

2016

GREEK LAW DIGEST

The Official Guide to Greek Law

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**Troulis & Partners
Law Firm**

THE COMPLIANCE OF PUBLIC
ADMINISTRATION WITH COURT ORDERS

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2nd EDITION



NOMIKI BIBLIOTHIKI

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GREEK LAW DIGEST
ISSN 2241-133X
www.greeklawdigest.gr
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Greek Law Digest (GLD)

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Published under the Auspices of



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■ CITIZENS & THE STATE



NOMIKI BIBLIOTHIKI

THE COMPLIANCE OF PUBLIC ADMINISTRATION WITH COURT ORDERS

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I. The Legislative and Regulatory Framework

Since the creation of the Greek State, it has generally been thought that enforcement against the State is inconceivable. It was only in the early 1980s that Article 122 of the Presidential Decree no. 1225/1981 provided that public administration has an obligation to comply with the non-appealable judgments of the Court of Auditors. However, the above-mentioned Article remained ineffective due to the parallel validity of Article 8 of Law no. 2097/1952, according to which the enforcement of court orders adjudging payment obligations against public authorities is not permitted.

Further to the adoption of the Greek Constitution in 1975, Article 95(5) provides that the public administration is under the obligation to comply with the annulment judgments of the Council of State. The violation of the above obligation may render the competent body liable under national legislation.

Furthermore, following the 2001 constitutional reform, Article 94(4) provides that court orders are enforceable against the State, the local decentralised authorities and all public entities.

Moreover, Article 50(4) of the Presidential Decree no. 18/1989 specifies that the administrative authorities, in accordance with the obligations arising from article 95(5) of the Greek Constitution, must comply with the judgments delivered by the Council of State and refrain from any action that would be contrary to them. It is also stipulated that the person violating this obligation is personally liable for compensation, in addition to criminal liability provided for in Article 259 of the Criminal Code.

Further, Article 198 of Law no. 2717/1999 is identical in content to the above Article 50(4) of the Presidential Decree no. 18/1989, but is applicable in the context of 'substantive' administrative law disputes (*recours de pleine juridiction*), whereas the former is applicable in the context of an application for annulment (*recours en annulation*). Article 199 of the above mentioned Law stipulates that the final judgments, the non-appealable judgments and the provisionally enforceable ones constitute an enforcement order in accordance with Article 904 of Civil Procedure Code. Subparagraph B of this Article provides that enforcement against the State is conducted according to the provisions of Civil Procedure Code.

Law no. 3068/2002, which was adopted for the implementation of Article 95(5) of the Greek Constitution, reiterates the obligation to comply with court orders. Court orders are defined as all judgments of administrative, civil, criminal and special courts, which are enforceable according to the law. It should be clarified that the public administration is also obliged to comply with decisions issued in the framework of interim measures.

Article 1 of the abovementioned Law states that the State, the local decentralised authorities and all public entities must comply **without delay** with court orders and take any action for the fulfillment of this obligation and the execution of the judgments. In accordance to Article 4 of the above Law, the enforcement of judgments regarding any monetary claim against the State, the local decentralised authorities and all public entities is carried out against their private property. It should be noted that according to Article 326(5) of the Law no. 4072/2012, the enforcement must be accompanied by an equivalent letter of credit, on behalf of the claimant.

Furthermore, according to Articles 272A-272I of Law no. 2717/1999, which were added by Law No. 4329/2015, payment orders shall be enforced against the Greek State, regarding claims arising from public procurement.

Finally, Article 5 of Law no. 3068/2002 provides that failure to comply with court orders constitutes a specific disciplinary misconduct for all competent bodies.

Exceptionally, enforcement measures against the State are not allowed when the claims arise from legal relationships governed by public law (for instance, planning regulations or Civil Service Law). Furthermore, enforcement measures against '*objects devoted to the immediate attainment of public objectives*' (e.g. the Acropolis) are also precluded. Moreover, according to Article 909 of Code of Civil Procedure, provisionally enforceable court orders are excluded in respect of the State and Municipalities.

The above mentioned provisions not only ensure judicial protection, but they allow the enjoyment of the claimants rights, namely the right to enforcement, without which any action before the Court would have no substantial value and utility.

II. Substance and Means of the Obligation to Comply with Court Orders

According to the established case-law of the Council of State¹, the compliance of the administration to annulment judgments must be full and immediate, meaning that after the the court order is issued, the competent authority must take any necessary action to implement the revocatory result of the above judgment and cannot choose to remain idle on grounds or reasons that are not based on constitutional provisions.

Specifically, public administration shall refrain from any action that would conflict with the ruling of the judgment, meaning that it should refrain from the execution of the annulled administrative act and not repeat - materially or legally - the act or the behaviour that has been controlled as illegal. In this context, it is prohibited to issue an act which is directly or indirectly similar to the annulled act, meaning having the same formal or substantial legal error. There are, however, certain exceptions to the above obligation, which are described below:

- New matters of fact or law: Public administration is able to issue an act, which is similar to the annulled one, as long as the new act is based on new matters of fact or law, which have not been already judged².

1. Judgments of the Council of State No 1518/2014, 2559/2011, 677/2010, 21/2008, 2557/2006, 3191/2005.

2. Judgments of the Council of State No 1235/2007, 2997/2003, 3126/1992.

- Elimination of the formal error: if a court order annuls an act due to formal reasons, the competent body shall repeat the act, on the condition that it complies with the formality, whose absence caused the annulment of the act³.
- Adoption of a new act. The new proper statement of reasons shall take into consideration new matters of fact that were not investigated under the terms of the annulment procedure.

Furthermore, the means of complying with court orders could be described as follows:

1. Obligation to revoke administrative acts based on the annulled one: Public administration is required to annule (individual) administrative acts based on the annulled one⁴.

2. Obligation to revoke administrative acts similar to the annulled one, provided under the same law or regulatory action: The conditions laid down in case-law concerning the above obligation are the following⁵:

- Judgment of the Council of State or non-appealable judgment of an administrative court that annuls an (individual) administrative act,
- on the grounds that the act in question was based on a legal rule opposed to the Constitution or on another act having no sound legal basis,
- on application to the competent public authority within a reasonable time after the publication of the annulment judgment by anyone who has legitimate interest,
- provided that the annulment of the specific administrative act does not affect rights acquired in good faith resulting from its application or, despite the fact that such rights are affected indeed, revocation is required for 'overriding reasons of the public interest'.

However, this is an obligation of reviewing of the case and not of revocating the administrative act in question, which still remains at the discretion of the public administration⁶.

3. Obligation to replace the annulled administrative act:

- In the event that the administration had circumscribed powers in respect to the annulled administrative act, then it is obliged to issue the act in question avoiding all legal faults as a result of which the act has been annulled, in accordance with the interpretation of the Court. The administration is further obliged to take all necessary measures of compliance in order to eliminate the results of the annulled act .
- In cases where the administration had discretionary authority to decide whether or not it would issue the annulled act, the competent authority is nonetheless obliged to re-issue this act, even if the adoption of the act was discretionary.
- Public administration is obliged not only to grant a restitutio in integrum, but it also has to re-establish the legal or actual situation existing before the annulment of the administrative act. For example, in case of annulment of an unfavourable administrative act, the competent authority has to effect a retrospective full restoration of benefits⁷.

3. Judgments of the Council of State No 3965/2012.

4. Judgments of the Council of State No 3433/2010, 1016/2009, 8/2002.

5. Judgments of the Council of State No 370/1997.

6. Judgment of the Council of State No 2176/2004.

7. Judgments of the Council of State No 4504/1996, 1022/1993.

4. Obligation to issue an act in case of annulment of an omission of due legal action: Public administration has to issue at once the administrative act, conferring a retroactive effect. The issue of an act following the annulment of an omission is absolutely necessary, since the judge can not take the place of the administration.

III. Enforcement against Public Administration

Article 8 of Law no. 2097/1952 has prohibited for decades the enforcement of court orders regarding the payment of court costs against the State. This privilege had been extended in favour of the local decentralised authorities following Article 4(1) of Legislative Decree no. 31/1968. However, since the end of the 1990s, the case-law considered this provision as inapplicable due to its opposition to the articles 6(1) of European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 2(3) and 14(1) of International Covenant on Civil and Political Rights (ICCPR) as well as the articles 20(1) and 26(3) of Greek Constitution.

In the framework of the 2001 constitutional reform, Article 94(4) provided that court orders are enforced against the State, the local decentralised authorities and all public entities, as laid down by law.

According to recent case-law of the Council of State⁸, enforcement measures against the State include enforcement against the State's cash and cash equivalents, since the above amounts of money are included to the State's budget to cover public obligations fulfilling the public interest, among which is the obligation of compliance with court orders.

Judgments ordering the seizure of any movable or immovable property or require any course of action or omission, are enforced according to the general provisions of the Code of Civil Procedure.

It should be pointed out that Article 326(5) of Law no. 4072/2012, the compatibility of which with constitutional provisions is doubtful, provides that the enforcement of court orders or other enforceable instruments, from which derive any pecuniary obligation of the State, is carried out when the interested party presents a letter of credit the level of which is equal to the claim against the State.

IV. Judicial Protection in case of Non-Compliance

In the event that public administration adopts an explicit administrative act opposed to its obligation to comply with court orders, the person concerned shall be entitled to re-file a legal remedy against the above act to the administrative courts. The same applies to explicit refusals of compliance with the obligation to adopt an act. Nevertheless, challenges concerning implied refusals of compliance or omissions to adopting measures of compliance shall not be admissible⁹.

8. Judgments of the Council of State No 819/2015.

9. Judgments of the Council of State No 30/2009, 3510/2002.

V. The Procedure of Law no. 3068/2002

Provision is made for the constitution and functioning of three-Judges Judicial Councils as part of the Supreme Special Court, the Council of State, the Supreme Court for Civil Cases, the Court of Auditors and the Administrative Courts, which are composed of members that did not take part in the adoption of the judgment to be enforced. They are members of the judiciary and their judgments are not subject to application for annulment.

The above Councils, after having determined upon claim of the person concerned delay, omission, refusal of compliance or defective compliance with the ruling of a judgment, they call the competent authority to state its views and submit the relevant elements at its disposal.

In the case where an unjustified non-compliance is found, the foregoing Councils call the authority to comply within a reasonable time. In the event of non-compliance, they acknowledge the fact of the non-compliance and fix an amount of money payable to the person concerned as a sanction against non-compliance. If the administration still does not comply even after the imposition of the sanction, the above Councils shall impose a new penalty, after repeating the above-mentioned procedure.

VI. The relevant case-law of the European Court of Human Rights

In a number of rulings issued by the European Court of Human Rights (ECHR) relating to Greece and following the entry into force of Law no. 3068/2002, the ECHR held that the obedience procedure, as provided for in the foregoing Law, does not constitute a requirement for the admissibility of appeals before the ECHR.

More precisely, the ECHR has stated that the ascertainment of non-compliance to court orders is insufficient and that an explicit confirmation of the problem of enforcement of judgments constitutes a minimum compensation of the litigant party, having merely a psychological dimension. That confirmation should be accompanied by concrete and direct legal effect, which mainly depends on the rapid and full enforcement of the judgment in question. In that respect, payment of remuneration as a sanction to public administration does not solve the problem. However, a compensation would certainly be desirable, but it should be considered as an alternative and subsidiary measure. The ECHR held in addition that disciplinary proceedings are also insufficient and that the enforcement of judgments can not be left to the discretion of the administration but should be compulsory.

The above overview of the ECHR's jurisprudence shows that the procedure implemented by Law no. 3068/2002 is not able to ensure with certainty the compliance of public administration to court orders.

Indicative of the attitude of the ECHR is its assessment on the occasion of the Case *Hornsby versus Greece* (19.03.1997), where the Court ruled that *"Execution of a judgment given by any court must be regarded as an integral part of the trial for the purposes of Article 6 of the European Convention of Human Rights. That right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, publi and expeditious – without protecting the implementation of judicial decisions"*.

VII. Conclusions

The domestic legal order appears to be contradictory and inadequate; on the one hand, it continues to maintain Article 8 of Law no. 2097/1952 in force by refusing to abolish explicitly the foregoing provision and, on the other hand, it seeks to indirectly force the Greek State to comply with its legal obligations.

Furthermore, it is obvious that the obligation of the claimant to present a letter of credit in order to initiate the enforcement procedure against the State, in addition to imposing an unjustified burden for the claimant, it means that the parties to enforcement proceedings are no longer placed on a level playing field. Above all, though, the foregoing provision manifestly infringes the right to legal redress as well as the right to respect for a person's property.

Further and independent thereof, the procedure provided for in Law no. 3068/2002 is unarguably inefficient, to the extent to which the relevant procedures are extremely long-term and unable to guarantee the compliance of the administration with court orders. Therefore, it would be desirable if at least the obligation of compliance had not been left to the discretion of the administrative authorities but it was mandatory.

Besides, the foregoing procedure referred to in Law no. 3068/2002 would have been totally unnecessary if there had been provision to enable court orders with the force to set a time limit by which public administration must comply with the relevant judgment and, alternatively, impose a fine in case of non-compliance.

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