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The Problematic Issues About Compensation for Damages Caused by Suspension of Appealed Individual Beneficial Administrative-Legal act, key Aspects About Mutual Separation of Procedural Standards Established in Civil and Administrative Court Proceedings

The present paper reviews the principal aspects of mutual separation of Civil and Administrative court proceedings, as well as the current legal reality in terms of analysis of the judicial practice. The relevance of the issue about the question of feasibility of compensation the damages caused by suspension of individual administrative-legal acts, while adjudicating the cases by the common courts, became the source the of inspiration for this paper.

The present research was analyzed on the basis of both – comparative-legal method and generalization of the judicial practice of the common courts and Constitutional Court of Georgia. The considerable part of this paper is dedicated to problematic aspects about admissibility of compensation for damages caused by suspension of the administrative-legal act in form of the claim security measure in Administrative court proceedings when there is a conflict of interests of subjects of private law in administrative dispute.

From comparative-legal point of view the paper examines the normative regulation of the issue about compensation for damages in the event of suspension of administrative-legal acts while implementation the Administrative Justice and also the approaches established in the doctrine on the examples of Germany, France, Latvia, Estonia and the United States of America.

The efficiency of justice is manifested in the independent, impartial, fair and timely judicial procedure.[1]

Keywords: *Suspensive Effect, Administrative court proceedings, Civil court proceedings, Preventive Security Measures, Provision for the Damage.*

1. Introduction

According to the 2nd article of the Civil Procedural Code of Georgia, every person is guaranteed to right to judicial protection.[2] The right of access to the court, is an instrumental right, which represents the means of protection of other rights and interests.[3]

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1 See citation: *Schmitt S., Richter H.,* The Procedure of Making a Decision by a Judge in Civil law, German Society for International Cooperation (GIZ), 2013, 3 (in Georgian).

2 The first part of the Article 2-nd of the Civil Procedural Code of Georgia, 14.11.1997, The Legislative Herald of Georgia, <https://matsne.gov.ge/ka/document/view/29962?publication=169> [24.01.2025] (in Georgian).

The right on effective court protection, is the main principle for the development of preventive measures for the protection of person's rights.[4]

The efficiency of judicial system is the fundamental precondition of reinforcement of legal order and provision of legal security.[5] According to the opinion in the legal doctrine, the Administrative Law best expresses the character of the state and the people.[6]

The temporary-legal remedies of protection of a person's right in Administrative proceedings serves to ensure the effective implementation of justice and provides temporary protection of the plaintiff's rights and interests until the dispute between parties is resolved and also ensure to avoid the obstructing circumstances of enforcement of final decision on the case.[7]

One of the legal remedies of temporary protection of a person's right in Administrative Justice is suspension the validity of the administrative-legal act. The issue about ensuring the compensation for damages caused by suspension the validity of administrative-legal act, that's will be the subject of present research.

In present paper there is reviewing the current legal reality and the legislative regulation from a comparative-legal point of view on the examples of Germany, France, Latvia, Estonia and United States of America.

2. About Suspension of the Validity of an Administrative-Legal Act as The Procedural-Legal Mechanism of Preventive protection of a person's right

The Administrative Procedural Legislation of Georgia[8] provide for suspension of the validity of the appealed individual administrative-legal act automatically in case of acceptance of a claim by the court, however the second part of the article 29 of Administrative Procedural Code of Georgia indicates the cases, when the appealed administrative-legal act is protected from the "suspension effect". One of them is the circumstance, when there is appealed beneficial administrative-legal act[9] and suspension of validity will cause significant harm to the legal interests of another person.

The fact, that according to the sub-section "E", second part of the article 29, the mechanism for suspend the validity of an act, does not apply on an individual beneficial administrative-legal act, it clearly indicates that issuing the above mentioned act, the legal interests of the addressee of the act

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3 The Judgement of 10-th November, 2009 on the case N1/3/421.422, Constitutional Court of Georgia (in Georgian).

4 *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.

5 *Schmitt S., Richter H.,* The Procedure of Making a Decision by a Judge in Civil law, German Society for International Cooperation (GIZ), 2013, 3 (in Georgian).

6 *Loria kh.* Assurance of Administrative Body – the Basis of Legal Reliance, Journal of Law, N2, 2022, 201, see citation: *Nalte G.,* General Principles of German and European Administrative Law- A Comparison in Historical Perspective, the Modern Law Review,1994, 212 (in Georgian).

7 Judgement on the case №/BS-551 (KS-23), the chamber of administrative cases of Supreme Court of Georgia, (in Georgian).

8 The Article 29 (1), of the Administrative Procedural Code of Georgia, 23.07.1999, The Legislative Herald of Georgia, <https://matsne.gov.ge/ka/document/view/16492?publication=98> [16.04.2025] (in Georgian).

9 Ibid, Article 29 (2), (in Georgian).

prevail over the plaintiff's interests and therefore, that is why the beneficial act is "protected" from the action of the suspensive effect. However, this "protection" can be crossed over in two circumstances[10]: when there is reasonable doubt about legality of the administrative-legal act and also in the case when enforcement causes so much harm to the plaintiff, that it makes impossible to protect his legal rights and interests in the future.

The "suspensive effect" [11] in administrative court proceedings preciously serves temporary protect a person's rights from the consequences of the public administration measures until the final decision will be taken by the court, the purpose of which is to maintain the status quo for the plaintiff, which was prior to the issuance of the contested act.[12]

For the purposes of this paper it is interesting, to research the issue from comparative-legal point of view and in this sense, to share the practice of foreign countries. In particular, in Germany appealing and rescission[13] of an administrative-legal act has a suspension effect[14], The Law on the "Administrative Judicial Order" also includes the cases, when the "suspensive effect" does not apply, among them there are cases when "suspensive effect" is not wide spreading[15] on the administrative-legal acts of such nature, which grant to a third person with a certain rights. Above-mentioned regulations are more or less similar to the normative regulations established in the Administrative Procedural Code of Georgia.

One of the peculiarities of the German Administrative Process which distinguishes it from the Civil Process, is the principle of investigation[16] , when German Judge adjudicating the suspension of the validity of an administrative-legal act, do not comprehensively inspection the legality of the administrative-legal act, but evaluates, what is more valuable: public interests to the implementation of the administrative-legal act, or plaintiff's private interest of its non-enforcement. It is naturally, that in this case, supposed illegality of an administrative-legal act comes across as a qualified argument in favor of a private interest.[17]

The legislative framework proposed by the French Administrative Law is interesting in terms of constitutional rights to effective judicial protection, which is similar to the European Convention of Human Rights.[18]

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10 Ibid, Article 29 (2) (in Georgian).

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

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

13 When adjudication the lawsuits related the legality of an administrative-legal act, including the norms on the measures to be taken by the court, in order to suspend the validity of an acts, is established in articles 80-80 (b) of the law about "Administrative Judicial Order" of the federal republic of Germany.

14 The Law of the Federal Republic of Germany on the "Administrative Judicial Order", 19.03.1991. art.80 (1), <https://www.gesetze-im-internet.de/englisch_vwgo/englisch_vwgo.html> [20.01.2025].

15 The Law of the Federal Republic of Germany on the "Administrative Judicial Order", 19.03.1991. art.80 (2), <https://www.gesetze-im-internet.de/englisch_vwgo/englisch_vwgo.html> [20.01.2025].

16 *Kharshiladze I., Ovsianikova N.,* Administrative Law of Foreign Countries, Tbilisi, 2014, 469 (in Georgian).

17 Ibid, 479 (in Georgian).

18 *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, 50.

In France, Appling of a lawsuit on the legality of a decision taken by an administrative body, does not suspend the validity of an act automatically[19], in this case the situation is more complicated from a doctrinal point of view, since the preventive protection of a person's rights is not directly recognized by the constitution of the country[20] but however, in some cases, when the enforcement of the appealed decision may have serious and unrepairable consequences, in this case, the Law gives an authority to the Administrative judge, to request "suspension of an action" of an Administrative Body.[21]

It is determined in the articles 521(1)-521 (4) of the Code of Administrative Justice of the Republic of France[22] about implementation some urgent authorities by the judge issuing an interim order (***Le Juge des Référés***) upon adjudicating the dispute over legality of an administrative-legal acts. In particular, when the subject of a dispute is related to cancellation or changing an administrative-legal act, the judge issuing an interim order (***Le Juge des Référés***) is authorized issue a decree (order) about the suspension of validity of an act, or to apply an alternative effect[23] of suspension, when an urgent response is justified and the investigation provides the reasonable grounds for suspicion, on the legality/illegality of an administrative-legal act. This authority is an important tool for the judge to take an urgent action before the substantive discussion of the case, until the matter will become adjudicable by the administrative courts (tribunals).[24]

It is also noteworthy, that in case of suspension of the validity of an acts, the final decision about abolishing or changing an administrative-legal act is rendering by the court in the shortest possible time, and the effect of the suspension effect is completed no later than the date of the final decision on the abolishing or changing of the administrative-legal act.[25]

The judge issuing an interim order (***Le Juge des Référés***) takes all necessary measures upon exercising its authorities in the terms of suspension the validity of an act for protecting the

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19 *Kharshiladze I., Ovsianikova N.,* Administrative Law of Foreign Countries, Tbilisi, 2014, 469 (in Georgian).

20 *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, 49.

21 *Kharshiladze I., Ovsianikova N.,* Administrative Law of Foreign Countries, Tbilisi, 2014, 420 (in Georgian).

22 The Code of Administrative Justice of the Republic of France, Article L521-1-521-4, 01.07.2000, <https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070933/LEGISCTA000006136456?dateVersion=20%2F01%2F2025&isAdvancedResult=&nomCode=zm7z5g%3D%3D&page=2&pageSize=10&query=&searchField=ALL&searchProximity=&searchType=ALL&tab_selection=code&typePagination=ARTICLE&typeRecherche=date&anchor=LEGISCTA000006136456#LEGISCTA000006136456> [23.05.2025].

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

24 Ibid.

25 The Code of Administrative Justice of the Republic of France, Article L521, 01.07.2000, <https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070933/LEGISCTA000006136456?dateVersion=20%2F01%2F2025&isAdvancedResult=&nomCode=zm7z5g%3D%3D&page=2&pageSize=10&query=&searchField=ALL&searchProximity=&searchType=ALL&tab_selection=code&typePagination=ARTICLE&typeRecherche=date&anchor=LEGISCTA000006136456#LEGISCTA000006136456>, [23.05.2025].

fundamental rights of a person, which has been grossly and unfairly violated by an Administrative Body, a Legal Entity under Public Law or Legal Entity under Private Law while exercising the public authority.[26]

As for Latvia[27], since the Latvian Act of Administrative Justice[28] entered into force on February 1, 2004, which contains the norms of both – administrative proceedings in Administrative Bodies, also administrative court proceedings, according to the article 185[29] filling a claim about abolishing or invalidation of an administrative – legal act, suspend the validity of the disputed act from the day of applying of the relevant application.

Second part of the same article[30] indicates the circumstances, when filling a claim does not suspend the validity of the disputed administrative-legal act, which is more or less similar to the circumstances indicated in the second part of the article 29 of the Administrative Procedural Code of Georgia.

In the chapter 24 of the Administrative Procedure Code of Estonia[31], where there are regulations about measures of preventive protection of the person's rights, one of the measures taken as a result of rendering an interim order is precisely the suspension of the disputed administrative-legal act.[32]

As for a such common law country, like the United States of America, here the Administrative law regulates the powers and rules of activities of the Administrative bodies (**Administrative Agencies**), also control of the courts over the Administrative bodies[33]. In United States of America relevant officials[34] of the Administrative Agencies carry out quasi-judicial activities, which is known as – so called **Administrative Adjudication**[35].

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26 Ibid, L521-2, The judge issuing an interim order (*Le Juge des Référés*) takes the appropriate decision within 48 hours.

27 As a result of significant legislative reforms, implementing in Latvia, Administrative justice, as well as, Civil and Criminal justice, is implemented through the tree instances: District Administrative Court (first instance), Regional Administrative Courts and the highest instance – the department of administrative cases of senate of the Supreme Court.

28 *Thill J.*, The Grand Duchy of Luxemburg*, Ed. by Jörg Gerkrath, Besselink L., Bovend 'Eert P., Broeksteeg H., de Lange R., Voermans W.,* Constitutional Law of The EU Member States, University of Amsterdam 2014, 1005-1006, <https://pure.uva.nl/ws/files/136136881/Constitutional_Law_of_28_EU_BW.pdf> [03.12.2024].

29 Article 185 (1), of The Act of the Republic of Latvia on the Administrative Procedure Law, 20.10.2001, entered into force from 01.02.2004, <https://constitutionnet.org/sites/default/files/Admin_Pro_Law.Latvia.pdf> [22.05.2025].

30 Ibid, 185 (2).

31 The Administrative Procedure Code of Estonia, 01.01.2012, art.249, <https://www.riigiteataja.ee/en/eli/512122017007/consolide> [23.05.2025].

32 Ibid, 251 (1).

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

34 They were originally called as – "Hearing Examiners" and later became known as Administrative Judges, who carry out quasi-judicial activities and possess with broad powers similar to what a judge has in a Civil Trial, in addition, they have authorities to seek necessary evidence for the adjudication of the case on their own initiative. The above-mentioned officials exercise their powers locally in Administrative Agencies.

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

The power of the judicial system of United States of America[36] to implementation the justice and among them, to exercise control over the activities of the Administrative Agencies,[37] is regulated by the article 3rd of the Constitution of United States of America. While hearing a complain on the decision made by an Administrative Agency, including reviewing the complaint not only from legality point of view, but also from the point of view of factual examination, is hearing with an administrative judge, which carries out quasi-judicial activities in Administrative Agencies.[38] The norms, regulating the implementation of justice by the federal and state courts[39], are established in the federal law of Administrative Proceedings, which is – Administrative Procedure Act, the so-called **APA**[40] (hereinafter the **Federal APA**) and also in the normative acts directly regulating the activities of an Administrative Bodies.

According to **APA** (The Federal APA) The court is authorized[41] to render the appropriate decision in the form of an order (the so called – **Injunction**) on the suspension the validity of the administrative-legal act (including not only of the administrative-legal Act, but also about the suspension of an action of the Administrative Body), the enforcement of which is mandatory for the Administrative Body, in order to maintain the status quo in terms of protecting a person's legal rights and interests until the dispute is resolved.[42] It can be said, that by the abovementioned order (**Injunction**) is being implemented preventively a kind of postponement of the date of enter into the force of an administrative-legal act or an action of an Administrative Body (**Administrative Agency**).

2.1. The Issue of Compensation for Damages in The Event of Abolishment of a Beneficial Administrative-Legal Act, Issued as a Result of Administrative Proceedings

When examining the issue for compensation for damages caused by the suspension the validity of an administrative-legal act by the court, the issue of the existence of a legal reliance of the addressee of an act, is gaining relevance, accordingly, when considering present research, we will logically address the issue of legal reliance and issue of the compensation for the damages resulting from the abolishment of an individual administrative-legal act at the stage of administrative proceedings.

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36 Ibid, 579, (in Georgian).

37 Apply to the federal and state courts of United States of America are made through petitions or lawsuits, the petition is made to the courts of appeal, and with the lawsuit – in the district courts.

38 *Cane P.,* Judicial Review and Merits Review: Comparing Administrative Adjudication by Courts and Tribunals, Comparative Administrative Law, Vol: 10.4337/97, 441, <https://articles.sk/book/99485222/505591/comparative-administrative-law-judicial-review-and-merits-review-comparing-administrative-adjudi.html> [21.05.2025].

39 *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.

40 The federal Administrative Procedural Act of the United States of America was initiated by the Senate on June 11, 1946.

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

42 Ibid.

The General Administrative Code of Georgia gives a definition the principle of the legal reliance[43] and it assumes an unwavering faith of the addressee of the beneficial individual administrative-legal act about implementation of certain action by an Administrative Bodies.[44]

The vey origin of the issue of legal reliance[45] means that, there is abolishment of a beneficial individual administrative- legal Act, what is the basis of the "Principle of Legality" the purpose of restore of which is precisely the abolishment of an illegal individual administrative-legal act. The mentioned principle is opposed by the principle of "Legal Reliance" of the addressee of an act, established by the legislator. Both of these principles are of constitutional rank and derive from the principle of the rule of law. The purpose of both, administrative proceedings and administrative court proceedings is, when solving a specific problem, to made a balanced decision by confrontation these two principles.[46] Precisely because, the plaintiff's claim based on the existence or non-existence of Legal Reliance[47] may be related to the issuance of the act, the implementation of an action, as well as the maintenance of the existence of the beneficial act.

In the event of abolishment of an illegal beneficial administrative- legal act at the stage of administrative proceedings, the compensation for damages to the addressee of the act is implemented precisely in view of his/her factor of legal reliance[48] and at the request of the addressee himself, the property damage caused by the void of an individual administrative- legal act must be compensated to him/her. Accordingly, the Legal Reliance of an act, at the stage of admistrative proceedings, is worthy of protection,[49] while it requires much more qualified argumentation, upon administrative court proceedings at the stage of preventive security measures, imposing the compensation by the court for damages caused by suspension of an administrative-legal act on the plaintiff.

The circumstances, that precludes the Legal Reliance the General Administrative Code of Georgia considers the illegal action of the addressee of an act, however, the fact -what is considered an "illegal action" – it is an evaluative category. An interesting definition is made by the Court of Justice of European Union in its decision,[50] where the following case is discussed, when the party of the case, the addressee of an administrative-legal act is an entrepreneur. In this dispute, the court defined a kind of a criteria of Legal Reliance – as the activities, carried out by a prudent and conscientious economic operator.

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43 Article 9 (1), of The General Administrative Code of Georgia, 25/06/1999 (in Georgian).

44 *Loria KH.,* Assurance of an Administrative Body – the Basis of Legal Reliance, Ivane Javakhishvili Tbilisi State University, "Journal of Law", №2, 2022, 214 (in Georgian).

45 Ibid, (in Georgian).

46 *Turava p.,* The General Administration Law, Tbilisi, 2024, 243 (in Georgian).

47 *Loria KH.,* Assurance of an Administrative Body – the Basis of Legal Reliance, Ivane Javakhishvili Tbilisi State University, "Journal of Law", №2, 2022, 214 (in Georgian).

48 *Turava p.,* The General Administration Law, Tbilisi, 2024, 250 (in Georgian).

49 Ibid, 244 (in Georgian).

50 The Court of Justice of the European Union, Arrêt du 30 novembre 2017, Red Bull/EUIPO–Optimum Mark, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=216554&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=4685038> [21.01.2025].

3. The Issue About Compensation for Damages Caused by Suspension of a Beneficial Individual Administrative-Legal Act in Terms of the Practice of Common Courts of Georgia

When considering the problematic issue about compensation/provision as for damages caused by suspension of the validity of a beneficial individual administrative-legal act at the stage of administrative court proceedings, we cannot fail not to touch on the constitutional submission of Tbilisi Court of Appeals[51] with respect to the article 19 and the article 31 of the Constitution of Georgia the Constitutional Court was requested to establish the constitutionality of the normative content of the 3rd part of the article 29 (only upon applying "E" sub-paragraph of the second part of article 29 in the section of beneficial act) and article 31 (only upon the conflict of interests of subjects of private law) of the Administrative Procedural Code of Georgia, when the provision of security, established by the Civil Procedural Code of Georgia, also the rule on the compensation of damages caused by the provisional measures, are not applied upon using the above-mentioned norms.

The constitutional submission is mainly focuses on transferring the institution of claim security and the rule on the compensation of damages, also the institution the provision of security established by the Civil Procedural Code of Georgia, to the administrative court proceedings when there is a conflict of interests between subjects of private law. The author of the submission proceeds from the unconditional protection of the principle of adversarial of parties and by reinforcing this thesis, it attempts to reinforce the necessity of transferring the civil court proceeding standard to administrative justice.[52]

The problematic issue about compensation for damages caused by suspension of an administrative-legal act, which is implemented by the court as a preventive measure of temporary protection of a person's right, is particularly sensitive, when considering the disputes over the acts of a beneficial nature – such as construction permits, since in this mentioned dispute, the plaintiff's legitimate interests (basically, the interest of a population, living in the construction area) are opposed to the interests of the building developers.

The issue about the legality of a construction permits are often subject of a dispute in common courts. It should be noted, that construction permit[53], is a legal document, reflecting a specific case of the right to construction guaranteed by the Constitution of Georgia and the necessity of issuing a permit by an administrative body is not intended to restrict this right, but rather to place the process of realizing the right within a legal framework.[54]

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51 Constitutional submission of Tbilisi Court of Appeals of 07.04.2021, <https://www.constcourt.ge/ka/judicial-acts?legal=11044> [20.01.2025], (in Georgian).

52 Ibid, (in Georgian).

53 *Churghulia D.,* Construction Permit Administrative Proceedings as a Mechanism for Implementing Construction Safety, Ivane Javakhishvili Tbilisi State University, "Journal of Law", №2, 2020, 193, (in Georgian).

54 *Kopaleishvili M., Skhirtladze N., Kardava E., Turava P., (ed.)* Administrative Procedural Law Guide, Tbilisi, 2008, 345, (in Georgian).

The issuance of a construction permit should eliminate any conflict of interest, since the balance between the private interests of the construction permit seekers and the public interests is maintained during administrative proceedings.

In terms of content public interests in turn includes individual interests also, more specifically, it either serves the realization of private interests or comes into conflict with them.[55]

Before applying with the constitutional submission to the Constitutional court, among them, the current judicial practice demonstrates, that according to the definition of Supreme Court of Georgia[56], administrative court proceedings do not recognize the institution of a guarantee for securing damages. The judgment clearly separates preventive security measures for the protection of the person's rights in civil and administrative court proceedings, however it must also be mentioned, that the definition of the Supreme Court, regarding the inadmissibility of civil procedural standards in administrative court proceedings, is not sufficiently detailed, in particular, there is not mentioned about the rights of the third person.

There is a reference in the constitutional submission[57], that the basically grounds of the conflict of interests between the persons of the private law, are provided in the "E" sub-paragraph of the second part of article 29, as well as in the article 31 of the Administrative Procedural Code of Georgia, which is a misconception at the beginning, because, in this case, in administrative dispute, the party, requesting a compensation/ensuring the compensation for damages caused by using a preventive measures, does not represent the defendant – in terms of content, but a third person. The defendant, in this case is the Administrative Body, issuing the administrative-legal act, although a certain illusion arises upon adjudicating the disputes about construction issues, that there is a conflict of interests only between the private individuals, while the act issuing authority is outside the abovementioned process. Accordingly, according to the constitutional submission, there is a conflict, between the interests of plaintiff and the third person.

The constitutional Court published an amicus curiae[58] – opinion regarding the constitutional submission, where there are interesting findings regarding the constitutionality of the norms of "E" sub-paragraph of the second part of article 29 and the article 31 of the Administrative Procedural Code of Georgia. The difference between the preventive measures of protection of the person's right, effects itself on the rights of the third person, to demand compensation for damages caused by the use of

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55 *Beridzishvili T., Bohne E., Deppe J., Svanishvili S., Labadze M., Turava P., Fuckner G., Kardava E., Kalichava K., Khishtovani G., Khubua G., (ed.),* Law Guide of Administrative Science, Book IV, Institute of Administrative Science, TSU, Tbilisi, 2018, 69 (in Georgian).

56 See the Judgement of 09 January 2019, on the case N/BS -1562 (US- 18) chamber of administrative cases Supreme Court of Georgia, where according to the definition of cassation court, it is not allowed in administrative court proceedings, to use the mechanism of provisional measures established by the civil procedural code, also related to it – the compensation for damages (also cross-undertaking as to damages). (in Georgian).

57 Constitutional submission of Tbilisi Court of Appeals of 07.04.2021, <https://www.constcourt.ge/ka/judicial-acts?legal=11044> [20.01.2025], (in Georgian).

58 Amicus Curiae, author – Turava Paata, regarding the constitutional submission, 29.12.2021, <https://www.constcourt.ge/ka/judicial-acts?legal=13002> [05.02.2025] (in Georgian).

temporary protection measures and accordingly, a security guarantee.[59] An interesting position is expressed, regarding the legal reliance of addressee of the act, in the opinion of the amicus curiae, according to which, the addressee of the act shall have a legal reliance of the issued act, after, the deadline for appeal has expired, but not within the appeal deadlines. As for demand the compensation for damages, suspension the validity of the act, does not cause the harm, insofar as the action taken on the bases of the act, within the appeal period, creates a risk of harm which remains within its scope of responsibility and cannot create a constitutional right to property rights.

According to the same, amicus curiae position, there is a different result regarding to the article 31 of Administrative Procedural Code of Georgia. In this case, since the abovementioned article does not serve to verify an administrative-legal act adopted by an Administrative Body, but rather the preliminary settlement of Administrative-Legal relationship, the third person is authorized to demand compensation for damages caused by the unjustified use of the procedural remedy of preliminary settlement of the rights exercised by the plaintiff. Which is appropriate with the approach established in theory, about compensation for damages in case of unjustified use of preventive measures provided for in article 31 of Administrative Procedural Code of Georgia for the protection of a person's rights in administrative court proceedings[60].

Due to the relevance of the article's research issue, according to the practice of common courts nowadays, it should be noted, that definitions, given in the Judgement of January 9, 2019, of Supreme Court of Georgia, are considered a kind of a guide for common courts and the doctrinal definition of the norm itself, about the priority of using temporary measures of protection of rights, provided for by the Administrative Procedural Code of Georgia in administrative court proceedings. As it is clear from research of the judicial practice of common courts[61] in the case of conflicting of interests of purely between the private individuals, for example such as invalidation of a registry entry, seizure lien on the property of private person, etc. The court has the authority, to use the security measures of a civil legal claim and if necessary, to issue the resolution about apply reversal provisional measures. For example, it may be the resolution of first instance court about securing the civil legal claim, where in administrative dispute the plaintiff – an Administrative Body, requests to seizure lien on defendant's property (i.e. on a vehicle). When considering the above issue, the court defines, that based on the legal analysis, since the purpose of the use of a provisional measure by the court, is to facilitate the enforcement of the decision, based on the assessment of specific circumstances, the presumption of the necessity of using a claim security measure was considered justified, also defined that, the institute of temporary measures represents a swift and effective procedural and legal guarantee for the actual implementation of the rights and legal interests protected by the substantive legislation and

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59 Ibid (in Georgian).

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

61 See the Resolution of 19 February, 2021 on the case №3/769-21; the Resolution of 07 July, 2020 on the case №3/3757-24; the Resolution of 16 May, 2024 on the case №3/3410; the Resolution of 12 July, 2017, on the case №3/4827-17, panel of administrative cases of Tbilisi city Court. (accessed from archive) (in Georgian).

accordingly, considered it appropriate to seizure lien on the defendant's property as a temporary measure, requested by the plaintiff.[62]

In the case of using of article 29 of Administrative Procedural Code of Georgia[63], according to the court's definition, through the realization the right, granted by the above mentioned article, the law restores a person to the legal and factual situation in which he/she was before the issuance the disputed act. Despite the circumstances, that when deciding the issue about the validity of an act, the court does not examine the legitimacy of the plaintiff's claim[64], according to the 3rd part of article 29 of Administrative Procedural Code of Georgia, the court suspends the validity of an act, if there is a reasonable doubt about an act's legality[65], that further execution of an act will cause substantial harm to the party of that quality, that would make it impossible to further protect of person's legal right or interests. Except as mentioned, in each particular case, when suspending the validity of an administrative-legal Act, the court must consider and decide the issue[66] of whether the plaintiff's interests outweighs the interests of public order and safety, also the interests of third person, served by the validity of a contested act.

Based in the research of judicial practice of the common courts, it can be concluded that, at the stage of preventive protection of a person's right in administrative court proceedings, the court shall apply the security of civil claim and the reversal measures of the security, provided for in the Civil Procedural Code of Georgia on an individual basis. It is based on the circumstances of the particular case and the assessments of the risks, accordingly it is a matter of discretion for the court. And in case if, as a result of final review of the case, the decision of the court will establish the illegality of the disputed administrative-legal act, the addressee of the act, who has a legal reliance in the act, has authority to demand the compensation for damages independently from the Administrative Body, which issued the illegal act, by separate lawsuit, based on filling a civil claim.

As for comparative-legal research on ensuring compensation for damages in Administrative Justice, according to the amendment to the Urban Planning Code of France, administrative lawsuit regarding the legality of a construction permit subject, to quite detailed criteria for admissibility as a plaintiff's legitimate interest point of view.[67] According to 7th part of article 600 of Urban Planning Code of France, in the event of an administrative lawsuit for exceeding the authority provided for in the construction permit, by suspending the validity of an act, which harms he addressee of the act,

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62 See the Resolution of 19 February, 2021 on the case №3/769-21, panel of administrative cases of Tbilisi city Court. (accessed from archive) (in Georgian).

63 Resolution of 07 December, 2015 on the case №3/9368-15, panel of administrative cases of Tbilisi city Court. (accessed from archive) (in Georgian).

64 Resolution of 11 August, 2021, on the case №3/4770-21, panel of administrative cases of Tbilisi city Court. (accessed from archive) (in Georgian).

65 Resolution of 13 May, 2024, on the case №3/1736-24, panel of administrative cases of Tbilisi city Court. (accessed from archive) (in Georgian).

66 Resolution of 14 September, 2017, on the case №3/154-17, panel of administrative cases of Tbilisi city Court. (accessed from archive) (in Georgian).

67 *Kalichava K., Agapishvili M.,* Dual nature of Plaintiff's Legitimate Interest and Criticism of Its Use in Georgian Administrative Justice, Ivane Javakhishvili Tbilisi State University, 24, Journal of Public Law, №2, 2023, 24 (in Georgian).

compensation for the damages is provided not in the form of ensuring compensation for damages (reversal measures), but separately, based on a lawsuit about compensation for damages, which is submitted by the addressee of an act to the administrative judge through a separate complaint.[68]

As for Germany, in German Administrative Justice, in general, it is permissible, to use the reversal measures of ensuring compensation for damages, however not when considering the disputes regarding the legality of an act. The Law of the Federal Republic of Germany on the "Administrative Judicial Order" explicitly excludes the application of procedural norms on securing civil claim within the framework of the legal norms of 80-80(a) of the above mentioned federal law, in particular, when considering a dispute about the legality of administrative-legal Act, during the suspension of an act.[69]

According to the 3rd part[70] of article 85 of Administrative Procedure Law of Republic of Latvia, in case of cancellation of an administrative-legal act which grants its addressee any right, an Administrative Body and accordingly, Legal Entities of Public Law has an obligation to compensate the addressee for the damage caused by the cancellation of an act through basis on a separate lawsuit.

4. Key Aspects of Mutual Separation of Civil and Administration Court Proceedings

The difference between Administrative and Civil procedural law order is precisely in basic principles characterizing these two court proceedings.

It is important, to pay attention to the circumstances, that principle of adversarial proceedings in administrative court proceedings[71], which is strictly followed in civil court proceedings and represents a main constitutional-legal principle, at the same time the principle of a comprehensive and objective examination of the circumstances of the case by the court applies. The administrative court process is distinguished by its inquisitorial nature. The essence of the inquisitorial principle derives significantly from the public interests, which always accompanies administrative disputes and come into conflict with private interests.[72]

Fundamental distinguishing feature of Administrative Justice is to control of public administration, which is aimed to protect the subjective rights of citizens and other persons of private law and it must be implemented in full compliance with the principle of separation of state powers.[73] It

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68 Urban Planning Code of France, art.600-7, last amendment, 23.11.2018, <https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006074075/LEGISCTA000006107992/#LEGISCTA000006107992> [22.05.2025].

69 The Law of the Federal Republic of Germany on the "Administrative Judicial Order", 19.03.1991. art.123 (5), <https://www.gesetze-im-internet.de/englisch_vwgo/englisch_vwgo.html> [22.05.2025].

70 Administrative Procedure Law of Republic of Latvia, 25.10.2001, article 85(3), <https://constitutionnet.org/sites/default/files/Admin_Pro_Law.Latvia.pdf > [22.05.2025].

71 *Ghvamichava T*., The Admissibility of a Cassation Appeal in an Administrative Process, (Comparative Analysis), dissertation, Tbilisi, 2017, 52 (in Georgian).

72 Ibid, 54 (in Georgian).

73 *Beridzishvili T., Bohne E., Deppe J., Svanishvili S., Labadze M., Turava P., Fuckner G., Kardava E., Kalichava K., Khishtovani G., Khubua G., (ed.),* Law Guide of Administrative Science, Book IV, Institute of Administrative Science, TSU, Tbilisi, 2018, 362-363 (in Georgian).

represents a form of external control[74] and it's goal is to protect a public order, human rights and freedoms.

The recognition of subjective public-legal rights gives a person the authority, to apply to the court for protection his/her right. Within the framework of the rights protection system an individual and an Administrative Bodies are presented at the same level of subjects with equal rights.[75]

There is a presumption, that in the event of issuance of an administrative-legal act by an Administrative Bodies, the act issued as a result of administrative proceedings, itself contains a balance of a public and private interests, and in the case of dispute over the act, this presumption is violated and the court examines the legality of the act.[76] The validity of an act is suspended at the stage of preventive protection, when the court has reasonable doubts about legality of an act. As a result of reviewing the key issues highlighted in this research, also studying the current legal reality, as well as judicial practice, it can be said in conclusion, that the damage, caused by the suspension of an act as a preventive measure, it is largely caused by the Administrative Bodies, disregard for the basic principles during administrative proceedings.

It must be mentioned again, that the main feature of Administrative Justice is to control over the legality of public administrative activities and in civil court proceeding, the essence of the institution of security claim, lies in the enforceability of the court ruling, which in turn serves the goal of ensuring the stability of civil circulation,[77] in order to create legal guarantees for the actual exercise of the plaintiff's rights and legitimate interests protected by the substantive legislation.[78]

The European Court of Human Right has noted in a number of its judgments the importance of enforcing the court decisions,[79] precisely because of the circumstances, that the applying to the court is not merely a hypothetical right in nature, but also includes the legitimate expectation, that the decision will be enforced.

In terms of the separation of administrative and civil proceedings, in conclusion it can be said that, if the purpose of securing a claim in a civil proceeding – this is the enforceability of the court decision, which depends on the interest of a private individuals and on the stability of civil circulation, unlike the above, use of a preventive measure in administrative court proceedings, is made for enforceability of the final decision of a court, however, the purpose of mentioned is not to prevail interests of private individuals, but the elimination of the illegal activities of state governance based on balancing the private and public interests, accordingly, by transferring of the civil court procedural

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74 *Kopaleishvili M., Turava P., Kharshiladze I., Loria Kh., Ghvamichava T., Gvaramadze T.,* Administrative procedural Law Guide, Tbilisi, 2018, 13 (in Georgian).

75 *Beridzishvili T., Bohne E., Deppe J., Svanishvili S., Labadze M., Turava P., Fuckner G., Kardava E., Kalichava K., Khishtovani G., Khubua G., (ed.),* Law Guide of Administrative Science, Book IV, Institute of Administrative Science, TSU, Tbilisi, 2018, 373 (in Georgian).

76 *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, Ivane Javakhishvili Tbilisi State University, "Journal of Law", №2, 2022, 229 (in Georgian).

77 *Dzlierishvili Z*., Cross-undertaking as to Damages Resulting from a Provisional Remedy, Ivane Javakhishvili Tbilisi State University, "Journal of Law", №1, 2018, 7 (in Georgian).

78 *Kurdadze Sh*., Adjudication of the Civil Cases in First Instance Court, Tbilisi, 2006, 520 (in Georgian).

79 See ECHR Judgements: "Apostol *v. Georgia"* application N40765/02, 28.11.2006, *Hornsby v. Greece,* Judgement of 19 march 1997, *Mutishev and Others v. Bulgaria,* Judgement of 03 December 2009.

standards in administrative justice, will completely violated a kind of "order" of administrative justice, which distinguishes it from the purely private-legal conflict of interests in a civil process.

5. conclusion

The judicial protection is effective, when it responds to demands swift/timely, fair and effective justice.[80]

As a result of researching the main problematic issue of this paper, in conclusion, attention should be drawn to the fact, that upon adjudicating the dispute about legality the beneficial administrative-legal act, through the prism of conflict the interests of the persons of private law, the unconditional transfer the standards of the Civil Procedural law in Administrative court proceedings in terms of ensuring the compensation for damages, this will be take us into a reality that is inappropriate with the principles of Administrative Justice, unlike the implementation preventive protection mechanism, provided for in article 31 of Administrative Procedural Code of Georgia, which serves not to control the legality of decision of Administrative body, but to obtain the beneficial result in advance of future decision, where the third person is authorized to request the compensation for damages caused by preventive settlements of a person's right, which can also be achieved by using a guarantee of compensatory damage. The first instance court in its temporary ruling defined that, in case of preliminary regulation of administrative-legal relations it must create a faith and reasonable assumption to the court, based on a high degree of probability, that without using the security measures with a temporary ruling enforcement of the decision may be rendered significantly more difficult or impossible, Since the purpose of the temporary ruling is to maintain the status quo, accordingly when rendering temporary ruling on a particular case, the court came to the conclusion, that in the present case preventive settlement of the disputed legal relationship, is the necessary means ensuring protection of an applicant's rights.[81]

The fact that, the necessity of separation of administrative and civil court proceedings arises from the very beginning, this particular issue is clearly presented in this paper on the examples of countries, given in research in comparative-legal point of view.

Due to the need for independent development of Administrative Justice and for the necessity of relevant reforms, when there is a conflict of interests of subjects of private law, due to the complexity of the research issue, the best alternative for protecting the person's right, again and again, is the better development of the judicial practice, which has not only theoretical but also the greatest practical importance for the development of Administrative law.

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