

### **TIME PERIOD FOR HEARING ADMINISTRATIVE CASE**

Passing the Law of Administrative Procedure and its implementation as of 1 September 2010 is an important step from the standpoint of reforming administrative law and regulations of the Republic of Azerbaijan.

This Law, amidst regulating relations between individuals and the state, reinforces the principle of supremacy of law in the Constitution of the Republic of Azerbaijan.

In a rule-of-law state, a citizen must as well be provided with the comprehensive and adequate means of legal protection *vis-à-vis* the activities of administrative bodies. In this regard, passing of the Administrative Procedure Code and its implementation as of 1 January 2011 is another important step among the reforms of the Republic of Azerbaijan in the administrative law field.

The Code provides for a three-pillar administrative court system, *i.e.*, the first instance collegiums to hear administrative cases are formed within the first instance courts, the second instance collegiums are formed within the appellate courts, and the last instance collegium is formed within the Supreme Court. The Republic of Azerbaijan has, thus, chosen to organise administrative courts within the system of common courts as opposed to creating a separate administrative court system.

Among the important issues of concern for lawyers as well as the general public upon hearing by courts of administrative law cases following the implementation of the Law and the Code is the term for hearing a case.

In relation to this, the issue that is debated most is the applicability or non-applicability to administrative courts of the provision set forth in the Civil Procedure Code requiring consideration of and resolution on a case in a three month period.

Initially, this issue was rather moot among the administrative courts. However, at the moment, we can say that the following position has largely been accepted.

While there is a generic reference in the Administrative Procedure Code to the Civil Procedure Code, there is also additional specific reference in Sub-Section 22.2 of the Administrative Procedure Code to the Civil Procedure Code in relation to time periods. However, references in this Sub-Section are not in relation to the time period, during which a court must resolve a case, but only in relation to the details of how a time period should run (start, expiration, non-business days, and the like).

There are no time periods established by the Administrative Procedure Code for resolving on a case as a matter of a standard procedure. This, in turn, stems from the requirements of certain provisions of the Code.

For instance, under the Code, if any administrative act is not passed as a result of inaction of the administrative body, a court prescribes a certain time period for the body to pass the administrative act. The administrative body must report to the court following its passing the administrative act. The prescribed time period is appointed by the judge depending on complexity of a matter, its circumstances, and the like. Upon a failure of the administrative body to pass the administrative act within the prescribed time period, the court, within three months of expiration of the prescribed period, resolves on the matter and the decision of the court replaces the administrative act.

Additionally, if, despite a demand by the court, a claimant in a period of consecutive 30 days fails to appear before the court to participate in the hearing, the claim is considered withdrawn and the court resolves on such accordingly. In other words, unlike the provisions of the Civil Procedure Code, a claimant does not have to positively act to withdraw the claim. In certain cases, a court can resolve on the claimant's withdrawal of the claim based on his/her/its inaction.

Also, if the conditions are not ready yet for a final resolution on a case and there is a requirement that the resolution be accepted within a three-month period, there would have been little sense left in the administrative procedure. In this case, the court would be unable to determine which decision to take because the provisions on a burden of proof come into play only once a failure of fact-finding has been ascertained.

Therefore, special features of administrative procedure, such as fact-finding and dependence on actions of administrative bodies, set asides a possibility of completing the procedure in a three-month period. In this case, even upon the Administrative Procedure Code's referring to the terms specified in the Civil Procedure Code, practically, it is impossible to comply with the terms and, especially, with the term of three months to complete an administrative procedure. Presently, under the prevailing practice, there are no time limitations on an administrative procedure period.

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