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Abstract

In the Hellenic legal order is forecasted legally the institution of prohibition of vessels departure if do not keep concrete conditions that are forecasted by the Hellenic legislation. These conditions are related with the keeping of concrete conditions of safety navigation or with the guarantee of public state interests or private interests and are related mainly with economic demands of them.

Between these two categories the most basic is the case of not keeping safety navigation conditions as this phenomenon can influence the safety of passengers, of crew, load and vessels and beyond them the prohibition of vessels departure has also economic consequences for them who are related with the activity of this. Besides consequences exist also for the State employees who impose the administrative prohibition meter of vessels departure and for that reason are controlled for penal, disciplinary and civil responsibilities.

Key words: Hellenic Coast Guard (HCG), Safety navigation, Police provisions, Appeals, Code of Administrative Procedure (COAP), Hellenic Council of State (HCOS), Court of Appeals

Introduction

The administrative sanctions play important role for the maintenance and the re-establishment of public order, since with them mainly is practiced the repressive policing. The official employees of the State for instance Police Officers, Officers of HCG etc are responsible for the imposition of administrative sentences in citizens, companies etc that are not complied with the administrative legislation. The reasons of pecuniary sanctions impositions, but also the imposition of consequential sanctions like e.g. the abstraction of authorizations or the prohibition of vessels departure are taking place with the invocation of reasons related to State interest.

The sentences in question presuppose the existence of citizens' culpability, of companies, of workers etc, in who/which are imposed as fine the pecuniary sentence, the prohibition of profession exercise or the restriction of transactions or regarding the present concise study the prohibition of vessels departure.

The fine as also the consequences administrative sentences, recommend usual obligatory meters imposed by the official employees of the State and simultaneously administrative sentences, that contrary to the fine as sentence in money according to the penal law, do not recommend punishment of criminal behavior, but aim exclusively in the coercion of the responsible person to proceed in the required action or omission. Legal basis of fine imposition as also the imposition of administrative consequences sanctions constitutes the provision of the article 96 paragraph 2 of the Constitution.

In order to be imposed pecuniary fine as administrative sentence, as well as consequence administrative sanction is essential explicit provision of law (essential or formal law), that will fix the conditions of imposition, the height of these, the responsible central service or state authority for their imposition, as also where the responsible person (natural or legal) is able to appeal the suitable in any appropriate case appeal.

Aim of this present concise study, is the conceptual determination of the meaning of vessels departure prohibition - administrative meter which is forecasted by the Hellenic national legal order and is imposed in enough cases according to this by the state employees - the cases in which is imposed with the development of the most frequency imposition of it that is the case of vessels departure prohibition because of adverse meteorological conditions, as well as the development of the appeals that are forecasted by the legislation in order to be practiced by the persons (individuals or companies) that are having legal interest. Finally the study will close with the formulation of conclusions.

Conceptual determination

The HCG personnel, in the frame of their duties impose many times the administrative meter of vessels departure prohibition, while in a lot of texts with shipping containing is also reported as hindrance of vessels departure or “cumber navigation»¹. The above mentioned meter² that is imposed in enough cases, constitute one of the most important competences of HCG with legal consequences so for its personnel as also for the recipients of this i.e. seamen, ship-owners, chargers etc.

Sailing means the locomotion of the vessel in the water, marine, fluvial or lake and has port of departure and port of destination. Departure and arrival are real facts and as is revealed by the legal provisions they have legal consequences and they are subjected under administrative formulations.

Concretely in the article 76 of Port General Regulation (PGR)³, is forecasted that “the maritime agents and representatives of vessels or of shipping/maritime enterprises generally, must announce written, to the Port Police Authority, at least 24 hours earlier, precise information about the day and hour of arrival, port of origin, type of cargo (and particular if this belongs to the category of dangerous), number of transported passengers, as well as each change of the above. In the event of delayed arrival of the vessel, these are obligated to inform the passengers, posted relative statement outside of their agencies”.

When the vessel arrive, the master according to articles 126 and 246 paragraph f of the legislative decree (LD) 187/1973 (A’ 261), [Code of Public Maritime Law, COPML] and the article 21 of PGR, is compelled to bring for control (article 40 of COPML) and for authentication the vessel documents (article 46 COPML) in the Port Police Authority.

In order to sail the vessel according to article 234 paragraph 1 of COMPL and article 22 of PGR⁴, must take an authorization/permission from the Port Police Authority. The master of the vessel or the legal representative of it must bring all the vessel documents in the Port Police Authority, from which it will result that the vessel observes all the conditions of safety navigation. Then the Port Police Authority will allow the departure. This permission consists the written registration in the Article of the vessel by an executive of HCG in a special place of registration. In the vessels under different flag from Hellenic which have not the obligation of keeping this document the departure is taking place by the issuing of special form.

The prohibition of vessel departure is an administrative action and is imposed by the Competent Authority, central or region of the HCG⁵. It reveals legally results with only the statement of the State. Essential conditions that determine the process of publication of administrative action but also its legality are:

- a. - The competence of the official employee.
- b. - The legal substance of this and
- c. - the observation of legal process⁶.

The prohibition must be written, with explicit explanation on the document and to bring date and signature of the responsible official employee. It expires when do not exist the reasons that imposed it i.e. when disappears the object of the action or when it is recalled.

The prohibition of vessel departure as administrative consequence sanction that is imposed with the pecuniary sentence of fine or as main and unique administrative sanction, is answered in number of provisions of COMPL (articles 42-44, 92) as also in other various statutes that are related with the provisions of

law 743/1977 as it has been encoded by the presidential decree (PD) 55/1998, in the law 2743/1999, in legal provisions that are related if do not take place the payment from the obligators the forecasted harbor dues, lighthouses dues, pilot ages rights, in the law 2881/2001 that is reported in the hauling of shipwrecks, in the article 157 of COMPL, in the guarantee of economic interests of Naval Retiring Fund (NRF), in juridical decisions on conservative and obligatory seizure according to the provisions of Code of Political Procedure etc.

Coding the cases for which is forecasted the administrative meter of vessel departure prohibition we can distinguish the following two categories:

a. - In the first category are included the cases at which has been ascertained serious infringement of provisions that are related with the safety of vessel navigation (e.g. article 42 of COMPL), with lacks in the organic composition of the vessel (article 92 of COMPL), transport of supernumerary passengers (article 180 of COMPL). In the same category is also fall some infringements related to the law 743/1977 as well as infringements of fishery legislation.

b. - In the second category is included the prohibition of vessel departure as administrative meter that is reported in the guarantee of economic demands of state as debts in the NRF, not payment of harbor dues, of pilot ages rights, lighthouses dues in order to be ensured the interests of Port Authorities and of Harbor Funds, as also in this category are included the economic claims of private individuals and private institutions, in order to ensure their interests according to the provisions of Code of Political Procedure.

In every of the two above cases the action of administration is binding concerning the imposition of particular meter (main in the first category) and sometimes is provided the discreet occasion in the administration, whether if it will enforce the particular administrative meter or no and under of which conditions. The prohibition of vessels departure from HCG personnel, must be enforced with big attention in order to be

avoided any unjustifiable delay of the vessel, as the person having legal interest⁷ i.e. each individual or legal person of ship owning considers that they are offended or that were offended their interests from the administrative imposed meter of prohibition of vessel departure, can according to the article 105 of Civil Code (CC)⁸ to claim in the political courts economic compensation conform individually with the damage which it suffered. It is obvious that the ship-owner in any case should prove the well-founded of his/her statements.

The HCG personnel because of the attribute which they bear (military) probably can be controlled for penal responsibilities according to the Hellenic Military Penal Code (HMPC) but also according to the Hellenic Penal Code (HPC)⁹. It is marked that exist specific provisions in which is expressly cited that must be taken any possible effort in order to be avoided the prohibition of vessel departure or its delay¹⁰.

Prohibition cases of vessels departure

The cases in which are imposed the prohibition of vessels departure for safety navigation reasons are the following:

Adverse meteorological conditions

The prohibition of vessel departure is forecasted in the PD 852/1976 (A' 312) that has been published according to the authorization of article 42 paragraph 2 of COMPL, in combination with the Handbook of Safety Navigation (HSN 9) that also has been published according to authorization of paragraph 4 of the PD in question¹¹.

Afterwards the publication of bulletin of adverse meteorological conditions from the National Meteorological Service (NMS) the Port Police Authorities inhibit the departure of vessels under the Hellenic flag until the improvement of the weather conditions. The suspension of vessels departure as also the lifting of this meter is carried out with written order¹² issued by the above mentioned Port Police Authorities. Excerpton of this prohibition is permitted when the voyage is

taking place near the coasts and has small duration, or when in some region the meteorological conditions that prevail are more favorable than those that are described in the bulletin of the NMS and after the agreement for the implementation of the voyage by the master of the vessel, the navigator of the port or by a master of a merchant shipping that allocates experience in the local conditions as also is required the conform opinion of the local Port Police Authorities. For the issuing of this permission by exception is drawn up special practical.

The suspension of vessel departure is realized taking into consideration the following criteria:

- a. - The category, the length, the type and the elements of stability and resistance of each category of vessels and the type of vessels.
- b. - The meteorological and wind statistical elements and the observations of NMS and the Hellenic hydrographic service for each region of Hellenic marine space.
- c. - The information that is notified by regular and extraordinary bulletins of NMS.
- d. - The local special conditions.
- e. - Each other element that could influence the safety navigation¹³.

In the HSN 9 is still forecasted the process which it should be followed by the master of a merchant vessel, in the event that judges that the port in which is the vessel is considered uncertain for its safety and is judged essential and crucial to sail for another safe port or bight retreat.

For the vessels under foreigner flag that are in Hellenic port, is forecasted only the notification with proof of the bulletin of NMS to the master of the vessel with capacity under the 3000 gross of total tonnage¹⁴ if it is cargo vessel or under the 1600 gross tonnage if it is a passenger vessel.

The offenders of lawful action and of all the relative orders that have been published or issued according to its authorization are under penal¹⁵, administrative¹⁶ and disciplinary sanctions¹⁷.

The restrictions for the prohibition of vessel departure because of adverse meteorological conditions, must include all the vessel categories under Hellenic flag and not only concrete categories, as in any case aim of the State is the protection of the individuals and of the passengers. It is obvious that in any case the technical elements criteria that have been received into account for the prohibition of vessels departure are after relative studies.

As a consequence the statement of Mylonopoulos D.,¹⁸ that is imposed the lifting of particular meter, namely the prohibition of vessel departure because of adverse meteorological conditions by the Port Police Authorities and that in any case must decide the master of the vessel for the safety of the vessel in adverse meteorological conditions, is not logically powerful and applicable, as the master because of the special relation with the company of the ship owner or with the ship owner is corruptible in exogenous factors, i.e. navigation of the vessel in order to be guaranteed the economic interests of the company despite his/her willingness.

According to articles 106 and 235 of COMPEL, the master is certified that before the departure of the vessel it brings all the forecasted supplies, it is constituted regularly (crew), the cargo is equitably stacked, brings the forecasted rescue means i.e. and ascertain the sufficiency of technical elements. It is mentioned that these do not ensure in any case the safety navigation in adverse meteorological conditions, as the vessel in navigation under adverse meteorological conditions suffers enormous pressures, while crowd of imponderable of factors is possible to influence its safety (e.g. the safety loading of the vessel it does not mean in any case that the navigation in adverse meteorological conditions it will remain as it had initially, specifically when there is bulk load).

For infringement of provisions related to the vessels safety

Article 45 of COMPL

Sanctions - Appeals

With the reserve of the case of article 44, for each infringement of provisions of this

Chapter and of the presidential decrees that are published according to its authorization and independently if there is a penal or disciplinary prosecution, is imposed by justified decision issued by the Head of Shipping Vessel Inspection Branch or by the Harbor Master, fine of three hundred Euros until five hundred thousand Euros. Obligated for the payment of fine is jointly and severally the ship-owner, the administrator, and the master of the vessel.

From the notification of the imposing decision fine is able to be prohibited the departure of the vessel up to the payment of the fine or until the deposit of equal amount by guaranteeing letter of a Bank.

The fines in question devolve to the State collected according to the provisions of public income¹⁹.

.....
It is marked that for each infringement that is ascertained during the inspection of the vessel in sectors that are included in paragraph 1 of article 23 and in paragraph 1 of the article 40 of COMPL is drawn up separate individually report of infringement certification and then is published separate decision of fine imposition.

For infringement of provisions related to the organic composition ²⁰

For infringement of provisions related to the transport of supernumerary passengers

In the article 44 of COMPL as it has been modified and been in effect ²¹ is determined:

Article 44

Supernumerary passengers²²

Is prohibited the receipt and transport with passenger vessel, number of passengers bigger than the written in the familiar certificate, and the Port Police Authorities or the Hellenic Consultant Maritime Section is compelled to prohibit the departure of the vessel.

In the event of supernumerary passengers transport is imposed by the Port Police Authority of vessel arrival to the ship owner fine equal with fifty times of the collected ticket per supernumerary passenger

.....
With the performance of fine decision, which is certified as public income, is able to be prohibited by the familiar Port Police

Authority the departure of the vessel up to the payment of the fine or the deposit of equal amount by guaranteeing letter of bank that functions legally in Hellas. In the case that imperative transport or other reasons, according to the crisis of Port Police Authority, justifying and from the things is unfeasible the direct producing of banking guarantee, the Port Police Authority is able to accept deposit of personal cheque of the master of the vessel or from the responsible maritime agent, of bank that functions in Hellas, under the condition of replacement with guaranteeing letter of above-mentioned bank equal in amount, by concern of the obligated persons, as soon as it becomes feasible, otherwise is prohibited the departure of the vessel with concern of any Port Police Authority in the region of jurisdiction the vessel is²³.

In the above provision are forecasted two cases of prohibition of vessels departure ²³.

A. - In the first case as is forecasted in paragraph 1 the Port Police Authority or the Hellenic Consultant Maritime Department in the case that ascertains that the vessel transports bigger number (even one) from the one that is forecasted according to the familiar certificate is compelled to impose prohibition of vessel departure. In any case and wherever is ascertained that the vessel transports supernumerary passengers (first port of arrival, intermediary port) the Port Police Authority is compelled to landing for safety reasons the passengers and the shipping company of the vessel to take care about the transportation of the passengers or their further promotion in their destination ports.

B. - In the second case the Port Police Authority has discreet occasion whether will impose the administrative meter of prohibition of vessel departure, until the fine to be paid or to submitted guaranteeing letter of bank equal in amount that functions legally in Hellas. It is pointed out that from the moment where for the certification and income of fine are applied the provisions of the Code of Public Income Collection (COPIC), does not exist reason in order to be imposed the prohibition of vessel departure, as with the mentioned before process are ensured the interests of State.

For infringement of provisions of European Agreement for the Prevention of Broadcasts transmitted from Stations outside National Territories

In the law 910/1979 (A' 99), «Ratification in Strasbourg European agreement signed on 22 of January 1965 “for the Prevention of Broadcasts transmitted from Stations outside National Territories and other relatives provisions”».

Article 5

It is prohibited the departure of any Hellenic vessel.....on which is installed and functions radio station.

As clearly reveals from the above provision the Port Police Authorities have obligation to prohibit the departure of the vessels that are not compliance with the regulations of European agreement which have been endorsement in the Hellenic legal order.

The departure of the vessel is allowed only when is removed and transferred from the vessel all the radio station system

For infringement of police provisions that are published according to the article 156 of COMPL

In the article 157 of COMPL as it has been modified and been in effect titled “Sanctions at offenders” is fixed:

Article 157

Sanctions at offenders

The offenders of the police provisions that are published according to its authorization are punished by a decision issued by the Port Police Authorities with fine up to 29.374, 03 E, rehabilitated annually from 1-1-2002 in rate of height 5%.....²⁴.

Before the publication of the above decisions the offenders are called in apology inside 24-hour with written invitation by Port Police Authorities²⁵.

.....

From the notification of the decision of fine imposition against the master or the skipper of the vessel is able to be prohibited the departure of the vessel unless is deposited equal in amount to the fine guaranteeing letter of Bank or if transport or other reasons impose the

departure of the vessel according to the crisis of the Head of the Port Police Authority.

4. Except the payment of the imposed fines the offenders of the police provisions are compelled to the convenient conformity of these provisions as also to the rehabilitation of the things otherwise the Port Police Authority is eligible to take all the necessary actions ascribing the relative expense against to the offender, receivable according to the provisions of law of public income

.....

In that case and as clearly reveals from paragraph 3 the Port Police Authority has discretion in order to impose the administrative sanction of vessel departure prohibition.

It must be noted that in this case we are referring to GPR which are related to safety navigation like the GPR No14 (loading of vehicles to passengers vessels), No 20 (high speed vessels and other maritime means of recreation) etc.

It also provides the opportunity to lift the prohibition of vessel departure if is deposited an equivalent amount for the fine by letter of credit bank, or if transportation or other reasons impose the sail at the discretion of the Head of the Port Police Authority. From the wording of the last subsection provides a wide administrative range of the Head of the Port Police Authority²⁶ in order to incorporate any acts he/she deems as reasons that gives/offers the right not to impose the administrative meter –prohibition of vessel departure.

It is pointed out that from the moment where for the certification and income of fine are applied the provisions of the COPIC, does not exist reason of imposed the prohibition of vessel departure, as with the mentioned before process are ensured the interests of state.

For infringement of provisions of law 3622/2007, Chapter XI-2 International Convention SOLAS 74 and of the ISPS Code (International Ship and Port Facility Security Code).

Article 17 of law 3622/2007 (A' 281)

A.1.a) "Port Police Authority proceeds in vessels control in order to ascertain the conformity with the provisions of present, of chapter XI-2 of the International Convention SOLAS 74, of the ISPS Code and the Regulation. If afterwards the control ascertains not conformity, that would justify the refusal of entry or the expulsion of vessel or the prohibition of vessel departure from a port of Territory, issues relative decision, after have been syntaxes the certification of infringement by the official employee that ascertains it. Then is able to be allowed the entry or the re arrival of the vessel provided that there are the following conditions:

.....
b) Port Police Authority notified the fine decision to: aa) in the case of vessel, in the master and does not allow the departure of the vessel or prohibits the entry or expulse the vessel of a port of Territory.
.....

c) The fines that are imposed according to the previous paragraphs devolve to the State and they are collected according to the provisions of COPIC.

d) At the decisions with which are imposed fines according to the previous paragraphs, is allowed appeal in the regular administrative courts inside deadline of sixty (60) days from the day of notification of these to the offender.

Before the submission of the appeal that is reported in the provision in question, is forecasted the exercise of also other legal means which will be analyzed below.

The prohibition of vessel departure because the payment of the imposed fine has not taken should not be imposed, as the application of COPIC ensures the interests of State. However is imposed the prohibition of vessel departure in case that are ascertained infringements which influence the safety of the vessel, or of harbor installation, or the safety of other vessels in the harbor installation.

Appeals- Suspension of decisions implementation

The enforceable individual administrative actions²⁷ or the omissions by which are created

according to the law administrative substance differences²⁸ they are subjected in appeal²⁹ The appeal is the legal aid that is forecasted by the legislation and provides to an individual or legal³⁰ person in that was imposed administrative pecuniary sanction or even consequence administrative sanction to solve the administrative substance difference with the administrative authority that issued the decision of fine imposition, which constitute individual enforceable administrative action.

With the legal mean in question is provided the power to the responsible administrative court or in the hierarchy head authority or and service, based on the forecast of the law where will be submitted individually the appeal, to modify or even to cancel the offended administrative action.

For all the statutes for which are forecasted the imposition of administrative pecuniary sanctions as well as the imposition of consequences administrative sanctions, which is carried out according to the competence by the Central Services and the Port Police Authorities of HCG, is forecasted also the right of appeal submission, determining concretely in the decision of fine imposition or in any other enforceable administrative action the authority in which will be submitted (Juridical or Administrative), as well as the time interval inside which it will be enforced by individual or legal person that has legal interest.

The administrative appeals are based on article 10 of Constitution and consist one of the ways of control or differently self-monitoring of administration³¹. The administrative appeals are possible to be addressed or to the administrative authority that issued the action or to the superior of this or even to other specifically incumbent.

Concretely, regarding the case of prohibition of vessel departure is forecasted the enforcement of the following appeals:

Informal administrative appeal (COAP article 24 paragraph 1), which can be application for remedy or hierarchical appeal. The application for remedy is submitted to the administrative authority that issued the offended action and

the hierarchical to the superior of this. Both of them have basis on the individual right of each one to report in the authority's (article 10 paragraph 1 of Constitution).

Both of them are submitted when the law does not forecast the possibility of enforcement of appeal according to article 25 of COAP. In case that they will be submitted will be judged as special or administrative remedial appeal provided that is covered the conditions of article 25 of COMPL. It is not forecasted deadline and thus exists the possibility to be submitted new application for remedy or hierarchical appeal provided of course that will be brought new elements. It is required a written application and the damage must have emanated from individual administrative action.

With the application for remedy which is submitted in the Authority that has published the individual action is requested the retraction or even its cancellation (is allowed self-monitoring of substance). With the hierarchical appeal which is submitted in the superior Authority of the one that has published the individual action is requested the cancellation of action, namely is only enforcement control of legality.

In case of action cancellation the affair comes back in the Authority that published it or is kept by the superior authority (hierarchical substitution – transference result) only when the law forecasts expressly something like that. In case of application submission in an unauthorized Authority is forecasted obligation of its transfer in the responsible Authority.

The responsible Authority in which is submitted the application or the hierarchical appeal should at the latest in 30 days to notify to the applicant its decision³², or similarly in different deadline if it is forecasted specifically by the law.

With the mentioned before provision is established more specifically right for the citizen, who suffers material or moral damage in his/her legal interests by an individual administrative action, to be possible to ask his/her satisfaction from the administration

before the juridical protection. This right is not connected with concrete forecast in special provisions, while opposite happens with the article of 25 COAP. As an example in the case of sanctions of article 45 of COMPL is forecasted appeal in front of the minister, while in the case of article 157 also of COMPL is not forecasted any administrative appeal. However in the case and after the publication of law 2690/1999 the citizen have right to submit administrative appeal with the form of application for remedy or with the form of hierarchical appeal³³.

The typical administrative appeal which further on the basis in the article 10 of Constitution also is based in special provision of law which its offer formality (article 25 paragraph 1 COAP). If under the special provision of law the formality in the appeal reaches up to the degree approaching the organization and the procedural plenitude of legal means, then this formal administrative appeal is named remedial appeal³⁴.

The administrative remedial appeal which is able according to the law to be submitted in front of the Authority that published the action, or in superior authority of this or in front of special incumbent administrative Authority. The enforcement of the remedial appeal takes place under the deadline (article 25 paragraph 1 of COAP) and allows the substance examination of the affair from the Authority with procedural guarantees (article 25 paragraph 2 COAP)³⁵.

Both of the above mentioned appeals are forecasted, constituting legal aids as they are forecasted by special provisions, they mainly have object the re-establishment of material or moral damage in legal interest and in right, and the damage must have been caused from administrative action individual or lawful (articles 178,198,203 and 205 of COAP) and not from omission or from material energy. The offended action should be enforceable.

The special administrative appeal involves the examination only of the legality of the action and consequently the organ is eligible to cancel it all or partly, or it rejects the appeal. The administrative remedial appeal involves

the examination of action legality as also the substance of affair and consequently it is eligible to cancel him, all or partly, or to modify it or to reject the appeal³⁶.

If the appeal is submitted in unauthorized organ is forecasted its dispatch in the responsible organ. In the person who submitted the responsible organ has obligation to notify its decision in the deadlines that fixes by the law. If the law does not forecast specifically the dead line on the special administrative appeal is at latest in thirty days and on the appeal line three months³⁷ and

d. – appeal according to article 63 and next of law 2717/1999 (A' 97)³⁸ as was modified by the law 3659/2008³⁹.

The submission of the appeal in front of the responsible Regular Administrative Court is carried out in deadline of sixty (60) days⁴⁰. The deadline begins from the next day from the one that was delivered the decision of fine imposition to the offender (article 66 paragraph 1 and 285 paragraph 1 of law 2717/1999)⁴¹. The deadline for the submission of the appeal do not suspend the implementation of the offended action (article 69 paragraph 1)⁴²

Suspension until to be published the final decision on the appeal can be decided by the court after application of suspension submitted by the offender, in the case where from the implementation of decision of fine imposition it can befall irreparable or difficult to be rectified material or moral damage in the event that is cancelled the decision of fine imposition (articles 200-205 of COAP)⁴³.

The administrative Authority can “suspend the implementation of administrative action” with the publication of relative enforceable administrative action, completely justified (article 17 of COAP). This because according to the article 30 of COAP, the suspension constitutes exception from the rule of application of administrative actions enforceable. The issuing of administrative suspension is not allowed in the event that was caused reject of application of asked juridical suspension. Because on one side the

possibility of administrative suspension precedes temporally and it follows the application of juridical suspension (article 200 paragraph 1 of COAP) and then the juridical action that is published on the application of suspension commits the administration grants it or reject it.

Retraction of administrative suspension action because of protection of public interest is not excluded. In this case the action is enforceable. The retraction presupposes the publication of complete justified administrative enforceable action. The recreation action is published or by the responsible authority⁴⁴, after application of interested person or as an exception also of third person and after is responsible for the suspension. Administrative Authority is the one that fix the law for the examination of the administrative appeal namely the Authority that has published the action or its superior Authority or other specifically forecasted from the law organ e.g. Committee. In any case the administrative Authority can enforce competence of discreet occasion in order to suspend the action. It will consider individual with the public interest. It is marked that article 26 does not forecast the reasons according to is granted the suspension. However from the moment where it is practiced in the frame of competence of discreet occasion it is obvious that it will take under consideration the individual interest.

The time duration of suspension is from its nature limiting⁴⁵. Maximum limit is the deadline for the publication of decision of administrative Authority, namely in the event that has been submitted report the sixty (60) days (articles 27 and 4 paragraph 1-3 of COAP), on application for remedy, hierarchical appeal, special appeal and remedial appeal thirty (30) days (articles 24 paragraph 2 and 25 paragraph 2 of CAP), or until it pronounces on the appeal and before the bend of maximum limit.

The time of suspension begins from the publication of relative action and it expires when the Authority pronounces on the administrative appeal (article 4 paragraph 1 of COAP), when namely it publishes final decision or when expires the utmost time limit

that is fixed for the publication of decision of Authority (articles 4 paragraph 1, 24 paragraph 2, 25 paragraph 2 of COAP). In consequence the inactivity of Authority or with the tacitly “implied” reject of the remedial appeal or with the significance of omission of due legal action involves lifting of the administrative suspension and consequently implementation of administrative action (article 63 of COAP)⁴⁶.

It is marked that according to article 63 paragraph 3 of COAP in the cases where by the law is forecasted at the action or omission administrative appeal, which is practiced in certain deadline, in front of the same or hierarchic head or other of specifically incumbent organ and involves the control of action or omission at the law and the substance (remedial appeal)⁴⁷, the legal aid of appeal practices admissible only for the action that is published for the remedial appeal.

If at the action or the omission are forecasted by the law more from than one successive remedial appeal the legal aid of resort practices itself admissible only for the action that is published for the last remedial appeal. If in the previous periods the unacceptable legal aid of appeal against action or omission at which is forecasted by the law the enforcement of remedial appeal, is not in effect if the responsible administrative authority omitted to inform completely at any way the interested person so for the obligation as also for the terms of submission of remedial appeal. In the event that expires the deadline that sets by any chance the special law in order to be published the decision on the remedial appeal or in the event that is not set such deadline, if expires inactive the quarter from its submission, the legal aid of resort is enforced against the admissible by the end of deadline of reject of remedial appeal.

The appeal is practiced admissible and before the occurrence of the omission or of the admissible reject of the remedial appeal, provided that this has befallen at the first discussion of legal aid of appeal.

The administrative Court of first instance after the deposit in its secretariat of the appeal transmits its copy at the Port Police Authority

that issued the decision of fine imposition and asks the mission of file of affair as well as its opinions on the content of appeal (article 129 of COAP). The file is transmitted in the Court at least twenty days before the day of the trial and it contains all the documents and elements that are essential in order the Court to form opinion on the particular affair. When is fixed the day of the trial is informed the ministry of Economy /Legal Council of State in order to permit the Juridical Office to attend in the trial as representative (lawyer of State) and to defend with each legal way the interests of State.

The head of Port Police Authority that issued the decision of fine imposition, attends as representative of Hellenic State when the imposed sum does not exceed equal the amount of 1469 Euros and when the appeal is judged by administrative court that resides in its region of jurisdiction. In each other case attends lawyer of Hellenic State.

When the decision of administrative court on the appeal is rendered irrevocable and provided that the fine is cancelled or is decreased the Port Police Authority transmits in the responsible Tax Office copy of decision of the court and the predictable Individual Leaf of Discounter (TAFE).

The enforcement of appeals according to the provisions of law 2690/1999 and specifically of the articles 24 until 27 is forecasted in the following statutes:

- a. - article 44 of COMPL for transport of supernumerary passengers,
- b. - article 45 as it has been modified and been in effect of COMPL for infringement of provisions of Chapter D of COMPL titled “Safety of vessels” and all lawful action that are published according to its authorization,
- c. - article 5 of legislative decree 93/1974 for infringement of provisions of International Code of Vessels Safety (DKAS),
- d. - article sixth paragraph 5 of the law 2932/2001 for infringement of provisions referring the marine transports,
- e. - article 14 as it has been modified and been in effect with law 192/1936 for infringement

of provisions referring to the finding of maritime work,

f. - article 6 as it has been modified and been in effect with law 2399/1999 for infringement of provisions referring to the Harbor Dues of passengers and

g. - article 14 of legislative decree 420/1970 for infringements of provisions of fishery legislation. The appeals in the case in question are submitted in front of Special Committees of Fishery Appeals Trial.

h. - Article 157 of COMPL⁴⁸ as it has been modified and been in effect.

Concretely and according to the opinion of Legal Council of the State with No 132/2002 the citizen has also in this case right of administrative appeal or with the form of application for remedy or with the form of hierarchical appeal.

After the enforcement of hierarchical appeals the citizen having legal interest and according to the provisions of law 2717/1999 as it has been modified and been in effect, is able to submit appeal on the action of hierarchical organs in front the Courts of Administrative Justice.

Whether the appeal has suspense result on the income of fine in the case where are submitted appeals according to the articles 24 and 25 of the law 2690/1999 exist forecast in the article 26 of the same law. In the case that has been submitted appeal according to special provisions of COMPL (e.g. article 45) whether will be overwhelmed or not the fine is fixed by each individually provisions. For the enforcement of appeal in front of the Regular Administrative Courts are in force the fixed in the law 2717/1999 as it has been modified and been in effect.

The competence of appeals trials from the Central Services of HCG is determined by the provisions of MD with No. 1141.1/04/14-07-2011 (B' 1611).

Conclusions

The administrative meter of prohibition of vessels departure can be imposed as consequence administrative sanction continuity with the imposition of pecuniary

administrative sanction, or selfly-existent. In the first case according to the provision of law that forecasts the imposition of administrative sanctions will be submitted the forecasted in any case appeal and proportionally will decide on the particular meter individually the responsible administrative or even juridical Authorities (Regular Administrative Justice), according to the provisions of law 2690/1999 and law 2717/1999 as they have been modified and are been in effect.

In the case that has been imposed only the administrative meter of prohibition of vessels departure is able to be followed again the process that is forecasted by the provisions of law 2690/1999 and law 2717/1999 as they have been modified and been in effect, with the submission of relevant appeals. The provisions of the above mentioned laws cover also the item of prohibition of vessels departure as consequence administrative sanction or as self-existent administrative sanction as the prohibition of vessels departure constitute administrative action as was reported previously. However in any case of imposed of this meter as was reported is needed particular attention for its imposition in order to avoid the personnel of HCG to be involved in penal, disciplinary and civil processes.

Furthermore minus the cases at which exists serious reason/s in order to be imposed the prohibition of vessels departure and concretely for infringement of provisions that are related with the vessel safety, load and passengers for which/whom the imposition of the administrative meter will force/the persons in charge to proceed in the re-establishment of lacks or in the reintroduction in the legality real situation which should be realized before the lifting of the meter from the responsible Central Service or Port Police authority of HCG, is not needed in the rest cases to be imposed the particular meter.

This statement springs from the fact that from the moment where the income of fines are realized according to the provisions of COPIC the interests of private individuals, institutions or even of State are ensured and do not exist

case of loss. This is not in effect in application of juridical decisions.

Finally in the case that is imposed the administrative meter of prohibition of vessel departure by Central Service or Port Police Authority, without have been imposed at the same time pecuniary administrative sanction, responsible in order to pronounce on the submitted hierarchy appeal is according to paragraph 13 unit C of the ministerial decision with No1141.1/04/14-07-2011 (B' 1611) the Deputy Commandant of HCG.

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¹ Mylonopoulos D., considers and equitably, that the terms of vessels departure prohibition and cumber navigation should not be considered as proper, as the Port Police Authorities enforce in any case the current legislation. Obviously this term is reduced in the space of private individuals, which for various reasons tries with subterfuges to achieve the hindrance of vessels departures until the time that they will involve the official from the Port Police Authority prohibition of vessel departure. See Mylonopoulos D., The prohibition of vessels departure, Athens, 1991, p 31.

² The prohibition of vessel departure constitute administrative action immediately executants. See Mylonopoulos, D., op.cit, pp 32-33.

³ According to the article 156 of COMPL as it was modified and is in effect with the article 10 of law 1940/1991 (A' 140), for the enforcement of

administrative police competences of Port Police Authorities, are published police provisions under the type of General and Special Regulations of Ports. See Korontzis, Tr. (2006), "Enforcement of administrative police from the Hellenic Coast Guard. The institutional development and the operation of sanctions imposition for infringements of provisions of General Regulations of Ports. Statistical elaboration of activity of Central Port Police of Piraeus in the period 1993-2001", *Nautiki Epitheorisi*'', No 557, pp 87-118.

⁴ See analytically for circulars of former Hellenic Ministry of Mercantile Marine, the Aegean and Island Policy (now ministry of Citizen Protection/HCG Headquarter), Stamatis K., General Regulation of Port, Port Police, Piraeus, 1983, pp 47-49.

⁵ Concretely the Central Services and Port Police Authorities that have the competence to impose administrative sanctions are:

- The Port Police Authorities of Interior (Central Port Police Authorities, Port Police Authorities, Sub Port Police Authorities).

The Hellenic Consular Port Police Authorities, which their duties are determined by the Ministerial Decisions No. 1141.1/39/02 (B' 929) and 1141.1/11/2005 (B' 729).

- The branch of Commercial Vessels Inspection (KEEP).

- The Office of Maritime Work Finding (GENE).

- The divisions of Maritime Environment Protection, Port Police, Maritime Transport, Seaman's Labor, Safety Navigation.

⁶ See Tachos, A.(2008), *Hellenic Administrative Law*, 9th publication, Ant. Sakkoulas, Athens - Thessalonici,, p 611 and next, Dagtoglou P.(2004), *General Administrative Law*, Ant. Sakkoulas, Athens - Komotini, p 269 and next, Papachatzis, G.(1991), "System of current administrative Law in Hellas", seventh publication, Athens, p 468 and next.

⁷ The person who has legal interest (material or moral) from the action or differently the interesting person. It has been judged in the frame of administrative procedure that the interest in order to

he "legal" should ".....not be contrary to the right". Consequently "interest object to the good faith is not legal." (HCOS 1517/1980). See Tachos A (2006), *Interpretation of Administrative Code Process* (law . 2690/1999, as was modified and is in effect), third publication - New, Sakkoulas, Athens - Thessalonici, pp 622 - 623, Spiliotopoulos, E (2006), *Handbook of Administrative Law*, II, twelfth publication, An. Sakkoulas, Athens - Komotini, 2006, pp 82-90. Additionally the Code of Administrative Process (CAP) in articles 24 paragraph 1, 25 paragraph 1 and 27 paragraph A fixes that "...the interesting person for the re-establishment of material or moral damage of legal interests....".

⁸ Compulsory Law 2783/1941.

⁹ See Korontzis, Tr. (2011), Chapter "Penal, disciplinary and civil responsibility of Hellenic Coast Guard", pp 256-268, in the PhD titled "The stationary role of HCG", Panteion University of Social and Political Sciences, Athens.

¹⁰ See PD 88/1997 (A' 90) in article 9 paragraph 7 is forecasted clearly the right of compensation to the ship owner in the event of unjustifiable prohibition of vessel departure or delay for any losses or damage that existed, PD 152/2003 (A' 124) and law 3394/2005 (A' 243). The vessel constitutes an important economic unit which the delay of the voyage has probably consequences in a wide circle of companies, enterprises and persons that are involved with any way in the activities that it develops.

¹¹ See also MD with No 4311.5/31/2005 from 29.12.2005 issued by the ex ministry of Mercantile Marine with subject "Completion of Safety Navigation Manual [HSN-EAN], actions of Port Police Authorities in cases of unfavorable meteorological".

¹² See Karakostas, M. (1987), *Police Law*, Athens - Komotini, Ant. Sakkoulas, p 130 and 869, Papachatzis, G. op.cit, p 869 and next.

¹³ The categories of vessels that are allowed or prohibited the departure are described analytically in the Safety Navigation Manual [HSN-EAN] 9 as it has been modified and been in effect.

¹⁴ Gross of total capacity.

¹⁵ Article 235 of COMPL. Regarding the local limits on the enforcement of the provision of paragraph 1 relative is the Consultation of Legal Adviser of ministry of Mercantile Marine with No 421/87/25-5-1987.

¹⁶ Each vessel under Hellenic flag, or under foreigner flag should fulfill the conditions of articles 31 -45 of COMPL that constitute Chapter D titled "Vessels safety". Additionally should keep the lawful action (PD, MD) that has been published according to authorization of the article in question. Also should keep the provisions of International Convention "Safety Of Life At Sea -SOLAS, 1974" as has been modified and been in effect as well as the provisions of PD and MD that have been published according its authorization. Furthermore the vessels are checked and inspected also according to the Regulations of Convention regarding the line of loading as well as with the provisions of EU Directives that have been ratified by PD and MD.

¹⁷ See articles 245 - 270 of COMPL. The Disciplined Councils are distinguished in First Degree Disciplined Council of Merchant Shipping and Secondary Council of Merchant Shipping. In secondary are judged the appeals against the decisions of first degree. The appeal is judged in one month from the decision notification to the interested individual. Relatives are the PD 861/1979 (A' 246) as it was modified by the PD 579/1989 (A' 246) and PD 580/1984 (A' 206).

¹⁸ See Mylonopoulos, D., op.cit, pp 46-47.

¹⁹ The fines are collected according to the COPIC(KEDE), law 356/1974 (A' 90). The fines that are imposed by the Hellenic Port Police Authorities in abroad (Hellenic Consulate Maritime Department) are dispatched by cheque of recognized bank that resides also in Hellas in the Tax Office of Vessels (DOY).

²⁰ See Korontzis, Tr. (2010), "The legal approach of vessels crewing with workforce (seamen)", Journal of Epitheorisi Ergasiakon Sxeseon, No 59, pp 55-68.

²¹ The specific article was modified by article 3 paragraph 3 of law 2881/2001 (A' 16).

²² For the ascertainment of transport supernumerary passengers is in effect the MD with No. 63621/2/74

(B' 572) titled "Process of ascertainment of supernumerary passengers transport".

²³ It is marked that related to the subject of supernumerary passengers passport are also the following PD that are related with the maritime agents and the electronic system of tickets reservation: PD 229/95 (A' 130), PD 427/1995 (A' 110), PD 176/1999 (A' 165), PD 279/2000 (A' 232).

²⁴ On the article has been incorporated the last lawful action according to are forecasted the administrative pecuniary sanctions that are imposed for infringements of GRP or SRP namely PD 183/2001.

²⁵ The deadline afterwards being in force the provisions of law 2690/1999 is five (05) days.

²⁶ Harbor Master is a title and not hierarchy decree. Harbor Master basically is an officer of Hellenic Coast Guard while in inferior Port Police Authorities (Port Police Departments or Port Police Authorities) can be posted as Commanders or Heads Petty Officers of HCG

²⁷ See Tachos, A., op.cit, p 578 and next.

²⁸ See Spiliotopoulos E., Handbook of Administrative Law, II, twelfth publication, An. Sakkoulas, Athens - Komotini, 2006, pp 27-34.

²⁹ See article 63 of law 2717/99 (A' 97) as was modified by law 3659/2008 (A' 77).

³⁰ See note 07.

³¹ The control in question can also take place by the Advocate of Citizen (article 103 paragraph 9 of Constitution, law 3094/2003) as also by the General Inspector of Public Administration (law 3074/2002).

³² It has been judged that this deadline is indicative but with limit the legitimate time (Administrative Court of Athens) 14538/2004)

³³ Legal Council of State Opinion with No 132/2002. See also indicatively Division of Maritime Environment Protection (DPTHP) No. 2412.4/02/2009, 2412.4/10/2005, 2412.4/11/2005. Also (DPTHP) No. 2111.4/21/2009, 2111.4/32/2009, 2111.4/40/2009, 2111.4/45/2009, 2111.4/46/2009, 2111.4/11/2008, 2111.4/42/2008, 2111.4/14/2007, 2111.4/20/2007, 2111.4/29/2007, 2111.4/32/2007, 2111.4/34/2007, 2111.4/33/2007, 2111.4/56/2007.

³⁴ See generally Panagopoulou M. – E. (2000), “The appeals against administration actions in front of the Administrative Authorities”, A. Sakkoulas, Athens – Komotini, Remelis K. (1987) “The informal administrative appeals (Constitutional foundation, conditions of enforcement, extent of control”, Ant. Sakkoulas, Athens - Komotini, p 89 and next.

³⁵ See Korsos D., Administrative Law, general part, third publication, Athens - Komotini, Ant. Sakkoulas, 2005, p 307 and next.

³⁶ It is marked that the action that is published afterwards the examination of the case after the submission of appeal is enforceable and is not able to become worst the place of the person (individual or enterprise). See indicatively Division of Safety Navigation (DAN) No’s 3214.18/01/2007, 3214.14/02/2007, 3214.28/01/2007, 3214.34/01/2007, 3214.39/02/07/2009, 3214.44/02/2007, 3214.04/01/2008, 3214.14/01/2008, 3214.23/01/2008, 3214.10/01/2008, 3214.46/01/08/2009, 3214.49/02/2009, 3214.51/02/2008, 3214.53/02/2008, 3214.16/01/2009. Also see article 7 PD 33/2009 (A’ 50).

³⁷ See Dagtoglou, P., op.cit, p 578 and next.

³⁸ Before the publication of law 2717/1999 was in effect the law 1406/1983. Afterwards the publication of the last law all the administrative differences in which were included and the decisions of imposition of fines (administrative action) were subjected in the competence of Administrative Courts. As far as concern discriminations of Courts and more specifically for the Administrative Courts and their characteristics see Spiliotopoulos E. (2006), Handbook of Administrative Law, II, twelfth publication, An. Sakkoulas, Athens - Komotini, p 20-34 and 221 and next.

³⁹ See generally Delikostopoulos St. (2008), Interpretation of code of administrative procedure: articles 1-230 as it was modified by law 3659/2008, “Economy and law”, P. Sakkoulas, Athens.

⁴⁰ See also opinion of State Legal Council No. 108/01-03-2002.

⁴¹ In all the decisions of fine imposition that they had been notified before the publication of law 2717/1999 and they fixed different deadlines from

the sixty days for submitting appeal are not in effect as they do not fall in the exceptions of article 285 of law in question.

⁴² The possibility of appeal submission is forecasted as was reported in special provisions of laws. Independently of the time deadlines that are forecasted in these provisions in order to be submitted the appeals (the legal aids), the administrative organs or Administrative Authorities or the Juridical Authorities in front of which will be submitted the legal appeals is very important to write if the submission of the appeal suspends the implementation of decision as should of course fixed in the familiar provisions. As an example in article 4 paragraph 3 of PD 542/1984 is fixed that the submission of the appeal in front of the minister suspends the implementation of decision something which is also forecasted in article 3 paragraph 4 and 6 of PD 229/95 as it has been modified and been in effect according to the submission of the appeal suspends the implementation of the decision minus the case of publication of supernumerary tickets of passengers or proofs of transport of vehicles.

⁴³ See Dagtoglou, P., op.cit, p 368 and next, Korsos, D. op.cit, p 435 and next, Papachatzis, G., op.cit, p 728 and next.

⁴⁴ See article 30 of COAP.

⁴⁵ Hellenic State of Council 5686/1996.

⁴⁶ See Tachos, A., op.cit, p 654 and next.

⁴⁷ See e.g. article 45 of COMPL.

⁴⁸ Regarding the article in question paragraph 2 is considered as repealed afterwards the publication of laws 1406/1983, 2690/1999 and 2717/1999. Remarkable is the decision with No. 8577/86 issued by the Three Members Administrative Court of Athens. Concretely the Juridical Authority in question pronounced that the action of Port Police Authority with which is imposed fine for infringement of police provision that is contained in PRG and not in other provision of administrative law, constitutes enforcement of penal operation and not active administration. For this reason, the provision of article 157 paragraph 2 of COMPL which forecasts in the event of contestation of the infringement the reference of affair in front of a Magistrates Court and afterwards the publication of the law 1406/1983 is against of the provision of

article 96 paragraph 2 of the Constitution. That because this provision forecasts against the action of police organ the submission of an appeal in front of the responsible penal court.

Also repealed is the paragraph 7 afterwards the publication of law 743/77 as it was coded in single text with the PD 55/1998.

The sanctions of article 157 of COMPL are imposed also in the perpetrators of other provisions that they refer in this as for the imposition of sanctions as:

- Law 1815/1988 (A' 250) and more specifically article 10 paragraph 5 as it was added with article 23 of law 3333/2005 (A' 91),
- PD (D' 519) from 16-05-1992.
- Article 180 of COMPL as paragraph 1 was replaced by the article 12 of law 2372/1996 (A' 29).
- Paragraph 4 of the article 11 of law 1940/91 (A' 40) that was added with paragraph 6 of the article 9 of law 2743/1999 (A' 211),
- Article 5, paragraph 3 of law 2323/1995 (A' 145).
- PD that are published in implementation of paragraph 11 of the article 15 of law 2743/1999 (A' 211) etc.
- The provisions of law 2932/2001 (A' 145) paragraph 2 article 11 as it has been modified and been in effect.
- Law 3153/2003 (A' 153) and more specifically article 29 paragraph 5 and article 42 which it was replaced by paragraph 11 of the article 43 of law 2696/1999 (A' 268).
- Law 3409/2005 (A' 273) and more specifically article 15 paragraph 3.