

ACCESS TO JUDICIAL REVIEW PROCEDURES IN BULGARIA

Standing – who can bring a case to court and how

An administrative act may be contested before the court even if the possibility for administrative contestation of the administrative act has not been exhausted. If the person has used the possibility of administrative review and is not satisfied with the outcome, it can refer the case to the court in accordance with the rules for judicial review of administrative acts. Where the act, the tacit refusal or the tacit consent have been contested according to an administrative procedure, the time begins to run from the communication that the superior administrative authority has rendered a decision and, if the authority has not pronounced it, from the latest date on which the authority should have pronounced it.

In administrative matters, two-instance court procedures are in place. A complainant has the right to appeal an administrative decision before the administrative court and then the first-instance court decision before the Supreme Administrative Court (SAC) via a cassation appeal.

The grounds for cassation, specified in the APC, are defects of the first-instance decision concerning the requirements for validity, admissibility and correctness of the judicial act, respectively, namely is it invalid, inadmissible, or incorrect because of a breach of the material law, substantial breach of the court procedural rules or insufficiency.

Environmental cases are handled under the common administrative procedure – i.e. there are no specific court rules applicable to environmental matters.

The Bulgarian legislation grants standing to interested persons (ENGOS and physical persons) to bring to court both measures of a general nature such as protected areas management plans and normative administrative acts – secondary legislation issued by the executive authorities. According to the Environmental Protection Act (EPA) "public" is defined as one or more natural or legal persons, and associations, organisations or groups thereof established in accordance with national legislation. EPA further defines "the public concerned" as the public who are affected or likely to be affected by, or which has an interest in, the procedures for approval of plans, programmes and development proposals, and in the decision-making process on the granting or updating of permits according to the respective environmental procedure or in the conditions set in the permits, including non-governmental organisations promoting environmental protection which are established in accordance with national legislation.

To grant standing to the interested public, the court carries out an admissibility test based on two groups of criteria, namely arising from the special composition of the provision in connection with the legal definition of the EPA regarding the legal personality and legal interest of the complainant, as well as the suitability of the challenged act as a subject of appeal.

Safeguards for effective procedures

There is no stipulated deadline for the national courts to hear a case. The general rule according to the Civil Procedure Act and the APC is that the court hears and rules on the case within a reasonable time limit. The APC stipulates a limit of 1 month after the hearing at which the examination of the case is completed for the court to render a decision.

Administrative acts shall be contestable within 14 days after communication thereof. A tacit refusal or tacit consent is contestable within 1 month after expiry of the time limit within which the administrative authority is obligated to pronounce the act.

Within 14 days after receipt of the transcript of the appeal/protest, each of the parties may present a written response and provide evidence.

The ruling on the motion of anticipatory enforcement can be challenged within 3 days after communication thereof.

The minutes of a court public hearing are published on the website of the court within 14 days after the hearing.

Interim measures – injunctive relief

An appeal challenging an administrative decision has suspensive effect unless an anticipatory enforcement has been allowed by the administrative authority or by law. This in practice represents automatic injunctive relief

Pursuant to the APC, the deciding administrative authority can admit, with a reasoned decision, anticipatory enforcement of the act (the decision being part of the act or a special order). The reasons could be protecting the life or health of individuals, protecting particularly important state or public interests, preventing a risk of the frustration or material impediment of the enforcement of the act, or where delay in enforcement may lead to a significant or difficult to repair damage.

The administrative act shall not be enforced prior to expiry of the time limits for its contestation or, where an appeal or protest has been lodged, until resolution of the dispute by the relevant authority. This rule shall not apply if all parties concerned request in writing an anticipatory enforcement of the act or if an anticipatory enforcement of the act is admitted by a law or by an order under the APC. The superior administrative authority may stay the anticipatory enforcement, allowed by order, upon the request of the contestant if this is required in the public interest or would inflict an irreparable detriment on the person concerned. In this case, the suspensive effect of the appeal will be restored.

The defence against preliminary enforcement may be provided by means of appeal in a separate legal control procedure independently from appealing the administrative act itself. The order by which the preliminary execution is admitted or refused may be appealed through the administrative body before the court within 3 days after its announcement, regardless of whether the administrative act has been appealed. It shall not stop the admitted preliminary execution, but the court may stop it till its final decision. The ruling of the court is still subject to appeal according to the APC. Otherwise, the preliminary execution may be stopped within the main procedure under the conditions of the APC, i.e. if it may cause to the appellant significant or hard-to-repair damage. The execution may be stopped only on the grounds of new circumstances.

Costs of litigation

The APC promotes as a principle access to justice with no financial barriers, and stipulates that no duties are collected and no costs are paid for any proceedings, except in the special cases provided for in the APC or in another law, as well as in the cases of judicial appeal against administrative acts and the bringing of a legal action under the APC.

In the Tariff for State Taxes, the tax for filing a cassation appeal against an administrative act by NGOs or individuals is very low – 10 BGN (about 5 EUR). However, the 2019 amendments to the APC significantly increased the tax for the cassation appeal from 5 BGN to 70 BGN for individuals, sole traders, state and municipal authorities and other persons with public functions or offering public services, and 370 BGN for organisations. The tax is not paid for the filing of a protest by the prosecutor or by

individuals for whom it is acknowledged by the court or another authority (e.g. the chairman of the Supreme Administrative Court) that they do not possess the means to pay. When a material interest could be defined in the administrative court proceedings, the state tax is proportional and amounts to 0.8% of the material interest of (value for) the party, but not more than 1,700 BGN, and in the event that the interest in the case is above 10,000,000 BNG the tax is 4,500 BGN. Another part of the costs in judicial proceedings is the attorney's fee, the minimum for which is defined in Ordinance № 1 on the Minimum Amounts of Attorneys' Fees (e.g. for procedural representation, defence and assistance in administrative cases without a specific material interest, except for the special cases, no less than 500 BGN).

The "loser pays" principle is fully applicable.

Where the court revokes the appealed administrative act or refusal to issue an administrative act, the stamp duties, court costs and fee for one lawyer, if the appellant has retained a lawyer, are reimbursed from the budget of the authority which issued the revoked act or refusal. The appellant is entitled to the same awarded costs upon dismissal of the case by reason of a withdrawal of the contested administrative act.

Where the court rejects the contestation or the appellant withdraws the appeal, the party for which the administrative act is favourable is entitled to be awarded costs. The appellant shall pay all costs incurred in litigation, including the minimum fee for one lawyer, fixed according to the ordinance to the Bar Act on minimum lawyers' fees, if the other party has hired a lawyer, or, if the administrative authority has been represented by its staff legal adviser, remuneration is awarded in the amount determined by the court.

Legal aid

Pro bono assistance is regulated by the Legal Aid Act, which aim is to guarantee equal access to justice for all persons in criminal, civil and administrative cases before all court instances by ensuring and providing effective legal aid. Legal aid funds are provided from the state budget. Legal aid is organised by the National Legal Aid Bureau (NLAB) and by the bar association councils. The aid is provided for consultations for reaching an out-of-the court agreement before the start of the judicial proceedings or for submitting a case to the court, for drafting documents necessary for submitting a case and representation in court. The aid is provided e.g. to persons and families who are eligible for receiving social aid monthly allowances.

The legal aid system covers cases where a party to an administrative case does not possess the financial means to pay the lawyer's fee, wants to have one, and it is in interest of justice. Legal aid is provided in cases where, based on evidence issued by the competent authorities, the court or the chairperson of the NLAB decides that the party lacks the means to pay the lawyer's fee. The court or the chairman decides on that taking into consideration the income of the person or of his/her family, his/her material assets declared, the family, health and employment status, and age.

The national legal aid hotline is another means for providing legal aid to individuals under more relaxed conditions than the general rules. The hotline is administrated by the NLAB and aid is provided by lawyers listed at the NLAB.