

Administrative Law

Introduction

Course Introduction

□ Overview

- Armenian Admin Law (legislation, case law)
- Foreign Admin Law (German comparison)
- Council of Europe standard setting documents
- ECHR cases

□ Materials

- <http://lawlibrary.info/ar/>
- Moodle

□ Grading

- Midterm exam (25%)
- Final exam (35%)
- Written assignments (30%)
- Participation (10%)

Terminology

- Administration/Administrative Activity – վարչարարություն
- Administrative Procedure – վարչական վարույթ
- Administrative (court) proceedings - վարչական դատավարություն

Public or private law?

- The person applies to the Police to get certain information
- The Minister of Justice concludes a sales contract with the head of the financial department of the same Ministry and sells his apartment
- The employees of the Ministry of Nature Protection cause harm to the car of the citizen while doing some measurements on his land
- The head of the legal department of the State Committee of Real Estate Cadastre applies to the same body to register his property right upon a summerhouse
- The person applies to the community head to get a construction permit

Admin Law & Other Branches of Law

- What is the significance of distinction?
 - To decide the applicable substantive & procedural rules
 - To decide where to litigate
- **Theories of distinction**
- Theory of Subordination
 - Public law: government takes a binding unilateral act against persons
 - Private law: equal expression of will, negotiation, consent, contract
- Theory of Addressee of the Rule
 - Contract rules: primarily addressed to & used by private persons
 - Inspection rules: designed for & implemented by admin authorities
- Theory of Interests
 - Does the rule serve private or public interests
 - Sometimes private & public interests may overlap

Admin Law Definition

- What is administrative law?
 - A system of legal rules regulating legal relationships between individuals and public authorities
 - A system of rules regulating *administrative law* relationships between individuals and administrative authorities
- Main goals:
 - Protection of public interest (through administrative activity) and
 - Protection of individual rights (principles, procedures, jud. review)

Goals of Admin Law

- Regulation of public law matters/protection of public interests
 - Business
 - Education
 - Healthcare
 - Transport
 - Social security etc.
- Protection of subjective public rights
 - Limitation of discretionary powers
 - Administrative procedures
 - Judicial review
- Many fundamental rights regulated/protected through Ad. Law

Rule of law state & Basic Rights

- Extension of the 'Rule of law' principles
 - Supremacy of human being(Art. 3, part 1)
 - Duties of public power(Art. 3, part 2)
 - Respect for and
 - Protection of fundamental rights and freedoms
 - Public power being limited by these rights (Art. 3, part 3)
 - Principle of legality ('supremacy of law' & 'legislative prescription) (Art. 6)
 - Principle of equality (Art. 28 and 29)
 - Prohibition of discrimination
 - Protection of personal data (Art. 34)
 - Right to petition (Art. 53)
 - Right to Proper Administration (Art. 50)
 - Judicial review of administrative action (Art. 61 and 63)
 - Right to Compensation for Damage (Art.62)
 - The Right to Apply to the Human Rights Defender (Art. 52)
 - Principle of proportionality (Art.78)
 - Limitation of human rights – an exception
- Admin laws aim to ensure implementation

RA Admin law system

- Material and formal law
- General and special admin law
- Main developments
 - Law on the Fundamentals of Administration and Administrative Procedure (hereinafter: LFAAP)
 - Code on Administrative Proceedings (hereinafter: CAP)
 - Jurisprudence (AC, ACA, CassCourt, Constitutional Court, ECHR)
 - The first Armenian Admin Law Textbook
- Specific laws and procedures
 - Licenses & registrations
 - Construction & environment
 - Social security and labor
 - Tax & customs
 - Fundamental rights

The Structure of the LFAAP

- Sections I and VII of this law apply to **any activity** of administrative bodies in the field of **public law**.
- Sections II to VI of this law apply to any activity of administrative bodies resulting in the **issuance of administrative act**, Sections IV to VI of this law apply to **real acts** of ABs that have factual consequences for persons.
 - **I. Fundamentals of administrative activity**
 - II. Administrative procedure
 - III. Administrative acts
 - IV. Appeals procedure
 - V. Procedure of enforcement of administrative acts
 - VI. Administrative expenses
 - **VII. Liability for damage caused by unlawful administrative activity**
 - VIII. Transitional and concluding provisions

Structure

- **I. Fundamentals of administrative activity**
- **VII. Liability for damage caused by unlawful administration**
 - Apply to any activity of administrative bodies in the field of public law.
 - These provisions turn the statute into 'code' of Admin Law of the RA
 - No specific law may trump the provision in these two sections. They apply universally in any specific field of administrative law.

Structure

- Sections II-VI apply to any activity of administrative bodies resulting in the issuance of administrative act.
 - **II. Administrative procedure**
 - **III. Administrative acts**
 - **IV. Appeals procedure**
 - **V. Procedure of enforcement of administrative acts**
 - **VI. Administrative expenses**
- Sections IV to VI apply to acts and omissions of administrative bodies that have factual consequences for persons.
 - **IV. Appeals procedure**
 - **V. Procedure of enforcement of administrative acts**
 - **VI. Administrative expenses**

The scope of 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

Administrative body

- Republican bodies of executive power
 - Ministries
 - Other state bodies exercising *administrative activity* in the whole territory of the RA
- Regional bodies of executive power
 - Marzpets
- Local self-government bodies
 - Council of elders; head of community

Administrative Activity

“Activity of *administrative bodies* having external effect resulting in the issuance of administrative or normative act, as well as action or omission, which have factual consequences for persons”.

- There are several elements in the definition of AA:
 - Activity of administrative bodies
 - External effect
 - Administrative acts
 - Normative acts
 - Action or
 - Omission with factual consequences for individuals

Definitional issues

- The definition of ABs refers to AA, while the definition of AA refers to AB. The definitions are circular. One defines the other, while each separately is not defined.
- In many states definition of AB is much simpler and broader, e.g. **public or private body or person exercising public functions**. This is a functional definition of a 'public body' or AB.
 - Whoever exercises a state function is bound to the fundamental rights and obliged to contribute to their implementation (Swiss Constitution, Art. 35(2))
- If a private person in Armenia is exercising delegated or contracted public functions of the state, it will not be considered an AB and its activity will not amount to AA. It will be a private entity exercising private activity, which is outside the scope of the LFAAAP and judicial review by the AC.
- However, even private entity's activity may raise human rights issues

Examples

- Statute of a Ministry
- Instruction of a minister to a civil servant of the ministry on new working methods and deadlines
- Issue a construction permit to a legal person
- The order of the head of the department to examine the case and report to him
- The ministry cleans up the roads after heavy snowfall
- Ministry of Labour and Social Affairs assigns pension to a specific person
- The Ministry doesn't pay the assigned pension

Admin bodies: discussion

- Is the president administrative body?
 - Does the President exercise AA?
 - Pardon?
 - Awards & medals?
 - Grant of citizenships?
- Is the government an AB?
 - Individual acts, e.g. grant of a military deferment, licenses?
 - Normative acts?
- State Committee of Real Estate Cadastre?
- Is the notary public an administrative body?
 - Notary is dismissed while case hearing
 - Succession or replacement of respondent?
 - Claim on compelling to issue inheritance certificate

- State administration office (պետական կառավարչական հիմնարկ) – organization which does not have a status of a legal person, is formed to ensure the effective and full performance of powers of state bodies (RA President, legislative, executive, judicial bodies, prosecution office, etc.) and their participation in civil legal relations.
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Succession or respondent replacement? 47/5014/05/09

Article 20. Procedural Succession

1. In case of withdrawal of one of the parties from the court proceedings (reorganization of the legal entity or administrative body, death of a physical person or other cases of changes of people in obligations), the court substitutes that party with his successor, and makes a separate decision on this. in the form of a separate judicial act.

Article 21. Substitution of the improper respondent with the proper one

When the court considers that the claim is filed not against the person, to whom it should be, the court may, upon the consent of the plaintiff substitute the improper respondent with the proper one. If the applicant disagrees, then the court may include the person as a second respondent.

Administrative body

Administration/Admin Activity

Admin
Act

Normative Act

Real Act(Action or Omission)

Administrative
procedure