



Can an administrative act be executed pending an internal administrative appeal?

Judgment of Supreme Court of 28 May 2020

Background

This case refers to a citizen who filed an internal administrative appeal (ie a voluntary appeal submitted before the same institution that issued the act in question) against a tax assessment. The citizen did not specifically request the stay of the execution of the assessment. Tax authorities, after the legal deadline for ruling on the internal appeal had expired and prior to decide on the appeal, initiated the execution of the assessment. This way of acting was based on the self-executing nature of administrative acts and on the fact that the appellant, in the absence of a resolution within the legal deadline, could consider the appeal as dismissed. The citizen filed a court claim against the execution on the basis that such execution had been initiated while the internal administrative appeal was still pending.

Acts cannot be executed if an administrative appeal is pending

The Supreme Court first declares that determining whether the authorities may execute a tax assessment pending an internal administrative appeal is a matter of the utmost interest that justifies the intervention of the Supreme Court. Thereafter, the Court rules in favor of the citizen (the tax assessment cannot be executed pending the internal appeal) on the basis of the following grounds:

1. The ruling on an internal administrative appeal against a tax assessment may, at least in theory, revoke such tax assessment. That being so, it makes no sense to execute the assessment before ruling on the appeal.
2. What tax authorities must do is to first rule on any pending internal administrative appeal and only execute such act if the internal administrative appeal is dismissed.
3. Internal administrative appeals must be carefully managed by the authorities. This means that the authorities, when an act is subject to an appeal of this type, must actually review the situation in order to assess whether the act had been adopted in accordance with applicable law or not. It is not acceptable, as it unfortunately happens often, to consider internal appeals as useless claims with no other possible outcome than being dismissed.
4. Finally, from a factual perspective, the Court points out that rather than concentrating on executing an administrative act that is subject to an appeal, authorities should direct their efforts to rule on the pending appeal. From this point of view, the Court further considers that the standard practice which consists of not issuing express rulings on internal appeals and relying only on the institution of the administrative silence is unacceptable.

Take-home message

Under the doctrine set forth by this judgement, administrative acts may not be executed pending an administrative appeal. This conclusion, although it is reached in the Judgment only in respect with tax assessments, may also be applied to other types of administrative acts.