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Other relevant rules on appeals, remedies and access to justice in environmental matters

Other relevant rules on appeals, remedies and access to justice in environmental matters are provided in the following legal regimes:

- administrative executive process (CPTA);
- payment of penalty for non-fulfilment of the Public Administration duty to execute administrative courts decisions (CPTA); and
- administrative appeals against omissions of administrative action (CPTA).

Articles 157 to 179 of the CPTA regulate the administrative executive process, that is the process applicable to contempt of judicial decisions by administrative courts against public bodies. The administrative executive process can also be used to: obtain the execution of unchallengeable administrative acts^[1] which the Administration does not duly execute (Article 157 par. 2); obtain the execution of any executive title issued within a legal administrative relation against a public legal person, a ministry or a regional administrative body (Article 157 par. 4).^[2] The general principle is that the decisions of administrative courts are mandatory for all public and private entities and outweigh any decisions of administrative authorities. This means that any administrative act in contempt of judicial decision is null, so when the judgment of the court is not followed and respected, the authors of such null act are subject to civil, criminal and disciplinary liability (Article 158 pars. 1 and 2). The civil liability of the authors of the null act involves the public body itself (i.e. the Administration) and the respective responsible officers; the disciplinary liability involves the responsible officers; and the criminal liability (crime of disobedience) involves the public administrative body when such administrative body clearly and unlawfully indicates its intention to not execute the court decision (Article 159). The moment when the court decision becomes effective counts as the start of the period for the Administration to execute such court decisions or, where the court decision has been subject to non-suspensive appeal, such period starts from the time of notification of such appeal to the Administration (Article 160).

There is a mechanism called extension of the effects of the court decision in administrative procedures^[3]. The effects of a court decision that has annulled or declared null a certain unfavourable administrative act, or that has recognised the existence of a certain favourable legal situation, can be extended to other persons who were not involved as parties in the respective judicial administrative process, if such persons are addressees of an administrative act with similar content or are placed in the same legal situation. This extension is valid only when there are several perfectly similar cases and is subject to the two following conditions: at least five judicial decisions from superior courts with the same meaning and not more than five with opposite meanings. For the purposes of the extension, the interested party shall send a request, within 1 year from the time when the court decision became effective, to the public administrative body that was the defendant in the process at stake (Article 161 of the CPTA). For example, in a process where land with forest resources that was expropriated is at stake, the co-owners of the land invoke the right to extend the effects of the court decision that has decided on the expropriation process^[4].

The administrative executive process can take one of the following forms: execution for service provision or delivery of certain assets, if the Administration did not spontaneously execute the court decision within a procedural period of 90 days (Articles 162 to 169 of the CPTA); and execution of court decisions annulling administrative acts, in which case the Administration shall reconstruct the situation as if the annulled act had not been issued and shall fulfil the duties that were not fulfilled under that same act (Articles 173 to 179 of the CPTA).

Without prejudice to the civil, criminal or disciplinary liability mentioned above, administrative courts have the power to impose penalty payments whenever appropriate (Article 3 par. 2 of the CPTA), as replied above to Questions 1.2, 4) and 1.7.1, 2). The penalty payment consists of condemning the responsible officer in the administrative body tasked with execution of the court decision to pay a sum of money for each overdue day. For

such purpose, the responsible officer shall be individually identified. Such sum of money is fixed under reasonable criteria between 5% and 10% of the minimum wage. The penalty payment ends when the court decision is fully executed. The officer responsible may oppose the penalty payment on the basis of justified reasons or excuse of conduct (Article 169 par. 1, 2, 4 and 6 of the CPTA).

Examples of cases where such penalty payment can be imposed are mentioned above under Question 1.7.2, 6) (Articles 108 par. 2 and 111 par. 4): they can be imposed in the rapid judicial action called the summons, which can take two forms: the summons to provide information, consult on processes or issue a certificate; the summons to protect rights, freedoms and guarantees. In both types of summons, if the Administration, private person or competent body (as applicable) does not comply with the summons, the judge shall order the payment of a penalty (Articles 108 par. 2 and 111 par. 4 of the CPTA). Other situations are, for example: in court decisions that condemn the Administration to issue administrative acts or administrative regulations or that impose the fulfilment of other kinds of duties, the court has the power to impose a certain period for their fulfilment and also a penalty payment to prevent avoidance of such fulfilment (Article 95 par. 4); the court can impose a penalty payment on the responsible officers of a public body condemned in a judgment of administrative court who are tasked with the execution of such court decision (Article 179 par. 3).

The issue of “administrative passivity” is also dealt with in the regime of protection of diffuse interests regarding omissions of the Public Administration that cause relevant damage to fundamental assets such as the environment. As extensively stated above in Questions 1.1, 3), 1.3, 1) and 3), 1.4, 3), 1.7.1, 1), administrative courts are competent to hear cases of environmental harm caused by omission of the State, namely to declare nullity of illegal omission of an administrative act due (Article 95 par. 5 of the CPTA).

[1] Unchallengeable administrative acts are those acts that do not meet the two conditions mentioned above in Question 1.7.1, 3), namely those acts that do not have external effectiveness and do not produce immediate legal effects (cf. Articles 51 and 54 par. 1 of the CPTA).

[2] The administrative executive process can also be used to execute judicial decisions of the administrative courts against private persons (Article 157 par. 5 of the CPTA), which are not addressed within these factsheets.

[3] On this mechanism, see Carvalho, Ana Celeste, “The extension of the effects of the judgment in administrative procedure revised”, e-Pública Vol. 3 No. 1, Abril 2016 (65-88), available [here](#).

[4] [Decision of STA n.º 048087G of 28/11/2007](#)

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