THE PRINCIPLE OF LEGAL RELIANCE VERSUS THE PRINCIPLE OF LEGALITY

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Abstract

Two important institutes of administrative law will be discussed in this paper, namely, the principle of legal reliance and the principle of legality, their origin, their place in the General Administrative Code of Georgia, their relation to the constitutional principles and to other principles of public law. The issue of conflict between these two principles takes significant part in the paper. The aim of the paper is to analyse the grounds for the principles of legal reliance and legality, the established caselaw related to them and to reveal significant challenges often faced by an administrative body, in the case of conflict between the mentioned principles. Herewith, the paper will present those problematic issues, which are related to the coexistence of the mentioned institutes, also, the ways for their solution and recommendations.

Keywords: the principle of legal reliance, the principle of legality, protection of reliance of interested party, revocation of act, collision of principles, proportionate and fair decision, conflict of public and private interests.

Introduction

On June 25, 1999, adoption of General Administrative Code was a historical legal reform. In 2000 after the entry into force of the mentioned Code, the standards of relation between the state and a citizen changed drastically. Before the commencement of the Code, there was no experience of application of administrative law and justice in the Law of Georgia.[1]

The administrative law traditions of the USA, Federal Republic of Germany, France and Holland had great influence on the drafting of the General Administrative Code.[2] The mentioned code established the principles of administrative law in the Law of Georgia, among them, the principle of legal reliance, application of which was not common as a Georgian tradition and it was established considering the already existing traditions in foreign countries.[3]

1. Principle of Legal Reliance. Historical Review

The talk about the principle of legal reliance became actual from XIX century. The mentioned principle was stated in the decision of 1892 of the supreme administrative court of Prussia. In the decision the court noted that it would cause legal instability if it would be possible to revoke the legal condition established by issuing a construction permit at any time, even after years and the entrepreneur, who has built a house on the basis of reliance on the permit, would have to leave that territory after one year from the issuance of the permit, or payment of large amount of money would be imposed against it in exchange for the new regulation of the legal relation.[4]

In German administrative law, the principle of legal reliance was one of the important principles[5], later this approach appeared in England.[6] The administrative law of England provided only a procedural

[1] Turava P., The Principle of Legal Reliance (Comparative Legal Analysis), Georgian Legislation Review, volume 10, N2-3, 2007, 212.
[2] Ibid.
[3] Ibid, p. 214.
[4] Ibid, p. 216.
[5] Zeyl, Trevor J., Charting the Wrong Course: The Doctrine of Legitimate Expectations in Investment Treaty Law, Alberta Law Review, Forthcoming, 03/03/2011, 19.

defence of legal reliance, therefore, when legal reliance existed, a person was entitled with only additional procedural rights, namely, for example, oral hearing. Though, at present, legal reliance is a guarantee for an individual implying the protection of rights by means of enforcement of personal expectations.[7] Both – in German and in Community Law legal reliance provides the basis for substantial defence.

1.1. The Principle of Legal Reliance According to the General Administrative Code of Georgia

The principle of legal reliance, like other institutes of administrative law, is subject to legislative regulation, namely, by General Administrative Code of Georgia.

According to the Cassation Court of Georgia, full establishment of the institute of legal reliance is the prerequisite for legality, stability of authority and for establishment of its authority over society.[8]

General Administrative Code does not provide direct definition for the term ''Principle of Legal Reliance'', it presents the mentioned principle in terms of the issues of administrative promise and revocation of enabling administrative act.[9]

Prior to reviewing the principle of legal reliance, it is relevant to study the mechanism for revocation of enabling administrative act pursuant to the General Administrative Code. According to the applicable General Administrative Code, the revocation of a legal act implies the termination of the force of the act. The Code provides three cases of revocation of an act: revocation of act by an administrative body based on administrative complaint, revocation of act at court, due to filing an administrative claim and revocation upon the initiative of administrative body.[10] In this case, our interest concerns the case of revocation of enabling administrative act upon the initiative of administrative body, as we can view the right to legal reliance in terms of the revocation of act upon the initiative of administrative body, in the previous two cases, a person does not have the legal grounds for applying legal reliance, as the terms for appealing the act have not been expired.

Pursuant to the current General Administrative Code an unlawful administrative act may be regarded void and a lawful administrative act may be declared invalid.[11]

According to the Supreme Court of Georgia, the right to legal reliance has particular importance in legal relations, as administrative relations are of subordinate nature. The right to legal reliance protects a person from legal mistake of administrative body and from the non-performance of the action to be implemented in future. Full establishment of the mentioned institute is important, because it is a certain type of prerequisite for legality, stability of governance and its authority over the society.[12]

Pursuant to the Article 41 of the European Charter of Fundamental Rights, the right to good governance is a fundamental right. Upon the concretization[13] of this Article, it was figured out that the prerequisite for good governance is trust between a state and society and the procedures adapted to the welfare of citizens.[14]

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[6] Nolte, G. General Principles of German and European Administrative Law: A Comparison in Historical Perspective. The Modern Law Review, 57(2), 1994, 191–212. http://www.jstor.org/stable/1096807.

[7] Barak-Erez, D., „The Doctrine of Legitimate Expectations and the Distinction between the Reliance and Expectation Interests.“ European Public Law, 2005, p. 584.

[8] Decision Nბს-535-506(ვ-09 of October 6, 2009 of the Supreme Court of Georgia.

[9] Articles 9, 60^1 of the General Administrative Code of Georgia, Parliamentary Gazette, 4, 15, 25/06/1999.

[10] Turava P., Handbook of General Administrative Law, publishing house World of Lawyers, Tbilisi, 2018, p. 201.

[11] Articles 60^1, 61 of the General Administrative Code of Georgia, Parliamentary Gazette, 15-16, 25/06/1999.

[12] Decision Nბს-168-162(ვს-09) of April 28, 2009 of the Supreme Court of Georgia, April 28, 2009, Tbilisi; see also, decisions: Nბს-1433-1391(ვ-08), March 17, 2009; Nბს-1725-1679(ვ-08), June 30, 2009; Nბს-535-506(ვ-09), October 6, 2009; Nბს-ბს-174-168(2ვ-10), July 20, 2010 of the Supreme Court of Georgia.

[13] “The European Code of Good Administrative Behaviour” the code was prepared by the Public Defender of Europe and in 6.9.2001 it was adopted by the European Parliament (Brochure Luxemburg 2001).

[14] Gegenava D., Sommerman K., Kobakhidze I., Rogava Z., Svanishvili S., Turava P., Kalichava K., Khubua G., Handbook of the Legal Bases of Public Administration, Tbilisi 2016, pp. 38-39.

Based on the analysis of the formulation of respective articles of General Administrative Code of Georgia, we may conclude that merely the reliance of an interested party on the act issued by an administrative body is not enough for existence of legal reliance. The belief of an interested party that this act is lawful is an important prerequisite for the existence of legal reliance. Therefore, great attention is paid to the goof faith of the interested party, the legal reliance of the party must not be based on the illegal action of the interested party, for example, this might be the deception of administrative body, submission of false documents etc. as, in this case, his/her belief in the legality of act is excluded.

According to the General Administrative Code of Georgia, the action of legal force, made on the basis of an act is also an important element of legal reliance. For example, when an enabling individual administrative act was addressed to a person, namely, the person obtained a construction permit and with the belief that this permit was issued by the administrative body pursuant to law, the person took out a loan, purchased construction materials and paid the service cost to the builder. In this case, we may regard these cases, as the action of legal force, which was made in terms of the construction permit, as an individual administrative act.

It is also interesting to mention the case, when the basis for issuance of an act is not the unlawful action of interested party, but a mistake or an unlawful action of the administrative body itself, which is known by the interested party, who remains silent. Can a party have legal reliance on such act? Of course, in the case of purposeful silence, the belief of the interested party towards such act is excluded. Therefore, we must consider that an unlawful action of an administrative body is one of the circumstances excluding legal reliance.

1.2. Administrative Promise

Administrative promise might be the grounds for the legal right and interest of the claimant. According to the General Administrative Code of Georgia, an administrative promise is a written document, which confirms that the given action will be made, which might become the basis for the legal reliance of an interested party.[15]

Upon the administrative promise, its content must indicate that the administrative body undertakes to perform certain act, though, the performance of act implies both – performance of an action and refraining from an action. For example, an administrative promise might imply refraining from exercising any of the powers granted to it under law.[16]

One of the important elements of legality of promise is that it must be made by an authorized administrative body. The promise related to the issuance of administrative act must be issued only after the interested party submits his/her opinions and after the written consent of the administrative body, which is necessary for issuing the promised act according to law.

According to the Article 9 of the General Administrative Code of Georgia, legal reliance shall be excluded, if it is based on an unlawful action of the interested party. Herewith, an administrative promise may not be based on an unlawful promise of the administrative body. It is a necessary condition for satisfying the claim of the interested party that the claim must be lawful. The fact whether the promiser or the interested party knew about the illegality of the promise has decisive importance.[17]

Non-observance of written form, changing of the respective normative grounds, which excludes satisfaction of the claim and non-submission of an opinion by other interested party are also the circumstances excluding legal reliance on the promise.[18]

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[15] Articles 9, 60[1] of the General Administrative Code of Georgia, Parliamentary Gazette, 4, 15, 25/06/1999.

[16] Decision Nბს-708-693(3კ-12) of July 4, 2013 of the Supreme Court of Georgia.

[17] Decision Nბს-942-903(კ-07) of September 10, 2008 of the Chamber for Administrative Cases and Cases of Other Categories, see also Turava P., Handbook of General Administrative Law, publishing house World of Lawyers Tbilisi, 2018, p. 181.

[18] Turava P., Handbook of General Administrative Law, publishing house World of Lawyers Tbilisi, 2018, p. 182.

1.3. Processual and Material Legal Reliance

Legal doctrine provides for processual and material reliance. At first, legal reliance was recognized in terms of processual rights. If a decision was made by a relevant authorized body of the state without hearing the interested party and taking his/her opinion into account, the interested party had legal reliance towards the processual right granted to him/her under law. Namely, he/she had a belief that he/she would enjoy the procedures determined by law and his/her opinion would be taken into account in the process of decision-making.[19]

To be more precise, material legal reliance may exist in two cases. First, when the interested party already receives benefit and/or has certain advantage pursuant to law. Therefore, he/she has belief that this condition must be continued. In this case, administrative body rendering the decision will be limited by legal reliance, to apply its discretional powers and revoke the act, which grants the interested person any advantage or benefit. In the other case, the interested person does not have any benefit or advantage yet, though, he/she has legitimate expectation that he/she will gain the mentioned advantage and benefit. In the other case legal reliance has compulsive effect on the decision-making administrative body to grant the promised benefit or advantage to a person as promised.[20]

If we take a closer look at it, we can draw parallel from the above-mentioned reasoning and find out such distinction in Georgian legislation as well. In the first case we have the inadmissibility of revocation of enabling individual administrative act upon the existence of legal reliance and in the second case we may consider the legal reliance deriving from the administrative promise.

In Georgian legislation and scientific literature processual and material legal reliance are not separated. Georgian legislation provides mostly material legal reliance. Nevertheless, the practice of the Supreme Court of Georgia regarding this issue is still interesting in one of the decisions, where legal reliance is discussed in terms of procedural right. In the mentioned case, the claimant missed the period for appeal determined by law due to the fact that the administrative body had explained the terms of appeal incorrectly. The cassation court explained that it is inadmissible to make substantial mistake in the operative part of the disputed individual administrative act, where the right to appeal is explained to the addressee of the act. Considering the fact that in the given case the legal error made by the administrative body caused incorrect understanding of the right to appeal by the interested party, he/she is protected by the institute of legal reliance. Therefore, he/she is authorized to appeal the administrative act according to the procedure and within the term explained by the administrative body. Thus, according to the cassation court, legal error made by an administrative body must not become a material and legal basis hindering the admissibility of a claim or appeal for an interested person.[21]

As we see, in the practice of the Supreme Court of Georgia there exists a decision, where we can talk in terms of the processual legal reliance, though this example mostly concerns the legal reliance related to procedural rights, which, in fact, is material and not procedural. According to the abovementioned interpretation, processual legal reliance implies making a decision specifically without granting to the interested person the right to be heard and to present his/her opinions, also the legal reliance originated therefrom and the expectation in terms of procedural rights, namely, in terms of the right to be heard and to present one’s opinions.

As we have already mentioned, Georgian legislation provides for both cases of material legal reliance – inadmissibility of revocation of enabling individual administrative act and the legal reliance originated from the administrative promise.

2. Legal Reliance as a Principle of Constitutional Law

Constitutional law determines general principles, which are important for any field of law and have guiding role. Administrative law is a kind of concretization of constitutional law. We should analyse

[19] Zeyl, Trevor J., Charting the Wrong Course: The Doctrine of Legitimate Expectations in Investment Treaty Law, Alberta Law Review, Forthcoming, 03/03/2011, p. 472-473.

[20] Uriadmkopeli K., ‘’The Principle of Legal Reliance in Administrative Law, doctoral thesis, 2015, p. 12.

[21] Decision Nბს-168-162(კს-09) of April 28, 2009 of the Supreme Court of Georgia, April 28, 2009, Tbilisi.

and perceive constitutional principles in a complex manner, in relation to the norms existing in administrative law, which are adopted by the influence of interpretation of the principles and provisions established by constitution.[22]

Reviewing the principle of legal reliance in the rank of a constitutional principle is not disputable any more. Dissenting opinion exists in terms of the question – which constitutional norm is related to the origin of the principle of legal reliance. Large part of scientists sees the roots of this principle in the principle of legal state and the principle of social state.[23]

2.1. Legal Reliance and the Principle of Legal State

There exists an opinion that the principle of legal reliance is derived from the principle of legal state, which protects a citizen from abuse of trust in an administrative body.[24]

According to the decision of the Federal Court of Germany, legal stability is an essential element of a legal state and first of all, legal stability implies the observance of reliance for a citizen. Pursuant to the principle of legal state, the activities of the state must be predictable, which is also a component part of stability and for society this means creation of reliance guarantees by the state.[25]

The principle of legal state requires that an administrative act issued by an administrative body, in its essence, must enable a citizen to perform an action based on the act and manage to foresee the outcomes of that act.[26] And without belief in the legality of act, it is impossible to foresee the outcomes and perform an action based on the act, in its turn, the belief in the legality of act is one of the most important prerequisites for legal reliance.

Based on the analysis of German legal literature, we may conclude that the principle of legal state creates constitutional basis for observing legal reliance. Contrary opinion, which regards the derivation of legal grounds for the revocation of act and its upholding from a single norm unlawful, is not well reasoned. As the principle of legal state is not a blanket rule, it is multipolar. Based on its multiple poles it is possible to view the principle of legal state as both - the basis for revocation of an act and the basis for limitation of possibility to revoke the act. Considering all the above-mentioned, the principle of legal state may be regarded as the grounds for both – material justice and the principle of protection of reliance.[27]

2.2. Legal Reliance and the Principle of Social State

In its Preamble, the Constitution of Georgia provides the principle of social state as a state goal.

Some authors substantiate the connection between the principle of observance of legal reliance and the principles guaranteed by the constitution with the reasoning that the principle of legal reliance is related to the principle of social state. The mentioned group of authors considers that the principle of observance of reliance must balance the relation between a citizen and a state, as citizens depend on the state and its lawful conduct. According to the principle of social state, an administrative body is obliged to ensure social justice and provide support for the financially needy groups in tackling the problems. Socially vulnerable groups must be protected so that the state does not return the benefit received by a member of society.[28] Contrary to the mentioned position, there exists an opinion that requiring observance of reliance on the basis of the principle of social state covers only the socially

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[22] Tskhadadze K., Relevance of Constitutional Legal Principles for Administrative Law, Popular Science Journal Administrative Law, N2, Tbilisi, 2016, pp. 5-6.
[23] See footnote 1, Turava, p. 221.
[24] Gegenava D., Sommerman K., Kobakhidze I., Rogava Z., Svanishvili S., Turava P., Kalichava K., Khubua G., Handbook of the Legal Bases of Public Administration, Tbilisi 2016, p. 111.
[25] See footnote 1, Turava, p. 222.
[26] Tskhadadze K., Relevance of Constitutional Legal Principles for Administrative Law, Popular Science Journal Administrative Law, N2, Tbilisi, 2016, p. 6.
[27] See footnote 1, Turava, p. 235.
[28] See footnote 1, Turava, p. 226.

vulnerable groups and the principle of social state is oriented to auxiliary intervention by the state.[29] Nevertheless, helping economically vulnerable group is not the only goal of a social state. The goal of a social a state is also to protect the estate, finances, health and property of an individual.[30] Therefore, we must consider as important elements of the principle of social state not only providing support for financially needy groups of the state, but also social equality, social security and social justice. Therefore, this argument cannot be considered as the argument contradicting the opinions of those authors, who relate the principle of legal reliance with the principle of social state guaranteed by the constitution.

Based on the principle of socials state, considering its multipolar nature, it is possible to observe both – public interests and individual interests.[31]

2.3. Legal Reliance and Good Faith

The principle of good faith, which is well-known in Civil Law, is often regarded as a legal basis for observance of reliance. This principle is named as the basis for observing the legal reliance particularly by the Federal Fiscal Court of Germany. Herewith, in the decisions of Federal Administrative Court we read that the principle of observance of reliance is based on good faith. Nevertheless, the practice is not uniform here as well, there are decisions of the same court, where we read that the principle of observance of reliance comes from the principles of legal stability and legal peace.[32]

One group of authors were critically disposed against applying the principle of observance of reliance based on the civil law principle of good faith. One of such authors is Schule, who considers that we cannot use the principle of good faith as a measure for the conduct of an administrative body. The principle of good faith implies the demand for mutual respect, therefore, at least the expression of will from two parties is a necessary precondition. And such relations are not frequent in Public Law. This type of relations are characteristic for Civil Law.[33]

Good faith and legal reliance are not strictly separated concepts in legal doctrine. They have more in common than differences. In the case of good faith both parties are required to observe this principle and in the case of legal reliance an interested party has expectation and belief in administrative body that its act corresponds with law.[34] Though, it should be noted that acting in good faith from the part of the interested party is a necessary prerequisite in order to have legal reliance of the interested party, Therefore, both – interested party and administrative body are obliged to observe the principle of good faith.[35] Thus, we can talk about a bona fide interested party and a bona fide administrative body.

The existence of the principle of good faith, as one of the most important principles in the activities of administrative bodies is indicated by the Law of Georgia On Public Service as well. The oath of a public servant underlines the importance and the role of the principle of good faith in the activities of a public servant.[36]

Therefore, we may conclude that General Administrative Law of Georgia does not mention the principle of good faith directly, though, this principle is referred to in its special part, various legislative acts and court decisions as well.

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[29] See footnote 1, Turava, p. 228.

[30] Gegenava D., Sommerman K., Kobakhidze I., Rogava Z., Svanishvili S., Turava P., Kalichava K., Khubua G., Handbook of the Legal Bases of Public Administration, Tbilisi 2016, p. 64.

[31] See footnote 1, Turava P., The Principle of Legal Reliance (Comparative Legal Analysis), Georgian Legislation Review, volume 10, N2-3, 2007, p. 235.

[32] See footnote 1, Turava, p. 224.

[33] Ibid.

[34] Uriadmkopeli K., The Principle of Legal Reliance in Administrative Law, doctoral thesis, 2015, p. 24.

[35] Turava P., Tskepladze Natia, Handbook of General Administrative Law, Tbilisi, 2013, pp. 34-35.

[36] Law of Georgia On Public Service, Article 44, Parliamentary Gazette 18, 27/10/2015.

3. The Essence and Purpose of the Principle of Legality

The principle of legal reliance has binding force for an administrative body. A state authority has certain limits of acting freely, but it is always bound by law. In terms of the principle of legality the issue of powers and competence is important. Any act conducted within the state authority must be based on the competence granted on the basis of law and must correspond with the law requirements.

In this case, we should perceive law in both – ''formal'' and ''material'' terms. Law in formal terms means a normative act adopted by the parliament through determined procedure. And in material terms, law implies all legal acts applicable in a state that are legally binding, abstract and general.[37]

Considering all the above-mentioned, the principle of legality is a guiding principle of administrative law, which ensures the legality of the activities of administrative body and their correspondence with law.

3.1. The Essence of the Principle of Legality for the Purposes of General Administrative Code

The principle of legality is a general principle, which combines the requirements towards an administrative body determined by law. The concept of this principle covers both – the principles determined by the General Administrative Code and the binding standards for exercising authority by administrative bodies. Enforcement of the principle of legality is a concomitant obligation of any action performed by an administrative body. Disregarding it equals to the illegality of the act performed by an administrative body.[38]

According to the Article 5(1) of the General Administrative Code of Georgia, any act performed by an administrative body must comply with the requirements of law. The principle of Rule of Law demonstrated in this part of the norm prohibits deviation from law for administrative bodies. Disregarding that results in the illegality of an act. According to the Article 5(2), restriction of human liberty must have normative grounds. This provision of the norm is derived from the principle of legal reservation.[39]

Article 5(3) determines the legal outcomes of violation of the principle of legal reservation. In the ultra vires case, the administrative measure carried out by it will not have legal force.

According to the principle of legal reservation, only the powers granted by law determine the activities of an administrative body, therefore, it must act within these powers. Non-existence of respective act, by itself, excludes the performance of an administrative measure.

3.2. The Principle of Legality as a Principle of Constitutional Law

The principle of legality is an expression and a kind of concretization of a legal state, as an important constitutional principle. The concept of legal state implies the principle of legitimate authority as well.

Based on the essence of the principle of legality, this principle is an important mechanism for controlling authorities. It establishes the limits of interference by administrative bodies in terms of private interests. The main goal of this principle is to prevent an unlawful act of an administrative body, which is a necessary condition for achieving legal stability.[40] And legal stability is one of the important prerequisites for a legal state.

The second element of the principle of legality, the principle of legal reservation also has connection with the principles stipulated in the constitution, namely, the principles of democracy, legal state and recognition of fundamental rights.[41]

[37] Khubua G. Theory of Law, Tbilisi, 2004, p. 140.
[38] Kharshiladze I., Administrative Law of Foreign Countries, Tbilisi, p. 447.
[39] Turava P., Handbook of General Administrative Law, publishing house World of Lawyers Tbilisi, 2018, p. 104.
[40] Tskhadadze K., Relevance of Constitutional Legal Principles for Administrative Law, Popular Science Journal Administrative Law, N2, Tbilisi, 2016, p. 10.
[41] Turava P., Handbook of General Administrative Law, publishing house World of Lawyers Tbilisi, 2018, p. 105.

One of the requirements of the principle of democracy is that important decisions related to ruling of the state must be rendered by a legitimate representative body elected directly by people. In this case, the principle of legal reservation also performs the function of allocation of competences between executive and legislative bodies.[42]

Pursuant to the above reasoning, we may conclude that the principle of legality is derived from the constitutional principle of legal state and represents its concretization in administrative law.

4. Interrelation between the principle of legal reliance and the principle of legality

4.1. Revocation of Administrative Act

After entering into legal force, i.e. after the respective term established by law for filing a complaint or a claim expires, an individual administrative act gains binding force, both – for the addressee of the administrative act and for the issuing administrative body. As we have mentioned above, due to the peculiarities of the authority, law gives administrative bodies the opportunity to revoke such acts upon their own initiative.[43] In particular, the principle of exercising effective authority provides administrative bodies with a power to bring administrative legal acts into compliance with real legal and factual changes and, therefore, regulate certain relations anew. Nevertheless, administrative bodies have the obligation to observe the principle of proportionality of private and public interests.[44]

Revocation of individual administrative act includes both – declaring the act as void and declaring the act as invalid. In both cases the act ceases to exist, but the difference between them lies within the legal nature of the revoked administrative act.[45]

According to the Article 60^1 of the General Administrative Code of Georgia, it is inadmissible to declare an enabling administrative act as void, if the interested party has legal reliance on this act. First of all, this implies protection of the interests of the interested party.

It is noteworthy that along with declaring an administrative act void, an administrative body determines the legal outcomes of its termination as well. Considering legal reliance of the person and public interests, it is possible to establish the termination of the administrative act from the day it became effective, from the day it was declared void or by indicating a certain date in the future.[46]

The power of an administrative body to revoke already rendered decision is derived from the principle of legality, which is a constitutionally recognized principle. Therefore, the principle of legality of authority, which requires that an illegal administrative act must be declared void, forms the grounds for declaring void an enabling individual administrative act, though contrary to the mentioned, we have the principle of legal reliance, as the interested party has legal reliance on the mentioned individual administrative act. As we have already noted, both principles are provided on the constitutional level and they are based on the principle of legal state.

As for declaring an administrative act invalid, the principle of legal reliance is more important in terms of this act, than in the case of declaring void of an illegal enabling administrative act. Upon declaring an administrative act invalid, there is no conflict between the principle of legality and the principle of legal reliance, as the act is lawful and these two principles stand side by side. Nevertheless, this conflict emerges again, when the individual administrative act was declared invalid due to the change in the factual or legal grounds existing upon its issuance. In such case, the individual administrative act is lawful upon its issuance, but the later change in its factual and legal grounds makes it unlawful.[47]

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[42] Adeishvili Z., Vardiashvili K., Izoria L., Kalandadze N., Kopaleishvili M., Skhirtladze N., Turava P., Kitoshvili D., Handbook of General Administrative Law, Tbilisi, 2005, p. 41.

[43] Articles 60 of the General Administrative Code of Georgia, Parliamentary Gazette, 15-16, 25/06/1999.

[44] Turava P., Handbook of General Administrative Law, publishing house World of Lawyers Tbilisi, 2018, p. 199-200.

[45] Articles 60^1-62 of the General Administrative Code of Georgia, Parliamentary Gazette, 15-16, 25/06/1999.

[46] Articles 60^1 of the General Administrative Code of Georgia, Parliamentary Gazette, 15-16, 25/06/1999.

[47] Turava P., Handbook of General Administrative Law, publishing house World of Lawyers Tbilisi, 2018, p. 204-207.

4.2. Conflict between the principle of legal reliance and the principle of legality upon the revocation of an administrative act

It is an interesting fact that in many cases, the principle of observance of reliance obliges an administrative body to perform an illegal action in favour of a citizen and to uphold an unlawful decision.[48] Again, this indicates the strength of the principle of legal reliance and the effectiveness of its defensive nature. The grounds for declaring an act void will be the principle of legitimacy of authority, which requires restoration of legality and revocation of the unlawful individual administrative act. In such case there will be a conflict, i.e. a collision, between the abovementioned two utterly important principles. On the one hand, we have a principle of legal reliance in terms of the void administrative act and, on other hand, it is contradicted by the principle of legality, as the mentioned act is unlawful. The observance of the principle of legality is one of the most important objectives of a legal state, though, the interested person is protected by the principle of legal reliance.

What kind of decision should an administrative body make in such case? Which principle should it prioritize? It is impossible to resolve the problem in a simple manner and to give direct answer to these questions. The aim and the major task for an administrative body, during administrative proceedings and also, for a court, during the court proceedings, is to render a proportionate and fair decision upon the collision of these two principles.

In one of the decisions the cassation court explains that the target of upholding the outcomes of an enabling administrative act is to ensure an utterly important principle of law – legal reliance, which, in its turn, causes the authority of administration and legal security.[49]

The reliance of a citizen on the act of an administrative body must be assessed as more important than the interest observed by the administrative body.[50]

In terms of the conflict between the principle of legal reliance and the principle of legality the recommendations of April 17, 2010 of the judges of the Supreme Court of Georgia are interesting, which cover, among others, the cases of conflict between these two very important principles. At the mentioned meeting the case of increasing the amount or granting a pension based on incorrect grounds was discussed. In such case the interested party has legal reliance towards this act, but the act itself, in terms of its legal nature, is unlawful. The opinion of the judges was that in the case of collision between these two principles, legal reliance is more important, namely, in this case, the person has legal reliance on the individual administrative act, based on which his pension was increased. If there are no grounds excluding legal reliance, the administrative body may not require from the interested party to return the difference due to the unlawfulness of this act, which was caused by the culpable act of the administrative body. The judges agreed that in this particular case, the person is not required to return the difference, because he had legal reliance on the act, though he will not receive the increased amount of pension in the following months.[51]

Based on the recommendations of the judges of the Supreme Court, also on the General Administrative Code of Georgia, we may conclude that when there do not exist circumstances excluding legal reliance, the right to legal reliance is the guarantee for retaining an unlawful administrative act.

In one of the cases the cassation court explains that despite the unlawfulness of the act, for the purpose of observance of the stability of applied administrative measure and the legal reliance of a person, the legislator defends even unlawful enabling administrative act and renders its abolition inadmissible, if legal reliance of the person exists. The court considers that in these circumstances, if there do not exist circumstances excluding legal reliance, the interested person has performed the act of legal nature based on the administrative act and declaring the unlawful administrative act void will inflict damage to him, the conflict between the principle of legality and the principle of legal reliance must be assessed

[48] Turava P., The Principle of Legal Reliance (Comparative Legal Analysis), Georgian Legislation Review, volume 10, N2-3, 2007, p. 226.

[49] Supreme Court of Georgia, Decision N-ბს-143-137(კ-10) of July 6, 2010.

[50] Turava P., Tskepladze Natia, Handbook of General Administrative Law, Tbilisi, 2013; p. 35.

[51] Recommendations on the Problematic Issues of the Caselaw of Administrative Law, April 17, 2010. http://www.supremecourt.ge/files/upload-file/pdf/rekomendaciebi%20administraciuli.pdf [l.s.26.10.2023].

and by means of the principle of proportionality, it must be established, observance of which principle must be given priority in each specific case.

According to the decision of the Cassation court, upon resolving the collision between the principle of legality and the principle of legal reliance of the interested party on the individual administrative act, it is an important precondition to make a comparison of the damage inflicted to third persons and society due to declaring the enabling individual administrative act void.[52]

The cassation court explains that when an act of legal significance has been performed on the basis of enabling individual administrative act, or when the damage inflicted due to its revocation is substantially greater than this good, such individual administrative act may not be declared void, the exception is the case, when the individual administrative act violates state, social or other person's rights or interests substantially. In the case of declaring an individual administrative act void, the material damage inflicted due to the voidness of the act must be compensated to the interested person, whose legal reliance on this act deserves defence.[53]

As we see, the cassation court considers that upon the comparison of the principle of legal reliance and the principle of legality, each particular case must be assessed considering the principle of proportionality by administrative bodies and courts, also, the assessment of public and private interests must be based on this principle.

4.3. The Role of the Principle of Proportionality and of the Pro Rata Principle in the Decision-Making Process

Upon making a decision, the legislator does not grant full liberty to an administrative body, on the one hand, it is limited by the requirement established under law and, on the other hand, by considering the proportionality of public and private interests. When, on the one hand, public interest and on the other hand, private interest are in conflict, an administrative body must assess the interests of a certain party based on the specific case, each detail must be examined thoroughly, because neither of them must be limited without respective grounds. Therefore, the measure selected by the administrative body may not cause unsubstantiated restriction of legal rights and interests of a person.[54]

Legal doctrine knows four stages for examining the existing relation between the measure taken by an administrative body and the goal to be achieved, upon examining the principle of proportionality.

The first stage is the establishment of the goal. Within this stage, the goal to be achieved by an administrative body must be determined. The second stage is the establishment of relevance. In this stage, the relevance between the goal determined by law and the measure applied by the administrative body must be examined. The third stage is the establishment of necessity. In this stage it is examined whether the relevant measure selected by the administrative body is necessary for the achievement of the legitimate goal determined by law. The measure is necessary, when the administrative body does not have other means, which would inflict less damage to both – the society and the addressee upon the achievement of the goal. The fourth stage of examination of proportionality is the establishment of proportionality. The necessary measure will be considered to be proportional, when the limitation of the right due to the issuance of an individual administrative act is in proportionate relation with the goal of the limitation.[55]

In the case of the stage of proportionality it is an interesting fact that according to the third stage of examination of proportionality, upon selecting the measure, the goal of the administrative body must be to select such means for the achievement of the goal, which will bring the least damage to the society

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[52] Supreme Court of Georgia, Decision N-ბს-143-137(კ-10) of July 6, 2010.

[53] Ibid.

[54] Tskhadadze, K., Relevance of Constitutional Legal Principles for Administrative Law, Popular Science Journal Administrative Law, N2, Tbilisi, 2016, p. 10.

[55] See the information on the stages of examination of the principle of proportionality: Turava P., Tskepladze Natia, Handbook of General Administrative Law, Tbilisi, 2013; p. 27; Turava P., Handbook of General Administrative Law, publishing house World of Lawyers Tbilisi, 2018, pp. 116-117.

and to the addressee of the measure. Though, in some cases the use of ‘’minimum force’’ might not be proportionate and sufficient for fair decision.[56]

Based on the principle of proportionality we may determine how successfully the administrative body deals with the task, how accurate it is while interfering in human rights and how much it can control all this. The principle of proportionality is the objective criterion for assessing the fairness of the limitation of constitutional right.[57]

In the case of revocation of the act, pursuant to the principle of proportionality, the administrative body must select the administrative measure by going through the abovementioned four stages, compare the public and private interests well and render the decision.

Conclusion

Based on the above reasoning, we may conclude that a fair decision made by an administrative body is an important element of a legal state. In its decision, Constitutional Court of Georgia notes that one of the most important preconditions for the stability of a modern state is correct allocation of priorities between public and private interests and rendering of a fair decision, and thus, creation of a reasonably balanced system between the authority and the members of society.[58]

Based on the views and reasoning provided in the paper, we may conclude that in the case of collision between the principle of legal reliance and the principle of legality, the main challenge for an administrative body is to render a maximally balanced and proportionate decision, as in such case, we have two contradictory principles, which represent the concretization of the principle of legal state.

Administrative body is obliged to substantiate in the decision on revocation of administrative act upon its initiative, why it has given advantage to one of the two contradictory principles. The administrative body must clearly present the arguments, which will confirm the advantage of revocation of administrative act contrary to the legal reliance, or vice versa and the necessity of upholding the illegal administrative act.

As it has already been mentioned, even in the case of giving advantage to the principle of legality, the principle of legal reliance still maintains its right-protecting function and it becomes the ground for requiring compensation for material damage inflicted due to declaring the administrative act void.

Upon conflict between these two principles, the main difficulty is that an administrative body does not have and cannot have certain answer – ‘’a blueprint’’, how to resolve this collision and which principle should be prioritized. In each particular case, an administrative body must render fair decision based on specific factual circumstances, pursuant to the phases characteristic for the principle of proportionality, on the basis of comparing public and private interests.

Therefore, it can be said that legal reliance is one of the fundamental rights of an interested party in a democratic society. Full establishment of the principle of legal reliance is important as it is a kind of prerequisite for the legitimacy of authority, stability and its reputation among society. The measure selected by an administrative body must not cause unsubstantiated limitation of legal rights and interests of a person This can be the basis for reasonable and proportionate decision adapted to the context of the administrative body.

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[56] Lango, John W., „Proportionality and Aithority”, the ethics of Armed Conflict: A Cosmopolitan just War Theory, Edinburgh University Press, 2014, გვ. 180.

[57] Gonashvili V., Eremadze K., Tevdorashvili G., Kakhiani G., Kverenchkhiladze G., Chighladze N., Introduction to Georgian Constitutional Law, 2016, p. 96.

[58] Citizens of Georgia – Davit Jimsheleishvili, Tariel Gvetadze and Neli Dalalishvili v. the Parliament of Georgia, Decision of the Constitutional Court of Georgia N1/2/384, July 2, 2007.

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