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**Dual Nature of the Plaintiff's Legal Interest
and Criticism of the Practice of its Application
in Georgian Administrative Justice**

I. Introduction	14
II. Legal interest – an element of the subjective model of judicial protection of the right	15
1. What does the subjective model of rights protection mean?	15
2. European paradigm of rights protection – approach of some countries	16
a) Germany	17
b) France	18
c) Germany/France parallels	19
d) Great Britain	20
3. US law paradigm – the model of so-called “Popular Lawsuits” (Transformation)	21
4. European supranational systems	23
a) Strasbourg Court	23
b) European Court of Justice	24
5. Georgian law approach	24
a) Legal interest – the Georgian paradigm of the subjective model of right protection	24

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b) Importance of assessing a legal interest by the judge: deficiency of Georgian law	26
c) Popular lawsuits in Georgian law	28
III. Assessment of legitimate interest in the context of the right to a fair trial	29
1. Different scopes of legal interest	29
2. Legal interest as a constitutive element of realizing/restricting the constitutional right to appeal to the court	29
3. Subjective interest as an element of limitation of legal protection of rights and a fair trial	30
4. Requirements to determine the legal interest	33
IV. Assessment of the absence of legal interest within the framework of Article 262(2) of the Administrative procedure Code – discretion or obligation of the court?	36
1. Legal basis	36
2. Time to establish the existence of the plaintiff's legal interest	37
3. Sentence 2 of Article 26 ² (2) of the Administrative Procedure Code – the door left open for determining the existence of a legal interest	42
V. Conclusion	50

I. Introduction

Administrative justice rests on several paradigmatic foundations. One of them is the protection of a “infringed right” through a lawsuit. The latter is the main idea (“*idée-mère*”¹) of administrative justice in the space of European law. In the part of the admissibility or justification of the claim, the European law is based on such a guiding concept as “direct damage” or “legal interest”,² which is an essential element of the perspective of the claims directed against the administrative measure.³

Following the subjective model of protecting rights, the legal interest is a necessary condition for implementing the material-legal right in the procedural law. It includes the beginning and the end of the protection of the right (the determination of the validity).

Administrative proceedings have two main subjects. On the one hand, litigation is always initiated by the interested party. On the other hand, the judicial process is also the work of the judge, which serves to protect the right, and thus, it creates the most important public good.⁴ The feeling of subjective interest, in addition to the protection of a person’s right, also creates the function of objective control of the legality of governing measures. The plaintiff’s legal interest leads the perspective of litigation and at the same time, indirectly implies the purpose of objective control.

The purpose of this article is to clarify the procedural-legal aspect of the legal interest of the plaintiff, from the perspective of termination of the proceedings and the material-legal point of view. The interest in refining this issue stems from the hidden potential of legal interest in the termination of proceedings, which is less reflected in Georgian judicial practice and legal circles. The normative content provided by the 2nd sentence of Article 26² (2) of the Civil Code is interesting in terms

¹ *E. Laferrière*, *Traite de la Juridiction Administrative et des Recours Contentieux*, t. 2, 2^{ème} ed. 1896, 436-437.

² There are different bases in the legal systems where the model of the so-called “popular lawsuit” is valid.

³ see. Articles 22-25 of the Administrative Procedure Code of Georgia (APCOG). (in Georgian)

⁴ *L. Cadet*, *Pour une “Theorie Generale du Proces”*, *Ritsumeikan Law Review*, №28, ed, 2011, 143.

of determining the fundamental line of administrative justice (subjective model of rights protection), the compliance with the principle of separation of powers, and realizing a fair court system. Working out the issue of legitimate interest helps us have access to the court or refuse to carry out administrative proceedings. It should be found out how Georgian judges apply it and what influence the passive position of judges has in this direction.

II. Legal interest – an element of the subjective model of judicial protection of the right

1. What does the subjective model of rights protection mean?

In the countries applying the subjective model of rights protection, the exercise of judicial control is related to the legitimate interest. The settlement of the dispute for the sake of the plaintiff is mostly based on the legal interest. It has a relevant importance at the stage of admissibility of the claim and its justification. A legal interest in the procedural sense “is an interest that is the basis of a referral to a judge when it is supported by a feeling of loss or injustice by the party...”⁵ which in turn allows the judge to initiate a dispute and discuss its merits. Following the subjective model, the dispute in court is conducted to protect “own” and not “other’s” rights.

Administrative procedural control is realized only in case of such an interest, which arises a negative subjective feeling towards the administrative measure that the right has been violated. What transforms this feeling into an object of judicial protection is the combination of the person’s interest in restoring the violated right and the legal possibility of reassuring it. The court becomes obliged to prevent the illegal administrative measures from damaging of plaintiff’s legal interest, which participates in evaluating justice on the substantial, procedural, and managerial outlook.⁶

⁵ F. Sichler-Ghestin, Préface, in the collection: O. Renaudie (dir.), *L’intérêt à Agir Devant le Juge Administratif*, Actes d’une journée d’études tenues le 3 avril 2015 à la Cour Administrative d’Appel de Nancy, ed. 2015, 8, quoted: L. Cadet/J. normand/S. Amrani Mekki, *Théorie Générale du Procès*, 2013.

⁶ L. Cluzel Métayer, *L’intérêt à Agir à l’Epreuve de la Justice*, in the collection: Renaudie (dir.), *L’intérêt à Agir Devant le Juge Administratif*, 38.

Bringing legal interest into administrative justice serves to realize the principle of legal security. It makes it inadmissible to cancel/change the existing legal reality in the case when we do not have the necessity for protecting the rights of an interested person caused by the disputed reality. Thus, the internal legal models of assessing legal interest in administrative procedural law are one of the defining elements of the rule of law.

As mentioned in the introduction, the concept of “legitimate interest” in administrative justice has a “transitional” meaning. Through the subjective interest, it indirectly serves to determine the objective legality of the administrative measure. Historical experience confirms that the story that began with the interest of individual protection of a person is transformed into the judicial control of the objective legality of governing.

The protection of individual interest has the function of the legality of the administrative measure, or on the contrary, checking the legality of the administrative measure and eliminating illegality serves to improve the condition of a plaintiff.

Finally, relating a dispute in court with a right or legal interest of a person is the procedural-legal construction that is the core of *Locus Standi*⁷ in administrative judicial control and also plays the role of guarantor of the constitutional principle in separating powers: it is a limiting mechanism of judicial control in the public administration because the court cannot initiate and begin to verify the legality of the administrative measure.⁸

2. European paradigm of rights protection – approach of some countries

The legitimate interest of the plaintiff is a paradigmatic element of the administrative law of continental Europe (Italy, Germany, Spain, France, Poland, and

⁷ Regarding the set of provisions qualifying the circle of persons with the right to file a lawsuit in court, see. European Parliament, Standing up for your right(s) in Europe, A Comparative Study on Legal Standing (*Locus Standi*) before the EU and Member States Courts, 2012, 69-72.

⁸ It is another question when the judge, based on his/her inquisitorial role, will not stop the started dispute at the request of the party if the public interest requires establishing the legality of the administrative measure. in detail see. *T. von Danwitz*, *Europäisches Verwaltungsrecht*, 2008, 24; 39; 76; 93.

others).⁹ In the European legal space, the right is protected not only due to the verification of the objective ruling of the administrative law but also because of protecting the subjective interest of the claimant. Germany is considered the most traditional country in this respect.

a) Germany

German administrative justice, still based on constitutional-legal principles, follows the subjective concept of rights protection.¹⁰ Only the one who can prove the violation of his/her public subjective rights has the right to appeal to the court.¹¹ If a person is not granted any right by the legal order, the court will not accept the claim.¹² The tradition of protecting subjective rights in German law is so strong that even the Aarhus Convention and European law could not change it.¹³ The approaches, emerging from the theory of the “protective norm” have been dominant. In this way, it differs from the tradition of French law, which in certain (mostly environmental) issues allows the objective control of administrative governing measures.¹⁴

The theory of the protective norm bases the admissibility of the claim on the principle of subjective public law, according to which the right to a valid claim exists only if the legal norm protecting the interests of a plaintiff is violated by the act or action of the administrative body (thus, there is a protective norm of third parties).¹⁵

⁹ see in detail. *T. von Danwitz* (footnote 8), 24; 39; 76; 93; 116. see. also “Euro-American model code of administrative jurisdiction” (Euro-American model code of administrative jurisdiction), which was created based on the experience of several countries (England, France, Germany, Italy, Portugal, and Spain) in 2006-2010 (see *R. Perlingeiro/K.-P. Sommermann* (ed.), *Euro-American model code of administrative jurisdiction*, Vol. 1, 2014).

¹⁰ Article 19 (4) of GG.

¹¹ § 42(2) of VwGO.

¹² *U. Ramsauer*, in: Koch (Hrsg.), *Umweltrecht*, 2007, § 3, Rn. 150.

¹³ *U. Ramsauer* (footnote 12), 151.

¹⁴ *Schwartz*, *Europäisches Verwaltungsrecht*, 2. Aufl., 2005, 119 f.

¹⁵ More about the theory of protection norm. see *H. Sodan*, in: *Sodan/Ziekow*, *VwGO* (Komm.), 2006, §42, Rn. 386 ff.

German lawyers have been working on the issue of defining subjective public rights for more than a hundred years.¹⁶ The old version of this doctrine is associated with the name of Othmar Bühler, according to whom “subjective public rights against individuals arise not only for the benefit of public interests” but also when the norm is issued for the benefit of the individual interests of certain individuals or a circle of individuals (e.g., basic rights, which should ensure rights of a person to property, personal freedom, etc.).¹⁷ The theory developed by Bühler retained its influence on the modern doctrine of the protective norm. However, modern doctrine distinguishes reflexive rights (Rechtsreflexe) from legally protected interests which is based on a norm “defending only the public interest and includes individual interests as a side effect, regardless of whether the main purpose of the norm intended these side effects from the beginning or not.”¹⁸

According to these modified approaches, the subjective rights of the neighbor may not derive from “the fact that the norm defines the circle of persons spatially, referring to some areas”, but from the fact that “subjective interests can be individualized from the structural elements of the norm”.¹⁹

b) France

The history of the formation of the content of legal interest developed at a different pace in the second leading country with a tradition of continental law – France. In French administrative law, within the objective paradigm²⁰ of controlling the legality of governing, was formed “legal interest” that implies a broader context than “direct and immediate damage” and “protective norm”. The scope of its assessment is not limited to the protection function of the subjective right of a plaintiff and expands²¹ it to the defense of interest protected by the legislation, in

¹⁶ H. Sodan, in: Sodan/Ziekow, VwGO (Komm.), 2006, §42, Rn. 386.

¹⁷ H. Sodan (footnote 16), 387.

¹⁸ OVG Münster, in NJW, 1965, 650.

¹⁹ BVerwG, NVwZ, 1987, 409.

²⁰ I. Michalis, L'Intérêt à Agir dans le Contentieux de l'Annulation des Actes administratifs, Etude Comparée des Droits Français et Allemand, 2021, 90-91.

²¹ O. Couvert-Castera, Intervention du Législateur et l'Intérêt à Agir: Quelle Marge d'Appréciation pour le Juge Administratif? In the collection O. Renaudie (dir.), L'intérêt à Agir Devant le Juge Administratif, 142.

general. It differs from the German approach,²² where, according to the “theory of the protective norm”, a legitimate interest can be seen only in the fact of harming an existing subjective right.²³

c) Germany/France parallels

The initial idea of legal interest, which was expressed in the Roman private law with the formula “ubi jus, ibi remedium”,²⁴ made ground in administrative justice in the 19th century through the concept of “subjective public rights”. However, in Europe as in the whole world, along with the breaking of the absolute bipolarity of public administration, the attitude of the above-mentioned countries towards the interest as a prerequisite for the admissibility of an administrative claim has developed²⁵ in a mutually opposite and converging manner. An example of this is the normative-sectoral narrowing of the scope of assessing legal interest in France, which was protected by the liberal approach at that time. According to an amendment to the French Urbanism Code, an administrative claim regarding the legality of gaining the permit for construction was subject to fairly detailed eligibility criteria based on the claimant’s legal interest.²⁶ In Germany, under the influence of the Court of Justice of the European Union,²⁷ in cases of realizing the right of access to

²² VwGO, §42, S. 2.

²³ On the difference between legal interest in French and German administrative procedural law, see *I. Michalis* (footnote 20), 169.

²⁴ “When the law gives a right, it simultaneously allows for its protection.” (see. *N. Kap-anadze/ M. Kvatchadze /L. Chanturia* (ed.), *Latin-Georgian legal dictionary*, 2008). (in Georgian).

²⁵ “Interest in action” (“L’intérêt à agir”) from French literature and doctrine, is known in German law (“Die Klagebefugnis”) with essentially the same content. see *I. Michalis* (footnote 20) 34. The mentioned criterion for the admissibility of an administrative claim essentially has the same content, according to which an administrative claim is admissible only if the claimant proves that the contested administrative governance has a detrimental effect on his/her legal status. However, the German concept does not include a reference to interest.

²⁶ Ordonnance n° 2013-638 du 18 juillet 2013 relative au Contentieux de l’Urbanisme, <<https://www.legifrance.gouv.fr>> [07.05.2023].

²⁷ The case “Trianel”-, CJEU, Case C-115/09, Bund für Umwelt und Naturschutz

justice concerning environmental issues ensured by the Aarhus Convention, evaluating the legal interest, the prevailing approach of the theory of protective norms remained unchanged. However, in Germany, the “altruistic jurisdiction” of environmental organizations was recognized as a compensatory approach to the Environmental Disputes²⁸. Also, along with the subjective, individual, and public rights defined by the law started considering reflexive rights featured with the side effects of public goals to make procedural and legal means of protecting rights available for the parties of multilateral administrative-legal relations.²⁹

d) Great Britain

Unlike German and French law, English law (common law) does not recognize the term “administrative justice”. Thus, in English law, the principle of “common jurisdiction” is not valid and cases are heard by courts of common jurisdiction (Ordinary court). The attempts to create a higher administrative law in Great Britain have been unsuccessful. The cases are still handled by Civil Procedure Rules (CPR) and Practice Directions (PD).³⁰ However, in the practice of British law, the term “public-legal dispute” is known, and courts of general jurisdiction effectively apply administrative justice to control the legality of administrative governing.³¹

The control of the administrative governing derives from the peculiarity of the ultra vires doctrine³² prevailing in British law, according to which the judge is obliged to discuss the legality of the contested act only concerning sovereign parliamentary decisions. Unlike German law, judicial control is not based on the protection of individual rights but primarily serves to ensure the enforcement of legislative reservations to verify the objective legality of public administration. The judge takes into account the reasonable goal of the applicant however, the focus is

Deutschland, Landesverband Nordrhein-Westfalen eV c/ Bezirksregierung Arnsberg, 2011.

²⁸ see in detail., *K. Kalichava*, Environmental Protection Law, 2018, 330. (in Georgian).

²⁹ *K. Kalichava*, Controlling the admissibility of environmental activities on the example of property law, 2016, 203. (in Georgian).

³⁰ *T. von Danwitz* (footnote 8), 40.

³¹ *W. Wade/Ch. Forsyth*, Administrative Law, 9. Ed. 2004, 10.

³² see. *F. Becker*, The significance of the ultra vires doctrine as a standard for judicial control of public power in England, *ZaöRV*, 2001, Vol. 61, 85 ff.

not on the subjective right of the citizen, but on the goal of “good administration”.³³ Over time, after the European Convention on Human Rights had come into force, the English judge was increasingly obliged to check the violation of a person’s subjective right (the own right).³⁴

3. US law paradigm – the model of so-called “Popular Lawsuits” (Transformation)

The so-called “Popular claims” are found in US procedural law. It is regulated by the US Administrative Procedure Act, according to which a person who believes that his/her condition is aggravated by a generally unlawful administrative governance, has the right to require judicial review of that governance.³⁵

The right to an administrative lawsuit is related to the function of a claimant as a general private attorney. According to this standard, a lawsuit for the protection of public interest can be filed by anyone who supposes that the act of an administrative body is inconsistent with the law regulating its activity. This law contains the right to file a lawsuit of public interest.

The expansion of access to the lawsuit for the private protection of general interests in the administrative process is connected to the attempt of the US Congress in the 60s and 70s of the 20th century to ensure the legality of public administration through emboldening popular lawsuits.³⁶ The right to enter the lawsuit was limited to the right of appeal permitted by Congress referring to the relevant regulations. They mainly included the issues about environmental, social, and public good protection (thus, public interest should be understood restrictively). Considering this admission, the plaintiff was not required to prove an individual legitimate interest and could directly request a judicial review of the legality of the administrative governance in the fields established by the act of Congress. This approach was initially implemented in 1970 with the introduction of the zone of interest principle.³⁷

³³ *T. von Danwitz* (footnote 8), 42.

³⁴ *T. von Danwitz* (footnote 89), 42.

³⁵ Administrative Procedure Act, sec. 10.

³⁶ *L. De lucia*, *Locus Standi and Distrust of the Public Administration. A Comparison of Three Models*, *Review of European Administrative Law*, 2/2017, 11.

³⁷ *Data Processing Svc. Orgs. v. Camp*, (1970), 397 U.S. 150.

It has undergone some modification by the Supreme Court in the following years. Following this principle, the interests of a plaintiff must be covered by the statutory protection mandate, which means that the interest of the person protected by the lawsuit should at least be considered by the public administration regulator in the zone protected by the norm (“zone of interests”). Also, the actual damage (“injury in fact”) was interpreted as a prerequisite for the right to a lawsuit. It removed the right to the legal claim from the precondition for admission established by specific regulations and strengthened the line of individual interest in the lawsuit.

In 1992, there was created the modern doctrine of legal interest established by the federal court in the environmental case which was based on the “Lujan test”.³⁸ According to this test, the right to an administrative claim depends on 1) particular, individual, actual damage to the interest of a plaintiff 2) the existence of a cause-and-effect relationship between the action of the defendant administrative body and the damage caused to the plaintiff, and 3) the possibility of eliminating the damage by satisfying the claim. Thus, advancing the prejudicial effect criterion widened the circle of people who can challenge an administrative action, as the right to sue no longer depends only on the field values provided by specific acts of Congress. On the other hand, the previous opportunities for popular lawsuits were curtailed which makes consider of having ended the era of public interest lawsuits.³⁹ However, protection of public interests was not excluded from administrative lawsuits. Following the admission of popular claims in administrative cases in the USA a person is allowed to protect the public interest by the claim, however, he/she is obliged to satisfy the Lujan test and to prove the damages caused by the action of the administration that is recoverable through the court.⁴⁰ Also, a plaintiff must demonstrate the damage that is not only economic and includes aesthetic, recreational, and environmental interests⁴¹ as well. If the claimant meets this condition, the court can consider the claim as a protection of public interests.

³⁸ Lujan v. Defenders of Wildlife (1992), 504 U.S. 555.

³⁹ E. Magill, Standing for the Public: A Lost History, Virginia Law Review, 5, 2009, 1181.

⁴⁰ https://constitution.congress.gov/browse/essay/artIII-S2-C1-6-4-1/ALDE_00012995/ [14.06.2023].

⁴¹ see. reference (footnote 40).

4. European supranational systems

a) Strasbourg Court

Based on the practice of the European Court, the right to appeal to the court has been interpreted⁴² since 1975 as an area protected by the first paragraph of Article 6 of the European Convention on Human Rights and one of the important aspects of the right to a fair trial. Accordingly, the examination of its compliance with the limitation convention also includes scrutinizing the mechanisms of admissibility of the claim. The European Court of Human Rights subjects the right to appeal administrative-legal acts to the court and considers cases when a person does not have a specific and effective possibility to appeal the administrative acts that interfere with his civil rights.⁴³ The European Court considered an unreasonable interpretation of the procedural norms as a violation of the right to appeal to the court made by the French Council of State and refused to consider the administrative claim.⁴⁴ Therefore, the issue of the existence or non-existence of a legal interest in the context of the right to a fair trial can be freely dealt with by the European Court of Justice referring to the state responsibility. For example, in one of the cases, the Strasbourg Court considered an almost formalistic assessment of the obligation of the Belgian Council of State to confirm the legitimate interest of a person contrary to the content of the right of access to a court protected by the first paragraph of Article 6 of the Convention and disproportionate⁴⁵ to the objective of the good administration of justice, which became the reason for reforming⁴⁶ the Belgian administrative judicial control system in terms of legal interest as a prerequisite for the admissibility of an administrative claim and the assessment of termination of the case.⁴⁷

⁴² ECHR, Case *Golder v. The United Kingdom*, no 4451/70, 21.02.1975, §34.

⁴³ ECHR, Case *Ortenberg v. Austria*, no 33/1993/428/507, 25.10.1994, §28, *Affaire Geouffre de la pradelles c. France*, no 12964/87, 16.12.1992, §34.

⁴⁴ CEDH, *Affaire Guillard c. France*, no 24488/04, 15.01.2009, §34.

⁴⁵ CEDH, *Affaire Ronald Vermeulen c. Belgique*, no 5475/06, 17.07.2018, §58.

⁴⁶ *Van dooren c. la Ville de Tournhout*, n° 243.406, 15.01.2019, C.E., §§17-18, *la société anonyme Dericherbourg BelgiuM c. la Région wallonne*, n° 250.163, C. E. 19.03.2021, C. E. § IV.2.

⁴⁷ *F. Henry*; *Maintien de l'Intérêt au Recours – Evolution de la Jurisprudence du Conseil d'Etat*, <<https://www.elegis.be/fr/nouvelle/maintien-de-linteret-au-recours-evolution>>

b) The European Court of Justice

The European Court of Justice plays a significant role in conceptualizing the obligation to assess the legal interest in the national administrative procedural law of the member states. A prominent example is regarded the integration of the right protection force of the EU environmental directives into the German administrative proceedings through the theory of the protective norm, indicating that the protective effect of EU law norms can be used by all interested parties before national courts. Thus, it is necessary to share the opinion of the European doctrine that the Court of Justice of the European Union establishes a kind of “functional subjectivization”⁴⁸ of legal interest by applying the norms of European law in national proceedings, according to which the right of effective appeal guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union is available to all persons to defend themselves against public authorities from freedom interference. In case of intervention, only infringement of interest can be the basis for starting administrative proceedings. The approach of the Luxembourg Court, which in turn is based on⁴⁹ the idea of equipping European citizens with common citizenship rights under EU law, has been an impetus for expanding the scope of admissibility of associations’ claims in German environmental justice.

5. Georgian law approach

a) Legal interest – the Georgian paradigm of the subjective model of right protection

Georgian administrative law was created and developed on the basis of the experience of European countries.⁵⁰ Already established European traditions and models of administrative law (especially German law) were taken into account in

de-la-jurisprudence-du-conseil-detat> [03.06.2023].

⁴⁸ *I. Michalis* (footnote 20), 465, quote: *M. Ruffert*, Subjektive Rechte im Umweltrecht der Europäischen, , Unter besonderer Berücksichtigung ihrer prozessualen Durchsetzung, v. Decker Heidelberg, 1996, 222

⁴⁹ CJUE, *Affaire Van Gend en Loos*, 16/62, 05.02.1963.

⁵⁰ On the Europeanization of administrative law, see *G. Winter/K. Kalichava*, Legal transfer and internal dynamics in transition countries: an example of the development of administrative law in Georgia, see. *Journal of Public Law*, 2023, No. 1, from 5.

the process of its creation. Admissibility of a *ratione personae*⁵¹ claim requires some prerequisites⁵² regulated by the Administrative Procedural Code of Georgia (hereinafter APCG): a legal right or interest of the claimant, i.e. making a governance decision by an administrative body, which has a direct and immediate damaging effect on the claimant's right/interest. This key precondition to implement administrative justice is called "legal interest" by Georgian administrative law experts. Under Georgian administrative law, like French, a person who is harmed by administrative governance has a right to a lawsuit which is denoted by the meaning of "legal interest". The alleged damage caused by this note of the Georgian legislator is specific and must be derived from the directly applicable legal norms,⁵³ "Thus, the plaintiff must have a direct right-protecting interest⁵⁴ in the issue raised by the lawsuit", which excludes the possibility of filing "popular" claims.⁵⁵ However, on the other hand, the entry of the Administrative Procedure Code of Georgia – "unless otherwise provided by law" and "legal right or interest", in contrast to German law, implies a more extended dimension of the right to use, which can be transformed into a popular right to sue under the Georgian legislation.

The word "interest" is of Latin meaning ("intersum," "interesse") and expresses a kind of interval, "a place between something and something else." In the Digest of Justinian, this meaning was reflected in the assessment of damages, compensation, and/or benefits.⁵⁶ From a functional point of view, the legal interest in the administrative process involves the relation between the subjective feeling of the person and the control taken by the court. It also includes the function of assessing the probability of improvement that can be achieved as a result of judicial control – in the sense of the "usefulness" of the claim, in terms of restoration.

⁵¹ *ratione personae*-because of the person, i.e. because of the nature of the person concerned or his position.

⁵² see. From Article 22 and the following of the APCOG.

⁵³ M. Kopaleishvili/N. Skhirtladze/E. Kardava/P. Turava, Handbook of Administrative Procedure Law, 2008, 335 (in Georgian).

⁵⁴ M. Kopaleishvili/N. Skhirtladze/E. Kardava/P. Turava (footnote 53) 121.

⁵⁵ M. Kopaleishvili/N. Skhirtladze/E. Kardava/P. Turava (footnote 53), 135.

⁵⁶ P. Scott, The Enactment of Justinian. The Digest or Pandects., Book XIX, The Civil Law, Cincinnati, 1932.

The criteria for determining the legal interest by the APCOG, based on the fact that articles 22-25 indicate the importance of a person's right and interest protected by law, are considered to be more developed⁵⁷ along the French approach to claims of legality. This represents the procedural-legal construction that is responsible for the realization of the mutual balancing functions of the goals of legal security and legality. The administrative court has the space to evaluate the legal interest and the means of development of judicial law.⁵⁸

As Couvert-Castera, the chairman of the chamber of one of the administrative appeals courts of France, believes, "legal interest is such a concept, which by its nature is difficult to define *in abstracto*, with a pre-determining normative text adapted to legal proceedings. On the contrary, it emanates from the set of assessments made by the judge *in concreto*."⁵⁹ Georgia does not have a doctrinal understanding of legal interest, its assessment criteria, and methodology in a systematized form. It is being homogenized by court practice in the definitions of individual cases.

b) Importance of assessing a legal interest by the judge: deficiency of Georgian law

Since one of the most important elements of the Georgian administrative procedural law is the legal interest, the judge should be focused on its evaluation. In practice, the existence of a legitimate interest is assessed very formally or is not assessed at all.

⁵⁷ K. Kalichava, Forms of public administration control, in: Khubua/Kalichava (ed.), Handbook of administrative science, 2018, Volume IV, 363 (in Georgian).

⁵⁸ The interest-based approach in France, in contrast to the full judicial control (*le contentieux de pleine juridiction*) is only applied to exercise control over "lawsuits of legality" to manage the excess of administration authority where the administrative court has the power to annul the administrative act (see J. Fougerouse, *Le Droit Administratif en Schemas*, 2018, 254), in Georgia, there is no classification of objective and subjective proceedings of administrative court control and the same compulsory model of legal interest for all main types of lawsuits (Parts 2 of Articles 22-24 of the APCOG) are valid.

⁵⁹ O. Couvert-Castera, Intervention du législateur et l'intérêt à agir : quelle marge d'appréciation pour le juge administratif ?, In collection: *Renaudie (dir.), L'Intérêt à Agir Devant le Juge Administratif*, 2015, 141.

Article 26² of the APCOG regulates the issue of the admissibility of the claim, including the verification of the legal interest, in the Georgian administrative procedural law. Part 2 of the mentioned norm allows the termination of proceedings on grounds of inadmissibility of the claim, including lack of legal interest, at any stage of the proceedings.⁶⁰ Accordingly, from the two main issues shaping the content of judicial control of the legality of governance, the first refers to the validity of the claim being limited only to the stage of the substantive consideration of the case, while the existence of a legal interest during the entire period of consideration of the claim/case, including in the second or third instance, may be called into question.⁶¹ Thus, Article 26²(2) of the APCOG Georgia protects the legality of governance through judicial control, where the obligation of the court to evaluate and substantiate the existence of legal interest as a criterion for the admissibility of a claim, and to assess its absence after recognizing the claim as admissible becomes more important. In this regard, the legal interest is a preliminary issue to be decided within a specific administrative dispute, which creates an area of confrontation and reconciliation between the fundamental goals of the multifaceted legal good and the administrative law, which is subject to complete review by the court, considering both factual and legal grounds. The court must determine the existence or non-existence of legal interest in advance. The access of litigants to actualization of the issue about a lack of legitimate interest throughout the administrative process emphasizes the space of separation between administrative justice and executive power, and at the same time ensures its maintenance, regardless of the recognition of judicial review as admissible.

Thus, considering the function of the legal interest after the admission of the claim, we should not forget the obligation of the court to evaluate the legal interest in terms of establishing the legal interest when the claim is recognized as admis-

⁶⁰ According to Article 32.3 of the APCOG, before making a final court decision, in the case of declaring an individual administrative-legal act invalid, considering the presence of the legal interest of the party and its proper request, the court has the right to declare this act invalid. In this case, the enabling function of judicial control of legal interest expands into the function of spatial control of legality (on this issue, see. *T. Shavgulidze*, Continuous Recognition Lawsuit in Georgian Administrative Procedural Law – comparison of Georgian and German law, *Journal of Public Law*, No. 1, 2023, from 205). (in Georgian).

⁶¹ Paragraphs 5 and 6 of Article 26 of the APCOG.

sible and assessing the absence of the legal interest after it. This is not only the defining cornerstone of the identity of administrative justice, but it is the protection of the most important order of state democratic organization – the principle of separation of powers that depends on the quality of its implementation.

c) Popular claims in Georgian law

In Georgia, judicial protection of rights in the environmental law implies the popular right of action, which Georgian law allows as an exception. In particular, the admissibility of a lawsuit in Georgian environmental protection legislation does not require as a necessary prerequisite the legal right or interest of a plaintiff to suffer direct and immediate damage.

In addition to the theoretical opinion that the environment is a common good (for everyone)⁶² and everyone should take care of it, popular claims⁶³ in Georgian law are also supported by various legislative acts, according to which, everyone has the right to "demand in a judicial proceeding the placement, design, construction, reconstruction, and change of decisions on operation",⁶⁴ or "require in a judicial proceeding change decisions on the location, design, construction, reconstruction and operation of air polluting facilities"⁶⁵ and others.⁶⁶

As for the legal basis of the popular legal rights of environmental organizations in Georgia, in addition to the above-mentioned sectoral legislation, it is also supported by the Aarhus Convention⁶⁷ of June 25, 1998, on "Access to Information Related to Environmental Issues, Public Participation in the Decision-Making Process, and Access to Justice in this Field." In practice, there is no obstacle to making claims by organizations based on Article 9 of the Convention.⁶⁸

⁶² In this direction, the European Court develops the theory of "common interests", which gives a person the right to a claim in the event of a threat to such interest.

⁶³ Which is not allowed in German law from the beginning.

⁶⁴ Environmental Assessment Code, Article 6, Paragraph "h".

⁶⁵ Law of Georgia on Ambient air pollution, Article 6, Paragraph I, sub-paragraph "f".

⁶⁶ Law of Georgia on Ambient air pollution, Article 6, Paragraph I, sub-paragraph "g"; Law of Georgia on animal protection, Article 14, Paragraph 3, Sub-paragraph "b"; Law of Georgia on water protection, Article 13, Paragraph I, sub-paragraph "b".

⁶⁷ It has been valid in Georgia since October 30, 2001.

⁶⁸ see. *Bitadze M.* The influence of International Legal Standards for the Protection of

Therefore, we cannot share the opinion expressed by some authors regarding the fact that under the legislation in force in Georgia, it is possible to limit the right of popular lawsuits⁶⁹ to environmental organizations. The reform that needs to be made is the systematization of this issue into a single norm, which, in addition to transparency, would be correct on the point of legal technique.

III. Assessment of legitimate interest in the context of the right to a fair trial

1. Different scopes of legal interest

Within the framework of judicial control of the legality of public administration, the obligation to assess the legal interest and the effect of action are heterogeneous and differ depending on the vector of viewpoint: 1) from the constitutional point of view, legal interest, as a prerequisite for the admissibility of a lawsuit, is a guarantee of the principle of separating powers; 2) in the administrative legal estimation it ensures the protection of the stability of the law;⁷⁰ 3) From the perspective of administrative proceedings, the concept of legitimate interest provides the prevention of court congestion.⁷¹ Accordingly, the assessment scheme of legal interest as a prerequisite for consideration of an administrative claim can be figuratively imagined as a tool for control of the legality of governance (separation of judicial and executive authorities), which, like DNA, consists of the objective aspect of legal security and protection of the quality of administrative justice.

2. Legal interest as a constitutive element of realizing/restricting the constitutional right to appeal to the court

The Constitution of Georgia provides the right of every person “to apply to a court to defend his/her rights.”⁷² The right to appeal to the court does not mean only

Human Ecological Rights on Georgian Law, 2008, 151-160.

⁶⁹ R. Khoferia, “Union Lawsuits” in Environmental Law, Student Law Journal, 2013, 147. (in Georgian)

⁷⁰ This goal includes the prevention of popular lawsuits that only aim to achieve legality and do not concern the plaintiff individually.

⁷¹ see. L. Cluzel Métayer (footnote 6), 44.

⁷² Constitution of Georgia, Article 31, Paragraph I.

the right to have the opportunity to file a statement in the court, but first of all, it is the basis for effective and real control.⁷³ The measures of delivering governance may lead to interference with basic human rights. They should be subject to judicial review. In a legal state, there is no other effective mechanism for checking the legality of government measures and protecting rights in “tying” the executive power to the legislative one.⁷⁴ On the other hand, the unrestricted realization of this right should not endanger the right of the other person (the addressee of the disputed act). Unrestricted verification of the legality of implementing administrative measures may threaten legal security. Thus, the limitation of the legal protection of rights by the prerequisites of admissibility should serve the legal protection of rights and the protection of the rights of the other party.

3. Subjective interest as an element of limitation of legal protection of rights and a fair trial

The content of the right to appeal to the court is based on the substantive legal area. According to the explanation of the Supreme Court of Georgia, without material-legal interest, the procedural right would not have any value. “The essence of the procedural right lies in the manifestation of the material right.”⁷⁵ Therefore, the court is obliged to establish the existence of the legal interest of a plaintiff, hence, the manifestation of the material-legal situation, which brings the actual situation of the plaintiff to conflict with the public administration management needs to be eliminated through the court. Thus, unlike other prerequisites for the admissibility of a claim, which are based on statically easy-to-determine circumstances, the assessment of legal interest is an issue of administrative procedural law that requires special concentration of the court in a legal state.⁷⁶

⁷³ *M. Sachs*, in: *Sachs* (Hrsg.), *Grundgesetz* (Komm.), 5. Aufl., 2009, Art. 29, Rn. 144 ff.

⁷⁴ *E. Reimer*, *VwGO* (Komm.), 2. Aufl., 2004, §40, Rn. 4 ff.

⁷⁵ Decision of the Supreme Court of Georgia, №BS-992(k-20) (2021). Compare the approach of the European Court of Human Rights, which makes a clear connection between admissibility and the institution of a fair trial. (*see. J.-F. Struillou*, *Intérêt à agir et exigences de la Cour européenne des droits de l’homme*, *Cahiers du Gridauh*, 2018/1, 113-123).

⁷⁶ *S. Couvreur*, *Réflexions sur la notion d’intérêt à agir devant les juridictions administratives*, 2017.

The Administrative Court of Georgia sees the main purpose of the existence of a legal interest in the inadmissibility of filing a “popular lawsuit.” Making the correct decision on the existence of a legal interest and the admissibility of the claim is important, on the one hand, to protect the right of access to the court, and on the other hand, to avoid unjustified infringement of the defendant’s right caused by the admission of the “popularis” (popular) claims.⁷⁷ So, the concept of legal interest as “simultaneous combination of a key and a padlock”⁷⁸ works in the Georgian administrative procedural doctrine as well as in the French one. According to the interpretation of the Supreme Court, the violation provided in Articles 22-25 of the Administrative procedure Code should refer to the right or interest of the plaintiff, which is protected by substantive legislation, and if the claim is satisfied, it provides an opportunity to restore the person’s rights or equip him/her with some type of right. “The existence of a legal interest implies that a person uses the right to apply to the court in good faith, it is not allowed to use this right only with the aim of harming another.” The possibility of a claim for theoretical interest appears to be excluded.⁷⁹ “The existence of a legal interest implies that a person uses the right to apply to the court in good faith, it is not allowed to use the right only to harm the other.”⁸⁰ Following the aforementioned definition of the Supreme Court of Georgia, legal interest is defined not only as a means of limiting access to the court but also as a tool for realizing the right to defend oneself from a lawsuit through having the right to a fair trial, which Georgian administrative courts consider⁸¹ to be one of the protective purposes of the existence of a legal interest in the administrative process.

⁷⁷ Decision of the Supreme Court of Georgia, №BS-764-764(2c-18) (2019). (in Georgian).

⁷⁸ O. Renaudie, Avant-propos, in collection: Renaudie (dir.), *L’Intérêt à Agir Devant le Juge Administratif*, 14.

⁷⁹ Decisions of the Supreme Court of Georgia №BS-361-361(c-18) (2020); №BS-764-764(2c-18) (2019). (in Georgian).

⁸⁰ Decisions of the Supreme Court of Georgia №BS-383-377(c-15) (2016); №BS-764-764(2c-18) (2019); №BS-372(3c-20) (2022). (in Georgian).

⁸¹ Decision No. 3b/2344-17 of the Administrative Affairs Chamber of the Tbilisi Court of Appeals of June 17, 2020 (remained unchanged by the Decision of Supreme Court No. BS-666(ks-20) of December 3, 2020). (in Georgian).

This view is followed by both negative and protective arguments. First of all, there arises a question about how correct it is to protect the right of an administrative body to a fair trial in a Rule of Law State, taking into account the specifics of an administrative dispute when one of the parties (in this case, the defendant) is the administrative body, and the responsibility of the administrative body for the activities of governance is ultimately interpreted into the responsibility of the state.⁸² An administrative body cannot rely on its own “right to a fair trial”. On the other hand, administrative-legal conflicts are often characterized by a composition of three members, the plaintiff, the defendant administrative body, and a person who benefits from the vesting effect of the appealed administrative-legal act (in the case of an claim for annulment), for example, the addressee of construction and environmental permits. In this case, the right of the third party to a fair trial in its negative aspect can be considered as one of those procedural and legal goods that is served by checking the existence of a legal interest. In recent years, in France, the aim at the arrangement of stability and securitization of economic activities in terms of the rights of third parties has led to the sectoral revision of the general liberal approach to the admissibility of lawsuits regarding the legality of governing measures in the field of construction.⁸³ Thus, the obligation of the court to assess the legal interest as a procedural framework for controlling the legality of governance is determined by the scope of the objective-legal protection of the governance, which does not strictly limit the legal status of the claimant who is harmed by the relationship with the contested governing activities. The existence of a violated interest, contemplated by the law is sufficient for a person to have the right to initiate a legal dispute against an unacceptable administrative measure. The court of cassation considers that “interest is not a constituent element of a subjective right, it leads the subjective right to determine its satisfaction.” From this point of view, it is possible to file a lawsuit based on damage to the legal interest of the plaintiff. The

⁸² That is why, from the point of view of controlling the legality of administrative activities, the imperative of legal interest is more based on the need for objective legal security than on the right to a fair trial. However, the point of view is different in the case of the participation of third parties equipped with the contested administrative measure in the process.

⁸³ *R. Delmas, La Stabilité des Situations Juridiques dans le Contentieux de la Légalité*, Thèse de doctorat, Université de Limoges, 2022, 102-104.

correct clarification of this issue is of great importance. On the one hand, the plaintiff is not deprived of his true right to a lawsuit and, accordingly, to a fair trial. On the other hand, the non-existent right of the plaintiff to a lawsuit is not exercised and thereby, the interests and a right to a fair trial of the defendant are not harmed.”⁸⁴ A wide area in the administrative process intersects with the right to a fair trial of the party defending against the lawsuit (e.g., the addressee of the administrative measure avoiding the lawsuit), which creates a special challenge in terms of justifying the assessment of the court referring to the existence of a legal interest. The scope of this challenge may vary depending on the relationship between researching the legitimate interest and the procedural phases of the case.

4. Requirements to determine the legal interest

Parts 2 of Articles 22-25 of the Administrative procedure Code require establishing the fact of harming the right/interest of a person protected by law. According to the traditional approach in the Georgian administrative procedural law, the plaintiff should not be imposed strict requirements. If the plaintiff can convince the judge of a threat of violation of his rights, it is sufficient to consider the case. Also, whether his/her rights were violated or not, should be decided as a result of the substantive examination of the case.⁸⁵ Thus, according to the broad/liberal definition of the legal standard of legal interest as a procedural framework for controlling the legality of governance, it is permissible to leave vague the part of the existence of damage in the three-step procedure of its assessment, however, the substantiation of the threat of violation of the right is the least requirement that an administrative claim must meet for admissibility. At the same time, the administrative procedural legislation of Georgia does not have the criteria for determining the legal interest, except for the model defined by Articles 22-25 of the APCOG. In Georgia and other countries, the signs of the existence of legal interest are developed by judicial practice and according to some authors, they are dominated by a completely subjective assessment of the judge and need to be examined with great care.⁸⁶ For

⁸⁴ Decision of the Supreme Court of Georgia №BS-288-280(c-13) (2013). (in Georgian).

⁸⁵ *M. Vachadze/I. Todria/P. Turava/N. Tskepladze*, Commentary on the Administrative Procedure Code of Georgia, 2005, 133. (in Georgian).

⁸⁶ *B. Asso/F. Monera*, Contentieux administrative, 2006, 192, quoted: *D. Landbeck*, Les

example, the French Council of State has developed uniform judicial law in the field of legality claims, which is an attempt to classify the legal interest of administrative claims (taking into account the appealed administrative measures and the individual claims), which is a precedent in assessing the admissibility of claims.⁸⁷ The traditional criteria for assessing legitimate interest are similar to administrative justice. The differences may be found in the scope⁸⁸ of statutory discharge, however, the judicial scope for assessing legitimate interest exists in all countries with traditional administrative proceedings. In a universal approach, it is a direct and individual impactful connection between the contested administrative measure and the legal status of the claimant. The claimant must have a certain legal status, which is violated by the administrative activity and restored if the claim is satisfied. The interest must be real at the time of starting to file the suit and in the process of considering the case, also, the interest must be lawful.⁸⁹ According to the Supreme Court of Georgia, the existence of a legal interest depends on a certain set of legal facts, “which prove the existence of the right or interest, as well as its violation or doubtful behavior.” In the dispute the burden of proving the legally protected interest of the claimant rests with him/her. In addition, the plaintiff must prove the fact of violation of his right, and his legally protected interest in the dispute. Besides, he/she must prove that the scope of his interests was violated as a result of the taken measures. The basis for filing a lawsuit is a legitimate interest. Moreover, the existence of legal interest must be based on objective data. Such data are primary pretexts for filing a lawsuit (violation of the right, danger of violation).⁹⁰

associations et l'intérêt à agir dans le contentieux administrative ou de la difficulté de la rédaction des clauses statutaires, LPA, 2003, 9.

⁸⁷ *B. Asso/F. Monera* (footnote 87), 88.

⁸⁸ e.g. In Luxembourg, the criteria of legitimate interest are spelled out at the legislative level only for claims regarding the legality of non-individual (reglementaire) administrative-legal acts, and in other cases are subject to judicial evaluation. see *S. Couvreur* (footnote 76).

⁸⁹ *J.-C. Bonichot/P. Cassia/B. Poujade*, *Les grands arrêts du contentieux administrative*, 2007, 567.

⁹⁰ Decision of the Supreme Court of Georgia №BS-574-574(cs-18) (2018). (in Georgian).

Deciding the issue of admissibility of a claim, the assessment of the legal interest as a basis for limiting judicial control is always based on the factual situation, however, determining its existence or non-existence depends, first of all, on the legal assessment.

Legal interest, as a legally defined category, means that the protection of a person's right or interest by law is subject to the interpretation of the court and the possibility of eliminating the consequences of its infringement depends on a lawsuit; And the impact of the governing act on this right/interest is a factually justifiable dimension. The plaintiff must state the specific facts that are to be prevented by the filed lawsuit.⁹¹

In one of the cases, a person disputed the provision of housing to his heir, as an IDP (internally displaced person). Based on his right, the absence of a legal interest was proved only by a legal assessment and interpretation of the law. The Supreme Court, unlike the court of first instance, explained that the law "On internally displaced persons from the occupied territories of Georgia – IDPs" does not provide a person with the status of an IDP to inherit the right to receive long-term residential space in his temporary place of residence to a member of his family who has not been granted the status⁹² of the displaced person. As a result, it was considered appropriate to terminate the proceedings in the court of the lower instance based on the lack of legal interest in the claim of the mentioned person.

Depending on the subject of the dispute, carrying out research on the existence of legal interest can be quite complex and it is impossible to define it at the legislative level. Determining the legal interest depends on the presence of a sufficiently harmful connection between the legal status of the person and the administrative action, however, as the French authors point out, only this formula does not mean a lot⁹³ and mostly it is an important direction of the development of judicial law. At the same time, the diversity of administrative-legal relations and the activation of the involvement of private individuals in administrative disputes while performing

⁹¹ Decision of the Supreme Court of Georgia №BS-574-574(cs-18) (2018). (in Georgian).

⁹² Decision of the Supreme Court of Georgia №BS-868 (cs-18) (2019). (in Georgian).

⁹³ *F. Melleray, A Propos de l'Intérêt Donnant Qualité à Agir en Contentieux Administratif. Les Moment 1900* " et Ses Suites, AJDA, 2014, 530, quoted: *Rougevin-Baville/Denoix de Saint Marc et D. Labetoulle, "Leçons de droit administratif", 1989, 443.*

the obligation of the court to assess a legal interest leads to an increase in the demand for the justification of the court's decisions, which is a challenge for the court and creates the need to respond to this issue accordingly.

The procedural and legal content that this work presents, is related to the termination of the proceedings, which is the same in content as the admissibility of the lawsuit, however, it differs from it in terms of the procedural chronology. Instead of refusing to accept the lawsuit, it is the basis for the termination of the proceedings which avoids the consideration of the claims made in error or lost interest.

Deciding on the admissibility of a claim the substantiation of the existence of a legal interest has a significant impact on the possibility to cast the doubt about the legal interest later. Legal interest, as a procedural framework to control the legality of governance, consists of sections on the admissibility of the claim and termination of proceedings, which are the main obligations of the administrative judge to perform proper justification. After recognizing the claim as admissible, revising the issue of the existence of legal interest provided by the APCOG at any stage of the proceedings challenges the judge in terms of the accuracy and sophistication of the factual-legal justification of the existence or absence of legal interest.

IV. Assessment of the absence of legal interest within the framework of Article 262(2) of the Administrative procedure Code – discretion or obligation of the court?

1. Legal basis

According to Article 26² (2) of the APCOG, termination of the case on the grounds of inadmissibility of the claim, including lack of legal interest, is possible at any stage of the case, including the substantive stage. Thus, after the claim is admitted to judicial review, raising the issue of lack of legal interest for a judge who has already found the claim to be admissible is a challenge.⁹⁴ Therefore, administrative justice needs certain guidelines. Following the guidelines, it is possible to realize the balanced protection of the interests of the parties to an administrative dispute and the right to a fair trial can be achieved. Also, the discussion on the

⁹⁴ The extent of the inconvenience depends on how well the existence of the legal interest is assessed at the stage of admissibility of the claim.

admissibility of the claim cannot be confused with the discourses about the merits of the claim, and the party defending the claim will not be restricted from the opportunity to avoid the claim, which ensures the right to a fair trial based on Article 26² (2) of the APCOG.

The main indicator to achieve this goal is the substantiation of the existence of a legal interest while recognizing a claim as admissible, which can also affect the assessment of the absence of a legal interest at any stage of the process.

2. Time to establish the existence of the plaintiff's legal interest

Based on Article 26² of the APCOG, the first step to assessing the legal interest of the plaintiff is the stage of accepting the claim, when the court checks the prerequisites for the admissibility of the claim and the relevant deficiencies. In the administrative process, the evaluation of the issue of legal interest takes place before the substantive review of the case. The court makes a decision on the admissibility⁹⁵ of the claim at the regulatory session through an oral hearing or without it. Following the general principle, the verification of legal interest coincides with the decision on the admissibility of the claim in time, for which the court is provided with perfect means. However, the positive resolution of the admissibility does not mean the exhaustion of the court's obligation in terms of controlling the existence of legal interest as a prerequisite for the admissibility of the claim. After the claim is accepted in the proceedings, the passive examination of legal interest continues, which can be carried out at the initiative of the court or the party. As the Court of Cassation notes, "the court examines the issue of the admissibility of the claim at the stage of accepting the claim in the proceedings, however, the judge reviewing the case must not be limited by the decision made at the regulatory session, and if the grounds for the inadmissibility of the claim are revealed at the next stage of reviewing the case, the court is authorized to terminate the proceedings."⁹⁶

Concerning the admissibility of the claim, the obligation to assess the issue of legal interest in the administrative process can be expressed as follows: The higher justification is obtained by the admissibility of the claimant's legal interest *in limine*

⁹⁵ APCOG 26² Paragraphs 1, 2.

⁹⁶ Decision of the Supreme Court of Georgia №BS-233-230(cs-11) (2011), Compare. №BS-351-341(c-13) (2013). (in Georgian).

*litis*⁹⁷ the more opportunity for the revision created by the 2nd sentence of Article 26² (2) of the APCOG is closed. After accepting the claim in the proceedings, the reasoning of the court plays an important role in the perspective of the defendant's objection to the admissibility.

According to the legislative provision created by the first and second parts of Article 26², the existence of legal interest is subject to unconditional verification by the court before recognizing the claim admissible, which implies the obligation of the court to thoroughly examine the admissibility of the claim, including the legal interest within the judicial materials presented at this stage, and if the admissibility arises doubt to appoint a regulatory session, where the parties will present their position on the issue of admissibility.⁹⁸

At the stage of accepting the claim in the proceedings, complete processing of the legal interest from the factual and legal point of view declines the risk of the absence of legal interest during the consideration of the case. Implementation of the obligation to preliminarily assess the legal interest should exclude the possibility of making a well-grounded motion to terminate proceedings because of the absence of legal interest. Dealing with a baseless motion is not difficult for the court with the fully substantiated admissibility considering the resources. Discovering new circumstances confirming the absence of legal interest, the court is obliged to switch to the mode of admissibility of the claim and, taking into account the new circumstances and the absence of legal interest, assess the existence of grounds for inadmissibility of the claim. In this regard, the main difficulty lies in the inappropriate processing of legal interest at the stage of admissibility of the claim. The decision of the Georgian administrative courts on the acceptance and admissibility of the claim in the proceedings often does not contain conclusions based on assessing the circumstances of the individual case regarding the necessity of the legal interest of the claimant. Accordingly, the acceptance of the claim in the proceedings, including admissibility is perceived as a formal issue except for the appointment of a regula-

⁹⁷ "On the threshold of the dispute, at the beginning", see Aaron X./Fellmeth A. X./Horwitz M., Guide to Latin in International Law, 2009.

⁹⁸ According to the latest standard of the French Council of State, the gap of legal interest is a rectifiable gap, on which the defendant's objection must be introduced to the plaintiff and a deadline for its elimination must be set. The question of admissibility must be decided by oral hearing at a public session. (see Cne d'Allauch, n° 453389, CE, 30.03.2023).

tory session. The existence of a legal interest as a precondition for admissibility in the relevant judicial act is not presented from a factual-legal point of view.⁹⁹

In the first phase of assessing legal interest, the conclusion of the court must depend on the indicators of the existence of legal interest and the appropriate positive analysis of the court. This means that depending on the subject of the dispute and the circumstances, the court has to create a satisfactory construction of legal interest in a specific case by checking the content of the claim.¹⁰⁰ However, accepting the proceedings the courts presume the existence of a legal interest, they do not identify the circumstances confirming the existence of the legal interest. This type of reference is made only when the admissibility of the claim is rejected due to the absence of legal interest. Hence, instead of checking the existence of a legal interest at the stage of receiving a lawsuit, the court examines the absence of a legal interest and often recognizes the lawsuit as admissible without a regulatory hearing¹⁰¹ if “the admissibility of the lawsuit is not in doubt.”¹⁰² Such an approach excludes the possibility of identifying and properly fixing legal interest¹⁰³ as a basis for al-

⁹⁹ Conclusions on admissibility formulated in one sentence can be found in these rulings: “The claim meets the requirements of admissibility established by the Civil Code and at this stage, it should be declared admissible” (e.g. Tbilisi City Court No. 3/6574-20 of November 04, 2020, No. 07 of November 2022 3/7560-22 rulings, Telavi District Court ruling No. 3/160-22 of November 11, 2022). (in Georgian).

¹⁰⁰ As the Court of Cassation considers the existence of interest should be based on objective data. Such data are primarily the facts of the pretext for filing a lawsuit (violation of the right, danger of violation, damage to the legal interest), which the plaintiff must indicate before the court examines the basis of the lawsuit. see. The decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of December 19, 2019, on case No.BS-868 (cs-18). (in Georgian).

¹⁰¹ Although the text of such rulings indicates the need to appoint a regulatory hearing, based on the court’s passive approach to the assessment of legal interest, the practice of refraining from appointing a regulatory hearing becomes understandable. (in Georgian).

¹⁰² The acceptance and admissibility of the lawsuit in the rulings, and the justification of the admissibility in some cases are formulated in this way (for example, Tbilisi City Court, ruling No. 3/6574-20 of November 4, 2020). (in Georgian).

¹⁰³ The problematic nature of the approach of the courts of first instance is indicated by the Supreme Court in its repeated explanation that the institution of admissibility of

lowing judicial control at the beginning of the dispute, which subsequently creates additional challenges for the court if the defendant indicates the absence of interest.

The court, which has allowed the lawsuit to be considered without assessing the legal interest, is not motivated to discuss the termination of the proceedings based on the inadmissibility of the lawsuit. However, if the defendant makes a motion to terminate the case, the court still has to respond to the claim of the defending party on the presence or absence of a legal interest.¹⁰⁴ This challenge may end with a broad interpretation of sentence 2nd of Article 26² (2), according to which the court is authorized to postpone the assessment of the absence of legal interest to the time of rendering the decision, which essentially destroys the admissibility of the claim in the administrative process and dismantles its function as a prerequisite for judicial control over public administration.

Applying sentence 2nd of Article 26² (2) of the APCOG with the mentioned content is caused by the shortcomings of the preliminary reasoning of the court regarding the presence or absence of a legal interest in the claim. Admissibility of the claim in the proceedings based on the APCOG implies the establishment of the existence of a legal interest. The burden of its substantiation does not fully fall on a court decision and, as mentioned above, has a more formal character. According to the current approach, the claim will be admitted to the court, if there is no clear lack of connection between the claimant and the contested administrative act. The obligation to specifically assess the admissibility and the legitimate interest is absorbed by the formal findings of admission in the proceedings, which may be based on an unfounded presumption of legitimate interest.¹⁰⁵ Such a formalistic approach to the

the claim in the administrative process serves to determine the existence of a reasonable, real, and legal interest of the claimant, and its purpose is [...] to find out before the substantive review whether there is a legal interest in filing a claim or not. see Administrative Affairs Chamber of the Supreme Court of Georgia No BS-288-280 (cs-13) of July 2, 2013, No. BS-363-358 (cs-16) of June 23, 2016, No. BS-574-574 (cs-16) of September 3, 2018, 18), rulings of December 3, 2020, No.: BS-666(cs-20). (in Georgian).

¹⁰⁴ In such a case, the consideration of the petition of the defendant is conducted at an oral hearing, and in case of refusal, the result is reflected in the decision of the minutes, which cannot be appealed separately based on Article 262.3 of the Civil Code. (in Georgian).

¹⁰⁵ In administrative proceedings there may be a person with a presumed legal interest, as

admissibility of the claim increases the risk of making a motion by the defendant to dismiss the case after the claim is admitted to the proceedings.

The relevance of assessing the presence or absence of a legal interest in accepting a lawsuit is increasing considering the number of different interests in the formation of public administration activities, accordingly, the number of tripolar administrative-legal disputes, the existence of a justified legal interest at all stages of consideration has particular importance. The result of a superficial approach to the assessment at the stage of admissibility can be most acutely manifested during the suspension of the administrative-legal act appealed as a preventive measure for the protection of the right.

Such a case is the suspension of the construction permit by the court based on Article 29, Part 3 of the APCOG, as an individual administrative-legal act provided by subsection “e” of Article 29, Part 2 of the same code. It can cause significant financial damage to a person.¹⁰⁶ The fair balance to protect the rights of the participants of the process should be based on the obligation to assess and justify the legal interest while accepting the claim. It cannot be formed on the presumption of the existence of damage. For example, in the case of a construction permit, “it is impossible to say that the violation of the norm establishing the neighbor’s rights always leads to an actual negative result (damage). [...] In the case of a norm establishing objective criteria that protect the neighbor’s right, it is necessary to have actual damage.”¹⁰⁷

The course of public administration chosen by the economic development of our country leads us to expect that in the future, regulating the obligation to assess

the French administrative justice considers the adjacent neighbor of the object of the construction permit, however, the mentioned circumstance is also subject to the obligation of relevant factual confirmation. see Bartolomei, n°389798, CE, 13.04.2016; C. D. et Mme A. B., n°399585, CE, 2017.

¹⁰⁶ The challenge facing the courts in this type of administrative dispute, in the direction of preventive protection of the right, has already been reflected in the constitutional submission of the Tbilisi Court of Appeal dated 30.03.2021, where the issue of providing compensation for damages caused by the suspension of the permit to a third party having with a construction permit during the review of the administrative dispute regarding the legality of the construction permit was raised. See more <<https://const-court.ge/ka/judicial-acts?legal=11044>> [08.05.2023].

¹⁰⁷ P. Turava/K. Kalichava, Construction Law, 2020, 215. (in Georgian).

the existence of a legal interest in the admissibility of administrative claims will be required to fill normative and practical gaps. This path was followed by the problem of assessing a legal interest in construction disputes in France, and to ensure a balance between the interests of the parties in a tripartite construction dispute, it was interpreted into detailing the criteria for the existence of legal interest at the legislative level. Simultaneously, the French Council of State, in construction lawsuits, under the influence of the changes made in the Urbanism Code, set the standard¹⁰⁸ to verify the legal interest with the participation of the parties (according to which, the burden of the plaintiff is to present sufficient evidence confirming his legal interest, and the party defending against the claim must present circumstances that exclude the legal interest. As a result, the court decides on the claim of admissibility). This was an original step taken by French administrative justice.¹⁰⁹

In Georgia, taking into account the current global and local economic processes, the implementation of the substantive and procedural filter¹¹⁰ for the admissibility of the claim will probably also be on the agenda, otherwise, maintaining the approach based on the presumption of legal interest will result in overloading the courts and the number of motions for termination of proceedings on the grounds of inadmissibility after the claim is admitted to consideration. This ultimately does not affect the quality of administrative justice in a good way.¹¹¹

3. Sentence 2 of Article 26² (2) of the Administrative Procedure Code – the door left open for determining the existence of a legal interest

The meaning of the legal interest is well expressed in the formula established by the Court of Cassation: “The claim of the disinterested claimant should not be admitted, and in case of making a mistake, the proceedings should be terminat-

¹⁰⁸ CE, 10 juin 2015, n° 386121, Brodelle et Gino.

¹⁰⁹ see. *I. Michalis* (footnote 20), 383.

¹¹⁰ We already have a similar mechanism in the form of a regulatory meeting in the AP-COG however, it is about applying it effectively in each case.

¹¹¹ Regarding the tightening of the attitude of the courts to the determination of legal interest in the wake of economic processes in France, see L. Cluzel Métayer (footnote 6), 40.

ed.”¹¹² The second sentence of Article 26² (2) of the APCOG regulates those exceptions when the grounds for denying the existence of a legal interest still appear after the court fulfills the obligation to substantiate the legal interest. The mentioned norm is based on the presumption of performing the obligation of the court to justify the claim at the stage of admissibility. It establishes that despite the fulfillment of the legal interest as a prerequisite for the admissibility of the claim, the grounds for its inadmissibility may be revealed after the claim is recognized as admissible, at which point the proceedings can be terminated at any stage of the process. The requirement of the existence of a legal interest in the activity of public administration with the limiting effect of judicial control continues to operate throughout the entire process, even at the stages of appeal and cassation review, because excluding the possibility of inadmissibility of an administrative claim at any stage of the process would be an approach denying both administrative-legal security and the principle of separation of powers.¹¹³ In terms of the standard of obligation to assess the legal interest, the APCOG does not explicitly differentiate between the admissibility and subsequent stages of the claim, and procedurally there should not be a difference either.

But, assuming that the ground of inadmissibility, including the absence of legitimate interest, may be revealed after admission in the proceedings, The illusion of a certain hidden procedural evaluation contributes to researching a legal interest in certain categories of cases referring to the objections of a defendant or judicial discretion, which is an unacceptable reality of the administrative process.

Leaving a question about legal interest open after receiving the claim in the proceedings is the main manifestation of the procedural content of the legal interest,¹¹⁴ which is similar to a quantum movement. It is subject to transformation

¹¹² Decisions of the Administrative Affairs Chamber of the Supreme Court of Georgia No. BS-868 (KS-18) of December 19, 2019 and No. BS-383-377 (cs-15) of May 19, 2016.

¹¹³ Attempts of instrumentalization of the courts by various entities to exert political pressure on governance activities or to receive benefits are neutralized, first of all, through the correct and timely assessment of the legal interest. For example, in France, administrative justice refuses admissible recognition of the legal interest of persons who have acquired real estate in the neighborhood of a construction site after the issuance of a building permit. see. *La société Ocean’s Dream Resort*, n°450241 CE, 2023.

¹¹⁴ Leaving the issue of admissibility open also involves the issue of checking other pre-

and even disappearance, which the administrative court must focus on to avoid exercising impermissible control over public administration.¹¹⁵ Thus, after the administrative claim is recognized as admissible, the obligation to assess the legal interest is limited to ensuring timely, proper detection of its deficiency and continues throughout the process. Taking into account that the court has to fully assess the issue of admissibility and the existence of a legal interest, accepting a claim for consideration, the second field of the obligation apart from assessing the legal interest, takes passive control over the part of the court. By accepting the legal interest confirmed in the proceedings of the lawsuit, the initiative to make it suspicious is a kind of transition from the lawsuit to the defending party. In such a case, there are the following scenarios for activating the issue of legal interest assessment: a) the party defending against the lawsuit does not point to new circumstances/evidence and offers the court a different solution to the issue of admissibility arising from the lawsuit b) the party defending against the lawsuit presents to the court new circumstances that exclude the existence of legal interest. In the first case, when the claim has already passed the filter for admissibility and the reference to the lack of legal interest by the defendant is not based on factual circumstances unlike the described in the claim, the previous justification making the claim accepted in the proceedings loses its validity only in the case of detecting a substantial legal flaw in legal assessment. The review of the admissibility of the claim is an exceptional rule in this regard. The burden of proof of the claimant is not heavy, because it has already been realized and confirmed by the decision of the court to accept the claim. However, this standard works only if the court properly substantiates the existence

requisites for admissibility, such as compliance with the appeal deadline, and administrative appeal. However, these issues are more statically determinable than legitimate interest, and once proven safe at the admissibility stage, they are usually not subject to review, unlike the existence of a legitimate interest, which can be questioned at any stage.

¹¹⁵ “By reviewing and deciding the administrative lawsuits filed against the administrative bodies, the court verifies the legality of the legal forms of activity arising/created in the process of implementing the governance functions of the administrative bodies, and thus, simultaneously, it exercises judicial control over the activities of the administrative bodies”. (see *M. Kopaleishvili/P. Turava/I. Kharshiladze et al.* Handbook of Administrative Procedural Law, 2018, 13). (in Georgian).

of the legal interest of the plaintiff from a factual-legal point of view at the stage of accepting the claim.

If the defendant points to circumstances different from the already assessed by the court, excluding the legal interest or the threat to him, the case perfectly transforms the relevant moment of the proceedings into the area of realization of the defendant's right to avoid the trial to defend himself/herself from the lawsuit that should not be refused. In this option, different cases should be taken into account when the pre-existing and unassessed circumstances of inadmissibility of the claim are mentioned while considering the case or the admissible claim loses interest during the process. Article 26² (2), sentence 2, part 2, of the APCOG, indicates the power of the court to terminate the proceedings on the grounds of inadmissibility however, it does not specify raising the issue of admissibility retroactively concerning a claim that was initially accepted but during the proceedings lost a legal interest. As mentioned at the beginning of this chapter, according to the APCOG, along with the function of admissibility of the claim, the legal interest also has the function of satisfaction of the claim.¹¹⁶ Accordingly, a reply to this question depends on determining which function of legal interest (lawsuit admissibility or claim validity) is dominant in the administrative-legal dispute, which is the subject of a separate study. However, within the scope of this work, if we consider the prohibition of impermissible administrative judicial control as the goal of sentence 2 of Article 26² (2) of the APOG, the loss of legal interest in the process of consideration of the case should be regarded as a basis for termination of the case on the grounds of inadmissibility of the claim, which the courts discern in various ways.¹¹⁷

All the above-mentioned cases, making a motion to stop the proceedings, raise the question: Article 26²(2) requires an immediate examination of the legitimate interest at any stage of the proceedings if, on the contrary, it does not limit the court to the stages of the proceedings and gives full discretion in terms of its application. The literal content of the norm “the court terminates the proceedings on the mentioned basis at any stage of the process” makes the opportunity of its interpretation

¹¹⁶ APCOG, Articles 32.1, 33.1 and 33¹.1.

¹¹⁷ Due to a loss of legal interest in practice, referring to one of the same cases one court stopped proceedings on the grounds of inadmissibility while another court issued a substantive decision against the plaintiff (Tbilisi City Court case No. 3/8906-22 Tbilisi Court of Appeals case No. 3b/2301-20). (in Georgian).

in the second sense, which the Georgian administrative courts also apply and, making a motion to terminate the case based on the absence of legal interest, postpone the discussion until the final decision on the case is made.¹¹⁸

Thus, the normative content of Article 26² (2) of the APCOG defines that after recognizing the claim as admissible, the court is not obliged to immediately evaluate the legal interest as a criterion for the admissibility of the claim, even in the case of the justified reference by the defective party. Hence, the court, applying this definition, refuses to exercise control over the admissibility of an administrative claim but allows to exercise an impermissible judicial control over administrative activities. Such an approach represents a kind of inverted understanding of the meaning of legal interest in the admissibility of a claim and contradicts its essential function. The APCOG separates the issue of admissibility of the claim from the stage of its admissibility and does not limit it only to the period of starting the consideration of the case. Also, it explicitly indicates that during the consideration of the case, the court terminates the proceedings on the grounds of inadmissibility of the claim at any stage of the process. The set of procedural norms implies that the obligation to check the legal interest to research the basis of the admissibility of the claim should not be confused with the substantive consideration of the case. Otherwise, the existence of legal interest, as a foundation for the autonomous content of the admissibility of judicial control over public administration, would lose its meaning. The discretionary interpretation of the second sentence of Article 26² (2), in addition to causing the procedural dysfunction of the institution of admissibility, has a significant negative impact on realizing the right to a fair trial of the parties. The party, who is provided with an interest and the right to avoid consideration of the claim brought against him/her, is forced to participate in such an administrative dispute before the end of the consideration of the case, on which the proceedings should have been terminated a long time ago. On the other hand, a plaintiff who is refused to examine his flawed legitimate interest by the court may also be limited in his right to a fair trial by intersecting with an institution of inquisitorial administrative justice such as claim transformation.¹¹⁹ Timely and complete control of the legal interest as a prerequisite for the admissibility of the claim can reveal such

¹¹⁸ e.g. Minutes of the administrative affairs panel of the Tbilisi City Court of October 24, 2022, on case No. 3/6574-20.

¹¹⁹ APCOG, Article 28¹ 2nd sentence.

a case of transforming the interest, for which the submitted claim will no longer be suitable as a legal remedy for the protection of the right. Therefore, neglecting this case may not only violate the right to a fair trial of the party defending against the lawsuit but also lead to the right of the plaintiff to be left without an effective procedural remedy.

The multiplicity of parties caused by the integration of private interests in implementing public administration is no longer a rarity in the administrative process. This is especially seen in the field of construction and environmental permits when the contested administrative measure (construction or environmental impact permit) has an empowering effect on its addressee for a third party. In such a case, the right to a fair trial of a third party also needs to be taken into account before the judge starts considering the lawsuit brought against the permit, which may not be useful as an argument to defend the right of the administrative body. The author of the administrative measure acts on behalf of the state, however, it undoubtedly represents the area of protecting the rights of the addressee which within performing the obligation to establish the legal interest must be squared perfectly with the claimant's right to access justice. The development of jurisprudence on legitimate interest as a basis for the termination of proceedings follows the appeal vector. Appealing the ruling on the termination of the proceedings, within the reasoning of the superior courts, the issue of the presence or absence of legal interest is nuanced for the revision of terminating the proceedings. However, declaring a claim admissible, there is no consistent and systematic approach of the administrative court referring to the justification of a legal interest and/or the revision of the validity of a refusal to stop the proceedings. Because the refusal to stop the proceedings (protocol decision) is not appealed separately and this issue is no longer relevant,¹²⁰ and if the claim is granted, it is lost in the substantive claims of the appeal about the merits of the claim.

¹²⁰ “The current Civil Procedure Code does not provide the appeal of the decision by the person in whose favor it was issued. Accordingly, the court of cassation believes that the author of the private complaint only indicated that the result was beneficial for him, but the dispute should have ended with a more beneficial judicial act: the court should have stopped the proceedings on the claim on the grounds of inadmissibility, this cannot become the basis for satisfying the private complaint.” (see. Decisions of the Supreme Court of Georgia No. BS-84-79(cs-13) (2013). (in Georgian).

Court practice provides an interesting case when the defendant appealed the decision in his favor and also requested the annulment of the minutes of the court of first instance which rejected the motions of his representative to declare the claim inadmissible and to stop the proceedings. Ultimately, the Supreme Court had to discuss the case.¹²¹ The party appealed that it was inadmissible to discuss the merits of the lawsuit and make a decision, while the court should have recognized the lawsuit as inadmissible and made a decision on the termination of the proceedings. The party pointed out that the court needs to refuse the request for annulment of the administrative act to the plaintiff, not as a result of studying the merits of the claim but explaining in a justified way that he does not represent a person whose legal rights may be harmed by the appealed administrative act and even if the administrative act is annulled, he cannot acquire the right of use or ownership the disputed piece of land, under the existence as the rightful owner.

The Supreme Court did not satisfy the mentioned private complaint due to the lack of procedural prerequisites (ending the dispute in favor of the author of the private complaint) however, this case is interesting in terms of the importance of evaluating the legal interest as a prerequisite for the admissibility of the lawsuit for the party defending against the lawsuit. The right, derived from the principle of legal certainty, to be protected from inadmissible legal proceedings appealed by the party is one of the functions of the existence of a legal interest in the administrative process. However, according to the existing procedural legislation, its implementation is possible only in case of appealing the final decision after the end of the lawsuit proceedings, which makes it useless to avoid lawsuits. Because of this, it is even more important for the court to make an effort to clarify the issue of legal interest at the stage of admissibility of the claim, and after the admission of the claim, in case the party indicates the absence of legal interest, reasonably assess the grounds for excluding the existence of legal interest from the point of the admissibility of the claim and not its merits. It should be noted that the problematic practice of a superficial approach to the assessment of the legal interest of an administrative claim, reviewed in this chapter, is due to the blurring of conceptual differences between civil and administrative processes, which is caused by the extensive use of the Civil Procedure Code in administrative proceedings. Because of this fact, the

¹²¹ Decision of the Supreme Court of Georgia (footnote 122).

essential distinguishing feature of administrative justice, taking control over the legality of public administration is forgotten. The requirement of the existence of a legal interest as a prerequisite for the admission of an administrative claim is the main engine¹²² for implementing the control. It is unacceptable for the mentioned requirement to remain without processing by the court at the stage of admissibility of the claim and its substantive consideration, for which the issue of the existence or absence of a legal interest must be properly reflected in the relevant administrative proceedings. Taking into account all of the above, the second sentence of Article 26² (2) of the APCOG is a norm that ensures the obligation to check a legal interest after the admission of a claim. Its reduction to the discretionary powers of the court does not correspond to the basic idea of the institution of admissibility of an administrative claim. The reasoning developed above refers to the possibility of the systematic and genetic-teleological principle of the interpretation of the mentioned norm, according to which the second sentence of Article 26² (2) should be interpreted as a reference to the court to stop the proceedings at any time due to inadmissibility of a claim, and not to the discretion of the court. In case of objection based on an interest of a legal nature, the court should not postpone the assessment until the end of considering the case or leave the issue without an evaluation due to lack of legal basis in case of a justified motion of the party. This kind of definition, along with any other definitions that can make the legal interest a prerequisite for the admissibility of the lawsuit, loses its substance, besides the basic principle of administrative proceedings, also contradicts the constitutional principle of separation of powers, since the legal interest is not only a legal institution to be discussed within the dispute between the opposing parties. It is a precondition to exercising judicial control over the management of the executive authority. Any deficiency in performing the obligation to evaluate the governance may become the reason for taking impermissible control over the activities of the executive bodies by the judicial authority.

¹²² In general, the physiognomy of the admissibility of the claim and the practice of treating the legal interest *ratione personae* to a large extent determine the main purpose and priorities of the existence of the country's administrative justice. see *I. Michalis* (footnote 20), 479.

V. Conclusion

The present article is an attempt to substantiate the essence of the legal interest, the prerequisite for the admissibility of the lawsuit, and the importance of their proper assessment by the judge, which serves to bring the legal interest as the basic idea of administrative judicial control to the forefront in the Georgian academic space. This article tries to answer the main question: does the second sentence of Article 26² (2) of the APCOG represent the discretion of the court, or on the contrary, does its content imply the obligation of the court to assess the issue of legal interest?

This question was raised by one of the co-authors of the article after having exercised practical cases in administrative proceedings. It was impossible to answer it without understanding the function and significance of the legal interest as a prerequisite for the admissibility of administrative judicial control. The specific procedural issue of assessing the legal interest as a basis for the termination of proceedings, which in our reality is paid less attention by the court and the parties, is the main indicator determining the identity of administrative justice. Determining the existence of a legal interest as a prerequisite for the admissibility of a lawsuit, depending on its dogmatic and practical meaning, should be done at any stage of the administrative process. After recognizing the administrative lawsuit as admissible, the court is obliged to timely identify the cases of absence of legal interest, in order not to exercise inadmissible judicial control over the administrative management. The second sentence of Article 26² (2) of the APCOG highlights not only the issue of identifying the court as an authorized or obligated institution but also the gaps in justifying the existence of legal interest at the stage of admissibility of the claim, which made it necessary to form a certain vision of its elimination in the future. It is essentially important for the Georgian administrative court, as far as possible, to leave the sphere of the dominance of the civil procedural order, and try to establish the legal interest in administrative justice as the autonomous institution of procedural law. Realizing proper administrative judicial control and the constitutional-legal order in the form of protecting the principle of separation of powers depends on the correct functioning of this institution. The mentioned is possible by defining the normative content of the second sentence of Article 26² (2) of the APCOG, which indicates the relevance of the obligation and not the authority to assess the existence of a legal interest in the lawsuit at any stage of the process.

It is important to establish a procedural policy of the court, a) by which the decision of the admissibility of the administrative claim will not depend only on the assessment of the existence of legal interest from a negative point of view, and in certain types of disputes discussing the rights to protect the interests of third parties will increase the role of positive justification of the existence of legal interest. As a result, to recognize the claim as admissible Court rulings will contain the necessary factual and legal justification regarding the existence or non-existence of legal interest; b) after recognizing the claim as admissible, when raising the issue of termination of the case based on the second sentence of Article 26² (2) of the APCOG, as the reason for the inadmissibility of the claim, the court must also fully assess the grounds of the motion and instead of verbally rejecting the issue of termination of the case, make a reasoned decision in which the evaluations of the court will be reflected on the new circumstances indicated as the basis for the absence of legal interest, or which will be based on the already substantiated ruling on the admissibility of the claim in case of indicating the new grounds. In any case, in the procedural situation provided with the normative content of the second sentence of Article 262 (2) of the APCOG which is actively used by the courts, the admissibility of the claim based on the lack of legal interest becomes doubtful by the defending party. Due to the problem of evaluating the legal interest, the question of admissibility of the claim is in a state of Schrödinger's experiment during the whole process. Accordingly, the bodies of administrative justice should ask themselves if judicial control of administrative activities can be carried out in a situation where the existence or non-existence of a legal interest in an administrative lawsuit is not clearly defined. It is less expected to give a positive answer to because it will cause the need to revise the existing judicial approach to the legal interest in the termination of proceedings and the obligation to assess the basis of admissibility of the claim.