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Institute of Temporary Ruling in Administrative Court Proceedings, Practice of Common Courts and Comparative Legal Analysis with the Legislation of Other Countries

One of the fundamental goals of the legal state is the unwavering protection of basic human rights, among them, legal security and the guarantee of judicial protection of the rights. The preventive remedies of protection of a person's Right in administrative court proceedings, as well as in generally Administrative Law, it is to give a special importance as the result of which the legal relationship arising between the physical person and administrative body based on Administrative Legislation is regulated and in turn, it is a guarantee of the protection of the plaintiff's right for the implementation of an effective justice in the future.

The problem of Delayed justice, which has a negative impact in economic, political and social perspective, an "immediate react" need to be found in response.¹

The first part of article 31 of the Constitution of Georgia provides a person with the right to apply to the court for the protection of his rights, as well as the right for the fair and timely adjudication of the case.²

The present paper examines the peculiarities of one of the measures of preventive protection of the right – The Institution of Temporary Ruling and the prerequisites for its use by the common court, as well as the current legal reality in terms of judicial practice.

The paper also presents the research of the Institute of Temporary Ruling from a comparative legal point of view on the examples of Germany, France, Estonia and the United States of America.

The paper analyzes mechanisms of legislative regulation in above mentioned countries and the approaches established in the theory regarding the Institution of Temporary Ruling.

Keywords: *Temporary Ruling, Preventive protection of the right, Suspensive Effect, Common courts, Administrative court Proceedings*

1. Introduction

“Effective justice implies itself not only repressive protection of a person's right, that means restoration of the violated person's right, but also temporary protection, which should ensure, that the

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¹ *Sierra de la S.*, Provisional Court Protection in Administrative Disputes in Europe: The Constitutional Status of Interim Measures Deriving from The Right to Effective Court Protection. A Comparative Approach, European Law Journal, Vol 10, 1, 2004, 42.

² The first part of article 31 of the Constitution of Georgia, The Legislative Herald of Georgia, 24.08.1995 (in Georgian).

public authorities do not put a person face to face with the real facts until the final decision will be made on the case. Temporary protection of the right also implies itself preventive protection of the right, that is, to prevent consequences of expected measures” .³

Preventive security measures of person’s right represent an important mechanism for fulfillment the right to a fair trial, which should be carried out with due care, comprehension its essence and purpose and determining the legal bases in depth. ⁴

A number of privileges and their use are gathered in the hands of Public Administration, one of the most important of them is so-called “executive character” of Administrative-Legal acts.⁵

Preventive security remedies of person’s right are significantly different from other means of protection of the right and are distinguished by many specificities. Among them, the most significant is the conflict between public and private interests, at which point the drastic role should be played by the court and protect the balance taking into account the principle of proportionality. ⁶

Article 31 of the Administrative Procedure Code⁷ gives the party the possibility to apply to the court with the request about rendering Temporary Ruling before filling a lawsuit regarding the subject of the dispute, when there is a danger of hindering or significantly complicating the realization of the applicant’s right which will be caused by a change in the current situation.

2. Institute of Temporary Ruling in Administrative Proceedings

The Administrative Procedure Code of Georgia provides a system of the temporary protection of person’s right, which is related to the types of administrative lawsuits. If the admissible form of lawsuit it is a lawsuit for annulment of the administrative-legal act, then the temporary protection of person’s right is implemented in accordance with the Article 29 of the Administrative Procedure Code of Georgia, and for the lawsuits defined by Articles 23 and 24 of the Administrative Procedure Code of Georgia, the remedy is given in Article 31 of above mentioned code. ⁸

The right of the interested party, for requesting the rendering of Temporary Ruling derives from his own right to fill a lawsuit about issuance of an individual administrative – legal act or the implementation of an action. This is a case, when filling a lawsuit by itself does not cause temporary

³ See citation: *Kopaleishvili M., Skhirtladze N., Kardava E., Turava P., (ed.) Administrative procedural Law Guide*, Tbilisi, 2008, 386 (in Georgian).

⁴ *Agapishvili M.*, The Issue About the Provision for Damage Inflicted by Preventive Security Measures upon Adjudication the Dispute over Legality of Enabling Individual Administrative-Legal Acts, “Journal of Law” , #2 (2022), Ivane Javakhishvili Tbilisi State University, 234 (in Georgian).

⁵ *Sierra de la S.*, Provisional Court Protection in Administrative Disputes in Europe: The Constitutional Status of Interim Measures Deriving from The Right to Effective Court Protection. A Comparative Approach, *European Law Journal*, Vol 10, 1, 2004, 42.

⁶ *Tsiklauri B.*, Preliminary Measures of Protection of the right in Administrative Law, “Student Law Journal” , ELSA – Georgia, 2011, 18 (in Georgian).

⁷ *Vachadze M., Todria I., Turava P., Tskepladze N.*, Commentary on the Administrative Procedure Code of Georgia, Tbilisi, 2005, 174 (in Georgian).

⁸ *Kopaleishvili M., Turava P., Kharshiladze I., Loria Kh., Ghvamichava T., Gvaramadze T.*, Administrative procedural Law Guide, Tbilisi, 2018, 335-336 (in Georgian).

protection of the plaintiff's rights and it becomes necessary to take an extra measures to protect legal status of the person.⁹

The definition of Temporary Ruling is given in Article 31 of Administrative Procedure code of Georgia, according to which, on the basis of the application, the court may be rendering temporary ruling on the subject of the dispute before filing a lawsuit, when there is a danger that the realization of the applicant's right may be hindered by changing the existing situation or the aforementioned will be significantly complicated. The use of temporary ruling by the court is also allowed for the preliminary settlement of the disputed legal relationship, if this settlement is necessary, first of all, in the case of a long-term legal relationship, due to significant damage, existing danger or other grounds.¹⁰

As we can see, the Institution of Temporary Ruling in administrative court proceedings has 2 basic function: the first – is to maintain the existing situation and the second is to pre-regulate the long-term legal relationship due to the existing danger or other urgent or necessary grounds.

Maintaining the person's "status quo" when using the temporary measure until the final decision will be made by the court, is widespread in the legal systems of many countries, as one of the important purposes of the temporary measure itself.¹¹

Temporary Ruling is rendering by the common court with the purpose of preliminary regulation of the disputed legal relationship. However, both-in maintaining the current situation and in preliminary regulation of the legal relationship, the purpose of temporary ruling is the same – to maintain the situation until the final decision is made by the court on the subject of the dispute, that will make it possible to enforce it.¹²

In order to satisfy the interested party's request about the rendering Temporary Ruling in administrative court proceedings, it is necessary for existing the important prerequisites and the most importantly, a real and not an abstract danger.¹³

For the purposes of the paper, it is significant, the features, that are related to the court proceedings provided for in article 31 of the Administrative procedure code of Georgia¹⁴ and which is implemented only on the basis of an application. From a procedural point of view, it represents an independent procedural action. When checking the admissibility of the lawsuit application, the procedural and legal means of protection of the admissible right on the disputed case are checked (the type of the lawsuit) because if the plaintiff can initiate a lawsuit for annulment the administrative-legal act or to declare about its invalidation, it is not allowed to implement the temporary remedies of

⁹ Ibid, 339-340 (in Georgian).

¹⁰ The first part of Article 31 of the Administrative Procedure Code of Georgia, 23.07.1999, The Legislative Herald of Georgia, <<https://matsne.gov.ge/ka/document/view/16492?publication=98>> [29.05.2024] (in Georgian).

¹¹ Roth M., Interim Measures, Journal of Dispute Resolution, [Vol. 2012] 426.

¹² Vachadze M., Todria I, Turava P., Tskepladze N., Commentary on the Administrative Procedure Code of Georgia, Tbilisi, 2005, 174 (in Georgian).

¹³ Abuseridze G., Preventive Security Measures in Administrative Law, Journal "Justice and Law" №2(62)'19, 2019,13 (in Georgian).

¹⁴ Vachadze M., Todria I, Turava P., Tskepladze N., Commentary on the Administrative Procedure Code of Georgia, Tbilisi, 2005, 176 (in Georgian).

protection the right, which is provided by article 31 of the administrative procedure code of Georgia.¹⁵ In this sense, if we take a look at today's judicial practice, it is interesting the definition of the first instance court¹⁶ about the rendering of temporary ruling, in case of apply to the court before the filling the lawsuit.

In the application regarding the request about rendering the temporary ruling regarding the subject of the dispute before filling the lawsuit, the danger must be clearly presented that by changing the exist situation realization of the applicant's right will be hindered or it will be significantly complicated and when the plaintiff's purpose is the preliminary regulation of the disputed legal relationship, he/she should clearly show that this regulation is necessary to avoid significant harm or present danger.¹⁷

The court, while consideration on the issue of rendering temporary ruling, must examine the plaintiff's right- defending interest regarding the temporary ruling, because temporary ruling should be the necessary remedy of temporary protection of the plaintiff's right. We are not dealing such a necessity, when the plaintiff can protect his/her rights in other easier way, or when the failure of the lawsuit or intentional non-targeted use is obvious.¹⁸

The circumstance that the rendering temporary ruling, first of all, serves the preventive protection of the person's rights, and when there is an expectable danger of violation of the right by the state, special attention is paid to implement an effective and swift justice by the court, this fact is well presented in Temporary Ruling of July 16, 2020, of Tbilisi City Court¹⁹, where the applicants requested reschedule the unified nation exam in English language except Saturday, since they represented the members of one of the religious confession – the seventh-day Adventist Church, which forbidding any secular activities on Saturdays, including taking part in exams. Accordingly, the applicants appealed on fact that, their right fell within the protected sphere of freedom of religion and belief recognized by the Constitution of Georgia and the norms of International Law and there will be the violation of the right to education, as well as the freedom of religion and belief by the state, since they would not be able to use by taking the advantage opportunity passing the unified national exams.

¹⁵ *Kopaleishvili M., Turava P., Kharshiladze I., Loria Kh., Ghvamichava T., Gvaramadze T.*, Administrative procedural Law Guide, Tbilisi, 2018, 339 (in Georgian).

¹⁶ Temporary Ruling of march 16, 2017 on the case N°3/1862-17, panel of administrative cases of Tbilisi City Court, (searched from the archive) (in Georgian). According to the court's definition, by the norm of the law it is established the practice of applying to the court before filling the lawsuit and this has a preventive purpose, since it takes into account the foreseeable danger, which can be expressed in changing the existing situation also in hindering or complicating the realization of the applicant's right. However, the temporary ruling is actually a temporary measure of protecting of the person's rights before making a final decision by the court. It is clear from the content of the norm of the law, that the court is authorized to render such a decision accordance with requirements of article 31 of the Administrative Procedure Code of Georgia, when the filling the lawsuit by itself does not lead to protection of the plaintiff's rights and it becomes necessary to implement an additional measure for protecting the legal status of the person.

¹⁷ *Kopaleishvili M., Turava P., Kharshiladze I., Loria Kh., Ghvamichava T., Gvaramadze T.*, Administrative procedural Law Guide, Tbilisi, 2018, 341 (in Georgian).

¹⁸ Ibid.

¹⁹ See Temporary Ruling of July 16 2020, on the case N°3781793, panel of administrative cases of Tbilisi City Court (searched from the archive) (in Georgian).

The common court satisfied the application about rendering temporary ruling. The court indicated, that since the interference of the state in the rights of belief, confession and education and the limitation of these rights, due to their distribution in the session appointed on Saturday of the English language test, is due to a legitimate purpose – since the schedule of unified national exams is established in accordance with the law, in a predetermined manner, nevertheless, the existence of the legitimate purpose does not justify interference by the state in the rights of belief, religion and education. In addition to the existence of the legitimate purpose, the interference must be necessary and proportional to the restriction, especially if the circumstances were also taken into account that the English test sessions were scheduled on Fridays and Sundays too, and the allotments of applicant on another session would not be result in the need for additional costs from the state.

Necessary prerequisites for the admissibility of an application for temporary ruling is not only the implementation of an action by the administrative body, but the request will be allowed in case of inaction also. However, in between time it is necessary to submit an application to the administrative body regarding the implementation of an action and after that the way to the court opens. It should Also be checked during the eligibility checking of the application existence of the person's right-defending interest,²⁰ and the plaintiff's right-defending interest does not exist when the disputed issue has not yet become the subject of discussion by the administrative body.

An interesting definition is also given by Supreme court of Georgia²¹ regarding temporary ruling and the purposes of rendering it by the court, where the court of cassation clearly emphasized Temporary Ruling as one of the most important mechanisms of preventive protection of the right in administrative justice.

It should be mentioned that, based from the purposes of article 31 of the Administrative Procedure Code of Georgia, the rendering of temporary ruling by the common court, is its authority, but not an obligation, accordingly, rendering the temporary ruling is related to assessments of certain risks by the court. The main and necessary prerequisite is the existence of real danger of violation of the person's right. This is what makes a temporary ruling different from the so-called, "suspension effect" provided in article 29 of the Administrative Procedure Code of Georgia, when filling a lawsuit in the court automatically suspends the appealed Administrative-Legal Act. When rendering temporary ruling, we do not have any regulation by the Administrative-Legal act. However, in both cases, in terms of effective justice, the main purpose is to protect the person's rights from the consequences of public administrative measure.

²⁰ *Vachadze M., Todria I, Turava P., Tskepladze N.*, Commentary on the Administrative Procedure Code of Georgia, Tbilisi, 2005, 177 (in Georgian).

²¹ Judgement of 09 January 2019 on the case №BS -1562 (US- 18) chamber of administrative cases Supreme Court of Georgia of, (in Georgian), according to the definition of cassation court, the purpose of temporary ruling as s temporary remedy of protection of the rights is to maintain the existing situation until the final decision is made on the subject of the dispute. When it comes, to an expected administrative measure – the issuance of an Individual Administrative-Legal act, or the implementation of action by the administrative body or abstain from implementation and hence the expected limitation of the person's rights, temporary ruling is one of the most important mechanisms of preliminary protection of the right. In this case, it is important to use the mechanism of preventive protection of a person's right, defined in article 31 of the Administrative Procedure Code of Georgia.

As for the issue compensation of damages caused by the temporary ruling rendered by the court, there are interesting noteworthy finding in legal literature and case law. There is an opinion expressed in the legal literature, according to which in the event the temporary ruling rendered by the court turned out to be unjustified because the plaintiff's request will not be satisfied in relation to the subject of the dispute and it will be proven that the person did not have a legal basis for the request at the beginning, then the party, on the basis of whose request temporary ruling was rendered is obliged to compensate for the damage to the other party that is suffered as a result of the issuance of temporary ruling.²² On the other hand, according to the definition of Supreme Court of Georgia, except for some exceptions, the court of cassation considers it inadmissible to implement the security measures for civil legal claims provided by the Civil Procedure Code of Georgia, and accordingly to apply its reversal mechanism, while adjudicating the administrative category dispute,²³ envisaged by article 199 of Civil Procedure Code of Georgia. However, the court of cassation has not extent its definition related to the inadmissibility of the use of compensation for damages caused by the claim security measures, neither the direct legislative regulation exists concerning this issue. It is also worth noting the fact, that Constitutional Court of Georgia is adjudicating the constitutional submission of Tbilisi Court of Appeal, by which the court requests to establish the constitutionality of inadmissibility of implementation of reversal mechanism of security measures while using the preventive protection measures in administrative court proceedings. The solution of the issue raised before it by the constitutional court, undoubtedly will significant clarify and bring the contribution in terms of preventive protection of the right.

Based on the pragmatic importance of the research topic, it is significant circumstance when studying the institution of Temporary Ruling from comparative-legal point of view, forms of implementation of temporary measures by the court in countries with different legal systems.²⁴ In particular, they can be rendered by the court in form of order (the so-called "interim order") which has an informal character, also in the form of temporary decision, which has the more formal character. In this regard, the courts are given wide discretion.

From the leading countries of continental law, it can be said, that German administrative legislation is the closest one to Georgian administrative legislation. Article 123 of the Law of the federal republic of Germany On the "Administrative Judicial Order" ²⁵ regulates the issuance of interim order by the court regarding the subject of the dispute at the stage before filling a lawsuit, if there is a danger of violation of the plaintiff's right by changing the existing situation. The court issuing interim order for the purpose of preliminary regulation of the legal relationship also, when the subject of the dispute is not an administrative act.²⁶ The use of above mentioned regulation is necessary for avoiding the existing danger and the immanent force related to it.²⁷

²² *Kopaleishvili M., Turava P., Kharshiladze I., Loria Kh., Ghvamichava T., Gvaramadze T., Administrative procedural Law Guide*, Tbilisi, 2018, 343-344 (in Georgian).

²³ Judgement of 09 January, 2019 on the case N°/BS -1562 (US- 18), chamber of administrative cases of Supreme Court of Georgia (in Georgian).

²⁴ *Roth M., Interim Measures*, Journal of Dispute Resolution, [Vol. 2012] 429-430.

²⁵ The Law of the Federal Republic of Germany on the "Administrative Judicial Order" , 19.03.1991. art.123 (1), <https://www.gesetze-im-internet.de/englisch_vwgo/englisch_vwgo.html> [18.07.2024]

²⁶ Ibid.

²⁷ Ibid.

As we see, in Georgian and German Administrative Procedural Legislation and judicial practice, the normative regulation of the prerequisites for rendering temporary ruling (in the federal republic of Germany – an interim order) is the similar. However, due to the relevance of the research topic of this paper, it is noteworthy that, German Administrative Procedural Legislation, when rendering an interim order, excludes using the norms regulating the suspension the validity of administrative-legal act, so-called “suspensive effect”,²⁸ and indicates about using the norms regarding the ruling on claim security provided by the same code, when rendering an interim order,²⁹ which points to the fact, that the normative regulation of rendering interim order is identical to the procedural norms that regulate the issuing ruling on claim security and this in turn indicates a close connection and common features between the purposes of an interim order and ruling of using claim security measure.

In France there are 2 instance of courts implemented administrative justice: Administrative Tribunals (which may be considered as a court of first instance) and Administrative Appeal Courts. The next one and highest and at the same, time we can say, the oldest instance – it is State Council (Conseil d’Etat) in which together with judges, includes the Vice President and the General Secretary of the State.³⁰

In France, upon adjudicating administrative dispute, interim measures for the preventive protection of the person’s right, includes, among them, the rendering of interim order by the judge issuing temporary ruling (Le Juge des référés), whose status is determined by the Code of Administrative Justice of the Republic of France.³¹

French Administrative procedural legislation is distinguished by certain peculiarities, the judge who has the power of rendering interim order, is limited to such interference, when the decision made by Administrative body clearly and seriously violated a person’s basic rights and freedoms and there is serious doubt about the legality of the Administrative-Legal act.³² As we see, in French administrative justice, for the purpose of preventive protection of the person’s rights, there are two prerequisites, which apply cumulatively for rendering temporary ruling (an interim order): reasonable doubt about the legality of the Administrative-Legal act and the urgent necessity in a timely manner for protecting the right.

²⁸ Ibid, The 5th part of article 123.

²⁹ Ibid, The 3rd part of article 123.

³⁰ Bell J., *Liche’re F.*, Contemporary French Administrative Law, Cambridge University Press, 2022, 83-84.

³¹ The Code of Administrative Justice of the Republic of France, Article L511-2, 01.07.2000, <https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070933/LEGISCTA000006136455/#LEGISCTA000006136455> [17.07.2024], According to the second part of article 511 of the Code of Administrative Justice of the Republic of France, the Judges with the power of rendering interim order, are at the same time chairpersons of Administrative Courts (Tribunals) and Administrative Appeal Courts. As well as the Magistrate Judges, appointed with purpose of issuance an interim order, with 2 years of profession work experience and non-less then with first class counselor rank, and while solution the disputes within the jurisdiction of the State Council, the function of Judges issuing interim order is performed by the State Councilors, appointed for this purpose and the President of the court disputes department.

³² Bell J., *Liche’re F.*, Contemporary French Administrative Law, Cambridge University Press, 2022, 104.

The Code of Administrative Justice of the Republic of France³³, regulates the authority to render interim order with collegial review – composition of three judges. In particular, if the circumstances of the case require it, the chairman of Administrative Court (Tribunal) or Administrative Appeal Court, and in the State Council – the President of the court disputes department may decide to determine the consideration of the issue in accordance with the norms established by this Code collegially – with the composition of three judges.

In this regard, due to the seriousness of the case, the case of Mr. Lambert is noteworthy, who had tetraplegia as a result of a car accident and was in a vegetative state with little consciousness. In 2014 a hospital decided to stop treatment process for Vincent Lambert. The plaintiff (that was Mr. Lambert's wife) requested a review of the above mentioned decision and suspension of its validity and therefore, the continuation of Mr. Lambert's treatment. Despite of number of interim orders, finally the decision was rendered by the court, which established that, the hospital made an illegal decision about suspension treatment process, without properly studying the circumstances of the case. The consideration of this case continued in The European Court of Human Rights and then back through the National Courts of France. Mr. Lambert has passed away in 2019 due to discontinuation of treatment process.³⁴

From Common Law Countries, it is interesting the Administrative court proceedings of United States of America. The authority of the court, to exercise control over the activities of administrative agencies is reinforced by the 3rd article of the Constitution the United States of America, in part 2 of which is stated, that “judicial authority shall be extent to all disputes, in which the United States of America is represented as a party”³⁵

There are numerous of norms, in the form of sources of the law, regulating the powers and activities of the federal judicial system and administrative agencies of the United States of America, among them are the Constitution of the country, the federal law of Administrative Proceedings, which is – Administrative Procedure Act, the so-called APA, acts, which directly regulating the activities of the administrative agencies, other statutes, rules of judicial procedure and judicial precedents themselves.³⁶ The general regulation of the exercising the temporary (interim) measures of protection of the right by the courts, is provided by the federal law of administrative proceedings of the United States of America – that is Administrative Procedure Act.³⁷

³³ The Code of Administrative Justice of the Republic of France, Article L511-2, 01.07.2000, <https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070933/LEGISCTA000006136455/#LEGISCTA000006136455> [17.07.2024].

³⁴ Bell J., *Liche're F.*, Contemporary French Administrative Law, Cambridge University Press, 2022, 108-109.

³⁵ Kharshiladze I., Ovsianikova N., Administrative Law of Foreign Countries, Tbilisi, 2014, 583 (in Georgian).

³⁶ Levinson L.H., Interim Relief at Administrative Procedure: Judicial Stay, Administrative Stay, And Other Interim Administrative Measures, The American Journal of Comparative Law, [Vol. 42, 1994] 639.

³⁷ The federal Administrative Procedural Act of the United States of America was initiated by the Senate on June 11, 1946 (last amendment in July 2024) to improve administrative proceedings and procedural issues.

As long as the case is considered by the court³⁸, the act – order, rendered by the court ensures that any administrative agency (where the justice requires it) is obliged to suspend any action taken by it (including the adopted administrative-legal act), as well as to maintain the existing situation if necessary.³⁹

In the event of appropriate conditions and the occurrence of need to prevent irreparable damage, as far as will be possible, the trial court (including the appeal court or upper instance court, where the appeal or any request of the party is considered) has the authority to render appropriate act, or implementation the procedural action in order to postpone the disputed action (suspension) of the administrative agency or for maintaining the status and current situation of the person until the end of the case review.⁴⁰

The mechanism of rendering temporary ruling by the court in the Estonian Administrative Procedural legislation is more or less similar to the Georgian legislative regulation.

The measures of preventive protection of the right are regulated in the chapter 24 of the Administrative Procedure Code of Estonia⁴¹. The court may, at any stage of the court proceedings, on the basis of an application of the applicant which states its reasons, or of its own motion, issuing an order ordering a measure of interim relief to give provisional protection to the applicant's rights, if in the contrary case the protection of the applicant's rights by the judgment may be rendered significantly more difficult or impossible. As it seems when rendering Temporary ruling, the judge evaluates the perspective and validity of the lawsuit, that is similar to the Georgian administrative procedural legislation.

It is also significant, that the legislation considers it admissible to apply to court for a temporary ruling still during the administrative complaint proceeding process in administrative agency, as well as before or after filling a lawsuit in court.⁴²

The mechanism of appealing temporary ruling is regulated in paragraph 252 of the Administrative Procedure Code of Estonia, according to which, temporary ruling can be appealed to the higher court, decision of which is no longer subject to appeal.⁴³

As can be seen, when reviewing the research issue from a comparative-legal point of view, the procedural legislation of common and continental law counties, is characterized by more or less differences and peculiarities when rendering temporary ruling by the court. However, despite of this, the common feature of all of them is the effective protection of the person's right, taking into account the essence of the administrative procedural order, by enforcing the principle of a fair trial.

³⁸ Comprehensive and detailed comments on the federal law about Administrative Procedure Act was presented in the Georgetown Legal Journal, in particular, the eighth subsection of the first chapter of the comments is devoted to a detailed description of the temporary (interim) measures for the protection of the right by the court.

³⁹ *Blachly F.F. & Oatman E.M.*, Federal Administrative Procedure Act, Geo. L. J. [Vol.34: p.407, 1946] p.422.

⁴⁰ Ibid.

⁴¹ The Administrative Procedure Code of Estonia, 01.01.2012, §249 <<https://www.riigiteataja.ee/en/eli/512122017007/consolide>> [01.01.2018]

⁴² Ibid, §249 (5).

⁴³ Ibid, §249 (7).

2.1. The Issue of Obscurity of the Norm in Relation to Article 31 of the Administrative Procedure Code of Georgia

In terms of obscurity of the norm given in article 31 of the Administrative Procedure Code of Georgia, for the purpose of this paper today's judicial practice is interesting and also the definitions of the judges about the foreseeability of above-mentioned article.⁴⁴ By the judges it was announced, that since article 31 of the Administrative Procedure Code of Georgia does not contain a direct legislative regulation of the term and procedure for appealing of a temporary ruling, the judge by the current judicial practice, by principle of analogy of the law, he/she applies to the 9th part of article 29 of the same code and therefore, temporary ruling is appealed through the private complaint. Also significant is the case, when temporary ruling abolishing becomes necessary, in this case a court applies the same principle of analogy of the law and apply to article 29 of the Administrative Procedure Code of Georgia, as well as article 421 of the Civil Procedure Code of Georgia, the constituent norms of which regulate cases of resumption of proceedings and at the same time, explains the cancellation of temporary ruling on the grounds of general principles of the law.

In addition to the above, since article 31 of the Administrative Procedure Code of Georgia, does not contain a clear legal regulation of the term of rendering temporary ruling by the court, in the mentioned case too, the court is guided by principle of analogy of the law, in particular by the 6th part of article 29 and accordingly, is rendering temporary ruling within 3 days.

Based on all of the above, as a result, the judges expressed the position about article 31 of the Administrative Procedure Code of Georgia, regarding its procedurally better writing by the legislator, which will bring important clarity in the process of preventive protection of the person's right.

3. Common Features with Article 29 of the Administrative Procedure Code of Georgia – So-Called “Suspensive Effect” and Differences from it, Judicial Practice and Common Characteristics with the Institution of Claim Security Provided by the Civil Procedure Code of Georgia

Remedies of protection of the right provided for in article 29 and 31 of the Administrative Procedure Code of Georgia serve to ensure the implementation of effective justice. “The suspensive effect” provided for in article 29 of the Administrative Procedure Code of Georgia, the purpose of which is to protect the person from the consequences of government measure before the final decision is made on the subject of the dispute in administrative proceedings, serves the temporary protection of the right. However, this includes cases, where the subject of the dispute is an already issued Administrative-Legal act and when it comes to the expected governance measure, the issuance of an Individual Administrative-Legal act, or implementation of an action or restraining from it, and hence – the expected limitations of individual's right, in this case, it is important to use the mechanism of

⁴⁴ It should be noted that, for the purposes of this paper, regarding the foreseeability of article 31, a kind of a common position was fixed by the judges of court of first instance, which was reflected in the paper in the form of definitions of them and uniform practice.

preventive protection of the person's right, which is included in article 31 of the Administrative Procedure Code of Georgia.⁴⁵

Based on the above, the norms, provided for in article 29 of the Administrative Procedure Code of Georgia, are used only on the lawsuits filed with the request for abolishing, declaration of invalidity (article 22 of the Administrative Procedure Code of Georgia) or invalid recognition of an individual administrative-legal act (article 25 of the Administrative Procedure Code of Georgia), in relation to other (such as mandatory lawsuit) types of lawsuits, article 31 of the Administrative Procedure Code of Georgia is used.

The institute of Temporary Ruling provided for in the administrative proceedings, has a wider scope, rather than the measure ensuring the suspension of the act. It is not issued by the court automatically, but only on the basis of the person's petition and for the purpose of maintaining the existing situation or preliminary, temporary regulation of the legal relationship.⁴⁶

The issue of obscurity of the norm in relation to the first part of article 29 of the Administrative Procedure Code of Georgia is outlined, which refers to the moment of suspension of an individual administrative-legal act. In particular, the first part of the above- mentioned article is not enough foreseeable.⁴⁷

For the purposes of this paper, taking into account the current judicial practice, according to the definitions of judges, the words given in the norm "acceptance of the lawsuit" clearly implies acceptance the lawsuit in administrative proceedings.

A common characteristics of the measures of temporary protection of the right, defined by article 29 and article 31 of the Administrative Procedure Code of Georgia, is to maintain the status quo, the purpose of which is to protect a person from the consequences of state administrative measures before making a decision in the process of administrative court proceedings.⁴⁸

When acceptance a complaint or lawsuit about annulment of an individual-administrative-legal act automatically suspends validity of this act, the authority to render temporary ruling, legislator gives only to a court. Which it receives based on the application of the interested party in administrative proceedings.⁴⁹

⁴⁵ *Vachadze M., Todria I., Turava P., Tskepladze N.*, Commentary on the Administrative Procedure Code of Georgia, Tbilisi, 2005, 174 (in Georgian).

⁴⁶ See citation: *Abuseridze G.*, Preventive Protection Measures in Administrative Law, Journal "Justice and Law" №2(62)'19, 2019,12-13 (in Georgian).

⁴⁷ It is noteworthy, that according to the first part of article 29 of the Administrative Procedure Code of Georgia, acceptance of the lawsuit in court, suspends the action of the appealed individual administrative-legal act. It is not clear from the content of the norm what does it meant by the words: "acceptance of the lawsuit" acceptance of the lawsuit in the proceedings, apply with the relevant lawsuit directly in the court and registration it etc. Unlike the General Administrative Code of Georgia, where it is clearly stated according to the first part of article 184, that if nothing else is established by a law or by the statutory act issued on the basis, validity of the appealed act will be suspended from the moment of registration of the administrative complaint.

⁴⁸ *Kopaleishvili M., Skhirtladze N., Kardava E., Turava P., (ed.)* Administrative Procedural Law Guide, Tbilisi, 2008, 386 (in Georgian).

⁴⁹ *Vachadze M., Todria I., Turava P., Tskepladze N.*, Commentary on the Administrative Procedure Code of Georgia, Tbilisi, 2005, 175 (in Georgian).

It is noteworthy another problematic issue, particular, while the judge adjudication the administrative case, to use the civil procedural claims security measures as a measures of temporary protection of the person's right. In this regard, the judicial practice of Supreme Court of Georgia is interesting, where the court of cassation clearly separated the preliminary remedies of protection of the right, provided for by the Civil and Administrative Procedural Legislation and gave kind of priority to the legal mechanisms of preliminary protection of the right, determined by the Administrative process, which are defined in articles 29 and 31 of the Administrative Procedure Code of Georgia.⁵⁰

In terms of current judicial practice regarding the above-mentioned problematic issue, according to the Judges definitions, the main accent should be on the purpose of the claim provision, whether the request of the petition satisfies or not the requirements for rendering temporary ruling as provided in article 31 of the Administrative Procedure Code of Georgia. For example, if the person requests to use civil procedural claim security measure, such as, e.g. seizure lien, here, the court is forced to explicitly use the particular claim security measure defined by article 198 of the Civil Procedure Code of Georgia, at the same time referring to the 2nd part of first article of the Administrative Procedure Code of Georgia.⁵¹

As in rendering a ruling on a measure of security of claim in civil procedure law, also at the time of rendering temporary ruling by the court adjudicating administrative case, the judge evaluates the perspective of lawsuit and the risks of significant damages and existing danger in the case of a long-term legal relationship and after then issue a ruling.

Moreover, it can be said, that in administrative proceedings the court may examine the perspective of the lawsuit with a higher degree then in civil proceedings, where the use of claim security is based on the hypothetical assumption of lawsuit satisfaction, however, the examination of perspective of the lawsuit, should not turn in substantive investigation of validity of the claim.⁵²

"The court, based on the purposes of rendering temporary ruling, must be convinced of a high probability of the person's success in order not to endanger the stability of justice. It is not allowed for the court to decide the main dispute by temporary ruling."⁵³ At the same time, the rendering the ruling should be the only remedy and the person should not have a real opportunity of protecting his/hers right in any other way.⁵⁴

⁵⁰ See the resolution of 09 January, 2019 on the case №1562 (us-k-18) of chamber of Administrative Cases of Supreme court of Georgia, where the court of cassation defines that, regardless of that there is wide spectrum of claim security measures represented in Civil Procedure Code of Georgia, the Administrative Procedure Code of Georgia determines itself the mechanisms of preliminary protection of the right, in particular, articles of 29 and 31 of the above-mentioned Code, in which the legal remedies of temporary protection of the right in administrative proceedings are provided, according to the types of lawsuits defined by the same code.

⁵¹ See the resolution of 12 July, 2017 on the case №3/4827-17 and the resolution of 19 February, 2021 on the case №3/769-21, of panel of administrative cases of Tbilisi city Court. (searched from archive.)

⁵² *Agapishvili M.*, The Issue About the Provision for Damage Inflicted by Preventive Security Measures upon Adjudication the Dispute over Legality of Enabling Individual Administrative-Legal Acts, "Journal of Law" , №2 (2022), Ivane Javakhishvili Tbilisi State University, 234 (in Georgian).

⁵³ See citation: *Tsiklauri B.*, The Preliminary Measures of Protecting the Right in Administrative Law, Student Law Journal, ELSA- Georgia, 2011,18 (in Georgian).

⁵⁴ *Abuseridze G.*, Preventive Security Measures in Administrative Law, Jour. "Justice and Law" №2(62)'19, 2019,13 (in Georgian).

The rendering temporary ruling should usually be used for temporary regulating the relevant legal relationship and not for satisfying the main request of the lawsuit, however in order to satisfy the basic requirements of temporary ruling, as an extreme exception, there must be strong preconditions, there must be a probability that the lawsuit will be satisfied and the same time without the rendering temporary ruling the realization of the right protected by the court, will be impossible or it will be significantly complicated.⁵⁵

Based on all of the above, it can be said, that the rendering temporary ruling contains a certain risks and that is why it is necessary undoubted existence of relevant prerequisites while render it, which does not characterize article 29 of the Administrative Procedure Code of Georgia, particular – suspensive effect, when the administrative-legal act automatically suspends, except for the exceptions regulated in the second part of same the article.

4. Conclusion

The right to effective judicial protection is one of the main principles of the development of temporary protection measures.⁵⁶

Based on the review of characteristic peculiarities of the research issue of this paper and the current judicial practice, regulation of the legislative framework from a procedural point of view and increasing the degree of foreseeability by the legislator is on the agenda, which again and again serves that purpose, that the person should be better informed and guaranteed by the norm of predictable law, so that his/her right does not remain without protection and should not depend on the non-uniformly interpretation of the norm by the court, in each specific case.

The purpose of this paper to present those key issues and problems as much as possible, what characterizes the Institution of Temporary Ruling, taking into account the current judicial practice. This paper is also presented the results and positions of the definitions given by the judges of the common courts, regarding the foreseeability of article 31 of the Administrative Procedure Code of Georgia and the peculiarities of the Institution of Temporary ruling in general, which hopefully will be considered important in the future and it will be positively contribute to the development of Administrative Procedural Law in the field of preventive protection of the right.

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⁵⁵ See the Resolution of 27 June, 2024 on the case №9517158, panel of administrative cases of Tbilisi city Court. (searched from archive.) (in Georgian).

⁵⁶ *Sierra de la S.*, Provisional Court Protection in Administrative Disputes in Europe: The Constitutional Status of Interim Measures Deriving from The Right to Effective Court Protection. A Comparative Approach, *European Law Journal*, [Vol 10]1, 2004, 48.

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