10.10 Additional Grounds

The grounds for annulment and grounds of appeal are listed exhaustively in the law and are:

- lack of competence of the institution issuing the act;
- violation of an essential procedural requirement;
- violation of an essential provision of the law; and
- misuse of powers.

In the specific case of an action on the merits, the following grounds may be added, although they may be included in the ground of violation of an essential provision of law:

- incorrect substantive assessment of the existence or non-existence of facts; and
- misuse of the administration's discretionary powers.

10.11 Exempt Decisions

Non-enforceable administrative acts, which do not give rise to any legal effects, cannot be challenged in court. Typical examples of non-enforceable administrative acts include, inter alia:

- internal acts of the administration;
- information documents;
- recommendations;
- simple opinions;
- interpretative circulars;
- confirmatory administrative measures; and
- intermediate acts leading to the adoption of a final enforceable administrative act.

Furthermore, government acts, ie, acts relating to the administration of political power or the functioning of government, cannot be challenged in court.

See also **2.1 Determining Susceptibility** and **3.5 Challenging Decisions Without Legal Effect**.

11. Defence

11.1 Timing and Grounds of Defence

In their pleadings, the parties present their views on the factual and legal aspects of the case. The pleading may not be used to extend the subject matter of the proceedings either in respect of the facts or in respect of the law. It may only be used to elaborate on existing arguments.

Therefore putting new pleas in law and new factual allegations forward is inadmissible.

The time limits and number of pleadings is expressly provided for in the legislation and varies according to the nature of the administrative dispute (in terms of annulment and merits).

12. Interim Relief

12.1 Common Forms of Interim Relief

In Greek administrative law it is possible to obtain interim judicial relief. In particular, both in administrative substantive and administrative annulment disputes, an application for suspension may be filed, provided that the applicant invokes irreparable harm from the execution of

the contested act and has filed a clearly well-founded appeal or application for annulment (depending on whether it is a substantive or annulment dispute).

Even if these conditions are met, the application for suspension may be rejected if the action or application for annulment is manifestly inadmissible or unfounded, even if the harm to the applicant from the immediate enforcement of the contested act is irreparable, and if it is also considered that the negative consequences of admission would outweigh the benefit to the applicant, when weighing the harm to the applicant, the interests of third parties and the public interest.

13. Remedies

13.1 Damages

In line with the general rule set out in Article 71(1) of the CAP, an action may be brought by anyone who has a pecuniary claim against the State or another public body because of any legal relationship under public law. An action under administrative procedural law is a legal remedy brought before the ordinary administrative courts by which an individual requests the court award them a pecuniary claim or pay them a sum of money owed to them by the State or a public body because of any legal relationship under public law.

The State is also liable to pay compensation for the damage caused to a natural or legal person by:

- the adoption of an unlawful administrative act;
- the unlawful failure to adopt such an act; or
- unlawful material actions or unlawful omissions of material actions on the part of its bodies, in cases where they arise from the organisation and operation of public services and are not connected with the private management of the State or are not due to the personal fault of a body acting outside the scope of its functions (Articles 105 and 106 of the Introductory Law or Civil Code).

13.2 Invalidating Legislation

If the court finds that a law is contrary to the Constitution, it is declared invalid. This means that the unconstitutional law is not applied by the court in the specific case, but it is not altogether abolished from the legal order. It is a law that is applied by all other courts and continues to be valid when it is considered constitutional by them.

Exceptionally, the law is abolished when it is declared unconstitutional by the Supreme Special Court, in exercise of the competence provided for in Article 100(1)(f) of the Constitution. In this case, the declaration of unconstitutionality may be given retroactive effect (Article 100(4) of the Constitution). That is, the unconstitutional law is considered legally non-existent retroactively (ex tunc) and not only for the future (ex nunc).

What applies to the review of the constitutionality of laws also applies to the review of the substantive compatibility of laws with other higher rules of international and EU law as well as to laws of increased formal force. When a national provision is found to be in conflict with EU or international law or other laws of increased formal force, the courts are obliged not to apply it.

When it comes to secondary legislation (administrative regulations, ministerial decisions, etc) in

the event that these are challenged before the court with a request for annulment, the court may annul/eliminate them in whole or in part.

13.3 Mandating Government Action Through Court Orders

According to Article 95(5) of the Constitution, the administration has an obligation to comply with court decisions. Their compliance constitutes the most important aspect of the principle of legality and the rule of law. The legal obligation of the administrative bodies to comply with court decisions stems directly from the fundamental principle of the rule of law and the constitutional separation of functions principle. The obligation is complementary to the constitutional enshrinement of the application for annulment as the general remedy against illegal administrative acts as well as the judicial *"legal protection"* of the administered person guaranteed by Article 20(1)(c) of the Constitution.

The provision of Article 95(5) of the Constitution extends this compliance obligation to the decisions of all courts regardless of jurisdiction. This rule is general and absolute and is not subject to the reservation of law.

Furthermore, the violation of the obligation to comply with judicial decisions creates liability for each body responsible for compliance. The Three-Member Council of the relevant branch is the competent body for the control of the compliance of the administration with court decisions under Law 3068/2002.

13.4 Next Steps Where a Decision Is Found Unlawful

In annulment proceedings, if the contested administrative act/decision is found to be illegal in whole or in part, the court annuls the act in whole or in part. The annulment decision has a transformative effect and shapes the legal relationship, eliminating the contested act with respect to everyone involved. The operative part of the decision to annul develops force erga omnes in line with Article 50(1) of Presidential Decree 18/1989, in contrast to all other elements of the judicial decision (reasoning, rejection order) which only create a binding force in the form of res judicata between the parties.

The same applies to substantive proceedings. However, the substantive court may annul the administrative act in whole or in part or choose to amend it.

In cases of annulment of the contested act, the court refers the matter to the administration in order to proceed with the legal actions.

14. Costs

14.1 Mechanisms to Protect Claimants From Excessive Costs

There are mechanisms in place to protect interested parties from the excessive costs of appealing to administrative courts. In particular, the CAP enshrines the principle of legal aid, which can be provided to citizens with low incomes when administrative cases are being handled.

At the same time, in annulment disputes, the party exercising the legal remedy may be exempted from the obligation to pay fees and charges, if, in the opinion of the court, there are likely grounds of poverty.

In substantive disputes, the party may be exempted from the advance payment of the court stamp duty and the fee, if it is proven that this advance payment creates a risk of prevent-

ing them from maintaining their essential needs and those of their family.

In addition, specific limits are set on the amount of fees and court stamp duty that the administered person is required to pay to the public, depending on the category of the petition they wish to file or the disputed amount.

14.2 Public Interest Costs

Fees are costs awarded in favour of the State. There are specific limits on the amount of fees depending on the category of the application that the applicant wishes to file or the amount of the dispute in question.

Furthermore, in both substantive and annulment disputes, it is provided that the losing party is ordered to pay the legal costs of the winning party. However, the court, assessing the circumstances, may exempt the losing party, in whole or in part, from the legal costs.

14.3 Wasted Costs

The obligation to pay a fee, as a condition of the admissibility of a legal remedy or appeal by an individual, aims to prevent the exercise of reckless and unfounded legal remedies and appeals, for the sake of the proper functioning of the courts and the effective administration of justice. For this reason, the fate of the fee (forfeiture, doubling or return to the payer) depends on the outcome and the general circumstances of the trial. For example, if the court finds that the legal remedy or appeal in question was clearly inadmissible or unfounded, it is possible to order that it be multiplied.

15. Appeals

15.1 Right to Appeal

In Greek administrative law, appeals can be made in both substantive disputes and annulment disputes. Appeals in substantive disputes are governed by Articles 92 et seq of the CAP, while appeals in annulment disputes are governed by Presidential Decree 18/1989. The appeals aim to get a higher court with more experienced judges to re-assess a case.

The appeals constitute the second and final instance of jurisdiction. The second instance court does not review the first instance decision in its entirety but only the points affecting the decision. It should be noted that the second instance of jurisdiction is not enshrined in the Constitution or Article 6 of the ECHR. Therefore, because it is not mandatory, the provision that in some cases there is no right to appeal is not against the Constitution.

15.2 Appeal Forums

In substantive disputes, an appeal is filed against the decision of the first instance ordinary administrative court (the Administrative Court of First Instance) before the second instance ordinary administrative court (the Administrative Court of Appeal). As a rule, all final decisions issued by administrative courts of first instance are subject to appeal, provided that the filing of an appeal is not excluded by law. That is, there are decisions that are irrevocable or categories of cases that are heard in first and last instance by the Administrative Court of Appeal.

In annulment disputes, an appeal is filed in the cases provided for by law before the Council of State.

In substantive disputes, provision is also made for appeals against judgments given on appeal or judgments given at first and last instance.

15.3 Permission to Appeal

No permission of any kind is required from the court of first instance, which issued the contested decision, in order to file an appeal. The admissibility of the appeal is assessed in line with the legislation. The conditions for the admissibility of the appeal are set out in the CAP for substantive disputes and in Presidential Decree 18/1989 for annulment disputes.

15.4 Rehearing of Appeal?

The appeal constitutes the second and final instance of jurisdiction. The second instance court does not review the first instance decision in its entirety but only examines the points on which the decision is affected (transferable effect of the appeal). However, these points can be legal or factual.

The purpose of the appeal is to have the case re-assessed by more experienced judges.

The grounds for appeal are not limited, ie, there is no numerus clausus of the grounds for appeal that may be raised. On the contrary, a ground for appeal may establish any legal or factual error in the contested decision, as well as any failure of the first instance court to investigate ex officio what it was obliged to. On the other hand, an appeal against judgments given on appeal does not constitute a third jurisdictional step because a full review of the case is not allowed, given that the appeal against judgments given on appeal, only examines errors of law.

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