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Principles from the Administrative Judicial Proceedings of the Republic of Armenia: Using the *Ex Officio* Principle to Determine the Facts of a Case

Aram Orbelyan[1]

Abstract

Administrative proceedings (at least in their existing form) represent a new phenomenon for Armenia's legal practice. An understanding of the principles involved in any phenomenon will provide a general understanding of its nature, and Administrative law is no exception. A good understanding of its principles affords a deeper and clearer understanding of the phenomenon, which, in our case, allows for a more precise interpretation of the norms of administrative proceedings and a better understanding of its tools.

In this two-part article, the author first attempts to define the key principles of administrative proceedings and the domain in which those principles operate. Analysis indicates that principles of administrative legal proceedings are not limited to the two principles described in the relevant part of the Administrative Code of Armenia but also include a number of principles that derive from the basic guarantees of the Constitution of Armenia, the European Convention on Human Rights and Freedoms, as well as other legal instruments. They describe the administrative process and define its features. In the second half of the article, the author analyzes how the ex officio *principle can be used for determining the facts of a court case. The article outlines the philosophical and factual grounds for using this principle as well as its content and the extent to which it can be applied.*

I. Introduction

As part of the Republic of Armenia's sweeping judicial reforms, the whole court system was significantly altered, starting with the adoption of amendments to the Armenian Constitution (passed October 13, 2005). This radically modified the authorities and functions of the Constitutional Court as well as the functions of the Court of Cassation of the Republic of Armenia. Moreover, due to significant constitutional amendments, new laws were adopted and existing laws were changed, namely, on June 1, 2006, the National Assembly of Armenia endorsed a new law "On Constitutional Court"[2] (in force since July 1, 2006), on February 21, 2007, the Judicial Code of Armenia was passed[3] (in force since May 18, 2007), and on November 28, 2007, a new Administrative Procedures Code was adopted[4] (in force since January 1, 2008). In addition, some amendments were introduced to the Civil Procedures Code as well as to the Criminal Procedures Code. Within the framework of this program of reforms, the Economic Court was abolished and the Administrative Court was created in its place, the goal of which was to institutionalize specialized judicial control over the activities of public administration.

Such reforms in the national legal system seem to suggest that in order to regulate administration, legislators preferred the continental system of administrative law–i.e. administrative bodies' activities are regulated by specialized courts (like in Germany) or tribunals (like in France) according to specific procedural norms–to the Anglo-Saxon system (i.e. such regulation is achieved via common courts within the framework of "Civil Procedures")[5]. Thus reform of Armenia's system not only implied the physical separation of specialized courts from common courts but also required the development of special procedural norms and new principles for proceedings.

In the article below, a general description and definition of the principles of administrative proceedings is followed by analysis of a legislative innovation in the field–the use of the *ex officio* principle as a tool to determine the facts of a case within the framework of administrative procedure. [6]

II. Principles of Administrative Judicial Proceedings

Chapter II of the Administrative Procedures Code (APC) is dedicated to principles of administrative judicial proceedings: article 5 declares the principle of the legal equality of parties, article 6 sets out the *ex officio* principle for determining facts related to the case, and article 7 is dedicated to the language of proceedings. However, the principles of administrative proceedings are not limited to these. Indeed, general principles of the judicial system, judicial activities and proceedings must be applied to administrative proceedings (as prescribed by the Code on Courts). Moreover, principles based on the interpretation of provisions of the Constitution (namely, articles

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[2] The text of the law (in Armenian) can be found at the following website (as of November 18, 2010): http://www.arlis.am/DocumentView.aspx?DocID=31285&DocID_AM=31285&DocID_RU=0&DocID_EN=0

[3] The text of the law (in Armenian) can be found at the following website (as of November 18, 2010): http://www.arlis.am/DocumentView.aspx?DocID=43994&DocID_AM=43994&DocID_RU=0&DocID_EN=0

[4] The text of the law (in Armenian) can be found at the following website (as of November 18, 2010): http://www.arlis.am/DocumentView.aspx?DocID=48486&DocID_AM=48486&DocID_RU=0&DocID_EN=0

[5] On various concepts and systems of administrative law see, for instance: Galligan, Polyansky, Starilov Administrative Law: history of development and major contemporary concepts – M; "Jurist", 2002

[6] The *ex officio* principle for determining the fact of a case is also a key principle of constitutional judicial proceedings (article 5 and article 19 on Constitutional Court)

1, 18, 19) and some international treaties (namely, the European Convention on Human Rights and Freedoms) must also be taken into account. Furthermore, additional key principles are contained in other parts of the APC.

1. The Armenian Constitution and the European Convention on the Protection of Human Rights and Freedoms

The Constitution of the Republic of Armenia safeguards certain key principles: according to article 1, the country represents a jural state, article 18 secures the right of every individual to effective legal protection, and article 19 stipulates the right of every individual to effective and fair trial. Similar foundational rights are stated in the European Convention on Human Rights (article 6). Thus, judicial practice and doctrine[7] provide detailed interpretation of such provisions–for example, an analysis of principles for legal proceedings (applicable to administrative proceedings as well) echo the principles of legality, equality of all before the law, publicity of proceedings, freedom of addressing the law, and judicial independence. Indeed, given the Constitution's direct role and supremacy, the entire judicial system, including administrative courts, is bound by constitutional provisions, and, therefore, all provisions must be applied to all proceedings, irrespective of their legal nature.

2. The Judicial Code of the Republic of Armenia

Chapter II of the Judicial Code contains key principles for the activities of judicial powers and some of these regulate court activities in the framework of administrative procedures[8]. It follows that any of those principles that can be applied to administrative proceedings–except in cases where the Code so allows or the Administrative Procedures Code regulates otherwise[9]–should be considered as principles of administrative proceedings. Such principles are:

- Principle of administration of justice in accordance with the law (article 8)
- Principle of judicial independence–as it applies to both courts and judges (article 11)
- Principle of equality of all before the law and the court (article 15)
- Principle of effective administration of justice (article 16)
- Principle of publicity of proceedings (article 20)
- Additional judgment of the court[10] (article 21)

3. Other Chapters of the Administrative Procedures Code (APC)

Analysis of the APC shows that other parts also contain principles that characterize administrative proceedings–for instance:

- distribution of the burden of proof (article 26)–administration (body, official) bears the main burden of proving the legal grounds for actions (lack of action) stemming from the adopted act;
- obligation of submission of all evidence (article 25)–administration shall submit evidence, substantiating the requirements of the opposing party; etc

Detailed and thorough analysis of these provisions reveals that principles indicated in other parts of the APC develop the main principles mentioned above (articles 6 and 7 of the APC). In the given article, therefore, provisions will be discussed within the scope of studying the *ex officio* principle as a tool for determining case-related facts.

Since the majority of the main principles described above (the principle of legality, equality before the law, effectiveness of proceedings, etc) are general and common for all types of proceedings (civil, criminal, administrative and constitutional) and assume no new meaning in the context of administrative procedures, this article does not attempt to provide detailed analysis of them; their content and applicability are well described in works by various research authors in the fields of civil and constitutional procedures. The article below will explore the innovative aspects of the legislation, especially the meaning of the *ex officio* principle for determining case-related facts.

III. Using the Ex Officio Principle to Determine the Facts of a Case

The *ex officio* principle (the principle of official examination) is presented in article 6 of the Administrative Procedures Code[11] and represents an important innovation in Armenian legislation; indeed, it did not exist for judicial proceedings in Armenia[12] and is thus a basically unstudied aspect of national legal science. It should be noted, how-

[7] See Հայաստանի Հանրապետության Սահմանադրության մեկնաբանություններ / ընհանուր խմբագրությամբ՝ Գ՛ Հարությունյանի, Ա. Վաղարշյանի. – Եր.: «Իրավունք», 2010 (in Armenian); Gomienne, Harris, Zvaak – European Convention on Human Rights and European Social Charter: law and practice – M., Publishing house, 1998

[8] In addition, regarding article 2 of APC, administrative proceedings are carried out in accordance with APC and the Judicial Code of Armenia and, in some cases, are prescribed by the APC and Civil Procedures Code to the extent that *mutatis mutandis* applies to administrative proceedings.

[9] In particular, article 17 of the Judicial Code envisages an adversarial system for the Judiciary, except in cases prescribed by law. However, the APC indicates the *ex officio* determination of case related facts. Therefore, since the law (APC) envisages a special principle, the adversarial principle should not be applied to administrative procedures.

[10] Pursuant to these principles, the Court, if it has sufficient grounds, shall receive additional decisions (in criminal and administrative cases); an additional administrative decision points out to the administration that substantial violations occurred at pre-court stages.

[11] It reads: "1. The facts of the case are determined by the Court ex officio"

[12] The principle was introduced into laws for constitutional and administrative judicial proceedings almost simultaneously.

ever, that the Court of Cassation of the Republic of Armenia had used this principle/provision in some of its verdicts (and interpreted the principle as well).

This article will elaborate on the meaning of this principle by considering general principles of interpretation, scientific concepts, and the judicial practice of Armenia's Court of Cassation. The main emphasis is a comparison of determining case-related facts ex officio with some parallel tools, such as types of claims, burden of proof, obligation to comprehensively and objectively examine the case, which are viewed in their comparative and legal context (i.e. with similar views in foreign (German) regulations).

1. The Rationale for Using the Ex Officio Principle to Determine Case-related Facts

From a historical point of view[13], as well as in legal theory, it is possible to distinguish two main forms of proceedings (with multiple sub-types) that are applied in contemporary society: **adversarial and inquisitorial**[14]. The essence of adversarial procedures is that the Court plays a relatively passive role and is in fact restricted to the observance of procedural norms (that regulate the activities of the parties) and the evaluation of arguments and evidence submitted by the parties to the proceedings. For a long time, this approach was believed to guarantee the protection of human rights since its key principle is to separate executive and judicial power; due to the adversarial principle, the court, as bearer of judicial power, stops representing the prosecution or one of the parties, thus strengthening the procedural guarantees of an individual. In contrast, the inquisitorial process requires that the court take a more active role–in such procedures it "investigates" the case, requires proof if necessary, and ascertains the positions of parties. If certain issues are insufficiently clear, the court attempts to clarify them by seeking additional evidence. Thus, the Court actively tries to define all the facts of the case and is not limited to evidence presented by the parties. Determining the truth represents the main and supreme goal of the inquisitorial process. The *ex officio* principle represents one aspect of the inquisitorial process, in which the judge plays quite an active role. In short, the types of proceedings that exist today (at least, in the continental system) are derivatives of these two principal forms.

When procedures are divided into various forms (in countries with a continental law system), attention is usually paid to **verifying the facts of the case**. In accordance with a legal maxim from ancient Rome (which is still in force), namely *iura novit curia* ("the court knows the law"), parties to the dispute do not prove the existence of any right or law (except for foreign rights and traditions, which are applied extremely rarely). The logical justification for inquisitorial procedures (such as the ex officio determination of the facts of the case) is that the principle of the equality of parties (article 5 of the APC)[15] applies exclusively to proceedings, while parties to administrative procedures are not fully equal outside the proceedings.[16] Moreover, the decision of the Administrative court is important not only for separate individuals, but, as a rule, for the state and general public as well, since the administrative body or official represents the state. Therefore, it is very important for the Court to offset the relative vulnerability of individuals and compensate for insufficient information (in some cases) on procedural issues[17] (since the administration, as a rule, is unable to hire external lawyers and consultants), possible errors, mistakes of the administrative body, and the possibility of corruption risks. In addition, the parties continue to play an active role–their right to appear in court, give statements, and submit proof at their own discretion is not limited by the ex officio principle and is in fact guaranteed by article 5 of the APC and the European Convention on Human Rights.

2. The Meaning of the Ex Officio Principle and its Relation to the Burden of Proof Principle

In order for any norm (or principle) to be correctly applied, it is necessary to have a precise definition of it. In accordance with the rules of interpretation, a legal act must be interpreted in line with the precise meaning of relevant words and expressions and in consideration of legal requirements[18]. In addition, the legal act must be interpreted based on the underlying principle and goals of the given act, taking into consideration the provisions of any other norms that provide clarification. In accordance with article 15.4 of the Judicial Code of the Republic Armenia (including interpretation of the law), cases in which facts are similar require the court to provide legal arguments.

In some cases, the Court of Cassation indicated that provisions of article 6 of the APC should be interpreted in line with articles 22 and 24 of that same Code[19]. Article 6.3 envisages the right (authority) of the Court to take reasonable action without being restricted by the motions of the parties to the administrative proceedings, the evidence

[13] See Graphsky – General History of Law and State; textbook for Universities M., NORMA., 2003. Problems of general history of law and state - authors – N.V. Varlamova, Lazarev, Lapaeva, etc; editorial of Nersessiants – M., 2008; Nersessiants – Philosophy of Law. Textbook., M., Infra-M-Norma, 1997, etc.

[14] History knows such varieties of process as "Divine justice" (applied quite intensively in Ancient times and the medieval era), decision by voting (used in Greek Policies, contained in some medieval monuments of the law), etc

[15] The administrative court shall ensure that parties have equal opportunities during the entire review of the case; it shall also afford parties the opportunity to state their positions.

[16] See, for instance, article 3 of the Republic of Armenia "On the Fundamentals of Administration and Administrative Procedures".

[17] In countries of Western Europe and in the US, there is a division of legal counsels (specialists in certain areas of law) and pleaders (those specialized in procedural norms and who almost always appear in courts).

[18] See, for instance, article 86 of the law of Armenia "On Legal Acts".

[19] The main cases to which the Court of Cassation often refers in subsequent decisions are administrative cases # VD3/0207/05/08 (2008), # VD/5525/05/08 (2009), and # VD3/0390/05/08 (2009).

presented by them, or the materials of the case…". Article 22.1 of the APC envisages that "the court shall identify what is required–by means of examination and evaluation of evidence that is collected in accordance with legally established guidelines–in order to reach a decision on the facts of the case "; and, article 24.1 states that "after examining all the evidence, the court decides if the case is proven (or unproven) according to its internal integrity and belief and a full, comprehensive, and objective examination". Furthermore, "the court shall substantiate how it reached its final verdict" (article 24.2 of the APC).

Thus, these two APC articles, as well as general principles of the jural state, provide a basis for the Court of Cassation to require submission of additional evidence or other relevant action as envisaged by article 6.3 of the APC. This represents not only the right of the court but also its obligation. Such an interpretation is especially interesting since it takes into account the specifics involved in presenting evidence and distributes the burden of proof in accordance with the APC.

According to article 25 of the APC, parties are obliged to present the Court with all the evidence that they possess and by which they are maintaining their position, while the administration must also present proof that validates the position of the opposing party. Moreover, article 26.3 states: "the state body or the local self-governance agency (official), who received the disputable act or performed a disputable action or failed to act in a way that the claimant believes was legally appropriate, bears the burden of proving the facts that substantiate the disputed decision, action, or lack of action". Thus, if the adversarial procedure is marked by little or no investigative activity or low procedural competence from the administrative body, a decision in favor of the claimant is almost certain[20]; but by applying the ex officio principle to determine the facts of the case, the court will require the parties to present (specific) evidence, which may ultimately affect the court's final verdict.

On the other hand, application of the principle simplifies the role of claimants (individuals), since in order to protect their rights in a broad range of cases (in particular, cases against, for example, traffic police, where it is only necessary to prove the existence or non-existence of the disputed fact), an individual is not obliged to always hire a specialist (lawyer or attorney) and can personally pursue the protection of their personal rights[21]. It should be mentioned, nevertheless, that the involvement of specialists (lawyers, consultants) in administrative cases (especially in complex disputes like customs, tax and labor law related cases) can improve the ability of an individual to protect their personal rights in Court.

Thus, via representation or by appearing in person in the administrative court, full information possessed by the party shall be revealed due to the interests of the proxy; in addition, it is necessary to define all significant facts and request the Court to require the administrative body to present relevant evidence, otherwise the case may be referred for further examination and review at the request of the administrative body or other stakeholder.

3. The Scope of Determining Case-related Facts Ex Officio

Even in the framework of inquisitorial procedure, the role and abilities of courts are restricted; in the contemporary world, this stems from the need to observe human rights and maintain the principle of legal predictability. This section will analyze a number of problems related to types of procedures, claims, and the procedure for proving facts, and will offer some solutions, including those based on foreign experience.

a. Types of proceedings and the ex officio principle

The APC envisages certain types of proceedings, namely:

- adversary justice (general/main proceedings, and special proceedings, which are instituted based on the claim and are conducted orally)
- written justice (proceedings on cases related to legality of normative and legal acts)
- proceedings on cases related to the issuance of a penalty order (levy)

Article 6 of the APC does not specify which forms of the procedure the ex officio principle may be applied to–for example, it does not restrict its use to oral procedure. However, while the application of the principle in the framework of oral or written hearings does not create any significant problems, the same cannot be said for proceedings that concern the issuance of a penalty order.

Proceedings on cases related to the issuance of a penalty order are regulated by article 27 of the APC. Article 154 states that the grounds for instituting such proceedings is when an individual who was required by an administrative act to pay a fine has failed to pay the fine. In accordance with article 155 of the APC, the procedural grounds for such cases is a claim from the administrative body, to which an administrative act is attached that demands the

20 For instance, the Court of Cassation of Armenia, when deciding on administrative case # VD/5525/05/08 (2009) based on the claim of the Arabkir Tax Inspectorate of the Committee on Administrative Revenues of the Government of Armenia (Inspectorate) vs. "George and Brandon" LLC, considered failure to observe article 6 of the APC sufficient for satisfying a claim from the Deputy Prosecutor General to return the case for new examination. In accordance with the circumstances of the case, the Administrative Court (1st instance court) – when rejecting the requirement of the Inspectorate on fines assessed on income tax and mandatory social allocations – indicated that written evidence of the case may not be considered proven and that fines are calculated in accordance with legal requirements (1st paragraph of article 23 of the Tax law). The Administrative Court considered this fact unproven without further evidence. The Court of Cassation of Armenia, based on the provisions in articles 6 and 24 of the APC, stated that the Court should have required the aforementioned evidence and that the cassation claim shall thus be upheld and the case returned for further examination and review.

21 The only significant procedural stage where qualified assistance is required is selection of the type of claim (see below).

issuance of a penalty order. In reality, the Court has no opportunity to hear such cases (there is no consideration of the case)–it can only ensure that all procedural issues are taken into account (e.g. that the claim was registered in accordance with all APC requirements); it cannot review the content of the act or decision. Indeed, the established practice in Armenia is that the Court issues such penalty orders without examining the case.

Since article 6 of the APC does not limit the scope of the ex officio principle, it follows that the possibility and practice of issuing such rulings (Chapter 27 of the APC) contradicts the ex officio principle of reviewing case-related facts. If the principle had been applied, the Court would have been obliged to investigate the content of the administrative act and, if necessary, require proof of the validity of the act.

However, this interpretation of the procedure for issuing a penalty order contradicts the definition of administrative act as defined in article 53 of the APC on principles of administration and administrative proceeding. This article states that an "administrative act is a decision, ordinance, decree, order or any other legal act with external effect, which is adopted by the administrative body in the area of public law with the purpose of establishing, changing, terminating or recognizing the rights and obligations of a group of people". As such, an administrative act implies a real change in the status (rights and obligations) of an individual. On the other hand, if we consider that real financial obligations demanded by the administrative act may only come in to force according to the court's decision, then the administrative act served only as a basis for the Court to arrive at the decision–it may not serve as a basis for changing the status of the individual. Such inconsistency is aggravated by the decision of the Court of Cassations on administrative case VD3/0627/03/09. Here, the Court of Cassation established that the concept of "*counter claim*" under article 159 is autonomous and must be viewed outside of the general process of filing claims (including terms for appeals). Ultimately, this distorts the meaning and concept of the administrative act as an act with external effect.

Based on the above, it may be concluded that in order to observe the ex officio principle, the special form of proceedings for cases concerning the issuance of a penalty order cannot, in the majority cases, be performed by administrative courts. Moreover, the given form of proceedings distorts the concept of the administrative act.

Thus, the author of the article believes that the given form of proceedings should be abolished as it contradicts the major principles of administrative proceedings and distorts the main concept of administrative law, including the administrative act.

b. Types of claims and the ex officio principle

Another feature of administrative law (in contrast to civil law) is that it has a more formalized approach to procedures. The APC outlines, in some detail, various stages and procedures and their specific roles (for instance, the process of court hearings is described in great detail). One of the elements of this formalized approach is the existence of different types of claims by which individuals may address the administrative court[22]. The types of claims that form a basis for the initiation of proceedings are described in Chapter 11 (articles 65-68 of the APC). They are:

- claim on litiscontestation;
- claim on imposition of obligation
- claim on performance of action
- claim on recognition

If a claim is incorrectly selected (e.g. the filing of a claim on recognition instead of a claim on litiscontestation), the claim may be rejected. For instance, the Administrative Court partially rejected the claim on case # 4870/05/09–Rudesh Kumar vs. the Passports and Visas Division of the Police of the Republic of Armenia–since the claim was considered invalid. It was stated that the claim on recognition was invalid and that a claim on litiscontestation should have been filed. In the framework of the given case[23], a request for litiscontestation was submitted as well and, only due to this, the citizen's claim was not fully rejected; in the end, Radesh Kumar was able to effectively exercise his rights.

The Court of Cassation has expressed its opinion on this issue in its decision on administrative case VD/2514/05/09 (2010). The Court of Cassation came to the following conclusion from its analysis of article 64 ("a case in the Administrative Court is initiated on the basis of a claim"), article 65 (claim on litiscontestation), article 68 (claim on recognition), article 113.1.4 (in issuing the judicial act, hearing a case on its merits, the administrative court solves the issue of "satisfying the claim in full or partially rejecting the claim"), and article 114.1.4 (the Administrative Court issues a judicial act based on the review of the case on its merits "on the existence or non-existence of a legal relationship or on the invalidity of the administrative act, in full or in part"): the administrative court may only initiate, investigate, or decide on a case on the basis of the claim, within the framework of the claim. Since the APC describes two types of claim on litiscontestation, the Administrative Court in its recognition of (in)validity has the right to satisfy the claim in full or in part, or reject the claim; however, it has no authority to change claim type.

[22] In addition to those indicated in this chapter, APC also envisages some other types of procedures/grounds for procedures, including a statement of the administrative body on imposition of sanctions, as well as claims on recognition of a normative act that fails to comply with the abovementioned acts/laws; claims on election issues, etc. Here, the focus is on the four abovementioned claims since constitute the grounds for the majority of cases.

[23] In the given case, colleagues of the author of the article (from the company "Concern-Dialogue") represented the claimant. During preparation of the case, a long discussion was held on the type of the claim, and, in the end, due to failure to agree on the type of the claim, two claims were submitted. This emphasizes that despite the fact that the nature of judicial proceedings has been changed in favor of the activities of the Court, even qualified lawyers have difficulties with the specifics of the procedure.

Thus, according to the interpretation of the Court of Cassation of the Republic of Armenia, a court is not permitted to change the grounds of the claim; if the type of claim was "incorrectly" chosen, then the court can do nothing more than reject the given claim. In general, the view of the Court in this matter is commendable since protection of rights entails the right of an individual, and in this scenario, while a court cannot change the claim, the individual can demand a review of the case within the limits of his/her claim in order to achieve a specific legal result (for instance, in the given case, the legal consequences for invalidity or litiscontestation of the administrative act may significantly differ). However, in the majority of cases an individual is interested not in a legal result but in an actual result (for instance, withdrawal of the relevant act); in such cases, the above conclusion really matters for the party.

In this context, the foreign approach to the problem is very interesting. Article 86.3 of Germany's Administrative Procedures Code and its interpretation, provided due to legal practice, the Court should instruct the claimant about any possible problems in the form of the claim and, if appropriate, suggest that the type of claim be changed. However, the Court has no right to change the type of the claim at its own initiative (even if the party decides to keep their chosen type of claim)[24].

Thus, in accordance with the ex officio principle, it is necessary for the Court to instruct the parties about any formal problems related to the claim, including "possible problems with the type of claims" and, at the same time, to give the parties the opportunity to correct such problems; this includes changing the type of the claim. If the party refrains from correcting such 'problems', then the Court will hear the case within the limits of the claim and based on it.

c. Proof and the ex officio principle

One more important aspect related to determining case-related facts ex officio in the framework of administrative procedures is the process of establishing complete evidence and requesting specific evidence. This article has already mentioned that the Court has the right to demand additional evidence, and, in fact, should not limit itself to the evidence presented by the parties to the proceedings. The Court has the authority to require the parties to present additional evidence or explanation and can appoint an investigation or conduct other reasonable actions for the purpose of receiving adequate evidence to form an opinion.

The process of gathering evidence, according to the APC and legal practice (see, for instance, the decision of the Cassation Court on administrative cases VD/0051/05/10 (2010), VD3/0390/05/08 (2009)), commences with the Court determining which facts are of vital importance. Then, the Court affords the parties the opportunity to present evidence (parties are free to present evidence in person or in writing). If the Court deems that a specific fact may only be proved by specific evidence, then it can require the relevant party to present such evidence. For example, the court may decide that a decision on tax inspection may only be proved (as a fact) if the original written decision (or copy of it) is submitted and may not be proved by any other evidence (such as the testimony of a witness). In all cases, the reason for the Court's decision about the admissibility and applicability of evidence must be substantiated.

In this regard, the following decisions of the Court of Cassation are most interesting: administrative cases # VD/0283/05/09 (2009) and # VD/5664/05/08 (2008). In both cases, the Cassation Court indicated that the decision to appoint an examination to clarify complex issues that require specialized/technical expertise belongs to the Court authorities (article 36.2.1 of the APC) but that, in light of article 24 of the APC (i.e. a complete, comprehensive and objective case investigation…), this is not just the court's prerogative but also its *obligation*. Thus, even if one party (with the burden of proof) does not file a motion to appoint an examination, the Court, in any case, should require complete evidence, which may include the appointing of an official examination.

IV. Conclusion

The abovementioned analysis of using the *ex officio* principle to determine case-related facts highlights how administrative proceedings radically differ from civil proceedings in terms of the role played by the Court. In our opinion, the effective practice of the Court requiring the administrative body to present complete evidence is desirable if such additional evidence may be obtained and corroborated.

Within the limits of this analysis, it was argued that the existing type of (administrative) procedure for cases on penalty orders is not only incompatible with the ex officio principle but also fails to correspond with other norms of administrative law and distorts the meaning of the administrative act in general; in our opinion, therefore, this type of proceeding should be abolished or radically modified. In addition, the above analysis indicates that if the Court is obliged to advise individuals about possible problems related to the selection of a certain type of claim, then the positive impact of the ex officio principle could be significantly enhanced. Such amendments to judicial proceedings could make the proceedings fairer and more effective and ultimately increase the level of legal protection for individual citizens and the public as a whole.

[24] See, for instance Schenke Wolf-Ruediger. Verwaltungsgerichtordnung: Kommentar (13., neubearbeitete Auflage). – München. 2003., CC 993-1021.