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ENFORCEMENT PROCEEDINGS UNDER THE BULGARIAN ADMINISTRATIVE PROCEDURE CODE

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ABSTRACT

This paper considers the issues related to the provisional enforcement of administrative acts and the legal remedies against the execution of an administrative act before its entry into force in case of contestation before a higher administrative body or the court. The means of protection of the parties concerned against the provisional enforcement of administrative acts are the subject of special proceedings defined as enforcement proceedings, as they guarantee the ultimate aim of protecting the respective appellant, which is sought by challenging the administrative act, namely not to have the legal consequences of an illegal administrative act realized. The enforcement proceedings under the Administrative Procedure Code provide protection through the suspension of provisional enforcement until the final settlement of the issue of the legality of the administrative act. There detailed consideration of the preconditions of the proceedings, including the controversial issues related to their application in the administration of justice.

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1. Introduction. A basic rule in the proceedings for challenging administrative acts issued by bodies of the public power is to suspend their execution until the final ruling of a higher administrative body or the administrative court. Such suspension of the execution of administrative acts in case of contestation may be defined as a precautionary measure that occurs automatically by virtue of the law. The suspension of the implementation of an administrative act deprives the administrative body of the opportunity to perform actions on the execution of the act until the court finally rules on the issue of its legality, respectively until the moment of its entry into force. The rule of Art. 90, paragraph 1, respectively Art. 166, paragraph 1 of the Administrative Procedure Code, which introduces the suspensive effect of an appeal, protects the rights of the appellant and the interested parties from the execution of an administrative act having defects, which lead to its illegality and prevents any damages caused in their legal field. Hence, the suspension of execution constitutes a security for the appeal lodged against the respective illegal administrative act. The security function of suspending the implementation of a contested administrative act is the very result of the impediment in the act to give rise to its constitutive effect in the legal field of the persons before the final confirmation of its legality.

The suspensive effect of an appeal against administrative acts is the rule, as there are, however, exceptions by virtue of the Code. It is possible that under certain preconditions the respective administrative body included an order of its for the provisional enforcement of the administrative act issued by it and the beginning of execution of the act regardless of its contestation through administrative channels or by order of the court. Furthermore, it is possible that the special law itself stipulates the provisional enforcement of the respective administrative act, regardless of

whether an appeal has been filed against it or not. In such cases the administrative act is subject to execution as of the moment of its issuance.

Therefore, the law should establish the means of protection against the preliminary execution of an administrative act that may be subsequently revoked in order to prevent the possibility of its implementation and to protect the rights of the parties concerned.

This paper looks at the issues of the hypotheses where the Bulgarian procedural law - the Administrative Procedure Code, allows the provisional enforcement of administrative acts, despite their appeal and the procedural means of protection of addressees. An analysis of the case law and proposals for its improvement have been made for the purpose of ensuring that the application of the procedural norms is not formal, but filled with content.

2. Methodology.

This paper applies the systematic, analytical and comparative research methods. The systematic and comparative methods reveal the connection between the existing legal institutes, the specific consequences of the provisional enforcement of administrative acts and the case law, while the comparative method considers the correlation between the institutes of security of an appeal and of a statement of claim, as established in the two main procedural laws, namely the Administrative Procedure Code and the Civil Procedure Code.

3. Cases of provisional enforcement of administrative acts.

Grounds have been introduced by the legislator to the provision of Art. 60 of the Administrative Procedure Code, according to which an administrative act issued by the administrative bodies gives rise to legal consequences and is subject to implementation despite being contested. Provisional enforcement by virtue of Art. 60 of the Administrative Procedure Code takes place by including an explicit order for provisional enforcement into the respective administrative act. The preconditions for provisional enforcement are established as an alternative, and the existence of each of them should result from the circumstances of the specific case, as the administrative body should explicitly motivate its order for provisional enforcement. The need of having such an order substantiated in the administrative act is due to the fact that the provisional enforcement of administrative acts is an exception to the rule for their action, that they enter into force and become stable administrative acts only upon expiration of the terms for their contestation through the proper channels.

Besides the cases under Art. 60 of the Administrative Procedure Code and on the grounds stipulated in it, there may be provisional enforcement of an administrative act by virtue of the law. These are the hypotheses when an explicit legal norm stipulates that the appeal of a specific administrative act does not suspend its execution. In such cases the provisional enforcement of the respective administrative act occurs directly on the basis of the legal provision, without the necessity for the administrative act itself to justify the presence of the preconditions by virtue of Art. 60 of the Administrative Procedure Code, and without the administrative act itself to have to deliberately include an express order for provisional enforcement.

The provisional enforcement of administrative acts may be overcome through the procedural means of protection stipulated in the Administrative Procedure Code, thus achieving the suspensive effect of the appeal and suspending the implementation of the administrative act. The procedural means for suspension of the provisional enforcement, which is analogous to the legal rules of Art. 90, paragraph 1 and Art. 166, paragraph 1 of the Administrative Procedure Code, are a form of security for the appeal, and therefore the proceedings, according to which the same take place, are such of protective nature. This is because they guarantee the ultimate goal of protection aimed by the appellant with the appeal, namely - not to implement the legal consequences of an illegal administrative act.

The enforcement proceedings under the Administrative Procedure Code can be conditionally divided into two groups – the first group covers the independent proceedings according to Art. 60 of the Administrative Procedure Code, by the order of which the order for provisional enforcement included into the act is contested, and the second group covers the ruling of the respective superior administrative body or the court on a request for suspension of the provisional enforcement within the contestation of the administrative act according to Art. 90, paragraph 3 and Art. 166, paragraph 2 Administrative Procedure Code. The enforcement proceedings by virtue of the Administrative Procedure Code are characterized with similar features, but also with some major differences in view of the stage of formation and the preconditions for their admission. Unifying features of the hypotheses of Art. 60, Art. 90, paragraph 3 and Art. 166, paragraph 2 of the Administrative Procedure Code are the material subject of proceedings, which is related to the provisional enforcement of the

respective issued administrative act, as well as the intended legal consequences of the protection against the provisional enforcement, namely its suspension, respectively cancellation.

I. The proceedings by virtue of Art. 60 of the Administrative Procedure Code.

The norm of Art. 60, paragraph 1 of the Administrative Procedure Code, which stipulates a possibility for an administrative body to add an order for provisional enforcement to the administrative act, has its analogue in the revoked provision of Art. 16 of the Administrative Procedure Act, which used to state that the administrative act includes an order for its preliminary execution whenever necessary in order to ensure the life or health of citizens, to prevent losses to the national economy, to protect other important state or public interests, as well as in case of any danger of spoiling or seriously hindering the execution of the act. It is noticeable that, beyond the fact that Art. 60 of the Administrative Procedure Code reproduces most of the prerequisites of Art. 16 of the Administrative Procedure Act (revoked), its scope also includes two new prerequisites for provisional enforcement of administrative acts – the first one being if the delay in execution may result in any significant or hard to repair damage, and the second one - at the express request of one of the parties, which is related to the protection of a particularly important interest of that party.

As regards the proceedings related to the possibility for suspension of the effect of provisional enforcement permitted by the administrative body, the revoked Administrative Proceedings Act did not stipulate such intentionally. The norm of Art. 37, paragraph 3 of the Administrative Proceedings, sentence 2 (revoked) established a possibility for the interested party to request the suspension of the provisional enforcement by the court. As this was the only provision that regulated the possibility for suspension of the provisional enforcement of administrative acts as such being admitted by an order, as well as because of the security nature of the request, by virtue of Art. 45 of the Administrative Procedure Act, the Civil Procedure Code was applicable in a subsidiary manner, namely the provisions of Chapter 33, Art. 308 et seq. of the Civil Procedure Code, “Enforcement Proceedings”. In this regard, the only normatively regulated procedural possibility for “security” of the appeal in the administrative process, prior to the adoption of the Administrative Procedure Code, was the one according to Art. 37, paragraph 3 of the Administrative Proceedings (revoked), respectively Art. 15, paragraph 2 the Supreme Administrative Court Act (revoked).

The current order of Art. 60 of the Administrative Procedure Code, along with the prerequisites that condition the introduction of an order for provisional enforcement into the administrative acts, also regulates the proceedings to follow upon lodging an appeal against the respective provisional enforcement. The law stipulates that the order, which allows or refuses provisional enforcement (in the cases of an explicit request by one of the parties) may be appealed via interlocutory appeal through the administrative body that has issued it, within a term of three days as of its notification, regardless of whether the administrative act has been contested or not (Article 60, paragraph 5 of the Administrative Procedure Code). Therefore, deliberate proceedings may be held at the parties’ request, which precede the contestation of the administrative act, thus having as its only object the legality of the order for provisional enforcement of the administrative act.¹ The appeal against the provisional enforcement of the administrative act shall be considered promptly in a closed session, as the parties receive no copies of it. The above is due to the fact that the request for suspension of the permitted provisional enforcement is a request for imposition of a security measure in view of any subsequent contestation of the legality of a specific administrative act, and the requests for imposition of security measures are not reported to the other party (argument Art. 395, paragraph 1 of the Civil Procedure Code).

The norm of Art. 60 of the Administrative Procedure Code does not introduce any requirement for the appellant to prove the infliction of any significant or hard to repair damages from the provisional enforcement as grounds for respecting the appeal, as explicitly stipulated by the provisions of Art. 90, paragraph 3 and Art. 166, paragraph 2 of the Administrative Procedure Code. The burden of proof in those cases is for the administrative body that should establish the presence of the prerequisite of Art. 60 of the Administrative Procedure Code, as applied by it, for the provisional enforcement of the act. Therefore, the order for provisional enforcement should be motivated in accordance with the explicit requirement of the new paragraph - paragraph 2 of Art. 60 of the

¹ It should be noted that even upon the validity of the Administrative Proceedings Act (revoked) the proceedings of contesting the provisional enforcement of administrative acts via request for their cancellation were also independent proceedings of a precautionary nature, which was permissible to be developed before lodging the appeal against it. The differences come from the circumstance that due to the lack of a legal regulation in the Administrative Procedure Act, the Civil Procedure Code and the claim security related provisions used to be applied by analogy.

Administrative Procedure Code. If the provisional enforcement order is not motivated, then it is illegal and is subject to annulment on this bare ground.

The order for provisional enforcement is an independent statement of will by the administrative body and as such it constitutes an act into the act. The above meaning that upon the issuance of the order for provisional enforcement the administrative body is obliged to observe the requirements for legality, as established for administrative acts, on the one hand, and the existence of the precondition for provisional enforcement according to Art. 60, paragraph 1 of the Administrative Procedure Code, on the other hand. In this connection, the burden of proof in the proceedings for contesting the provisional enforcement order falls on the administrative body as per the rule of Art. 170, paragraph 1 of the Administrative Procedure Code, but not on the claimant. Hence, the latter shall not be obliged to prove the occurrence of any damages from such provisional enforcement, respectively their establishment under the proceedings for contesting the order shall not be a precondition for the validity of the appeal. The above is one of the main differences between the enforcement proceedings according to Art. 60 of the Administrative Procedure Code and the proceedings according to Art. 90, paragraph 3 and Art. 166, paragraph 2 of the Administrative Procedure Code, which take place within pending proceedings for contesting the respective administrative act, subject to provisional enforcement.

The appeal against the provisional enforcement does not suspend the implementation of the act, but the court may stop it until its final resolution - Art. 60, paragraph 6, 2nd proposal of the Administrative Procedure Code. The Administrative Court rules by a Ruling on the contestation of the provisional enforcement, with which it may respect the appeal and to suspend the provisional enforcement of the act or to rejected it as ungrounded. Art. 60, paragraph 7 of the Administrative Procedure Code, which regulates the way of ruling by the Administrative Court on the appeal against the provisional enforcement, points out that in the cases when the court respects the appeal, it cancels the order or cancels the provisional enforcement, thus resolving the issue on the merits. In fact, the result of contesting the provisional enforcement, including whenever it is permitted by an express order, is indeed the suspension of the execution of the administrative act until the final ruling of the court on its legality. Furthermore, the proceedings for contesting provisional enforcement precautionary is of interlocutory nature, and it is not controversial proceedings, as has its analogue in the interlocutory proceedings by virtue of the Civil Procedure Code - Part IV, Chapter 34 of the Civil Procedure Code, and one of the security measures is indeed the suspension of execution (argument Art. 397, paragraph 1, item 3 of the Civil Procedure Code).

The issue of the applicability of the proceedings under Art. 60 of the Administrative Procedure Code and the possibility for independent contestation of the provisional enforcement order in the cases when the provisional enforcement of the act is permitted by virtue of a special law. In these hypotheses the legislator itself has considered present some of the prerequisites according to Art. 60 of the Administrative Procedure Code for execution of the act before its final entry into force. In some court acts it is accepted that the provisional enforcement and appeal by virtue of Art. 60 of the Administrative Procedure Code shall apply only to acts, which include a provisional enforcement order, but not to those subject to provisional enforcement by virtue of a special law. The norm of Art. 60 of the Administrative Procedure Code is construed restrictively and a conclusion is drawn that contesting a provisional enforcement permitted by the law, within the term of three terms stipulated in Art. 60, paragraph 5 of the Administrative Procedure Code, is inadmissible due to the lack of a subject matter¹ It is stated that there may be statutory suspension of provisional enforcement by virtue of the provisions of Art. 166, paragraph 2 of the Administrative Procedure Code in view of the norm of Art. 166, paragraph 4 of the Administrative Procedure Code within the court contestation of the respective administrative act. Other court acts deem it acceptable an admissible appeal against the provisional enforcement by law by virtue of Art. 60 of the Administrative Procedure Code, as it is stated that in order for the execution based on an argument to the contrary to be suspended, the court should establish the existence for the claimant of some of the prerequisites of Art. 60 of the

¹ In view of the above, Ruling No. 4698/30.03.2012, 7 Division of the Supreme Administrative Court: "Provided that under the present case the Commission has not ruled any constitutive statement of will by virtue of Art. 60, paragraph 1 of the Administrative Procedure Code, but the provisional enforcement of the administrative act follows from the imperative statutory provision (Art. 197 of the Law of Collective Investment Schemes and Other Enterprises for Collective Investment), the protection under Art. 60, paragraph 4 of the Administrative Procedure Code is inadmissible".

Administrative Procedure Code, namely: to endanger the life and health of citizens, to protect especially important state interests, in case of any danger that the implementation of the act may be spoiled or seriously impeded, or that there may follow a significant or hard to repair damage, or at the request of one of the parties - in defense of a particularly important interest of its, upon submission of a guarantee.¹ My opinion is that there is no procedural obstacle to the admittance of an appeal to be considered by virtue of Art. 60, paragraph 5 of the Administrative Procedure Code against provisional enforcement of an administrative act permitted by the law. However, due to the fact that the availability of any of the preconditions of Art. 60 of the Administrative Procedure Code is presumed by the legislator upon introducing the norm for provisional enforcement of the respective category of administrative acts, then based on the argument of Art. 166, paragraph 4 of the Administrative Procedure Code, the validity of the request for suspension of provisional enforcement will be preconditioned by proving by the appellant of infringement of his/her property or non-property rights and the occurrence of damages from such execution.

II. The proceedings according to Art. 90, paragraph 3 and Art. 166, paragraph 2 of the Administrative Procedure Code.

A security measure shall be also deemed the possibility for the provisional enforcement of the respective administrative act to be suspended by the higher administrative body at the request of the appellant, by virtue of Art. 90, paragraph 3 of the Administrative Procedure Code. The request should be grounded by the occurrence of an irreparable damage to the appellant as a result of the said provisional enforcement or if established that it is not required in the public interest. However, the Code does not stipulate independent appeal against the provisional enforcement order before the immediate superior body. It is only the administrative court that has the power to rule on an appeal against a provisional enforcement order, regardless of the contestation of the administrative act, by virtue of Art. 60, paragraph 5 of the Administrative Procedure Code. Hence, in order for the right of the superior administrative body to occur for it to suspend the admissible provisional enforcement, it should be addressed by an appeal against the administrative act and the appellant should make an explicit request for the suspension of the implementation for the duration of its contestation. In connection with this, a request for suspension of the execution lodged with the higher administrative body may not come from another person interested in the action of the administrative act, who, however, has not contested the administrative act by an administrative order. In case the higher authority rules on a request for suspension by a party that has not lodged any complaint against the administrative act, the its decision will be illegal to the extent of nullity.

The provisional enforcement of the administrative act may also be suspended by the administrative court within the proceedings in the case for challenging the act. The grounds for suspension shall be Art. 166, paragraph 2 regarding the provisional enforcement permitted by an independent order according to Art. 60 of the Administrative Procedure Code, and Art. 166, paragraph 4 regarding the provisional enforcement permitted by a norm of a special law. For this purpose, the interested party should submit a special request for suspension of provisional enforcement, on which the court shall rule promptly, separately from its ruling on the merits of the administrative dispute. Unlike the proceedings according to Art. 60 of the Administrative Procedure Code, a precondition for respecting the request for suspension of provisional enforcement under Art. 166, paragraph 2, respectively paragraph 4 of the Administrative Procedure Code, is the proving by the claimant of the probability of occurrence of major or hard to repair damages. Damages may be both property - sustained losses or lost profits, as well as non-property - damages to the health, physical integrity, reputation, honor, and dignity. Such damages should be significant in scope or have such an impact on the appellant that it is difficult for the same to be recovered. It is also necessary to have sufficient likelihood of their occurrence, which is established by the claimant's allegations, supported by relevant evidence. In the hypotheses when

¹ For example, Ruling No. 2840/19.03.2007, II Division of the Supreme Administrative Court ruled under a complaint against a Ruling of the Sofia City Court for suspension of the implementation of an Order by the Director of the Regional Directorate for National Construction Control-Sofia, it is deemed that due to the fact that the special law – the Spatial Development Act, by virtue of which the provisional enforcement has been permitted, does not stipulate the respective preconditions for its suspension, then based on an argument for the contrary, the Court should find as regards the claimant one of the hypotheses under Art. 60, paragraph 1 of the Administrative Procedure Code, which in this case is the impairment of its material interests, thus also leaving in force the Ruling of the Administrative Court of first instance for suspension of the provisional enforcement of an Order by the Director of the Regional Directorate for National Construction Control-Sofia for prohibition of the use of a construction site.

provisional enforcement is permitted by virtue of the law, the preconditions of Art. 60 of the Administrative Procedure Code are presumed in advance by the legislator, and hence the impact should be of such a nature that the damages on the private interest should prevail over the public interest protected by the provisional enforcement by virtue of the law. At a request for suspension of provisional enforcement permitted by virtue of a special law, the court assesses both the amount of damages claimed by the appellant and the evidence that the same is obliged to present for the purpose of confuting each of the alternative prerequisites of Art. 60 of the Administrative Procedure Code. In connection with this, Ruling No. 629/17.01.2014 of the Supreme Administrative Court BAC, deems an ungrounded request for suspension of the provisional enforcement under a special law fulfillment of a compulsory administrative measure - suspension of the exploitation of a site imposed by an order of the Director of Sofia Health Directorate: "... In each specific case, the court that considers the request for suspension according to Art. 166, paragraph 2 in connection with paragraph 2 of the Administrative Procedure Code of an act issued by virtue of Art. 38, paragraphs 3-4 of the Health Act, assesses whether its immediate execution may cause any significant or hard to repair damage to the addressee, which would be opposed to the presumed prerequisites according to Art. 60, paragraph 1 of the Administrative Procedure Code. The normative requirements are in proportion of alternative form rather than cumulateness, and in the presence of any of the grounds the court should assess whether the protection of the claimant's private interest may be opposed to the public interest and may overcome it."

The burden of proof as regards the type and amount of damages is for the claimant, unlike the proceedings for contesting the order for provisional enforcement according to Art. 60, paragraph 5 of the Administrative Procedure Code, where the administrative body should prove the existence of the grounds at its choice in the order for admission of the provisional enforcement of the respective administrative act issued by it. The shift of the burden of proof in both proceedings under Art. 60 and under Art. 166 of the Administrative Procedure Code is explainable given the fundamental differences between them.

The provision of Art. 166, paragraph 2 and paragraph 4 of the Administrative Procedure Code, unlike the proceedings according to Art. 60 of the Administrative Procedure Code, introduces an explicit requirement for the suspension of the provisional enforcement of the said administrative act, being admitted by an order according to Art. 60 of the Administrative Procedure Code or by virtue of a special law, for it to be due to the probability that it would cause significant or hard to repair damages to the appellant. Meanwhile, the second proposal in the second paragraph of Art. 166 of the Administrative Procedure Code stipulates that such enforcement may be suspended only based on new circumstances. The legislator, however, has not specified the meaning of the term "new circumstances" - whether these are facts related to the damages claimed by the appellant and as of which moment, if so, their new nature is to be assessed in view of the circumstance that a request for suspension may be lodged in any situation of the case. The practice has accepted that new circumstances are facts occurred following the entry into force of the provisional enforcement order according to Art. 60 of the Administrative Procedure Code, as not appealed within the term of three days or if appealed, as it has been confirmed. However, as far as such request for suspension of provisional enforcement in both hypotheses of its admittance by virtue of an explicit order or by virtue of a special law according to Art. 166, paragraph 2 of the Administrative Procedure Code is presupposed by proving damages, the interpretation of the norm stipulated in Art. 166, paragraph 2, proposal 2 of the Administrative Procedure Code imposes a conclusion that the circumstances are indeed related to the damages claimed by the appellant as a result of the effect of the administrative act. In connection with this, the established case law of the Bulgarian administrative court cannot be shared, namely that the new circumstances are such facts that have occurred following the commencement of the provisional enforcement order according to Art. 60 of the Administrative Procedure Code as not appealed within the term of three days or upon its confirmation in case of appeal, due to the fact that, as already mentioned above, Art. 60 of the Administrative Procedure Code does not set any requirement for allegations or proof of damages.

The circumstances that may result in the suspension of the provisional enforcement of the administrative act appealed before the court are facts, the presence of which leads to the occurrence of damages for the appellant. It is possible that these circumstances also have existed during the issuance of the administrative act and that the administrative body has not taken them into consideration upon taking its decision, because of which it has issued an act in violation of the requirements for legality. For example, the administrative body has not considered the fact that the lodging, the confiscation of which had been ordered by it, is the only lodging of the person and despite this fact it has issued an order for confiscation of a municipal property or has not fulfilled the legal obligation to announce the

commencement of the proceedings for issuing an order for confiscation of municipal property, thus impeding the addressee to find another home and to organize his/her moving, etc. Furthermore, it is possible that the circumstances, which result in damages, occur following the issuance of the respective administrative act - for example, revocation of a permit to carry out a certain activity, sealing of premises, where a trading activity takes place, etc. Thus, the connection of the circumstances by virtue of the norm of Art. 166, paragraph 2, proposal 2 of the Administrative Procedure Code with commencement of the order for provisional enforcement according to Art. 60 of the Administrative Procedure Code is an issue that is not relevant to their occurrence.

In view of the above, the norm of Art. 166, paragraph 2, proposal 2 of the Administrative Procedure Code should be construed in the general sense of the provision of Art. 166, paragraph 2 Administrative Procedure Code, as the time frames set by it for the right to request the suspension of provisional enforcement - at any time until the completion of the pending nature of the proceedings. In connection with this, the "new circumstances", based on which the court may suspend enforcement, are relevant to the number of requests for suspension. In case the initial request is disregarded as ungrounded, upon the occurrence of new circumstances that cause damages, the appellant may repeatedly request the court to suspend the provisional enforcement of the act, which should be respected in turn.

The suspension of the execution of the respective administrative act is a type of security for the appeal. During the civil proceedings the main precondition for respecting a request for security of the statement of claim by imposing a security measure is the probable validity of the claim lodged by the plaintiff. Therefore, the assessment of the existence of sufficient evidence in support of the merits of the claimant's allegations is a part of the assessment of the validity of the request for security. Upon ruling on the request for securing the claim, the civil court shall perform a general assessment of the presented evidence, without assessing their evidential value - whether these are admissible, relevant and whether they establish the allegations presented in the statement of claim. Ruling No. 411/30.10.2008, 2 Commercial Panel of the Supreme Court of Cassation has deemed proper the case law, according to which: "... in the enforcement proceedings the court may not enter into a detailed assessment of the evidence presented under the case, thus committing to an opinion on the rights arising from this evidence before the final completion of the case. The assessment should be one of the most general nature, as the only thing that depends on it is whether the security should be permitted under conditions of a guarantee or not".

The suspension of enforcement, including of an effective judicial act under civil proceedings, is a type of precautionary measure that raises the question of whether and to what extent the administrative court should also assess the probable illegal nature of the administrative act. Beyond any doubt, the main precondition for the validity of the requested suspension of the preliminary enforcement is the establishment by the appellant of any significant or hard to repair damages, the presence or absence of which needs to be evaluated by the administrative court. On the other hand, the damages in the claimant's legal sphere occur due to the illegality of the administrative act and are in direct causal connection with it. In case the administrative act has been issued upon observation of the legal requirements and justifiably gives rise to an adverse effect in the legal field of the claimant against his/her will, then damages being grounds for suspension shall not occur for him/her. In view of the circumstance that in this connection the main purpose of securing the appeal by suspending the preliminary enforcement is not to enforce the legal consequences of an unlawful administrative act, then it should be considered that the administrative court should even perform a general assessment of the legal nature of the act, the action of which leads to the allegations for damages to the claimant. The above applies to the greatest extent to the illegal administrative acts to an extent of nullity, which as a rule do not take any effect as of the moment of their issuance, but for which there is a danger of execution without any initial lack of legal grounds as them being the subject of provisional enforcement.

4. Conclusion and discussion.

The considered hypotheses on suspension of the provisional enforcement of the issued administrative act have not been accidentally defined as "proceedings" of a security nature. The appeal against the provisional enforcement refers to the higher administrative body or to the court with an independent request, based on which proceedings are initiated together with the main proceedings for contesting the administrative act. The addressed body makes a separate rule from the ruling on the merits of the administrative dispute with an act, which is also the subject of a separate appeal. In this connection, the enforcement proceedings are relatively independent from the main proceedings under the administrative dispute. However, their significance for the administrative process is material both for the persons interested in the operation of the administrative act and for the administrative body

issuing the act, as the successful development of the interlocutory proceedings ensures the protection of the subjective rights and interests of the interested parties, on the other hand, and hinders the engagement of liability of the administrative body for damages resulting from the unlawful provisional enforcement, on the other hand.

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