Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

Association des Conseils d'Etat et des Juridictions administratives suprêmes de l'Union européenne a.i.s.b.l.

Council of State of Belgium

Association of the Councils of State and the Supreme Administrative Jurisdictions of the European Union
With the collaboration of the Council of State of Belgium

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ISSUE 1: The 'administrative loop', or the power to rectify the legality of an administrative decision

What is meant by 'administrative loop', or the power to rectify?
In the Netherlands, an administrative court can invite (court) an administrative body by means of an interlocutory judgment or enjoin it (Litigation Division of the Council of State and Central Council of Appeal) to rectify or have rectified, within a set period, an infringement in the disputed decision unless such rectification would result in unfair treatment of the parties concerned who are not party to the case. The interlocutory judgment indicates insofar as possible how to rectify the infringement. In this case, the administrative body must inform the administrative court as soon as possible whether it intends to take up the option, offered by the court, of rectifying the infringement or having it rectified. Where the administrative body accedes to the request to rectify the infringement, it shall indicate in writing as soon as possible how it is going to rectify it. The parties may, within a set period following said written notification being sent, indicate their attitude to rectification of the infringement. A final judgment shall be handed down upon the first appeal against the flawed decision that has been (or has not been) rectified.

Question 1: In your country's legal system do you know of a mechanism laid down in the constitution, in law or in regulations, or borne out of established case-law, that confers on an administrative court, in the course of proceedings, the power to *rectify* a flaw in a disputed decision rather than have that decision quashed and proceedings reopened? If so, what does this power consist of? How is it organised?

If not, what are the reasons that, in your country's law, lead to the power of the court to be limited to solely annulling the disputed decision or to denying the court the power to rectify an infringement that has been established or have it rectified?
If so, what specific powers does the administrative court have to rectify an infringement that has been established or have it rectified? Explain your answer.
Do these specific powers of the court apply to any infringement that has been applied and to all decisions of the authority? Explain your answer.
At what stage of the proceedings and under what conditions can the administrative court exercise its power to rectify a flawed decision? Explain your answer.

Answer: Pursuant to the applicable Code of Administrative Court Procedure, the above mechanism has not been laid down in administrative court procedure in Estonia.

The clearly dominant position is that in Estonia an administrative act is verified as at the issue thereof (§ 54 of the Administrative Procedure Act (APA)). This means that in assessing the lawfulness of an administrative act, the later rectification thereof by an administrative authority cannot be considered. However, it should be stressed that pursuant to § 58 of the APA and § 3(3)1) of the State Liability Act (SLA), an administrative act need not be declared invalid if violations of procedural requirements or requirements for formal validity occur, but such violations cannot affect the resolution of the matter. Later explanations given in court by an administrative authority cannot replace the shortcomings in the reasoning for the administrative act; however, they can convince the court that no other decision was possible to make upon the issue of the administrative act or that the administrative act under dispute should be reissued with the same decision after the annulment.

According to § 3(2) of the SLA, an administrative act shall not be declared invalid if the rights of the person are restored by amendment to the administrative act. This is with respect to a situation where an administrative authority itself amends the substance of an unlawful administrative act so as to make it lawful. For instance, a situation where an administrative act challenged in the administrative court prescribes that a person is required to fulfil an obligation within an unreasonably short term, and during the court proceedings the administrative authority extends the term so it is reasonable. It should be stressed that it is only the right of the administrative authority and not of the court.

The purpose of the restrictions on "rectifying" administrative acts is connected to ensuring the separation of powers. If the court which shall verify administrative acts would be allowed to rectify or supplement the said acts to a certain extent, it would assume the role of the executive power in that part.

Question 2: Can the administrative court itself exercise its power to rectify a flawed decision and itself rectify the infringement that has been identified (power to reverse decisions)?

If so, explain in brief how this mechanism works. If not, is the authority required (obligation) – in the context of the exercise of this specific power to rectify a flawed decision– to rectify the infringement determined by the court? Explain your answer.

Answer: The Estonian law regarding administrative court procedure does not prescribe, in general, an option for the court to amend administrative decisions.

Pursuant to § 5(1) of the Code of Administrative Court Procedure (CACP), in satisfaction of an action the court has the right, in the decision of the judgment, to:

1) Annul an administrative act in full or in part;
2) Require the issue of an administrative act or taking of a measure;
3) Prohibit the issue of an administrative act or taking of a measure;
4) Award compensation for damage caused in a public law relationship;
5) Issue a precept for eliminating the consequences of an administrative act or an administrative measure;
6) Ascertain whether an administrative act is null and void, whether an administrative act or administrative measure is unlawful, or a fact of importance in a public law relationship.

The Supreme Court has repeatedly stressed that in verifying the lawfulness of an administrative act, the court is not allowed to justify the administrative act, instead of the administrative authority, on legal and factual bases which the administrative authority has not noted in its administrative act upon the issue thereof (in *ex ante* situation), or to exercise the right of discretion itself. Particularly in cases where an administrative act is issued based on the right of discretion (see the Supreme Court judgment of 17.10.2007 in administrative matter no. 3-3-1-39-07; judgment in administrative matter no. 3-3-1-15-08, subparagraph 1 of paragraph 8; or judgment of 15.12.2009 in administrative matter no. 3-3-1-82-09, paragraph 22). The court cannot rectify flaws in administrative acts. For example, the court cannot amend the legal basis indicated in an administrative act, but it can establish that an administrative act with the same decision should have been inevitably issued on a different legal basis. The Administrative Law Chamber of the Supreme Court found in its judgment of

28.09.2011 in administrative matter no. 3-3-1-40-11 that failure to refer, in an order for release from service of an official, to § 117(1)3) of the Public Service Act as the correct legal basis for release is a violation which pursuant to the abovementioned section 58 of the APA cannot result in annulment of the order because even in the case of referral to a wrong legal basis, the administrative authority could not have decided otherwise. The Chamber itself indicated the correct legal basis; whereas, the noting of the correct legal basis did not affect the validity of the administrative act, but the administrative act remains valid as it was issued (on a wrong legal basis).

In principle, the regulatory framework concerning administrative court procedure enables the annulment of a contested administrative act in part or in full; whereas, without requiring the administrative authority to review the issue. A binding precept is issued if a person challenges an administrative authority's failure to act or delay, and requests the issue of an administrative act or requirement to take an administrative measure.

Question 3: How is the action to quash affected if the decision involving an infringement is rectified? Is the appeal still valid? Must or can the rectified decision be disputed in another appeal? How do the proceedings continue once the court decides to exercise or has exercised its power to rectify a flawed decision? Explain your answer.

Answer:
If an administrative authority itself eliminates during court proceedings a violation of rights by rectifying an administrative act based on § 3(2) of the SLA, the action against the original administrative act shall be dismissed. If the later administrative act amending the earlier administrative act is not sufficient for the elimination of the violation of law, the action against the earlier administrative act shall be satisfied. If the amendment of the original administrative act results in a new violation, the new administrative act needs to be challenged.

If an administrative authority annuls an administrative act in the part it was challenged, the legal meaning of the action filed against the administrative act does not change. Pursuant to § 152(1)4) of the CACP, the court terminates the proceedings by a ruling if the administrative act challenged by the action has been declared invalid. The proceedings for the establishment of the unlawfulness of the administrative act shall be continued if it is necessary for the protection of the rights of the person who filed the action and the said person has requested it (§ 152(2) of the CACP).

Question 4: What are your experiences of the administrative court having such a power to rectify? Is it implemented successfully?

Answer: See also the answers to questions no. 2 and 3. We find that the administrative court procedure functions successfully, irrespective of the fact that the applicable law does not prescribe an option for the court to rectify violations of procedural requirements or requirements for formal validity regarding administrative acts. This forces administrative authorities to take procedural requirements and requirements for formal validity seriously. According to the dominant opinion, the option for the court to rectify flaws would allow administrative authorities to take the rules of administrative procedure lightly, and the

administrative court would face adjudication of matters which should actually be settled in administrative proceedings first. § 58 of the APA enables the court, without rectifying an administrative decision, to leave an administrative act in force if the violations by the administrative authority were insignificant.

Question 5: Does your court hear appeals against decisions that are rectified in this way and, if so, how are such appeals dealt with?

Answer: See the answers to questions no. 2, 3 and 4.

ISSUE 2: Power to award compensation and action for annulment

Question 1: Are you familiar with the system of compensation as an alternative to annulment?

If so, is this system applied to the exclusion of annulment? Does the system only work for certain illegalities or only the most serious ones? Is it available in appeals on any grounds or is it limited to appeals on only the most serious grounds? Is it applied to regulations and individual decisions? Is a choice between annulment and compensation available and if so, based on what criteria and who makes this choice (the legislator through the effect of the law, one of the parties, the court?) and when (at the time the appeal is lodged, during proceedings (how does this impact on adversarial proceedings))? Does the administrative body itself still have the option to annul its decision when compensation is asked or granted in Court?

Answer: System of compensations is not an alternative to annulment. It is typical of the Estonian administrative procedure law that a claim for annulment is primary and a claim for compensation is secondary. A person must do everything in their power to avoid damage. Pursuant to § 7(1) of the SLA, a person whose rights are violated by the unlawful activities of a public authority in a public law relationship may claim compensation for damage caused to the person if damage could not be prevented and cannot be eliminated by the protection or restoration of rights in the manner provided for in §§ 3, 4 and 6 of the SLA. Section 3 of the SLA regulates filing of a claim for annulment of an administrative act; section 4 filing of a claim for termination of a measure; and section 6 filing of a claim for issue of an administrative act or taking of a measure.

For filing of an action for compensation it is not inevitably necessary that a person shall previously file an action for annulment. However, a person loses the right to compensation for damage if the damage can still be eliminated by annulment or if the injured party could have eliminated the damage by annulment. Situations where annulment would no longer have been of any help to the injured party are quite frequent also. Furthermore, failing to file a primary claim is excusable if the need to file such an action was not understandable or good reason for not filing such an action existed.

In practice, there may be situations where the term for filing of a claim for compensation expires before court proceedings with regard to a claim for annulment have been completed. In that case a person has the right to file a claim for compensation with the court in order to prevent violation of the term for complaint. Based on the principle of procedural economy, the court has the right to suspend the proceedings with regard to the claim for compensation until the completion of the court proceedings with regard to the claim for annulment.

Compensation for damage can be claimed in every area and in the case of an action filed for any reason, i.e. it is not limited to only certain illegalities or the most serious cases.

Compensation may be claimed for damage caused by legislation of specific application and by legislation of general application. However, in the case of legislation of general application, the right of claim is restricted. Under § 14(1) of the SLA a person may claim compensation for damage caused by legislation of general application or by failure to issue legislation of general application only if the damage was caused by a material violation of the obligations of a public authority, the norm which serves as a basis for the violated obligation is applicable directly, and the person belongs, due to the legislation of general application or failure to issue the legislation of general application, to a group of persons who have been especially injured. A claim for compensation for damage caused by legislation of general application or by failure to issue legislation of general application does not exclude liability for damage caused by an administrative act issued or a measure taken under the legislation of general application.

An administrative authority has, in principle, an option to repeal its own decision at any time (both in the case of filing an action for compensation for damage and another type of action, or in the case an action has not been filed with the court). According to § 64(2) of the APA, an administrative authority shall resolve the repeal of an administrative act according to the right of discretion, unless repeal of the administrative act is prohibited by law or repeal of the administrative act is required by law. § 64(3) of the APA prescribes that upon exercise of the right of discretion, the consequences of issue of an administrative act and repeal of an administrative act for a person, the completeness of the proceedings for issue of the administrative act, significance of the reasons for repeal of the administrative act and the relation thereof with the participation of a person in proceedings for issue of the administrative act and with the other activities of the person, the time which has passed after issue of the administrative act and other relevant facts shall be taken into account. If the damage claimed in on-going proceedings ceases to exist or decreases as a result of the annulment of the administrative act by the authority, the claim for compensation shall be dismissed or satisfied only in part.

If an administrative authority has repealed during court proceedings an administrative act which was the object of the action and has issued a new administrative act, a new action shall be filed, if necessary, against the new administrative act.

The court cannot refuse to annul an administrative act based on the reason that the damage caused by the act is compensated for. It is exceptionally possible only if a compromise sets out such an agreement. If an administrative act violates a person’s rights and the action is subject to adjudication by merits, other possible legal remedies do not exclude annulment. However, compensation for damage may exclude elimination of factual consequences of the administrative act annulled (§ 11 of the SLA).

The court cannot choose freely whether to apply annulment or compensation for damage in the case of violation of rights. The person who files an action has the freedom to choose the legal remedy. The court can satisfy only the claim which the person has filed. The court can, and in some cases is required to, explain to the person who filed the action that there is a better legal remedy available. For that purpose, the person who filed the action can change the action during the entire proceedings if the court deems it rational. There are also exceptions – less serious cases of compensation for non-proprietary damage, in the case of which the court may, instead of the required monetary compensation, declare a violation of the rights of the person who filed the action (§ 41(5) of the CACP).

Question 2: What is the extent of the compensation and how is it calculated?

Does it cover all the damage sustained or is a lump sum awarded, e.g. in the case of a fair satisfaction? In the latter case, does the award of the lump sum preclude action for further compensation to cover all the damage caused or may such action still be taken, where appropriate before another court? Can the plaintiff or the defendant initially request a decision *in principle* as regards compensation and only move to proceedings concerning the actual amount thereof once the principle has been acknowledged by the court?

Answer: § 25 of the Constitution of the Republic of Estonia provides that everyone has the right to compensation for moral and material damage caused by the unlawful action of any person. In the case of unlawful damage, failure to fully compensate for damage is an infringement of the fundamental right provided for in § 25 of the Constitution.

The amount of compensation for damage depends on the circumstances of every specific case and no certain amounts have been determined by law. Whereas, actions for compensation for non-proprietary damage and actions for compensation for proprietary damage shall be distinguished.

§ 38(2) of the CACP provides that in claiming monetary compensation, the action shall set out also the amount of the requested compensation. In claiming compensation for non-proprietary damage, and also if it is impossible or unreasonably complicated for the person who filed the action to determine the amount of the proprietary damage, the person who filed the action is not required to specify the amount of the compensation in the action and has the right to request a fair compensation at the discretion of the court. § 61(5) of the CACP prescribes that if the amount of a proprietary or non-proprietary claim, including a claim for damage cannot be established or if the said establishment is significantly complicated or unreasonably expensive, the court shall decide the amount of the claim according to its conscience, taking into account all the circumstances.

With respect to compensation for proprietary damage the SLA provides that compensation shall create the financial situation in which the injured party would be had his or her rights not been violated (§ 8(1) of the SLA). Deduction of profit made or expenses saved in connection with the damage shall not be deemed compensation for damage in part. A so-called differential hypothesis is applied which is typical of also civil law.

Consequently, compensation shall be awarded for the entire damage, in general. However, upon determining the amount of compensation, the extent to which the damage was unforeseeable, objective obstacles to preventing damage, gravity of the violation of rights, the part the injured party had in causing the damage, and other circumstances which would render compensation for damage in full unfair shall be taken into account (§ 13(1) of the SLA). A public authority shall be relieved of liability for damage caused in the course of performance of public duties if the damage could not have been prevented even if diligence necessary for the performance of public duties had been fully observed (§ 13(3) of the SLA).

Non-proprietary damage shall be compensated for in proportion to the gravity of the offence and, in general, considering the type and gravity of the fault (§ 9(2) of the SLA). The fault in causing of damage shall not be taken into account if compensation for non-proprietary damage is sought on the basis of a judgment of the European Court of Human Rights establishing a violation, by a public authority, of the European Convention for the Protection of Human Rights and Fundamental Freedoms or a protocol thereto (§ 9(3) of the SLA).

An appropriate way to compensate for non-proprietary damage may be, in addition to compensation in money, solely establishment of unlawfulness by a court judgment. If this principle was so far recognised only in case-law (see, for example, the Administrative Law Chamber of the Supreme Court judgment of 5 October 2006 in matter no. 3-3-1-44-06, paragraph 14), then as of 01.01.2012 it has been provided for also in the Code of Administrative Court Procedure. § 41(5) of the CACP prescribes that if the prerequisites arising from the law for claiming compensation for non-proprietary damage have been fulfilled but the court refuses to award compensation on the conditions provided by law, the court may, instead of awarding compensation, declare the unlawfulness of the administrative act or administrative measure which caused the damage.

The State Liability Act (§ 16) prescribes as an exception claiming of compensation for proprietary damage caused by a lawful administrative act or administrative measure if the damage has been caused by an administrative act or measure which in an extraordinary manner restricts the fundamental rights or freedoms of the person. In case-law for instance, it has been deemed possible to compensate for proprietary damage caused lawfully by removal of a person from office in pre-trial criminal proceedings if the fundamental right of ownership has been restricted exceptionally intensively (the Supreme Court *en banc* judgment of 30 August 2011 in matter no. 3-3-1-15-10). In the case of compensation for lawful damage (§ 16 of the SLA), a person cannot claim compensation for the entire damage but only to a fair extent. That extent is decided by the court, according to its discretion.

According to the case-law, the requested compensation for damage can be increased also in the course of court proceedings, including in the appeal procedure, if the requisite bases exist. This is justified by the aim of compensation for damage which, as stated above, is creating, as closely as possible, the situation in which the person would be had the circumstance giving rise to the obligation to compensate for damage not occurred (the Administrative Law Chamber of the Supreme Court judgment of 24 May 2007 in matter no. 3-3-1-10-07, paragraph 16).

The person who files an action may first request from the court the establishment of unlawfulness and then, upon a favourable decision, file a claim for compensation for damage. It is not prohibited to file at once a claim for compensation for damage, in the adjudication of

which the court assesses, inter alia, the lawfulness of the activity of the administrative authority. In adjudicating a claim for compensation for damage the court may also render an interim judgment for the establishment of a prerequisite for satisfaction of the action, continuing with the proceedings for the adjudication of the remainder of the issues.

Matters of damage caused in public law relationships are mostly subject to administrative courts[1]; it is not possible to have recourse to other courts in matters regarding state liability.

If a person has already requested in court compensation for the entire damage and a decision on the substance of the case has been rendered by satisfying or dismissing the action, it is not possible to have recourse to the court for a second time for compensation for the same damage in connection with the same administrative decision. Nevertheless, the person may first file an action for the compensation of only one part of the damage and later for the compensation of the rest of the damage. The person may also have recourse to the court for the compensation of damage which was not compensated for earlier if he or she finds that it has been caused by a different administrative act or measure than the one which was disputed over in the earlier action. Naturally, the person shall have recourse to the court within the term prescribed for that purpose in the Code of Administrative Court Procedure.

Question 3: What is the impact of penalising an unlawful decision by awarding compensation on the decision itself?

Is an unlawful decision which has been penalised in the form of the award of compensation subsequently assumed to comply with the law? What is the extent of this assumption? To what extent does a final decision awarding compensation impact on the power of other courts to control the lawfulness of that decision?

Answer:
The Estonian law does not deem compensation for damage caused by the state as punishment. The sole purpose of compensation is redress for a violation of a person's rights. In general, a prerequisite for compensation for damage is that the activity of an administrative authority was unlawful. In awarding compensation for damage the court also admits the unlawfulness of the activity of the administrative authority (the Administrative Law Chamber of the Supreme Court judgment of 08.06.2006 in matter no. 3-3-1-39-06, and judgment of 05.10.2006 in matter no. 3-3-1-44-06). Since in terms of execution only the resolution of the judgment is binding, then in the case the court refers to the unlawfulness of an administrative act or administrative measure only in the reasoning of the judgment, overruling of the unlawfulness in other possible disputes is not excluded.

Since an administrative act is valid despite its unlawfulness (§ 60 of the APA), compensation for damage or establishment of the unlawfulness of the administrative act do not affect the validity of the administrative act if the court does not also annul the administrative act.

[1] However, it may be provided by law that certain disputes regarding compensation for damage caused in a public law relationship shall be settled in general courts. For example, matters of compensation for damage caused by the activity of a bailiff holding an office in public law (§ 9(8) of the Bailiffs Act) and by a notary (§ 14(1) of the Notaries Act).

Consequently, compensation for damage does not automatically mean that a person or an authority is not required to comply with the administrative act.

Question 4: Does your court have the power to settle compensation for the damage caused by the unlawful decision it has previously annulled? If so, is this an exclusive power or is that power also granted to other courts?

Does the plaintiff have to submit the application for compensation at the same time as the annulment request or can it be made subsequently, after annulment?

Answer: Settlement of all administrative matters in the Estonian legal system begins in the administrative court of first instance which also has the right to award compensation for damage. Administrative court judgments can be contested by filing an appeal, and judgments of courts of appeal (circuit courts) can be contested by filing an appeal in cassation with the Supreme Court.

A request for compensation for damage may be filed both together with an action to annul, to require or to establish and separately. Whereas, it shall be considered that the term for filing actions to annul and to require is, in general, 30 days pursuant to the Estonian law regarding administrative court procedure, but for filing an action for compensation it is 3 years. With an action a person may request annulment of an administrative act in full or in part (action to annul) as well as compensation for damage caused in a public law relationship (action for compensation). These claims may be related (joined action). Claims included in joined actions may also be alternatives.

All administrative courts (administrative courts, circuit courts and the Supreme Court) are equally authorised to review such requests.

The Supreme Court, being also the highest administrative court, reviews only circuit court judgments appealed pursuant to cassation procedure, and requests for review of court judgments which have entered into force. In reviewing administrative matters, the Supreme Court does not act as a court of first instance. In reviewing an appeal in cassation, the Supreme Court has, according to § 230(5)5) of the CACP, the right to amend a judgment of the circuit court or the administrative court, or to render a new judgment without referring the matter for a new hearing if there is no need to collect new evidence in the matter or amend the evaluation thereof given in the appeal proceedings. Consequently, the Supreme Court is competent to decide on compensation for damage if it does not concur with the judgments of lower courts which dismissed a request for compensation for damage, and deciding on compensation for damage is possible on the basis of circumstances established by lower courts.

Question 5: What is the extent of the compensation and how is it calculated?

Does this compensation have to be fault-based? Does it have to remedy all the damage? Is a lump sum involved and if so, can an action for compensation to cover all damage incurred subsequently be brought before another court?

Answer: In the case of proprietary damage, fault is considered only upon compensation for loss of income (§ 13(2) of the SLA). Similarly, compensation for damage caused in administration of justice can be requested only if the judge has committed a criminal offence, i.e. the judge's wrongful behaviour has been established by a court judgment (§ 15(1) of the SLA).

In compensation for non-proprietary damage, the type and gravity of the fault is considered, in general (§ 9(2) of the SLA). As an exception, the fault shall not be taken into account if compensation for non-proprietary damage is sought on the basis of a judgment of the European Court of Human Rights establishing a violation, by a public authority, of the European Convention for the Protection of Human Rights and Fundamental Freedoms or a protocol thereto (§ 9(3) of the SLA).

A request for compensation for damage can be reviewed in administrative courts of all three instances (see the answer to question no. 4). All instances are tied to the same principles of compensation for damage which have been described in the answer to question no. 2.

ISSUE 3: The effectiveness of enforcement of the rulings of administrative courts

Question 1: Do the administrative courts in your country have the means to ensure actual implementation of their rulings and judgments by the authorities?

If so, describe in brief these means and how exactly they are implemented. If not, what are the reasons for the absence of such means?

Answer: The administrative court has the right to impose on a participant in the proceedings who is at fault a fine of up to 32,000 euros for failure to execute a court decision or a compromise approved by the court (§ 248(1) of the CACP). The court of first instance shall impose the said fine also in the case of failure to execute judgments of the Supreme Court or circuit courts.

In imposition of a fine, the court shall consider the time passed as of the entry into force of the court judgment and other circumstances which are of importance in determining the fine and the amount thereof (§ 248(2) of the CACP).

The imposition of a fine does not release the participant in the proceedings from the obligation to comply with the court judgment or ruling. If the court judgment has not been executed within a reasonable period of time, the other participant in the proceedings shall have the right to request the imposition of a fine again (§ 248(1) of the CACP) and the court shall have the right to impose a new fine also on its own initiative (subsection 2).

For example, only recently the administrative court imposed a fine on the Government of the Republic because the latter had failed to execute a court judgment which required the

government to establish a mechanism for satisfaction of claims in connection with certificates of a national fund[2].

Question 2: Do the administrative courts have the power to order the authority to enforce their rulings and judgments (power of injunction)?

If so, at what stage of the action can this power of injunction be asserted?
Where the court can decide to issue such an injunction at the time of handing down its ruling, who may apply for such an injunction and by what means, and what will its scope be (can the court indicate to the authority how it can rectify the illegality?)? Can a deadline be imposed in respect of such an injunction and what happens if the authority fails to adhere to the stipulated deadline?
Where the injunction can be implemented at the stage of enforcement of the ruling or of the judgment, who can request it, by what means and at what time? What scope will it have? Does the authority have a certain period to enforce it? What happens if it has to be enforced urgently?
Is this power of injunction also applied when the authority in question is ordered to pay a sum of money (e.g. damages) and if not, how does this recovery work?

Answer: One possible legal remedy in the Estonian administrative court procedure is action to require. It constitutes a person's request that the court issue a precept to an administrative authority for the issue of an administrative act or taking of a measure. If an action to require is satisfied, the resolution of the court judgment always contains a precept to the administrative authority. Also if a claim for compensation for damage is satisfied, the court issues a binding precept for the payment of compensation. After rendering of a judgment the court cannot issue any further precepts but in limited cases it can render a supplementary judgment (if some of the claims of the person who filed the action have not been settled or if the original judgment is unclear).

Depending on the circumstances of the case and the extent of the discretion of the administrative authority, the precept contained in a court judgment may be specific or more general (i.e. the court may issue a precept for the issue of a specific administrative act or require the authority to reconsider the matter based on the opinions stated in the judgment). The law enables a court judgment to specify the way the judgment should be executed and within which term, and it may include temporary measures for ensuring the rights of the person who filed the action (§ 168 of the CACP). The court can make these specifications on its own initiative as well as at the request of the person who filed the action. Non-compliance with the terms for execution and other conditions is punishable by a fine similarly to other cases of failure to execute a judgment.

Also in adjudication of claims for compensation and in the case of other monetary claims (claim for payment of wages, pensions etc.), the court may award a lump sum in the case of clear circumstances. If calculating a lump sum in the proceedings would be unreasonable, the court may issue a precept to the administrative authority for calculating, and paying, the sum itself based on the instructions given by the court.

[2] The Tallinn Circuit Court ruling of 11 January 2012 in administrative case no 3-04-469.

Question 3: Have all your country's administrative courts been granted this power of injunction?

Can an injunction be enforced even in case of appeal or cassation complaint? In other words, in the case of an appeal or cassation complaint does the administrative court of first instance retain the power to ensure that its ruling is enforced or does the higher court become competent? Where the court of first instance court retains this power, what happens if the decision in respect of which it is seeking enforcement is annulled on appeal or quashed following a cassation complaint?

Answer: See also the answer to question no. 1.

A court judgment shall be executed after the entry into force thereof. The court may set a term for the execution of the judgment which shall begin to run as of the entry into force of the court judgment (§ 246(1) of the CACP). The court judgment shall enter into force if it cannot be contested, without restoration of the term, in any other way than in a review procedure (§ 176(1) of the CACP). Consequently, the entry into force shall be generally postponed if an appeal or an appeal in cassation is filed. Contesting the court judgment in a timely manner excludes the entry into force thereof until the entry into force of the court decision rendered in respect of the appeal (§ 176(2) of the CACP). Also in the case of restoration of the term for filing an appeal or appeal in cassation, the participants in the proceedings are not required to execute the appealed court judgment, unless the court judgment is subject to immediate execution (§ 246(2) of the CACP).

§ 247(2) of the CACP provides for the cases when a court judgment is subject to immediate execution. A court judgment subject to immediate execution shall enter into force as of the public announcement thereof irrespective of appeals (§ 176(3) of the CACP).

Question 4: Can your country's administrative courts sentence the offending authority to pay a penalty or a fine?

If so, is this penalty or fine independent of the court's power of injunction? Explain the mechanism that has been put in place and the conditions under which the penalty or fine will be imposed. If this penalty is combined with implementation of a power of injunction, explain how the two mechanisms interact. Does this penalty or fine benefit solely the litigant who has won the case?

Answer: The administrative courts are competent to impose a fine only in a situation where the administrative authority fails to execute the court judgment (see the answer to question no. 1), or in administrative court proceedings if procedural rights have been violated (§ 28(2), § 50(2), § 58, § 73(4) of the CACP).

A fine is independent of the court's injunction because the injunction is set in a judgment, but a fine is imposed later by a ruling if the judgment is not executed. The amount of the fine is not awarded to the person who filed the action but to the state revenues. In order to impose a

fine it shall be examined whether the activity of the administrative authority upon the execution of the court judgment corresponds to the precept contained in the judgment and to the conditions of its execution.

Question 5: What happens where the authority has enforced the ruling or judgment but this enforcement is not in line with the authority of *res judicata*?

Can the litigant in the case in question make an application for enforcement of the judgment or ruling to the competent court? Furthermore, if the administrative court considers that it cannot implement the power of injunction because the judgment or ruling has been enforced, can the litigant lodge an appeal against this decision? And to conclude, are there circumstances in which an authority can refuse to enforce a judgment or ruling despite an injunction to enforce having been issued?

Answer: Also in such a case a participant in the proceedings may file with the court a request for imposition of a fine on the participant at fault for failure to execute the court judgment. The administrative authority shall unconditionally execute a court judgment which has entered into force. The court has the right not to impose a fine if the execution of the judgment is objectively impossible for some reason. Change in the circumstances or in the law does not in itself constitute a basis for failure to execute a court judgment and it does not exclude imposition of a fine.

An appeal may be filed against an administrative court ruling which dismissed a request for the imposition of a fine.