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Preliminary communication

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REFUTATION OF ADMINISTRATIVE SETTLEMENT

Summary: *Although settlement is atypical for administrative proceedings, it represents an important agreement through which parties regulate disputed relations based on mutual concessions. A settlement that has been concluded and officially confirmed carries the legal force of an enforceable decision and can be executed only against the participating party. The agreement between the parties must be officially confirmed by recording the content of the reached settlement. Settlement cannot be equated in terms of content or legal nature with a decision rendered in administrative proceedings. Legal remedies provided by the Administrative Procedure Act cannot be applied to settlement since they exclusively pertain to administrative acts. No administrative dispute can be initiated against a settlement as the subject matter of such dispute solely concerns the legality assessment of that act. Given the undisputed civil legal effects of a settlement concluded in administrative proceedings, the important question arises as to whether settlement can be regarded as a bilateral legal transaction. If a party believes that the settlement was made under a mistake, duress, or fraud, it can challenge it only through an appropriate civil lawsuit filed before the competent court. Considering the legal gap, we believe that the complete regulation of this matter and legal certainty to some extent require the application of civil law principles and judicial practice.*

Key words: *settlement, agreement between parties, disputed relation, conclusion, enforceable act*

JEL classification: *K23*

INTRODUCTION

An agreement on settlement in administrative proceedings is an agreement that is not characteristic of administrative proceedings, which are generally non-contentious legal processes. As it is an atypical agreement, the General Administrative Procedure Act only regulates basic issues related to settlement, leaving certain dilemmas regarding its practical application. Controversial issues particularly pertain to the possibility of challenging a concluded settlement, for which the General Administrative Procedure Act does not contain any provisions, thus allowing for different interpretations, both in terms of available remedies and potential grounds.

Given that it is undisputed that a settlement concluded in administrative proceedings has civil law effects, an important question arises as to whether the settlement can be considered a bilateral contract and whether the provisions of the Law on Obligations can be applied to it. Considering the legal gap, we believe that the complete regulation of this matter and legal certainty, to some extent, require the application of civil law principles and judicial practice.

1. THE CONCEPT OF SETTLEMENT

Settlement is an agreement through which parties, by mutual concessions, resolve a dispute or uncertainty in a legal relationship. It is an agreement concluded between the parties before the official authority conducting the proceedings. It is important to emphasize that settlement is not characteristic of administrative proceedings, which are generally non-contentious legal processes. Settlement is a special type of contract through which the parties resolve a disputed relationship by mutual concessions and determine their respective rights and obligations. Settlement is a bilateral onerous (synallagmatic) contract, which means that the same principles applicable to other bilateral onerous contracts also apply to this contract (Branković 2021). Administrative settlement can only be concluded before the first-instance authority and when an administrative procedure is pending before the second-instance authority due to an appeal. If, at the time of concluding the settlement, the case is pending before the second-instance authority for a decision on the appeal, the first-instance authority will, *ex officio*, inform that authority about the concluded settlement (Fazekas 2022). The second-instance authority will return the case to the first-instance authority since the administrative procedure is considered concluded by the conclusion of the settlement.

2. CONCLUSION OF SETTLEMENT

Settlement must be concluded in written form, and the competent authority prepares a record of it. The parties may request a certified copy of the record in which their settlement agreement is entered. Such a request can be made immediately after the conclusion of the settlement or at a later time. The settlement is not concluded if a party refuses to sign the record in which the settlement agreement is entered, and in such case, the administrative procedure continues. The settlement agreement between the parties should be included in the record, even in cases when the first-instance authority does not permit such a settlement (Schneider 2005). Including the settlement agreement in the record when it is not permitted by the first-instance authority is necessary for the second-instance authority to assess the legality of the decision by which the first-instance authority disallows such a settlement.

3. SETTLEMENT EFFECT

The effect of the settlement lies in establishing the legally binding state of rights and obligations between the parties from the moment of its conclusion. The settlement carries the force of an enforceable decision. Besides its substantive legal effect as a contractual agreement, it also holds the legal effect of an administrative decision.

When applying for the enforcement of a settlement, the enforcing authority cannot examine the suitability of the settlement for enforcement since the settlement has already undergone scrutiny by the authority before which it was concluded.

The authority before which the settlement is concluded is already mandated by law to ensure that, in accepting the settlement on record, they uphold objectives that extend beyond the boundaries set by public order or public morality.

The settlement, as an enforceable instrument, is concluded in accordance with the law and can only be directed against the party/parties that participated in the settlement and for the obligation that is the subject of the settlement. The validity of the settlement can only be challenged on the grounds of lack of will on the part of the party that concluded the settlement.

The procedure will be fully terminated when the parties reach a settlement on all disputed issues of the given relationship, and this is called a complete settlement. Partial settlement exists when the parties agree only on certain disputed points, and then the procedure is terminated only partially.

4. REFUTATION OF SETTLEMENT

The General Administrative Procedure Act does not provide a precise answer regarding the procedure for challenging administrative settlement. Considering its content and legal nature, settlement cannot be equated with a decision rendered in the administrative procedure. Since the legal remedies provided for in the Administrative Procedure Act apply exclusively to administrative acts, they cannot be used to challenge a concluded settlement. It is also not possible to initiate an administrative dispute against a settlement because the subject matter of such a dispute is solely the assessment of the legality of an administrative act. The reasons for challenging an administrative settlement are not explicitly stated in the General Administrative Procedure Act. However, it can be considered that a settlement can be challenged due to defects in consent, such as if it was concluded under mistake, duress, or fraud, similar to any other bilateral legal transaction. An administrative settlement concluded in an administrative procedure cannot be challenged through an appeal (Jenks 1956; Pavone 2018; Longobardo 2021). If a party believes that the settlement was concluded under mistake, duress, or fraud, they can only challenge it through an appropriate civil lawsuit before the competent court, in litigation.

A settlement regarding an absolutely void transaction is itself void (Nematov 2020).

Like any other contract, a settlement can be challenged by any third party who has a legal interest or whose rights have been violated by the settlement (Branković 2021, 19).

The case law also supports the mentioned opinion, and regarding the mistake in the statement by which the settlement is concluded, general rules regarding the significance of mistake for the validity of legal transactions apply.

Since a settlement can only be challenged through a lawsuit, the question of the time limits for filing a lawsuit to annul a settlement concluded in an administrative procedure arises. As administrative settlement has civil effects, we believe that the provisions of the Law on Civil Procedure should be applied regarding the time limits for filing a lawsuit.

According to the mentioned law, a lawsuit can be filed within three months from the day of becoming aware of the grounds for challenging, but no later than five years from the day of concluding the settlement.

CONCLUSION

Settlement agreement in administrative proceedings is an agreement that is not typical for administrative proceedings, which are generally non-contentious legal processes. As it is a non-typical agreement, the Law on General Administrative Procedure regulates only basic issues related to settlements, leaving certain dilemmas regarding its practical application.

Controversial issues particularly arise regarding the possibility of challenging a concluded settlement, as the Law on General Administrative Procedure does not contain any provisions regarding this matter, which leaves room for different interpretations, both in terms of remedies and possible grounds for challenging.

Given that it is undisputed that a settlement concluded in an administrative procedure has civil law implications, an important question arises as to whether the settlement can be considered a bilateral legal transaction. If a party believes that the settlement was concluded under mistake, duress, or fraud, it can only challenge it through an appropriate civil lawsuit before the competent court.

Considering the legal gap, it is considered necessary to apply the institutions of civil law and judicial practice to fully regulate this matter and ensure legal certainty to some extent.

As it is indisputable that the settlement concluded in the administrative procedure has a civil law effect, the important question is whether the settlement can be considered a bilateral legal transaction. If the party believes that the settlement was concluded in error or under the influence

of coercion or fraud, it can only challenge it with an appropriate civil lawsuit before the competent court, in litigation.

Considering the legal gap, it is considered that for the complete regulation of this matter and legal certainty to a certain extent, the application of the institute of civil law and judicial practice is necessary.

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