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TITLE

INTERRELATION BETWEEN ACTION OF QUASHING AND ACTION OF COMPELLING UNDER ADMINISTRATIVE PROCEDURE CODE OF RA

Whether the current regulation of examining the action of quashing together with the action of compelling by virtue of law ensures effective restoration of human rights considering the specific limitations of applicable legislation and evidence for these types of actions?

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Table of Contents

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Introduction

The judicial control of the Administrative court of the Republic of Armenia (hereinafter "the Court") is considered to be an important measure for both individuals and legal entities to apply to the Court with the claims against unlawful administration exercised by the administrative bodies. For this purpose, the Code of the Administrative Procedure of the Republic of Armenia (hereinafter "the Code") stipulated four types of claims that may be brought to the Court against administrative bodies.

Article 65 of the Code stipulates the grounds for instituting a case in the Administrative Court establishing that the case in the Court shall be instituted based on a claim. Therefore, Articles 66-69 stipulate the claims which may be brought to the Court and with these claims the administrative proceedings are differ from the criminal and civil proceedings as only the Code stipulates specific claims which are subject of examination of the Court. The mentioned claims are the followings.

1. The action of quashing,
2. The action of compelling,
3. The action of taking an action,
4. The action of recognition.

This thesis paper deals with the two types of administrative actions and in this thesis paper we will concentrate on the action of quashing and the action of compelling.

The selection of these two actions is conditioned to the fact that in practice there are some misunderstandings regarded to the regulations stipulated by the Code. The action of quashing

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and the action of compelling are strongly connected and it is essential to distinguish between these two actions to decide which measure to apply for fighting against unlawful administration exercised by the administrative bodies.

In practice, when the plaintiff brings an action of compelling, s/he also indirectly includes an action of quashing an interfering administrative act by which the administrative body refused the adoption of the specific administrative act to grant the plaintiff with a requested right. So, if the plaintiff brings an action accordingly to Article 66 of the Code, the action of quashing is considered to be an independent claim and is not conditioned with other claims, but in cases when the plaintiff brings an action of compelling accordingly to Article 76 of the Code, in this case the situation is different. The problem is that in this case the action of compelling indirectly includes the action of quashing an interfering administrative act by which the administrative body rejected the claim of adopting a favorable administrative act. Thus, in case of the action of compelling the action of quashing becomes an indirect action which is included within the scopes of the action of compelling. Therefore, it turns out that the outcome of an indirect action of quashing is conditioned with the outcome of the action of compelling. In other words, if the action of compelling is satisfied by the Court consequently the action of quashing is also satisfied and vice versa. But it should be noted, that this situation and the relevant regulations stipulated by the Code arise some problems regarding to applicable laws and evidences that are subject of examination while adopting the final judicial act, and in some cases due to this regulations the Court faces some difficulties, which we will examine in this thesis paper and try to find relevant solutions of such problems.

So, in this thesis paper, we will try to bring the main characteristics of the two actions mentioned above, reveal some problems, identify possible legislative gaps in the administrative legislation and suggest some solutions and recommendations regarding them with the strong substantiating examples or points, and also we will introduce some practical cases, including the decisions of the Court, the Court of Cassation of the Republic of Armenia, the court of Appeals for administrative claims and the Constitutional court.

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The actuality of the selected problem of this thesis paper is conditioned with the fact that some specific claims against administrative bodies have recently begun to be examined in law enforcement practice, and there is no stable judicial practice regarded to that claims (for example the claims against the President of the RA to oblige the latter to adopt a decree about the termination of an individual's citizenship). And drawing the attention to the fact that such claims are considered as the claims of compelling and also include indirect claims of quashing, the study and examination of these two actions has an important role in the process of creating a stable judicial practice.

This thesis paper consists of an introduction, three chapters, a conclusion and a bibliography.

The introduction will present an overview of the general characteristics of administrative claims.

Chapter 1 is designed to introduce the specific peculiarities of the action of quashing and action of compelling, as well as their interrelation. We will introduce in which cases plaintiffs may bring the action of quashing and which cases the action of compelling, which are the preconditions for both actions in order to have the right to apply them, in which cases which admissibility criteria is required that is considered by the Court while deciding the admissibility of claims and also will introduce some peculiarities stipulated by the decisions of the Court, the Court of Appeals for administrative cases and the Court of Cassation.

Chapter 2 is directed to present the regulations regarding the applicable law of both the action of quashing and the action of compelling, which is under the consideration by the Court with the final judicial act, we will show some problems that may arise while employing such measures and also will bring some possible recommendations in the ways of solving such problems.

Chapter 3 will introduce regulations related to the burden of proof in both actions, will intoduce some issues regarding to the current regulations and will show some possible solutions regardin to them.

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And in the end, ***the conclusion*** will sum up the whole ideas presented in this thesis paper, presented issues and suggested recommendations as well.

CHAPTER 1

1.1 Notion of the action of quashing and its legal regulations.

The action of quashing is considered to be the first claim stipulates by the Code particularly in Article 66, which gives an opportunity for the plaintiff to bring the claim against administrative bodies to invalidate an administrative act which has an interfering effect for the plaintiff. This claim may be considered as a measure of fighting against unlawful administrative acts and it may also have a supervisory role for administrative bodies to act more carefully knowing the risk of abolishment of their administrative acts.

Individuals (by describing individuals in this thesis paper we consider also legal entities which are also may be a party in these claims) by applying to the Court aim to protect and restore their rights violated as a result of unlawful administration executed by the administrative bodies. As commonly administrative bodies adopt administrative acts regarding the rights and obligations of an individual, there remains only one measure for the person to apply to the Court by requesting the abolishment of an interfering administrative act.

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RA Law on the Principles of Administration and Administrative Proceedings (hereinafter referred to as "the Law") provides an opportunity to challenge administrative acts not only in a judicial but also in an administrative manner. Accordingly, to the second paragraph of Article 63 of the Law, the unlawful administrative act provided for in paragraph 1 of the same Article may be declared invalid by the administrative authority which adopted that act or its superior body as well as by judicial procedure. So, the choice of which manner to apply for appealing an administrative act is on an individual's discretion. Thus, in practice, the administrative act may be appealed simultaneously both in an administrative and a judicial manner, in which cases pursuant to Article 70 (3) of the Law RA, if the act has been appealed simultaneously in an administrative and judicial manner, then the appeal shall be subject to judicial review, in which case the proceedings instituted in the administrative body shall have stayed.

So, when a person chose the judicial way of protecting his/her rights, the restoration of his/her rights may be reached by bringing an action of quashing an interfering administrative act to the Court.

This claim aims at quashing an interfering administrative act wholly or partially. So, the subject of this action is an interfering administrative act. Thus, the subject of this claim should be an administrative act which had an interfering effect on the claimant, it is necessary for the action of quashing to have the infringement of the plaintiff's rights but not just the possibility of the infringement of abstract, economic or other interests of such nature. The question whether the plaintiff's rights were infringed refers to the justification of the action of quashing, but not the eligibility of the claim[1].

For bringing an action of quashing, the action should comply to the following requirements.

1. There should be an administrative act that wholly or partially interferes the plaintiff's rights,

2. The plaintiff should demand on quashing that act wholly or partially.

[1] See Հայաստանի Հանրապետության ընդհանուր վարչական իրավունք, Հ.Թովմասյան, Օ. Լուխթերհանդթ, Գ. Մուրադյան, Վ.Պողոսյան, Վ.Ռայմերս, Ռ.Ռուբել-Ելբ.: Բավիդ, 2011, 382 էջ.

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Referring to the question of the legality of an administrative act by judicial procedure, the Court of Cassation of the Republic of Armenia stated in one of its earlier decisions that the use of judicial protection in disputing an administrative act cannot be an end in itself but should be aimed at restoring the violated rights of a person. Therefore, in applying to the administrative court, a person must not only substantiate that the administrative acts of state and local government and also their officials have been adopted, act or omit in violation of the law, but must also indicate his/her rights and freedoms that have been violated. And the Court of Cassation of RA has stated that it is a requirement to completely or partially abolish the interfering administrative act that is the subject of the dispute. It is an integral part of the claim or the same, the material basis of the claim is the material object of the claim. In the case of an action of quashing, the material object of the action is the disputed administrative act. The latter is the main subject of judicial proceedings in the administrative proceedings[2].

Firstly, as the action of quashing is wholly connected to the administrative act, we consider it necessary to reflect on the concept of an administrative act to simply understand the main requirements that are under consideration while bringing the above-mentioned actions to the Court.

According to Article 53 (1) of the Law, an administrative act is a decision, order or other individual legal act that has an external effect and has been adopted by an administrative body for the purpose of regulating a particular case in the field of public law and is aimed at defining, modifying, abolishing or recognizing the rights and obligations of individuals.

The second paragraph of the same article separates 3 types of administrative actions particularly, favorable, interfering and combined administrative acts, which are the following.

[2] See RA Court of Cassation's decision of 24.05.2013 in the administrative case No. VD / 1346/05/10.

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a) favorable administrative act is the administrative act by which administrative authorities grant rights to persons or create for them any other conditions that improve the legal or factual status of such persons;

b) interfering administrative act is an administrative act by which administrative authorities refuse, interfere, even restrict the exercise of the rights of persons, place any obligation on them or in any other way impair their legal or factual situation;

c) combined administrative act is the administrative act which contains provisions for both favorable and interfering administrative acts.

Understanding the concept of an administrative act and defining the differences between favorable, interfering and combining administrative acts, is strongly necessary for bringing not only an action of quashing but also an action of compelling (the regulations concerning the action of compelling are provided in the next paragraph).

And also, in the course of an administrative proceeding instituted on the basis of a dispute, it is firstly necessary to ascertain whether the material object of the claim is an administrative act or not. In other words, the examination of the claim for invalidation of a document under the procedure of the administrative procedure of the RA depends on whether the document is an administrative act in the legal system of the RA or not.

In its previous rulings, the Court of Cassation of the RA has expressed the legal position that in order to clarify the characteristics of an administrative act, in any case, the court must find out whether the act is an individual act which is an official written document (with the exception of oral and other administrative acts provided for in Article 54 of the Law), which does not contain legal norms and specifies the rights subject to mandatory recognition, protection, etc. , and is adopted by an administrative body, whether it has external influence, is adopted in the

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field of public law and regulates a particular case, and establishes the rights and obligations of the person[3] .

Thus, the Court of Cassation found that the following characteristics are designate of an administrative act:

1) an administrative act is an individual legal act; it has clearly defined recipients,

2) the administrative act shall be adopted by the administrative bodies, regional and local government agencies as well as by other state administration bodies,

3) the administrative act has an external influence. The addressee is a natural or legal person who is not in an organizational, working, internally subordinate or any other direct relationship with the administrative body;

4) the administrative act is adopted in the field of public law; it is a unilateral directive issued by a publicly-owned body to a natural or legal person, based on legal norms initially adopted by a publicly-owned body for implementation;

5) it is aimed at regulating a specific issue in the field of public law by a body authorized by the public authority;

6) The administrative act has direct legal consequences for the relevant natural or legal person who is not in an organizational, working, internal subordinate or any other direct relationship with it; thereby the administrative body establishes, modifies, abolishes or recognizes the rights and obligations of the appropriate natural or legal person[4].

[3] See, RA Court of Cassation's decision of 29.10.2010 in the administrative case No. VD / 4538/05/09.
[4] See RA Court of Cassation's decision of 30.04.2015 in the administrative case No. VD/4651/05/12.

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Each of the qualitative attributes listed in the Court of Cassation's decision is necessary and their combination sufficient to qualify the written document as an administrative act; in the absence of any of these features the document cannot be regarded as an administrative act.

The basis for quashing an interfering administrative act, are stipulated in article 63 of the Law, which stipulates the following.

1. An illegitimate administrative act, which is not considered as null and void, shall be invalid if it has been adopted:

a) in violation of the law, including as a result of misapplication or misinterpretation of the law;

(b) on the basis of false documents or information, or if it is apparent from the documents submitted that a different decision was actually to be taken;

c) in a situation of conflict of interest.

Pursuant to paragraph 2 of Article 66 of the Code, the action of quashing an interfering administrative act also includes the challenging the decision adopted in the result of an appeal. It means that in this case there are two interfering administrative acts. One is the act which is challenged in the court and the other one is the act by which the previous one stayed in force.

So, a question arises, whether the plaintiff may bring an action against the act adopted as a result of an appeal. The Court of Cassation of RA has a position regarding this question, stating that a plaintiff may bring an action against the appealed administrative act when s/he appeals it in the bases of procedural manner[5].

It is important to mention that in cases when the plaintiff aims to quash an interfering administrative act, it is useless to bring an action against the decision adopted as a result of appealing, because if the latter is quashed, there would be no consequences for the plaintiff, as

[5] See RA Court of Cassation's decision of 22.04.2016 in the administrative case No. VD/4315/05/14.

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the decision, by which the interfering act stays in force, is quashed, but the main interfering act is not, which therefore continues interfering the plaintiff's rights.

To sum up the above-mentioned, the action of quashing is directed to the protection of individuals rights by invalidating the interfering administrative acts of administrative bodies which are adopted in the violation of laws and other legal acts. In case of bringing an action of compelling it is necessary to have an interfering administrative act which partially or wholly has aggravating, interfering effect on the applicant. And the action of quashing in its turn includes also the challenging an interfering administrative act by which the administrative body rejected the appeal brought by the plaintiff and in cases when the appeal is brought simultaneously both to the administrative body and the Court, the Court should examine the case and decide the legitimacy of the challenged administrative act. In fact, the action of quashing of an interfering administrative act is an important measure provided by the Code to protect the violated rights of an individuals and restore them by quashing their acts adopted as a result of unlawful administration.

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1.2 Notion of the action of compelling and its legal regulations.

The next claim that we are considering to discuss is the action of compelling stipulated in Article 67 of the Code.

According to the above-mentioned article, by bringing an action for compelling, the plaintiff may demand the adoption of a favorable administrative act, which was denied by the administrative body.

Pursuant to paragraph 2 of the same article, the claim of compelling also involves a request by the administrative body to challenge the interfering administrative act referred to in paragraph 1 of the same article.

In case of action of compelling the plaintiff demands from administrative body to adopt a favorable administrative act. This is considered to be an important distinctive issue for this action by which it is differentiated from the action of compelling an action. And also, for the action of compelling a plaintiff may demand on adopting only a favorable administrative act, so the combined and interfering administrative acts are excluded in this action.

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As we can see, for bringing an action of compelling, it is a prerequisite for applying to the administrative body with the same demand and after receiving a rejection, a plaintiff may apply to the court by bringing this action. So, in cases, when a plaintiff did not apply to the administrative body or had applied but did not receive an answer, s/he may not bring an action of compelling to the court. Like the action of quashing, in this case, we should also apply to Article 53 of the Law (a concept of an interfering administrative act), in order to determine which administrative act is considered a favorable one, and which administrative act may be requested to be adopted.

That is to say, the claim of compelling also contains a claim of quashing whether or not the claimant has made such a claim. Such a point is made by the Court of Cassation by stating that the requirement to challenge an administrative act to refuse to adopt a favorable administrative act is legally enshrined in the claim for compelling[6].

So, in other words, in this case, the action of quashing becomes an adjective action, for which it is not necessary for the plaintiff to apply separately[7]. And for bringing an action of compelling it should be noted that any rejection and also any answer provided by the administrative body will not be considered as an interfering administrative act. By rejecting the adoption of an administrative act, the administrative body shows its clear intention to reject an individual's demand. Even in cases, when an administrative body does not satisfy an individual's demand, it also may not be considered as a rejection for bringing an action of compelling. For example, a person applies to the administrative body and demands on adopting a favorable administrative act, but the administrative body rejects the claim and the rejection of adopting a favorable administrative act is considered to be an interfering administrative act. Article 72 of the Code stipulates the terms during which the plaintiff may bring actions to the Court against administrative bodies. For the action of compelling it is stipulated the two-month period for

[6] See RA Court of Cassation's decision of 13.03.2019 in the administrative case No. VD/7479/05/16.

[7] See ԵՊՀ իրավագիտության ֆակուլտետի ասպիրանտների և հայցորդների նստաշրջանի նյութերի ժողովածու, 2 (2) 2018, Անի Զիլինգարյան, Պարտավորեցման և ոչ ինքնուրույն վիճարկման հայցերի հարաբերակցությունը, Երևան, 2019, էջեր 327-337.

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applying to the Court after being informed about the rejection of the adoption of the administrative act. So, the person has two months in order to apply to the Court to compel the administrative body to adopt a favorable administrative act, but the person, in our example, skips that time period and lost its opportunity to bring the action to the Court. As for not being rejected by the Court, the person decides to apply again to the administrative body with the same demand in order to receive the rejection and to apply to the Court by not missing the judicial terms. The administrative body consequently rejects again the claim and also states that the same position was stated in the previous decision of rejecting the adoption of an act. In this case, in fact there are all requirements stipulates by the Code to apply to the action of compelling, there are both the rejection of the administrative body and the plaintiff brought the claim during two months after receiving the last rejection. We think, that this rejection, by which the administrative body once again stated its position and rejected again the same demand brought by the plaintiff, may not be considered as the proper prerequisite of bringing the action of compelling, and the Court should find out the first time that the plaintiff applied to the administrative body and received the rejection of his/her claim. And after discovering the above-mentioned fact, the Court should consider the first rejection of the plaintiff's claim to be the rejection in the scope of bringing the action of compelling. Thus, the second rejection is also considered the rejection of a plaintiff's claim but for bringing an action of compelling it is important that the first answer to be rejecting for the plaintiff (it should be noted that this position does not regard to the cases when the applicant applied to the administrative body with the same demand but in different circumstances or it is presented the different demand which was considered as a new application and should be considered by the administrative body).

We think that the regulation of article 67 of the Code stipulating the requirement of the existence of a rejection of adopting a favorable administrative act, should be interpreted regarding to the facts of the case, because there are cases when the administrative body rejects the claim of the applicant but does not adopt a relevant decision. In other words, a rejection of adopting an administrative act may not only be in the form of a special decision of rejecting its

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adoption, but also in a form of a letter by which the administrative body rejects the claim. For example, the administrative body may reject the claim of an applicant by stating that based on some ground his/her demand may not be considered or may not be satisfied and as a result instead of adopting a relevant decision about rejecting the claim the administrative body may just establish its position in the form a letter or other written document.

Article 67 of the Code also stipulates that the action of compelling includes the action of quashing an interfering administrative act by which an administrative body rejected an individual's claim. This article seems very simple, but in practice, there are a lot of issues arising from this regulation. For example, the question arises, whether the possible outcome of this claim predetermines the outcome of the action of quashing. In other words, is it possible to reject the action of compelling and satisfy the action of quashing, or vice versa. In first sight, it is logical that if the Court satisfies the action of compelling it also quashes an interfering administrative act, by which an administrative body rejected the adoption of a favorable administrative act. But in cases when the Court rejects the action of compelling it is assumed that the action of quashing should also be rejected, but we think that in this case there arise some issues. For example, an individual applied to the administrative body with the demand of adopting an administrative act, the administrative body refused the request and the applicant bring an action of compelling to the Court. The Court examines the case and makes a decision of rejecting the claim in the justification for the plaintiff for not having such right which s/he desires to receive by the adoption of an administrative act. But also, the Court notices that the rejection of an administrative act was not adopted correspond to the required regulations, in other words, an administrative body rejected the claim but in the wrong bases, therefore adopting an interfering administrative act. So, the Court examines the case and notices that the administrative body wrongfully rejected the plaintiff's claim and there are bases of quashing it according to Article 63 of the Law. But as the claim of compelling is being rejected, the Court does not address that issue and also does not satisfy an indirect claim of quashing.

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We consider it necessary to note that the main purpose of the action of compelling is to obtain a favorable administrative act for a person, and based on the provisions of Article 124, Part 3 of the Code, the Court of Cassation found that within the framework of the evidence, and on the basis of the laws in force at the time of making the judicial act, the Court considers the legality of the favorable administrative act to be approved, the latter must make a judicial act resolving the case on satisfying the claim by invalidating the decision of rejecting the adoption of the administrative act requested by the administrative body and obliges the administrative body to adopt that administrative act.

Pursuant to Article 125 (part 1, clause 2) of the Code in case of satisfying the claim, the Court makes a judicial act resolving the case on the merits to invalidate the decision on rejecting to adopt the administrative act requested by the administrative body and to oblige the administrative body to adopt that administrative act.

Article 124 (3) of the Code stipulates the precondition for satisfying the action of compelling, which is the legality of the favorable administrative act. In other words, the legitimacy of the decision to refuse to adopt the administrative act requested by the administrative body is conditioned by the legitimacy of the requested administrative act, and not the vice versa.
On the other hand, in case of an action of compelling, the legislator, seeking to find out the legality of the favorable administrative act, provided for in Part 2 of Article 125 of the Code that in case of rejecting the claim the Court makes a decision about it. This means that the rejection of the action of compelling is conditioned by the legality of the favorable administrative act. That is, if, within the framework of the obtained evidence the legality of the favorable administrative act is not established on the basis of the laws in force at the time of the judicial act, the action of compelling is rejected, and in this case the Court does not refer to the decision to reject the adoption of the administrative act[8].

[8] See RA Court of Cassation's decision of 26.12.2016 in the administrative case No. VD/6495/05/14.

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We think that in cases when the Court notices the grounds of quashing an interfering administrative act in the scope of the claim of compelling, the Court should have such authority to do so. And we suggest adding such regulation in the Code.

And also in practice, there are also cases that by examining the case the Court notices that there are sufficient grounds for satisfying the action of compelling, but the rejection of adopting the administrative act was lawful.

For example, there are some cases when the adoption of a favorable administrative act is rejected by the administrative body based on some formal grounds stipulated by the law and the plaintiff applies to the court to oblige the administrative body to adopt the favorable act. In this cases, the Court examines the grounds of the rejection of the adoption of an administrative act and decides whether the rejection was based on the requirements stipulated by the law, and then decides whether the plaintiff has such right which s/he desires to oblige the administrative body to grant and adopt a relevant administrative act.

It may happen that the plaintiff has the specific right which s/he desires to be granted, but there are some formal requirements that was not followed by him/her and thus, the rejection was lawful. In this case it turns out that the person has the right to be granted by the administrative body but the Court did not satisfy the claim because the rejection was lawful and the administrative body acted according to the legislation. In order to better understand the above mentioned we will discuss the following example.

Article 43 of the RA law on state registration of property rights (up to the edition of 01.01.2012) stipulated the grounds of rejecting the registration of property rights, one of which was the absence of the receipt of state registration fee. This was considered as a ground of rejecting the state registration of property rights, the adoption of an administrative act which stipulates an individual's rights of property. The court of Cassation stated in its decision of VD/4491/05/09 that this was considered to be a formal requirement stipulated by the law and the rejection of adoption of an administrative act based on this ground should not contribute to the

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violation of property rights. In particular, a plaintiff applied to the Cadastre to register her rights of the real estate according to the decision of the RA court of Appeals for civil cases, which had been already entered into force. The applicant did not attach the receipt of state registration fee to her application and therefore, the application was rejected and the Cadastre did not register her property rights. Then, the applicant applied to the Court by obliging the Cadastre to register the real estate belonging to her according to the decision of the RA court of Appeals for civil cases. The court of Cassation established that as there was a Court's decision, it was subject to performance, and the Cadastre might not reject the application based on formal requirements. The court consistently stated that the rights arising from the final verdict of the court are subject to registration in strict accordance with it. In other words, the court of Cassation stated that a judicial act that has entered into force has binding effect and is subject to performance, and the Cadastre might not reject the performance of a final judicial act based on just formal grounds[9].

The action of compelling only refers to the requests of the adoption of favorable for plaintiffs administrative acts, but this regulation also arises some problems in practice.

For a deeper understanding let's discuss the following example.

A company applied to the State Commission for the protection of the economic competition of the Republic of Armenia (hereinafter referred to as "SCPEC") in order to do an examination of the market of specific products. The company brought an action of compelling SCPEC to do an examination of specific products market and to adopt the relevant administrative act.

While the hearings of the case there was a question of how much does it considered a favorable administrative act for the complaint. And the latter justified its arguments by saying that as the company is a subject of that market and makes some activity in that field, the examination of the field, in any case, will be beneficial for it. But in this case, the Court refused the claim for the reason that the examination of the product market and the decision or any act

[9] See RA Court of Cassation's decision of 01.07.2011 in the administrative case No. VD/4491/05/09.

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adopted directed to it may not be considered as a favorable administrative act in the light of the regulations of Article 53 of the Law. In this case, the Court did not apply to the question of which kind of administrative act it is considered to be. And also, there was not clear whether the act adopted by the result of that examination will be an administrative act or not.

This example shows, that for the action of compelling it is difficult sometimes to decide whether the claim that is brought to the Court will lead to the adoption of administrative act especially favorable one. And the Court sometimes may not find out such issue until it examines the case and finds out the real purposes and the motivation of bringing such action. This problem arises also because of the difficulties which arise while deciding the type of an administrative act because there are cases that it is not clear whether the act is favorable or not until it is not adopted.

Therefore, in the light of the regulations concerning the action of compelling, we may conclude that when the Court examines the case and decides that the requested administrative act is not its kind of favorable one, and it is, for instance, a combined administrative act, the action of compelling should be refused, because this action only concerns to the favorable administrative acts. Whereas, some lawyers think that in this case it is infringed the right to a fair trial[10].

We do not wholly agree with this point, because we think that if a plaintiff brings an action of compelling by which s/he requests adoption of the administrative act, his/her aim is receiving the favorable act because it will be not logical to bring a claim by requesting adoption of an interfering or a combined administrative act. And reflecting on the viewpoint that such regulation may violate the plaintiff's right to a fair trial, we think that there may not be any violation regarding that for the following reason. In cases when the plaintiff requests an adoption of an administrative act, for example, a right to land for 1000 sq. m, but the Court decides to satisfy the

[10] See Իրավունքների պաշտպանություն առանց սահմանների հասարակական կազմակերպություն, Ջեկույց ՀՀ վարչական արդարադատության վերաբերյալ (Օրենսդրության եւ իրավակիրառ պրակտիկայի ուսումնասիրության արդյունքներ), Երեւան, «Առողիկ» հրատարակչություն, 2011, էջեր 41-45.

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claim of 800 sq. m, there is no need for the Court to refuse the claim wholly or compel the administrative body to adopt a combined administrative act, because the Court may satisfy the claim partially, by the part of 800 sq. m, and reject the rest part of the claim. In this case, there would be no violation of the plaintiff's rights. And also, on the other hand, if there was a regulation that if the Court has an authority to compel the administrative body to adopt a combined administrative act but the plaintiff applied for the favorable one, in this case, we think there would be a violation not only of plaintiff rights but also the Court will get out of the scopes of the claim which is not acceptable.

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Chapter 2

Applicable law for the examination of cases on the action of quashing and action of compelling

In the process of adopting a final judicial act, there are some requirements that the Court should apply in order to solve the specific problem.

Article 124 of the Code stipulates some regulations regarding the applicable law that the Court should apply in a final judicial act.

Pursuant to Article 124 (3) of the Code, the lawfulness of the action sought is determined on the basis of the evidence obtained as a result of the judicial act and on the basis of the laws in force at the time of the judicial act. The Court of Cassation considered it necessary to address the issues to be clarified by the courts during the course of the action, considering the importance of assessing the lawfulness of the actions imposed on administrative bodies by the said application. In the analysis of Article 124 (3) of the Code, the Court of Cassation found that in order to oblige the administrative body to perform a particular action it must be established that there are sufficient factual and legal grounds for the requested action and that the case and the judicial act be examined. The jurisdiction of the administrative body to execute the requested action stems from the requirements of the legal acts regulating the specific relations in force at the time of establishment. Courts are not empowered to oblige an administrative body to conduct an activity that is unlawful, and therefore, in order to oblige the administrative body to perform a particular

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action, sufficient and irrefutable evidence must be obtained by the court to prove that the action sought is lawful[11].

In case if the regulation stipulated in the Code gave an opportunity to bring the action of quashing and action of compelling separately, we will have a problem, because Article 124 stipulates different proceedings regarding to the burden of proof and the applicable law. Particularly, regarding to the applicable laws Article 124 establishes that the lawfulness of the action sought is determined on the basis of the laws in force at the time of the judicial act.

According to the regulations above-mentioned in the previous chapter, the action of quashing may be satisfied because the plaintiff had the right to receive the favorable requested administrative act, but the action of compelling is rejected because there were changes in the legislation accordingly to which the plaintiff has lost his/her right to receive the requested right. And also, it might be vice versa, the action of compelling might be satisfied because accordingly to the current regulations the plaintiff has the right to receive the requested administrative act, which s/he did not have at the time of the adoption of the interfering administrative act, and so the action of quashing will not be satisfied.

It follows from Article 124 of the Code that in cases of action of compelling the favorable law has the retroactive effect, thus if the plaintiff did not have the right to be granted with the requested administrative act and the law has changed since that, the Court may satisfy the claim of compelling accordingly to the new regulations.

There may also be the opposite situation when the law has changed to the detriment to the plaintiff, and even if the plaintiff had the right to receive the requested right accordingly to the laws in force at the time of the adoption of the refusal of his/her request, now at the time of the judicial act the plaintiff has lost such right because of the changes in the law. For example, a person had a right to receive the requested administrative act, but the administrative body refused his/her claim, and the person brought an action of compelling to the Court, but the law has

[11] See RA Court of Cassation's decision of 22.07.2016 in the administrative case No. VD/11173/05/13.

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changed and at the end of litigation the Court should decide which law to apply. This question arises because of the regulation stipulated in Article 124 as if the court notices that during the adoption of interfering administrative act the plaintiff had the requested by him/her right but during litigation, s/he has ceased to have such right because of the changes in the law. And in this case, the Court is obliged to apply to the regulation which is more favorable for the plaintiff, but the regulation stipulated in Article 124 does not give such opportunity. We think that in these cases there arise some issues regarding of the constitutionality of the Article 124, because accordingly to Article 73 (2) of the Constitution of the Republic of Armenia, laws and other legal acts improving the legal condition of a person shall have retroactive effect where these acts so provide for, but pursuant to Article 124 of the Code the Court is bound to apply the favorable for the plaintiff regulations in cases of the claims of compelling.

The Constitutional court in PCCC-81 procedural decision dated of 14.04.2020 has addressed to the issue regarding to conformity of Article 124 part 3 of the Code with the Constitution on the basis of the application of Administrative court. In particular, the case was following.

The plaintiff applied to the Court with the demand of obliging the president of the Republic of Armenia to adopt a favorable administrative act about terminating his son's citizenship. Such procedure of terminating a person's citizenship consists of several procedures and includes several administrative activities conducted by several administrative bodies, and finally the president decides whether to terminate a person's citizenship by adopting a relevant decree.

In this case there were some legislative changes, and the regulations that were in force at the time of the application to the administrative body, of the time of adopting the rejecting decree and also the current regulations at the time of making the final judicial act were different. Thus, there was a question which laws to apply in order to solve the problem. The case was complicated because the legal acts in the course of this case were aggravating for the plaintiff, and as plaintiff brought the action of compelling the president to adopt a relevant decree, the Court should apply to Article 124 of the Code and to solve the case based on the laws which are in force and evidence obtained during the time of adopting a judicial act. As the laws were

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changed to the detriment of the plaintiff, the Court's decision, which would be based on the aggravating regulations (as the laws that are in force during the adoption of the Court's judicial act), will not be legal as such decision will contradict to the Constitution. In particular Article 73 (1) of the Constitution stipulates that laws and other legal acts deteriorating the legal condition of a person shall not have retroactive effect. And the 2nd part of the same article stipulates that laws and other legal acts improving the legal condition of a person shall have retroactive effect if these acts so provide for.

In order to solve the case and decide which laws to apply, the Court applied to the Constitutional court with the issue regarding to conformity of Article 124 part 3 of the Code with the Constitution. The Constitutional court in PCCC-81 procedural decision dated on14.04.2020 stated that the legal relationships regarded to the termination of citizenship have continuous nature, which arise at the time when the applicant submits the application to terminate his/her citizenship and such relations are end up by satisfying such application. Therefore, in this case the challenged regulations had the same content both during the administrative actions and the examination of the case in the Court. The Constitutional court stated that in this case for finding out the applicable regulations, not the regulations are important that are in force at the time of applying to the administrative body, but the regulations that are in force at the time of the adoption of the administrative act. And only in the cases when the laws that are in force at the time of the adoption of an administrative act the judicial act, so in this case there will be an issue regarding to the retroactive effect of the aggravating are different for the plaintiff regulations[12].

It should be noted that the above-mentioned decision of the Constitutional court did not solve the problem regarding to the application of Article 124 as it is stated that the established position is regarded to the specific case, and the Court should examine any case regarded to the application of Article 124 of the Code, and decide in which cases which norms are applicable. In practice, such cases, especially regarded to the actions of compelling the president to adopt a decree, are special because judges of not only of the Court, but also of the Court of Appeals for

[12] See RA Constitutional Court's procedural decision of 14.04.2020 in the case No. 81.

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administrative cases have different positions regarding to the action of compelling the president to adopt a decree. In particular, some judges consider such actions as the action of compelling, and the others state that claims against the president may not be considered as the action of compelling. For example, in the administrative case No. VD/2968/05/19 the Court satisfied the demand and obliged the president to adopt a decree about terminating the plaintiff's citizenship by invalidating the decree of the president regarding the rejection of application on termination of plaintiff's citizenship. The Court stated that as for the position of the respondent that the president does not have any other constitutional authority to resolve citizenship issues when the relevant documents are returned with objections of the RA Constitutional court, the Court did not consider that argument reasonable. This position of the Court stem from the fact that in the legal system of the Republic of Armenia administrative acts are adopted both as a result of administrative proceedings and as a result of court proceedings based on a judicial act. The above-mentioned two proceedings are legally permissible and must be clearly separated as the administrative procedure has other rules for administrative proceedings and the judidical procedure has other rules set out in the Code. Accordingly, the Court found that if the admission of the administrative act is preceded by a judicial procedure when the court examines a claim of compelling submitted by a person then it is not the administrative procedure but the procedural rules that are essential. The legitimacy issue, therefore, is the only significant circumstance in this case whether the existence of the legal grounds necessary for the adoption of the administrative act is justified by the procedural rules or not. In this regard, there are all factual and legal grounds to oblige the administrative body responsible for adopting the favorable administrative act[13].

The court of Appeals for administrative cases overturned the verdict of the Court and decided to reject the claim by stating that the legitimacy of a favorable administrative act in particular implies that it must comply with the provisions of the law enshrining the requirements for its adoption and its should be derived from the laws and evidence substantiating the legality of that

[13] See RA Administrative court's decision of 25.07.2019 in the administrative case No. VD/2968/05/19.

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act. At the same time, one of the main and primary features of the legitimacy of the requested favorable administrative act is the acceptance of specific act by the competent authority which has specific powers assigned to it in order to adopt that act. In other words, the administrative act should be adopted by the relevant body within the scope of specific authority assigned to it.

Therefore, in the light of the above-mentioned the court of Appeals stated that the president is not authorized to adopt a decree by giving a solution contrary to the issues reflected in the attached draft decree provided by the Prime Minister of the Republic of Armenia, because it does not stem from the authorities of the president stipulated by the Constitution and the RA law on citizenship of the Republic of Armenia. Therefore, the president does not have authority to adopt a decree by granting or terminating a person's citizenship if that decree contradicts with the draft decree provided by the Prime minister. It is a legitimate function arising from these powers, as it will directly contradict the legal regulations of Article 139 of the Constitution, which clearly stipulates those powers. According to it, it will not be in accordance with the principle of legality which is one of the main pillars of the rule of law enshrined in Article 6 of the Constitution, which requires that the activities of state bodies and officials should be based on the Constitution and the laws. The decree, which was proposed by the Prime minister and provided for by the proposal of the Prime minister in connection with the above-mentioned issues, cannot be considered as a legal administrative act arising from the powers stipulated by the constitution and other laws[14].

So, in the light of the above-mentioned it is followed that the Constitution particularly Article 139 stipulates the authority of solving the issues regarding of granting or terminating one's citizenship, but the Ra law on citizenship of the RA does not provide the opportunity for the president to adopt a decree which will contradict to the draft decree provided by the Prime minister. So, the president just signs the relevant draft decree attached to the proposal and if having some objections, the only provision that is stipulated in the law is the authority to return the draft decree and apply to the Constitutional court, if the objections of the president are not

[14] See footnote No.13.

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accepted by the prime minister. So, in another administrative case No. 12319/05/18 the Court decided to apply to the Constitutional court with the issue of the conformity of Article 27 of the RA law on citizenship of RA with the Constitution. According to the procedural decision No. PCCC-97 of the Constitutional court dated of 27.04.2020, the trial of this issue is scheduled on 07.07.2020.

In another administrative case No. VD/9845/05/19 the court of Appeals stated that if the plaintiff has applied to the administrative body with the same demand of termination of his/her citizenship and the his/her claim was rejected by the decree of the president and the preconditions stipulated by Article 67 are met by the plaintiff, the Court should examine such claims considering them as the action of compelling[15].

So, as we can see, the cases regarded to the claims to oblige the president to adopt a decree are not clearly considered by the courts to be examined as the action of compelling or not. We, think that the claims brought against the president regarded to the adoption of a decree should be considered as the action of compelling. We agree with the point established by the court of Appeal that the president does not have an authority of examine the case and he only adopts a decree accordingly to the draft decree provided by the Prime minister. But it should be noted, that if we do not consider these cases as the claims of compelling, in these cases individuals will not have an opportunity to bring actions against the president accordingly to Article 67 of the Code and the only measure to restore the plaintiff's rights will be the challenging the interfering decree adopted by the president. But in this case, even if the claim of challenging an interfering decree will be satisfied by the Court, it will not have any positive consequences for the plaintiff, because his/her rights will not be recovered and just the invalidation of the interfering decree will lead to the effective protection of plaintiff's rights. Moreover, in this case a person will be deprived of the right to a fair trial by the court and in fact the method of protection of person's rights will be of a formal nature.

[15] See RA Court of Appeals for administrative cases decision of 24.01.2020 in the administrative case No. VD/9845/05/19.

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Chapter 3

The rules of the burden of proof regarding the examination of cases on the action of quashing and action of compelling

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In deciding on the merits of the case, the Court examines some rules, in particular, assesses the evidence, decides which circumstances are relevant to the case and which have not been disclosed, determines the laws and other legal acts to be applied in the case, as well as the legal acts that were to be applied in the case, but which are not subject to enforcement because of contravention of the law, decides whether the claim is wholly or partially upheld or dismissed. By doing so, the Court should firstly examine relevant evidence obtained during the litigation.

The rules of burden of proof are mainly connected to the distinction of claims, which predetermine the principles of defining the scope of the burden of proof.

Before turning to the rules of burden of proof, it is needed to find out the subject of the proof.

The scope of the burden of proof includes legal and evidential facts of both material and judicial nature[16].

Evidential facts are considered to be indirect evidence that may be brought by parties during hearings. Whereas, legal facts that are included in the subject of evidence, particularly the facts underlined of claims of a plaintiff and objections of the defendant, are unchangeable during litigation until the plaintiff changes the claim or the defendant changes the objection.

Regarding the action of compelling, we may state that for this action the scope of the evidence is limited to the evidence which has an important role in defining the legality of the requested administrative act[17].

We may conclude that the outcome of the claim of compelling is conditioned to the legality of the requested administrative act, and in cases when the Court decides that the requested administrative act is lawful, it satisfies the claim and automatically (by the power of law)

[16] See Հովսեփ Բեդեւյան, Պարտավորեցման հայցերով ապացուցման բեռի բաշխման հիմնախնդիրները վարչական դատավարությունում, Պետություն եւ իրավունք, Երեւան, էջ 71-75

[17] See RA Court of Cassation's decision of 26.12.2016 in the administrative case No. VD/6495/05/14

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quashes the interfering administrative act by which the adoption of the requested act was rejected.

And vice versa, if the Court does not confirm the legality of the requested act, the claim of compelling is rejected and in this case, even in the presence of sufficient grounds, the interfering administrative act is not eliminated and continues its existence.

In practice there are some issues especially regarding the rules of the burden of proof, because of the regulations stipulated in Articles 28 and 29 of the Code, which stipulate the following.

According to the Article 28 of the Code a party shall furnish to the Court all evidence in its possession or sphere of influence in which it substantiates its claims or objections.

The second paragraph of the same article stipulates that the administrative authority shall also be required to present all the materials of the administrative proceedings, as well as any evidence in its possession or sphere of influence which justifies the claims or objectives of the opposite party.

According to article 29 (1) of the Code if after examining all the evidence, any fact leading to the outcome of the case remains unproven, its negative consequences shall be borne by the burden of proof.

It is stated in the second paragraph of the same article that the burden of proof shall be:

1) with a claim for quashing – on the administrative body that has adopted the interfering administrative act on the facts on which it is based;

2) with a claim of the compelling – on the administrative body on the grounds of refusal to adopt the requested administrative act and the natural or legal person on the facts justifying the adoption of the administrative act favorable to him/her.

Meanwhile, Article 124 stipulates that the lawfulness of the disputed administrative act shall be determined on the basis of the evidence obtained in the administrative proceeding

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directed to the adoption of that act and the laws in force at the time of its adoption, except when a later law, more favorable to natural or legal persons involved in the proceedings, has been adopted and if so provided by that law.

The lawfulness of the requested favorable administrative act, as well as the action to be sought or to refrain from it, shall be determined on the basis of the evidence obtained at the time of the judicial act and on the basis of the laws in force at the time of the judicial act.

We may conclude from these regulations that each party bears the obligation to prove its facts, and also bears the negative consequences that may arise by not doing so. But there is a contradiction between Article 28 and 124 of the Code, because Article 28 stipulates the obligation for a party to bring evidence which substantiate their position, but simultaneously, for example, in case of the action of quashing the whole burden of proof is put on the administrative body. In this case, it turns out that an individual brings an action of quashing establishing some facts, but s/he does not have an obligation to prove his/her statements because the burden of proof is put on the administrative body, and the Court examines only the evidence that was established during administrative proceedings.

The same issue arises in case of an action of compelling. But in that case, there are more confusing regulations which not only contradict each other but also stipulate some unclear and misunderstanding norms.

It turns out that the Court should examine not only the evidence which was obtained during administrative proceedings directed to the adoption of that act, but also the Court should obtain the evidence that although was not included in the proceedings of adopting the refusal of the requested administrative act, may have an important role in finding out the essential facts for the exact solution of the case.

So, in administrative proceedings, the legislature considers the burden of proof as an obligation laid on each party, and in case of not doing such an obligation there arises some negative consequences. In administrative proceedings after examining the whole evidence there

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still remain some facts that are not proved by the party, the negative consequences lay on the letter. In other words, in such cases, the Court may consider such facts as not proved and put the negative consequences on the responsible party. That's why it is important to know which party is responsible for proving which facts, because in the end there may arise negative consequences for each liable party[18].

As we can see in case of the action of compelling the burden of proof is put on both parties, particularly an individual and an administrative body. The burden of proof is on an individual on the facts justifying the adoption of the administrative act favorable to him/her. And for the administrative body, the scope of the burden of proof is limited on the grounds of refusal of granting to the plaintiff the specific right by adopting the requested administrative act.

So, the plaintiff should substantiate that the requested favorable administrative act, by which a plaintiff will receive the specific right, is legal and justified, and s/he took some legal actions in order to obtain such right. On the other hand, the administrative body should substantiate that the refusal of granting to the plaintiff the specific right is legal. Let's assume, that the Court notices that there are sufficient grounds for the plaintiff to receive the requested right, does it mean that by refusing of the granting such right the administrative body violated the plaintiff's rights and if yes, whether the Court is obliged to reflect to the legality of that interfering administrative act in the scopes of the action of compelling[19].

According to Article 25 of the Code the Court, by examining and evaluating the evidence obtained in accordance with the procedure established by the Code, shall ascertain all the facts essential to the outcome of the case.

So, if there is more than one evidence that is essential to the outcome of the case, the Court should ascertain it and put under the justification of the final judicial act.

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[18] See RA Court of Cassation's decision of 27.12.2017 in the administrative case No. VD/2680/05/15.

[19] See ԵՊՀ իրավագիտության ֆակուլտետի ասպիրանտների եւ հայցորդների նստաշրջանի հյուրերի ժողովածու, 2 (2) 2018, Անի Զիլինգարյան, Պարտավորեցման եւ ոչ իսկ հետեւության վիճարկման հայցերի հարաբերակցությունը, Երեւան, 2019.

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Firstly, we should understand which evidence is considered essential for both the action of quashing and compelling, which the Court, having directly assessed in the case, shall decide the question of fact be established on the basis of a comprehensive, complete and objective examination of the case.

There are cases that parties do not prove some facts not for their inactivity but for impossibility. This may be in cases, for example, when an individual is obliged to prove the existence of the bases for adopting an administrative act, but s/he may not prove it, because such evidence may be obtained in the administrative activities managed by the administrative bodies, and in such cases, the action of compelling is directed to the rejection.

Such may be, for example, in cases when there are stipulated several bases for adopting specific administrative acts and the administrative body rejected the request of adopting that favorable administrative act relying on only one base and did not reflect the other bases. In this case, the plaintiff, bearing an obligation of proving the rest of the other bases, may not have an opportunity to prove the absence of the other bases for rejecting the adoption of an administrative act, because such facts may be examined and revealed only as a result of an administrative activity. For example, a person applies to the administrative body to receive a right by adopting a favorable administrative act for him/her, the administrative body rejected the claim based on one bases stipulated by the law, for example, not attaching the receipt of a fee for adopting such administrative act. Person applies to the Court to oblige the administrative body to adopt that act, the Court should not be limited by only examining that one bases based on which the administrative body rejected the claim. The Court should examine the whole bases stipulated by the law for rejecting the adoption of an administrative act and only in cases of the absence of the other bases the Court may oblige the administrative body to adopt the act. But there may be cases that in order to adopt the act the administrative body should enforce some activities, for example, do the special expertice that may not be done by the Court.

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In this cases the person is not able to prove the absence of such bases of rejecting his/her claim as it may be proved by the administrative body which is obliged to do that expertice.

We think that in such cases the Court should put on the burden of proof of that fact on the administrative body and demand on bringing such evidence, for example, the conclusion of the exprtice, to the Court.

To sum up, in practice, there are cases that an administrative body, bearing the obligation to prove the legality of the rejection of adopting a favorable administrative act, cannot prove the legality of its decision, but it appears not sufficient to satisfy the claim, because of the inability of the plaintiff of not proving the fact that substantiates his/her claim. In this case, although the Court may find out bases of quashing an interfering administrative act by which the administrative body refused the plaintiff's claim, the Court may not satisfy the claim of compelling. In this situation, we think that there may be a risk of violating the plaintiff's right to a fair trial, and the final judicial act may be considered as just problem-solving act, but not a fair judicial act, which is directed to the protection of an individual's rights against unlawful administration. We think that judicial acts should not only solve the problem but also ensure effective remedies for protecting and restoring an individual's violated rights.

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Conclusion

To sum up, the whole ideas mentioned in this thesis paper, it should be noted that administrative claims are considered to be an effective means of protecting an individual's rights against unlawful administration conducted by the administrative bodies. Administrative claims are directed to ensure the effective measures for plaintiffs to apply in the protection of their violated rights.

In the first chapter, we introduced the general review of the action of quashing and action of compelling, introduced some practical cases and judicial practice regarding these claims. In particular, the action of compelling is considered to be an important measure for plaintiffs to apply to the Court and challenge interfering administrative act wholly or partially and restore their violated rights. This action makes administrative bodies act more carefully by knowing the risk of the abolishment of their administrative acts and in practice this action gives an opportunity to fight against unlawful administration executed by the administrative bodies. The action of quashing an interfering administrative act also includes the interfering administrative act adopted as the result of an appeal of an interfering administrative act. If the appeal is brought

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simultaneously both to the administrative body and the Court, the Court should examine the case and decide the legitimacy of the challenged administrative act, and in cases when the plaintiff brings the action of quashing by challenging the act which was adopted as a result of an appeal, so the claim will be useless (unless if it is appealed in the bases of procedural manner) because the abolishment of that act (the act that was adopted as a result of an appeal) will not result to the restoration of the violated rights because the interfering administrative act will continue its existence and will have an interfering effect unless it is abolished by the Court or the administrative body.

In case of action of compelling the plaintiff demands on compelling the administrative body to adopt a favorable administrative act which was rejected by the latter. This claim also includes the action of quashing an interfering administrative act which adoption was rejected by the administrative body, and the action of quashing in this case becomes an adjective action for which it is not necessary to apply separately.

In cases when the plaintiff applies to the administrative body but has missed the terms of applying to the Court, therefore applies to the administrative body with the same demand in order to have the opportunity to apply to the Court, the Court in this case should consider the first rejection adopted by the administrative body as the prerequisite for bringing an action of compelling. And also the rejection may be adopted in the form of both as a decision and as a letter or another written document which clearly states the position of the administrative body to reject the claim of the applicant.

In cases when the Court notices the sufficient grounds for quashing an interfering administrative act which was indirectly included in the scopes of the action of compelling, the Court should have such authority to quash that act irrespective the fact whether the action of compelling is satisfied or not.

In cases when there are grounds for the action of compelling to be satisfied but the rejection of adopting a favorable administrative act was lawful, the Court should examine such grounds

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and conclude whether the rejection was based on formal requirements that were not met by the applicant and therefore the application was rejected. In other words, if the grounds for rejecting the application were lawful but the administrative act interferes the other rights, such as property rights of the plaintiff, that are subject to be granted to the him/her, the Court may not reject the action of compelling and should grant such right to the plaintiff.

The Court does not have an authority to compel the administrative body to adopt an interfering or combined administrative acts, as the action of compelling is aimed to compel the administrative body to adopt a favorable administrative act, and if the Court decides to compel the administrative body to adopt a combined administrative act, it will not only violate the plaintiff's rights but also will get out of the scopes of the claim which is not acceptable.

In the second and the third chapters we introduced the regulations of Article 124 of the Code, we brought some issues that arose in practice. Particularly, in the second chapter, we introduced the regulations relating to the applicable law for both actions, and in the third chapter, we applied to the regulations regarding the burden of proof.

In case of the action of compelling the burden of proof is put on both parties, particularly an individual and an administrative body. The burden of proof is on an individual on the facts justifying the adoption of the administrative act favorable to him/her. And for the administrative body, the scope of the burden of proof is limited on the grounds of refusal of granting to the plaintiff the specific right by adopting the requested administrative act. And if there is more than one evidence that is essential to the outcome of the case, the Court should ascertain it and put under the justification of the final judicial act. In cases when the burden of proof is on the plaintiff but some facts may be proved only after doing some administration, the Court should put on the burden of proof of that fact on the administrative body.

In cases when the laws have changed to the detriment of the plaintiff the Court should find out whether the laws that are in force at the time of the adoption of an administrative act and the laws that are in force at the time of the judicial act are different or they stipulate the same

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regulations. If they are the same there would not be a question about retroactive effects of the aggravating laws.

We think that the regulations stipulated in the Code are very effective and also it is strongly confirmed in judicial practice, but there happen some cases when the specific regulations limit the scope of considerations of the Court, and we think that in the light of the ex officio principle provided in the Code, the Court should have more discretional powers in the decision-making process.

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