

Administrative Procedure II

Right to be Heard in AP:

Armenian Law

- 1. During administrative procedure administrative body shall ensure that procedure participants and their representatives have **the opportunity to be heard** in regard to the factual matters examined during administrative procedure.
- 2. Hearings shall not be required, if:
 - a) **favorable administrative act** will be issued during administrative procedure, which does not interfere in the enjoyment of the rights of other persons, or the addressee of administrative act does not demand hearings be held,
 - b) petition is **manifestly unfounded**;
 - c) the administrative **act is issued orally**.
- 3. Hearings shall not be held, if:
 - a) immediate issuance of administrative act is necessary and delay may pose a **public danger**,
 - b) the administrative act is issued in **another form**
- 4. In other cases prescribed by law, holding of hearings shall not be required, but may be optional.
- Under para. 4, in case the specific law is silent on the hearing, should there be a hearing?

Hearings in Practice

- Constitutional basis of hearings in AP in Armenia?
 - Article 50 – Right to proper administration
- What is the policy of the duty to hear?
 - Protection of the participants/addressees of AAs
 - Support to AB in establishing/clarifying the circumstances
- Can AB draw adverse inferences from refusal of the participant to attend the oral hearing at the AB?
 - Right to be heard is a “right” and may be waived by the holder
- Consequences of denying hearings: positions of the Cassation Court

Definition of AAs

- 1. Administrative act is the **decision**, instruction, order or other **individual** legal act with **external effect** that administrative body adopted for the purpose of **regulating a concrete case** in the field of **public law**, and **is directed to the prescription, amendment, elimination or recognition of rights and obligations for persons.**
- 2. Administrative act can also be directed to a **group of persons** classified according to a **certain individual criteria.**

“Individual legal act”

- This element distinguishes AAs from normative regulations
 - AA – regulation of a *specific* (current/past) situation in relation to *certain* individual(s)
 - NA – abstract regulation of all typical situations (in the future)
 - Addressees of the AA must be *specific* or *distinguishable*, e. g. traffic lights
- Decision of the Government granting deferment from military service to 20 AUA male students – administrative body in functional meaning
- Decision of Government granting tax ‘amnesty’ to all sole proprietors who failed to pay taxes in 2013
- Decision of the Minister of Social and Labor Affairs to grant lump-sum to all participants of the battle for Shushi
- Traffic sign prohibiting the traffic in a certain direction
- The decision of a policeman to stop the assembly (with 400 participants)

“External effect”

- Officer of the passport & visa department applies to the department for new passport
- Decision of the management of civil service to impose disciplinary measure on the civil servant in the form of ‘warning’
- Key principles:
 - Outside the relationships within institution
 - Private person for the administrative body
 - The act affects subjective public rights protected by law
 - *Protective purpose* of the law & intensity of interference
 - Right to trust
 - Legitimate expectation

“Regulation of a concrete case”

- Regulation of a concrete case & individual nature of the act are closely connected
 - Individual case raises concrete matters for regulation
 - Application for AA requires regulation of a concrete case
 - Initiative of AB in relation to specific person requires concrete regulation
- Normative acts regulate abstract matters
 - Duty to pay certain taxes
 - Assignment of a legal consequence to individual in a specific situation abstractly regulated by statute – punishment for failure to pay taxes

“Decision”

- What amounts to ‘decision’ for the purposes of AAs?
 - Procedural acts before the adoption of AA are not AAs
- Reference letters, expert opinions, decisions to conduct procedural acts, e.g. site examination
 - Decision to take psychiatric test before issuing driving license
 - Marzpet obtains the recommendation of the mayor before deciding upon application for construction license
- Decision should be *final* and *conclusive* for the procedure to amount to AAs
- Final solution/regulation of ‘concrete case’



- The State Real Estate Cadaster registered a property right of the individual in the registration book and issues a certificate of registration.
- Which one is the AA? Why is it important to distinguish?
 - Registration of the right to property in the registration book of the State Real Estate Cadaster or
 - Certificate of ownership of a real estate issued by the Cadaster?
- Decision of the Cassation Court (27 December 2007 (3-1918(SԴ)) *Yerevan Mayor v. Lambron OJSC*)
 - AA is the registration of the right in the registration book
 - Certificate of ownership is only certifying that the right has been registered
 - The applicant may request the AC invalidation of registration, not the registration certificate
 - Quashing of the certificate does not entail legal consequences

Types of AAs (Art. 53)

- **Favorable AAs** - administrative bodies grant rights to persons or create for them any other condition that improves the legal or factual situation of those persons;
- **Interfering AAs** - administrative bodies refuse, interfere, restrict the enjoyment of the rights of persons, impose obligation on them or in any other way worsen their legal or factual situation;
- **Combining AAs** - combines the application of provisions that are both favorable and interfering for the person.

Forms of AAs (Art. 54)

- **Written AAs** – if the procedure has been launched through a written petition, only written AA may be adopted.
- **Oral AAs** – oral AAs may be made into writing if the addressee demands or if he has an interest in written AA.
- **AAs of other form** - light, sound, image, signals or signs
- **Other forms** prescribed by law.

Entry Into Force of AAs (Art. 59-60)

- Written administrative act **shall be delivered** to the procedure participants within three days after issuance.
- **As a rule**, delivery of written administrative act shall be conducted through handing the act over the procedure participants by signature.
- Other means of delivery prescribed by this part shall be used **in case** when handing over by signature is impossible *due to any justified reason*, including when the addressee requested to use other means of delivery.
- **Administrative act shall enter into force on the next day of notice** made in a procedure prescribed by Article 59 of this law on the issuance of the act, unless otherwise prescribed by law or by that act.
- Oral and other forms of administrative acts shall enter into force from the moment of their promulgation.

Legal force of Admin Acts

- Formal legal force
- Substantial legal force
 - Undisputable administrative act