

Administrative Law

Introduction II

Administrative body

Administration/Admin Activity

Admin
Act

Normative Act

Real Act(Action or Omission)

Administrative
procedure

Costello Roberts v. the UK

- Applicant: corporal punishment by teacher in a private school; complaint under Art 3, 8 and 13 ECHR, i.e. degrading treatment, private life, effective remedy
- Government: while state exercised limited degree of control over independent schools, it is not directly responsible for every aspect of how they are run, especially for matters of discipline
- Held:
 - State under positive obligation (Art. 1) to secure to everyone the rights enshrined in the Convention
 - Discipline is part of the right to education: UN Convention on the Rights of the Child
 - Right to education equally belonging to private/public school pupils
 - States cannot absolve themselves from responsibility by delegating their obligations to private bodies
 - Although the punishment was administered by headmaster of private school, such act may engage state responsibility:

Ostra Lopez v. Spain

- Applicant: home 12 meters away from toxic plant built with state subsidy on municipal land by private company causing health issues; degrading treatment, right to private/family life & home
- Held:
 - Theoretically, state not directly responsible. However, built on municipal land (licensed) and construction subsidized by state
 - State responsibility attaches to acts of private entities if the state has **facilitated** or **colluded** in such acts, even if there was no delegation of functions!

Van der Musselle v. Belgium

- Complaint: applicant, member of Belgian Bar, obliged to represent indigent individuals amounting to forced labor under Art. 4(2)
- Government: Belgian state was not involved in the operation of the Bar, therefore, the state cannot be answerable for Bar's acts
- Held: under
- Belgian state is obliged to provide free legal aid. So, its legislation 'compels' the Bar Associations to 'compel' members of the Bar to defend indigent persons.
- Such a solution cannot relieve the Belgian State of the responsibilities it would have incurred under the Convention had it chosen to operate the system itself

LFAAP & Special Procedures

VD2/0082/05/09

- State Hygienic Inspection fined the hotel 40.000 AMD for a number of violations on the basis of the Code on Administrative Offences
- Administrative Court invalidated the admin act imposing the fine reasoning that the act did not comply with the requirements of Administrative activity prescribed by LFAAP (Art. 55), among others
- Cass Court disagreed.
- CAO has specific requirements towards AAs, which makes the LFAAP inapplicable on the ground of Art. 2(3) of the LFAAP.

LFAAP

Article 55. Requirements for Written Administrative Act

Written administrative act shall meet the following requirements;

- a) the content of administrative act shall be in conformity with the requirements prescribed by law for the issuance of such act, *it shall contain notice about all those substantial factual and legal circumstances that served basis for making the decision by administrative body.*

Code of Administrative Offences

Article 281

The decision shall contain the name of the body which has adopted it, the date of case examination, data on the person concerning whom the case is being examined, the circumstances affirmed during the case examination, the normative act prescribing liability for that particular offence, the decision made on the case.

The Scope of the LFAAP

- **Article 2**
- 3. Particularities of **special** types of administrative **procedures** shall be prescribed by the laws and international treaties of the Republic of Armenia.
- 4. This law does not apply to relations regulated by the norms of judicial-procedural law.
- Previously, Sections II-VI did not cover admin offences - deleted

Admin Law vs Criminal Law: Admin Process vs Criminal Process II

47/4129/05/08

- The investigator decided to inspect the company, which was assigned to the Ministry of Finance (CPC, Art. 55(4)(5)). The Minister issued order on conducting audit in the company. Admin Court quashed the Minister's order. Deputy Prosecutor General appealed by way of cassation.
- The Prosecutor:
 - Audit order not subject to appeal in the AC. Order not AA. Reference to Art. 2(4) LFAAAP. Order was issued pursuant to criminal law decision.
- HELD:
 - Admin Court judgment reversed.
- REASONS:
 - Inspection conducted pursuant to CPC are outside the scope of LFAAP and Law on Inspections.
 - Provisions of LFAAP and Law on Inspections are inapplicable to this dispute

What is the situation now?

CAP, Article 3, Standing

1. Physical and legal persons v. state or local self-government body or their officials when due to their administrative acts, actions or omissions:

- His rights and freedoms have been violated or may be directly violated
- He has unlawfully been assigned a duty
- He has unlawfully been subjected to administrative liability

2. Administrative bodies or officials:

- Claiming to subject a physical or legal person to administrative liability, **if the law prescribes that only court can subject to administrative liability**
- Claiming to deprive a physical or legal person of certain rights or to impose certain duties on them, if the law reserves it to the court
- Against another administrative body on competency disputes, if it cannot be solved in a superior order
- Against another administrative body on personal data protection cases

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CAP, Article 3, Standing

- 3. State and local self-government bodies or officials v. administrative body when due to its administrative acts, actions or omissions the rights of the state have been violated or may be directly violated
 - The protection of those rights is under the authority of these bodies
 - The dispute cannot be solved in a superior order
- 4. Ombudsman and the faction of Yerevan Council on challenging the legality of normative acts
- 5. NGOs in the field of environmental protection
 - At least 2 years in the field prior to the submission of the claim
 - The claim stems from the goals stated in the NGO charter and is directed towards the protection of the beneficiaries of the NGO
 - NGO has taken part in the initial stage of public discussions on the activities it is challenging now or it was deprived of the right to take part in public discussions

CAP, Article 10. Subject matter jurisdiction

- Cases *arising from public legal relations*, including:
 - Disputes related to entering, exercising, quitting public service
 - Disputes among administrative bodies not subject to higher review
 - Disputes on suspension or termination of associations acting or having the aim to act in public law sphere
- Out of subject matter jurisdiction of Admin Court:
 - 1. cases within the jurisdiction of Constitutional Court
 - 2. criminal cases within the jurisdiction of courts of general jurisdiction
 - 3. cases related to the sentence execution

Admin Law vs Private Law

- **FACTS:** Prosecutor's Office v. Margaryan on terminating the long service pension payment. CGJ referred the case to Admin. Court, the case was terminated. Appealed to the Cassation Court
- **Admin. Court Reasoning**
 - Outside the scope of CAP, Article 3, part 2, point 2 – no deprivation of the right to pension
 - Social security relations
- **ISSUE:** whether the claim on terminating the pension payment constitutes a dispute arising from public relations?
- **HOLDING:** Yes, pension payment stems from the nature of public relations and is exercised within the executive enforcement activities of state bodies

Definition of public legal relations – arising during the executive enforcement activities of state bodies within the relations between administrative bodies and physical or legal persons.
- Pension payment is directly connected with state policy exercised in the field of pension security.

Admin Law Public Law Labor Law 47/2087/05/12

- Head of the State Revenue Service fired an employee of customs services by an order applying the rules of Labor Code and the Law on Customs Service. Cass Court admitted the case for contributing to uniform application of the law in the fields of labor, public and administrative laws
- Freedom to choose employment v. right to public service
- Conclusions:
 - Relationships in public service are regulated by labor law as much as they are not regulated by specific public service laws, e.g. Law on Customs Service
 - The activity of public servants also has administrative law nature, because public functions are exercised through public servants
 - In the exercise of public (customs) service admin law is manifested through external, intra-organizational, subordinational, vertical and horizontal legal relationships
 - Public servant may enter both labor law and administrative law relationships with his/her employer (the state) depending (on case-by-case basis) on whether dispute involves labor or admin functions
 - Entering, exercising and quitting public service
- In dismissal cases both labor law and public service law apply
- Dismissal was under employment law, because the ground was redundancy, which is labor law ground.
- Other public services cases that have labor law issues subject to CGJ