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## **Annulment of an Individual Administrative-Legal Act without Resolving the Disputed Issue by the Court and Ordering the Issuance of a New Act – an Effective Means of Protecting the Rights of an Interested Person?**

*In a modern democratic legal state, the development of effective mechanisms for the protection of human rights and their practical implementation remains a challenge, which is unimaginable without the active intervention of the court as a controlling body. Such intervention is particularly important when the legality of administrative measures is reviewed through administrative bodies, and a person requests the protection of their rights and the restoration of justice.*

*As the dispute takes place between two unequal subjects and balance is the cornerstone of making a true and fair decision, this article discusses the role of the court in administrative proceedings, the expression of the inquisitorial principle, and when an individual administrative-legal act is annulled without resolving the disputed issue. The validity and effectiveness of using this mechanism are also discussed. The mechanism offered by administrative procedural legislation is evaluated in terms of its sufficiency and as the only primary means of a fully justified guarantee for the subsequent protection of a person's legitimate interests and rights.*

**Keywords:** *inquisitorial nature, adversarial principle, administrative proceedings, discretionary authority, annulment of an act.*

### **1. Introduction**

In a democratic state, the protection of fundamental human rights is both the goal and a challenge for all legal systems and instruments. Accordingly, when researching the branches of law, it is usually an essential and, in most cases, a primary problem to find ways to eliminate obstacles to the protection of human rights and to create fundamental scientific foundations and theories for their effective protection and implementation in real life.

An effective mechanism for protecting human rights is closely related to the supremacy of law, which in turn implies judicial control over the interference of state authorities in a person's rights. Typically, such control should be exercised by the judicial authority, as judicial control provides the best guarantees of independence, impartiality, and adherence to due procedures.<sup>1</sup>

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<sup>1</sup> Turava, P., Firtskhalashvili, A., Kardava, E., Administrative Proceedings in Public Service, Tbilisi, 2020, 81 (In Georgian).

Hence, it is important to discuss the role of the court in administrative proceedings, the expression of the inquisitorial principle, and when an individual administrative-legal act is annulled without resolving the disputed issue. It is also important to consider the validity and effectiveness of using this mechanism, and to review it within the framework of the main principles characteristic of administrative law, to ascertain how protected the right to a fair and timely review is in such cases, whether the mechanism offered by administrative procedural legislation is effective in terms of protecting legitimate interest, and also if it is a sufficient and the only primary means for absolutely justified assurance of subsequent protection of a person's legitimate interest and rights.

Given the above, it will also be important to review what reasoning and arguments the court uses and how sufficient such reasoning is for the interested person's case to move/return from the court to administrative proceedings (to the relevant administrative body).

## **2. The Importance of Administrative Procedural Law, as a Branch of Legal Protection and Control of Administrative Bodies, and the Content of Article 32.4 of the Administrative Procedural Code**

In addition to regulating relations between citizens, the law also regulates their relations with administrative bodies. A person has the right to receive certain information, express their opinion, have the opportunity to protect their rights in court, etc.

Administrative justice bodies must check the compliance of administrative bodies' managerial functions with the law, which stems from their function of legal protection. Any form of activity of administrative bodies is subject to judicial control. Accordingly, a citizen has the right to file a lawsuit with the administrative court if their rights are violated by an administrative body.<sup>2</sup>

The most important principles and procedural guarantees of administrative proceedings have been defined by the General Administrative Code<sup>3</sup> since 2000, but since 2017, the principle of fair administrative proceedings has acquired the significance of a constitutional legal principle.<sup>4</sup>

The current state of administrative procedural law was preceded by numerous reforms, since its importance has become a significant basis for controlling state activities and implementing actions over the years. The function of legal protection obliged administrative justice bodies to check the compliance of the managerial function with the law.<sup>5</sup>

One of the mechanisms for protecting rights, stemming from the function of legal protection, was enshrined in Article 32, Part 4 of the Administrative Procedural Code of Georgia<sup>6</sup> (hereinafter referred to as APC), which represents a repressive right protection mechanism and allows the court to intervene in the process with immediate response through the administration of justice. The aforementioned norm establishes two factual circumstances when the court begins to discuss the

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<sup>2</sup> Loria V., Administrative Law of Georgia, Meridian Publishing House, Tbilisi, 2002, 13 (In Georgian).

<sup>3</sup> Law of Georgia, General Administrative Code of Georgia, 1999 (In Georgian).

<sup>4</sup> Gvaramadze T., Fair Administrative Proceedings and European Standards, Collection of Articles, Law Journal N2, Tbilisi, 2023, 236 (In Georgian).

<sup>5</sup> Ibid, 13.

<sup>6</sup> Law of Georgia, Administrative Procedure Code of Georgia, 1999 (In Georgian).

annulment of an act without resolving the issue: 1. Important circumstances for the case have not been investigated, or have been partially investigated. 2. The important circumstances for the case have not been evaluated. Hence, in the opinion of the court, based on this norm, we have an incomplete proceeding. In addition, there must be an urgent legitimate interest of the party in the annulment.

It should be noted that a decision made based on APC Article 32.4 is similar in nature to a decision made based on APC Article 33 (ordering the issuance of an administrative-legal act).<sup>7</sup> In both cases, the party's interest is to order the issuance of an act or a new act. However, the basis of the latter is the party's lawsuit based on the APC Article 23, where the party appeals the refusal to issue an act or there is a violation of the legal deadline for issuing an act. In this case, the court does not substantively discuss the issue and decides to order the issuance of the act or refuses to satisfy the claim, only in this part. When deciding based on APC Article 33, the court is more constrained by the substantive authority of the administrative body and discusses only the legality of refusing to issue the act, without interfering with what decision the administrative body will make when issuing the act. Whereas on the basis of Article 32.4, the court assesses the legality of an already issued act and, hence, its reasoning and evaluations that should accompany the annulment of the act and the issuance of a new act, to some extent guide the administrative body on what issues it should discuss additionally.

It should be noted that the use of the above-mentioned norm requires considerable caution and a high standard of justification, as its correct application is directly related to the constitutionally guaranteed right to a fair trial. As a result of constitutional changes, by creating this norm, the right to so-called "good governance" and "fair administrative proceedings" was enshrined as a fundamental right.<sup>8</sup> Good governance, as the codification of a fundamental right in the country's main law, will contribute to the protection of individual rights and, at the same time, to the effectiveness of public administration.<sup>9</sup>

### **3. Principles Characteristic of Administrative Procedural Law in Terms of Controlling and Restraining Administrative Bodies**

The Constitution of Georgia defines the basic principles of all branches of law, which individual sub-branches strengthen and extend in such a way that the essence of the basic principles is not violated. Constitutionally enshrined principles, it can be said, are exceptionally dominant in administrative law<sup>10</sup>.

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<sup>7</sup> Kopaleishili M., Turava P., Kharshiladze I., Loria Kh., Gvaramadze T., Ghvamichava T., *Administrative Procedural Law Handbook*, Tbilisi, Lawyers' World, 2018, 255 (In Georgian).

<sup>8</sup> The Association Agreement "between Georgia, on the one part, and the European Union and the European Atomic Energy Community and their Member States, on the other part" was signed on 27 June 2014. It was ratified by the Parliament of Georgia on 18 July 2014. It entered into full force on 1 July 2016 (In Georgian).

<sup>9</sup> Turava P., Pirtskalaishvili A., Kardava E., "Administrative Procedure in the Public Service", Tbilisi, 2020, 9 (In Georgian).

<sup>10</sup> Tskhadadze K., "Relevance of Constitutional-Legal Principles for Administrative Law", *Administrative Law, Scientific Popular Journal*, Tbilisi, 2016, 5 (In Georgian).

Administrative procedural law, which creates the most important lever for protecting rights within the framework of relations between administrative bodies and citizens, is based on such important principles as the principle of disposition, the principle of inquisitoriality, the principle of adversariality, and the principle of equality before the law. The principles of administrative decision-making, namely, the principle of proportionality and commensurability, and the principle of discretionary authority, etc., are also important.<sup>11</sup>

Each of the above-mentioned principles accompanies the entire administrative process and is the determining and fundamental direction in legal proceedings. Accordingly, within the framework of this article, we will first review the main principles in administrative proceedings, the peculiarities of their manifestation, and also discuss their importance in terms of effectively protecting the rights of persons participating in the administrative process.

### **3.1. The Role and Scope of the Adversarial Principle when the Court Annuls an Individual Administrative-Legal Act without Resolving the Disputed Issue**

One of the most important principles that creates an effective lever for protecting and exercising rights for participants in administrative proceedings is the adversarial principle. This principle equally equips the parties. They enjoy equal rights and opportunities to substantiate their claims, define the scope and grounds of the claim, refute or invalidate claims, evidence, or justifications put forward by the other party.<sup>12</sup>

The legislator makes a reservation that the court is authorized to decide on its initiative to submit additional information or evidence. Given the importance of this reservation, it is advisable to discuss only the principle of adversariality and its essence in this subsection, while the court's investigation of the circumstances of the case, a basis established in scientific literature as the inquisitorial principle, will be discussed separately.

The right to an adversarial process must be exercised under satisfactory conditions: a party to the proceedings must have the opportunity to review the evidence before the court, as well as the means to comment on its content and authenticity in an appropriate form and within a reasonable time, if necessary, by postponing the hearing.<sup>13</sup>

It is important to note that despite the broad authority of the judge in administrative proceedings – to participate, *inter alia*, in investigating or clarifying circumstances important to the case – the parties enjoy equal rights to decide on the submission of evidence themselves. Thus, in administrative procedural law, we have an absolute autonomy of will along with an equally authoritative mechanism for protecting rights or decisions.

It is precisely with the limitation of the absolute autonomy of will and the use of equal authorities that we are dealing when the court returns the issue for consideration to the administrative

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<sup>11</sup> Kopaleishvili M., Skhirtladze N., Kardava E., Turava P., Handbook of Administrative Procedural Law, Tbilisi, 2008, 8 (In Georgian).

<sup>12</sup> Kopaleishvili M., Turava P., Kharshiladze I., Loria Kh., Gvaramadze T., Ghvamichava T., Handbook of Administrative Procedural Law, Tbilisi, 2018, 23 (In Georgian).

<sup>13</sup> Guidelines on Article 6 of the European Convention on Human Rights, 17.

body, whereas the whole “charm” of administrative proceedings is expressed precisely in adversariality and, at the same time, in the active role of the court.

When an act is annulled without resolving the issue, the case moves to administrative proceedings, where the dispute continues between two unequal subjects, on the one hand, an organ with governing power, and on the other hand, interested persons, where the standard of ensuring adversariality and its control mechanism are outside the court and, consequently, ineffective.

The effective realization of the adversarial principle implies that the court plays an active role in ensuring balance. If the judge considers that the issue has not been sufficiently investigated and additional evidence and circumstances need to be clarified and discussed, within the framework of broad powers, they can postpone the session, instruct the administrative body to submit relevant documents/materials, and conduct additional research within the process with equal participation of the parties, and only then make a decision. It is precisely within the framework of such a solution that this principle will be effective.

### **3.2. Investigation of Case Circumstances by the Court – Degree of Inquisitoriality – When the Court Annuls an Individual Administrative-legal act Without Resolving the Disputed Issue**

The inquisitorial principle, as mentioned above, is established in scientific literature with such terminology and implies the active role of the court exercising administrative justice in investigating the circumstances of the case during legal proceedings.

The administrative process is characterized by an inquisitorial nature, because it is focused on protecting public norms. If the evidence presented by the parties during the dispute does not satisfy the court and it considers that it is insufficient for objectively investigating the circumstances of the case and establishing objective truth, it will, on its initiative, ensure the search and investigation of evidence. It is also possible for the court to focus on circumstances that the parties did not present to the court during the proceedings.<sup>14</sup>

The inquisitorial nature of administrative disputes does not inherently imply unlimited powers of the court system to interfere in the activities of administrative bodies and make decisions instead of them. Accordingly, a “golden mean” is necessary so that the court does not become a subject exercising governance, which in itself would violate the essence of the constitutional principle of separation of powers. “Although the court can collect additional evidence to fully investigate factual circumstances, this ensures the elimination of deficiencies allowed within the administrative proceedings and not the replacement of the proceedings to be carried out in the body,” explained the Supreme Court.<sup>15</sup>

“The scope of control over managerial measures by the court and a higher administrative body is differentiated from each other, since a higher administrative body reviews a decision made based on discretionary authority and subsequently appealed, both in terms of legality and expediency, whereas

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<sup>14</sup> *Ghvamichava T., Admissibility of Cassation Appeal in Administrative Proceedings (Comparative Analysis)*, Dissertation, Tbilisi, 2017,52 (In Georgian).

<sup>15</sup> Decision of the Supreme Court of Georgia of July 24, 2024, case #8b-260(3-24) (In Georgian).

the court's control over such acts is limited and it is limited only to checking the legality of the decision.”<sup>16</sup>

When applying the inquisitorial principle, it is important to note that, based on Article 2.5 of the APC, the initiation of a request to annul an individual administrative-legal act in court is preceded by the obligation of a one-time appeal of this act (except for cases provided by law). Accordingly, the administrative body is granted a kind of additional mechanism and opportunity by law to review and additionally study the issue, both in terms of legality and expediency. Consequently, in cases of using such a mechanism, the court's decision to give the administrative body another opportunity for additional research becomes even more ambiguous.

It is precisely the inquisitorial principle that makes the administrative justice process special and gives it a special role in helping the interested person in a dispute with an administrative body that is at a higher level compared to them. Assistance can be expressed both in formulating/clarifying the request and in presenting additional evidence, documents, and materials at the request of the court. Of course, such assistance does not at all imply the court's declared support for the party in advance and the creation of an expectation of a decision in its favor. Accordingly, the role of the court in the administration of justice is decisive for making an objective decision in the case.

Refusal of the inquisitorial principle can be considered the annulment of an appealed act without resolving the issue and returning it to the administrative body for reconsideration without proper justification, even when the court has both the authority granted by law and sufficient resources to conduct additional research on the issue with the participation of the parties. Annulment of an act without resolving the issue cannot be considered a suitable means on the grounds of protecting a person's legitimate interest, because the interested person's goal is not only to annul the act, but also to make a necessary and fair decision, to reach an outcome.

### **3.3. The Balance of the Principle of Equality Before the Law When a Court Annuls an Individual Administrative-Legal Act without Resolving the Disputed Issue.**

The principle of equality before the law is one of the fundamental principles that is manifested uniquely in administrative proceedings. It implies the equal legal standing of all parties involved in the administrative process. This principle is particularly important in the context of administrative disputes and during both administrative proceedings and adjudication, where the parties typically include two actors on unequal footing. In such cases, it is essential to uphold equality in a manner that ensures, on the one hand, the protection of the public interest, and on the other, a reasonable balance between public and private interests.<sup>17</sup>

Administrative litigation and justice are the powerful institutions through which equality of rights must be guaranteed, especially during the implementation of public administrative measures. Administrative bodies often possess significantly more power and resources compared to the addressees of such measures. This applies equally to both empowering and restrictive administrative actions, where the realization of the rights of interested parties requires strong support, first and

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<sup>16</sup> Decision of the Supreme Court of Georgia of November 8, 2018, case #8b-602-602(23-18) (In Georgian).

<sup>17</sup> Kopaleishili M., Turava P., Kharshiladze I., Loria Kh., Gvaramadze T., Ghvamichava T., Administrative Procedural Law Handbook, Tbilisi, 2018, 29 (In Georgian).

foremost through a well-structured legislative framework, to ensure equality in the execution of public administrative activities.

Granting administrative bodies an additional opportunity to re-examine a case, when a court annuls an act without resolving the underlying issue, under conditions where the administrative authority may simply reissue the same decision after a merely formal, rather than substantive, review, undermines the principle of equality. In such cases, equality is violated when the court is capable of securing the presentation of evidence through instructions within the proceeding itself, and to adjudicate the matter with the parties placed on an equal footing.

Moreover, the ambiguity of the current legal norm creates a risk of inconsistent decisions, which is further discussed in detail in the section on judicial practice below.

### **3.4. The Effectiveness and Significance of the Right to a Fair Trial in Cases Where a Court Annuls an Individual Administrative-Legal Act Without Resolving the Disputed Matter**

The *Universal Declaration of Human Rights*, adopted by the United Nations General Assembly on 10 December 1948, was the first document in human history to enshrine fundamental human rights grounded in the principle of universality and applicable to individuals in their unique contexts.<sup>18</sup> Among other essential rights, the Declaration established, under Article 8, that everyone whose fundamental rights are granted by the constitution or by law are violated must have access to an effective remedy before competent national courts.<sup>19</sup>

It can be said that this fundamental right, enshrined in the Universal Declaration of Human Rights, is reflected with utmost precision and the highest standard of protection in the supreme law of the country. Both international legal instruments and domestic legal systems emphasize not only the right to a fair hearing but also the requirement that cases be examined and decided within a reasonable time frame.

The importance of this constitutionally guaranteed fundamental procedural right is further underscored by the European Convention on Human Rights, which proclaims that every person, in the determination of their civil rights and obligations or of any criminal charge against them, is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.<sup>20</sup>

The Constitutional Court of Georgia considers this right, as in the Constitution, to be an “instrumental right,” noting that it ensures the enforceability and protection of rights and legitimate interests through the courts.<sup>21</sup>

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<sup>18</sup> Universal Declaration of Human Rights, 60th Anniversary (Special Edition 1948-2008) United Nations Department of Public Information, Georgia Office, Office of the United Nations High Commissioner for Human Rights, Georgia, Tbilisi, May, 2008, <<https://www.supremecourt.ge/files/upload-file/pdf/aqtебi3.pdf>> (In Georgian).

<sup>19</sup> Universal Declaration of Human Rights, United Nations General Assembly, December 10, 1948.

<sup>20</sup> Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950. Ratified by Georgia in 1994, and entered into force in 1999. Convention for the Protection of Human Rights and Fundamental Freedoms | LEPL “Georgian Legislative Herald” ([matsne.gov.ge](http://matsne.gov.ge)) [14.04.2024] (In Georgian.)

<sup>21</sup> Decision of the Constitutional Court of Georgia of August 27, 2009 N1/2/434, in the case – Public Defender of Georgia v. Parliament of Georgia (In Georgian).

There has never been, and likely never will be, a more effective means of protecting rights than judicial remedy.<sup>22</sup>

The right to a fair trial is a key element of the rule of law and democratic governance. It serves as the most vital mechanism for regulating disputes between the individual and the state, ensuring the effective realization of constitutional rights, and protecting individuals from unjustified interference.<sup>23</sup>

The right to a fair trial includes a set of key procedural guarantees that contribute to ensuring the fairness of judicial proceedings. The following guarantees apply to all types of legal proceedings:

- Public hearing;
- Examination within a reasonable time;
- Access to a lawyer or the ability to represent oneself;
- A reasoned decision.<sup>24</sup>

Therefore, in a democratic state, the right to a fair trial is considered a cornerstone of democracy. It includes not only the individual's right to access the court but also encompasses the entire process and requires fair procedural guarantees throughout.

The realization of the right to a fair trial should be discussed with the legal remedy mechanism provided under Article 32.4 of the Administrative Procedure Code. Of course, the use of this mechanism, by its nature, is also a judicial proceeding, and all reasoning developed in the previous subsections applies here. However, when the court considers a claim to annul an act, the use of the mentioned mechanism requires particular attention in terms of the realization of the right to a fair trial.

The parties involved in legal proceedings must have the right not only to submit collected materials, evidence, and conclusions, but also for their case to be reviewed by the court. This is what the effective protection of this right entails. The weakness in the protection of the right, the right to have one's case reviewed by a court, is revealed precisely when the court annuls an act without resolving the matter. The court has an "obligation" to thoroughly examine the submitted evidence, arguments, and documents, their completeness and sufficiency, and if it determines that further information, materials, or evidence are needed to reach a decision, it must request them, instruct the administrative body to submit them, and only then continue the review.

The combination of this right with the inquisitorial principle in administrative judicial proceedings gives us the framework in which the court's role in the effective realization of rights is especially important. The judge hearing the case has both the right and the duty not only to rely on the submitted evidence and documents, but also to participate actively, to request additional evidence and documents to ensure equality between the parties, to achieve a fair balance, and to determine the objective truth in the case. The active role and positive intervention of the court should not be expressed in annulling the act without resolving the matter and returning it to the administrative

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<sup>22</sup> *Kurdadze Sh.*, The Essence of Simplified Proceedings in Civil Procedure, Journal, "Law", N7-8, 2002,29 (In Georgian.)

<sup>23</sup> Decision of the Constitutional Court of Georgia of December 19, 2008 #1/1/403,427 Canadian citizen Hussein Ali and Georgian citizen Elene Kirakosyan against the Parliament of Georgia (In Georgian).

<sup>24</sup> <https://www.humanrightsguide.ge/rights/samartiani-sasamartlos-upleba>, [17.04.2025] (In Georgian.)

authority for further investigation, but rather in the active exercise of its oversight power within the proceedings.

The mechanism offered by administrative procedural legislation, whereby the court returns the case to the administrative authority for investigation, in its current form and content, cannot ensure the effective protection of the right to a fair trial. The examination of the matter and the decision-making process are unreasonably delayed in time, and multiple essential principles, including adversarial proceedings and inquisitorial elements, cannot be fully realized. These principles are directly linked to the effective protection of the right to a fair trial.

#### **4. Judicial Practice**

According to its content and judicial practice, Article 32.4 of the Administrative Procedure Code (APC) is applied in cases where specific circumstances cannot be established through judicial procedure and the party has an urgent legitimate interest.<sup>25</sup>

In its decision №б-681-681(3-18) of 13 December 2018, the Supreme Court held that the ruling of the Court of Appeals, which upheld the City Court's decision to annul the contested act, having determined that the circumstances essential to the case were not properly examined by the respondent (administrative authority), and instructing the said authority to issue a new act after investigating the relevant facts was unsubstantiated. The Cassation Court concluded that instead of providing a proper legal assessment of the factual circumstances established in the case and making an appropriate decision, the Court of Appeals, along with the court of first instance, approached the disputed issue in a merely formal manner.<sup>26</sup>

In the reasoning part of the decision in the present case, the Cassation Court stated that invoking Article 32.4 of the APC lacks any legal basis when the materials in the case are sufficient for drawing appropriate conclusions and resolving the dispute. The Court also emphasized that the administrative body had established all the essential facts relevant to the case and that the decision was based on those findings. Moreover, the resolution of the case did not require the establishment of facts that could only be determined by the administrative authority through powers granted to it by law, nor was there a discretionary element present that would justify returning the case to the administrative authority for further investigation.

What is important in this decision is the Cassation Court's perspective on the effective protection of the rights and legitimate interests of the interested party. The Cassation Court was able to reach a decision based on the analysis and examination of the materials submitted by the parties. It may be said that the lower courts misunderstood the components of Article 32.4 of the APC due to the following reasons: the component of the interested party's legitimate interest is not reflected in the decision, given that they aimed to have the act annulled and to obtain an outcome within a reasonable time. This, however, was not achieved, neither in terms of timeliness nor interest satisfaction. The process was prolonged, and the resolution of the person's interest was deferred. Moreover, there was

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<sup>25</sup> Supreme Court Decision of December 13, 2018, Case №б-681-681(3-18). (In Georgian).

<sup>26</sup> Ibid.

no guarantee that the party would ultimately be satisfied. Accordingly, in this case, had it not been for the Cassation Court's reasonable and legally justified "intervention," the interested party would have faced uncertainty: on the one hand, they may have expected the administrative body to satisfy their claim through a new act, while on the other, they might have lost interest in the dispute altogether, as the matter became associated with unreasonable delays and additional efforts due to being returned for reconsideration by the same administrative body.

The Cassation Court made an important clarification regarding the principle of inquisitorial proceedings in the administrative process, emphasizing that the court is not only authorized but also obligated to fully examine and investigate all circumstances relevant to the case. This includes, when necessary, the court's initiative to identify the need to establish certain facts and to seek evidence confirming or refuting those facts.<sup>27</sup>

In its reasoning, the Cassation Court also stressed the importance of observing procedural prerequisites when applying Article 32.4 of the Administrative Procedure Code. It noted that returning a case to the administrative authority without resolving the disputed issue and instructing it to issue a new act must be substantiated and must include an indication of the specific circumstances that the administrative body is required to examine. Additionally, in the cited decision, the court explained that the circumstances identified as unexplored by the court must be essential and capable of influencing the administrative authority's decision.<sup>28</sup>

"Conducting administrative proceedings includes the fundamental procedural obligation of the administrative authority to investigate all circumstances relevant to the case and to make a decision based on the assessment and reconciliation of these circumstances. The legislation establishes procedural safeguards for issuing an act, as the legitimacy and reasoned nature of an individual administrative-legal act issued impartially and based on a comprehensive and objective investigation of the case's circumstances is significantly higher. Compliance with the procedural rules established for issuing an administrative-legal act is of decisive importance for the legality of the act itself. This imperative provision of the General Administrative Code of Georgia serves the principle of legality in public administration, as every administrative decision must be based on the objective study and examination of the circumstances and facts of the matter under consideration, from which a conclusion for decision-making should be derived."<sup>29</sup>

When returning a case to the administrative authority for additional examination, the court's decision must be based on the fact(s) that the court itself lacks the resources and capacity to conduct further investigation, thereby justifying the court's inability to take an active role. The Cassation Court, in one of its decisions, noted that returning the disputed act to the administrative as archival records need to be retrieved or that an expert opinion or conclusion is necessary is not substantiated, and the cited circumstances do not provide a firm basis for such a decision.<sup>30</sup>

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<sup>27</sup> Ruling of the Supreme Court of Georgia of April 17, 2024, case #ბ-546(3-23) (In Georgian).

<sup>28</sup> Ruling of the Supreme Court of Georgia of September 18, 2023, Case # ბ-466(3-22) (In Georgian).

<sup>29</sup> Decision of the Supreme Court of Georgia of September 23, 2014, case #ბ-246-243(3-14) (In Georgian).

<sup>30</sup> Decision of the Supreme Court of Georgia of June 22, 2023, Case #ბ-883(23-20) (In Georgian).

Moreover, a court decision to return a case to an administrative authority for further consideration may be conditioned by the discretionary nature of the authority's powers. In such cases, the court allows the administrative body to reconsider its previously adopted decision within the bounds of its discretion and to issue a new act. An analysis of the decisions and rulings reviewed in the course of this research reveals that when a decision made by an administrative authority within its discretionary powers is not based on a proper and thorough evaluation, annulling the disputed act and permitting the issuance of a new act serves as a means for the issuing authority to revisit its decision. In our view, this contributes to the court's exercise of long-term and effective oversight, encouraging administrative bodies to analyze their decisions, the scope and content of their discretion, and only thereafter to adopt a new decision, thus refining their practice and approaches.

However, the Cassation Court has clearly stated that the discretionary nature of administrative authority's powers alone does not automatically justify the annulment of an act and the return of the case for additional consideration. According to the court's explanation: "Judicial interference with the discretionary powers of an administrative body becomes necessary when there is a clear violation of a constitutionally protected right or when there exists a substantiated presumption, under Article 60<sup>1</sup>.2 of the General Administrative Code of Georgia, that a different decision could be made." Therefore, the discretionary nature of a power, in itself, does not create a legitimate basis for issuing an unsubstantiated decision. The court must evaluate the necessity of its intervention in each case, and only then decide whether to return the case to the administrative authority for further examination or to issue a decision itself.

The Cassation Court has emphasized that, under the inquisitorial/officiality principle, the initiative of the court reviewing an administrative case to further investigate the facts, collect and analyze evidence on its own, is a necessary condition in the current legal culture of the country. The Court stated that a lawful decision and the effective exercise of judicial oversight may not be achievable without the effective application of this principle.<sup>31</sup>

The Court's authority to obtain evidence or information on its initiative means that the court must identify instances where a core principle of justice, equality of the parties, is at risk. This refers to ensuring equal opportunities for the parties to defend their rights, particularly considering the subordinate position of participants in public law disputes, the Cassation Court explained.<sup>32</sup>

## **5. Preventive Means of Rights Protection and the Comparison of Article 32.4 in Terms of Effectiveness**

The Constitution of Georgia<sup>33</sup> guarantees every individual the full enjoyment of the right to a fair trial. This right must also ensure comprehensive and fair protection of the individual. Effective justice implies not only the restoration of a violated right but also its temporary protection, which aims to ensure the preventive safeguarding of a right before the final resolution of the case.<sup>34</sup>

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<sup>31</sup> Decision of the Administrative Cases Chamber of the Supreme Court of Georgia of December 2, 2024, Case #8b-303-299(3-14) (In Georgian).

<sup>32</sup> Ibid.

<sup>33</sup> Constitution of Georgia, Article 31, Paragraph 1, 1995 (In Georgian).

<sup>34</sup> Ruling of the Supreme Court of Georgia of February 26, 2020, #8b-1389(3b-19) (In Georgian).

Administrative procedural law provides not only repressive means for the protection of rights but also establishes and reinforces preventive measures, which in some cases prove to be more effective than repressive ones, both in terms of the timeliness of protection and in preventing or mitigating actual or potential harm.

Unlike civil procedure, administrative law is characterized by the existence of the suspensive effect as a preventive measure of rights protection. Through this mechanism, the legal force of an administrative act is temporarily suspended. Specifically, this occurs after an appeal is filed and remains in effect until the conclusion of administrative proceedings on the complaint, or until the court renders a final decision on the request to annul the administrative-legal act.

Temporary means of right protection aim to preserve the existing situation before a final decision is made in the case, or to modify it in a way that ensures the enforceability of the final decision.<sup>35</sup>

The types of temporary legal protection are directly linked to the types of administrative claims defined in procedural legislation. In cases where the claim seeks annulment of an act, the temporary protection measure under Article 29 is applied. In contrast, for claims defined under Articles 23 and 24 of the APC, Article 31 of the APC provides for the instrument of a temporary ruling concerning the issuance or implementation of an individual administrative-legal act.

Within the Administrative Procedural Code, the suspensive effect as a mechanism for rights protection is regulated by Article 29. According to the first paragraph of this article, the filing of a claim with the court suspends the effect of the contested individual administrative-legal act. However, the second paragraph of the same article specifies exceptions where, despite the appeal, the act remains in force.

As for the temporary legal protection measure provided under administrative legislation and reinforced by Article 31, it can be used by a party before filing a claim, specifically, by submitting a petition to the court. It is not an automatic consequence of the main legal protection mechanism; instead, legal proceedings under this article are initiated based on a party's request.<sup>36</sup>

Therefore, the temporary protection measures offered by procedural law create a solid foundation and opportunity to safeguard or preserve the existing situation, based on the party's interests, until a final decision is made.

In the context of this research, it is important to compare the application of the temporary measure under Article 29 with the court's annulment of an act without resolving the substantive issue under Article 32(4) of the APC, and the subsequent instruction to the administrative authority to issue a new act following further factual investigation, especially from the perspective of effectiveness.

First and foremost, it must be noted that the procedural relationships governed by these norms are different and represent substantively distinct legal institutions. Nevertheless, the comparison is relevant for research purposes due to a shared aspect: the protection and enforcement of a party's

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<sup>35</sup> Kopaleishili M., Turava P., Kharshiladze I., Loria Kh., Gvaramadze T., Ghvamichava T., Handbook of Administrative Procedural Law, Tbilisi, 2018, 335 (In Georgian).

<sup>36</sup> Kopaleishili M., Turava P., Kharshiladze I., Loria Kh., Gvaramadze T., Ghvamichava T., Handbook of Administrative Procedural Law, Tbilisi, 2018, 339-340 (In Georgian).

urgent legitimate interest. As previously noted, one of the components for invoking Article 32(4) is precisely the existence of such an interest. We must examine the *real meaning* of the party's urgent legitimate interest, which, by its best interpretation, should be understood in favor of the party. This is because the application of this mechanism must be justified by demonstrating that it truly serves the party's interests, and that protection of that interest is driven by urgent necessity.

Temporary protection measures used before the final decision serve essentially the same purpose. Therefore, discontinuing substantive proceedings under Article 32(4) without appropriate reasoning raises the question of whether the same benefit could have been achieved by applying temporary protection measures instead and continuing with substantive review. In such cases, the dispute is no longer considered by the court but is transferred back to the administrative body for re-examination. Notably, the administrative authority is not given a specific timeframe to issue a new decision, and the party may once again be required to return to court over the same issue, including unresolved facts that the authority may still fail to investigate. This is, although the party's urgent interest could have been satisfied by suspending the contested act under Article 29, or by issuing a temporary ruling under Article 31.

Therefore, Article 32.4 should only be applied in the presence of the cumulative conditions specified therein in part 1: Essential circumstances must be insufficiently or not at all examined; and the party must have an urgent legitimate interest.

This urgent legitimate interest is directly addressed by Article 29, under which the contested act is suspended automatically, without the need for a specific request, except in exceptional cases where a party must file a request. Thus, when these two norms are properly harmonized and correctly applied, the effectiveness of protecting the individual's legitimate interests is not at risk.

## 6. Conclusion

According to Article 31.1 of the Constitution of Georgia, the right to a fair trial falls within the scope of constitutional protection. It establishes a strong guarantee that an individual's right to access a court is protected at the constitutional level. This article also ensures the right to a fair and timely hearing. Accordingly, it is essential not only for fairness but also for the functioning of a democratic state. If there is no possibility of preventing a violation or restoring a violated right, the legal mechanism and the very exercise of the right come into question. Therefore, prohibiting or disproportionately restricting access to the courts to protect rights and freedoms violates not only the right to a fair trial but also poses a risk of disregarding the very rights for the protection of which court access has been prohibited or restricted.<sup>37</sup>

It is thus necessary to assess not only the general advisability of applying Article 32.4, but also, based on established judicial practice, how rigorously its application is justified by the courts, how effective it is, and whether it serves a legitimate aim in protecting the lawful interests of the concerned party.

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<sup>37</sup> Decision of the Constitutional Court of Georgia of June 28, 2010, No. 1/466 in the case "Public Defender of Georgia vs. Parliament of Georgia".

The court decisions reviewed in this article, based on which cases were returned to administrative bodies for further consideration, fail, in most instances, to meet essential components of the right to a fair trial. Specifically, they do not ensure the examination of the case within a reasonable time, the issuance of a well-reasoned decision, or the hearing of significant factual circumstances during the proceedings. The cited rulings of the Cassation Court indicate that the primary issue in the application of Article 32.4 is the low standard of justification, in particular, the insufficient explanation as to why the relevant instance court could not examine the essential facts itself, actively participate in the process, and render a final decision. This is especially problematic given that the inquisitorial principle grants broad powers to the presiding judge.

Another major challenge is the justification of the existence of a party's legitimate interest, as Article 32.4 cannot be applied without it. Courts often assume, as a general principle, that annulment of an act inherently serves the interest of the complainant. However, there is a substantive difference between annulment of an act and partial satisfaction of a claim under Article 32.4, where the outcome still depends on how and when the administrative authority will act under renewed procedural conditions.

In the context of legitimate interest, Article 32.4 may allow for broader interpretation and afford the court more flexibility when temporary protection measures can, in principle, clearly preserve or protect an individual's legitimate interest before the final decision is made.

Therefore, it is crucial to refine the scope and content of Article 32.4 so that its use is strictly limited to situations where the temporary protection measure under Article 29 cannot safeguard the party's legitimate interest and where the discretion of the administrative authority necessitates further examination within the administrative body.

In conclusion, refining and clarifying this legal mechanism within the legislative framework would, on the one hand, simplify decision-making for courts and contribute to the development of consistent judicial practice; on the other hand, it would make the mechanisms for protecting the rights of interested parties more effective and flexible, ensuring realization of all principles underpinning the right to fair trial. Ultimately, this would lead to strengthened public trust in the judiciary.

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