

Administrative Procedure II

Conclusion (Assignment)

Can the following be considered as administrative acts?

- Suspension of AP (Art.49, LFAAP)?
- Termination of AP (Art. 50, LFAAP)?

Cassation Court Decision

47/2982/05/09

- When can the administrative body use other means of delivering the administrative act?
- What are the legal consequences of failure of the AB to notify the addressee of the unfavorable AA?
- What are the legal consequences of late notification?

Reasoning of AAs: General

- What is the policy of giving reasons for the AA?
 - Reasoning **informs the addressee** of the AA why he/she received unfavorable decision, e.g. why he was deprived of a right, why an obligation was imposed on him etc.
 - Reasoning **informs the public** on why the public authorities acted in a certain way. Transparency & accountability to the society
 - Reasoning reveals the **grounds for judicial review** of the AA & informs the plaintiff's arguments: **access to court**

Reasoning of AAs

- ◆ Written administrative act or administrative act confirmed in writing shall contain reasoning where **all substantial factual and legal grounds** for the issuance of the decision shall be mentioned.
- ◆ The reasoning of administrative act issued as a result of exercise of discretionary power of administrative body shall indicate the **considerations** on the basis of which administrative body **chose that solution**.
- ◆ Reasoning of administrative acts issued by administrative body with *arguments not related to the competence of that body shall be prohibited*.
- ◆ Germany and England approaches
- ◆ *Meltex ltd. v. Armenia*

Invalidation of AAs

- Who decides on the validity/invalidity of AA
 - AB that adopted the AA
 - Higher AB
 - Admin Court

Invalid AAs

- Unlawful AA **which is not void** is invalid AA, if:
 - Adopted in **breach of law**, including incorrect interpretation/application of law
 - Adopted as a result of **forged documents**/information or
 - It is obvious from document that other AA should have been adopted
- Unlawful AAs may not be invalidated, if:
 - the addressee has a **right to trust** in the existence of the AA **and**
 - its existence **may not violate** the rights of others, the RA or communities
- The addressee has a right to trust, if:
 - s/he has **already used** what has been obtained through the AA **or**
 - returning will **cause harm** to the addressee
- Except where:
 - AA is obtained by bribe, threat, deceit, forged/incomplete document etc.
 - Knew or had reason to know about unlawfulness of the AA

Null & Void AAs

- Void AAs
 - AB adopting the AA not clear
 - AA adopted by incompetent AB
 - Addressee of AA not clear
 - Issues AA aimed to regulate not clear
 - Apparently unlawful obligation/right
- Void AAs do not have legal force *ab initio*
- No responsibility for incompliance with void AA
- Invalidation of unlawful AA
 - Difference between void, invalid & unlawful AAs
 - May void AA be invalidated?
 - Only unlawful, but not void AAs, may be invalidated