



**PUBLIC LAW**

# Supreme Administrative Court standardises case law: administrative courts have jurisdiction to enforce urban planning fines

On 7 October 2020, Judgment to Standardise Case Law of the Supreme Administrative Court no. 4/2020 was published in the official gazette, Diário da República<sup>1</sup>.

This judgment has standardised case law as follows:

*“As from 1 September 2016 and for enforcement actions that have been brought in court since that date – through the effect of articles 04(1)(l) and (n) of ETAF, 157(5), of CPTA, 61 and 89 of DL 433/82 of 27/10, 15(5) of DL 214-G/2015 of 2/10 – the administrative courts will have jurisdiction over the judicial enforcement of administrative decisions which have imposed fines for violation of administrative law rules on urban planning, whether or not they have been challenged”.*

**"On 7 October 2020, Judgment to Standardise Case Law of the Supreme Administrative Court no. 4/2020 was published in the official gazette, Diário da República."**

Decree-Law 214-G/2015 of 2 October expressly established that the administrative courts have jurisdiction to hear judicial challenges against decisions of the Public Administration imposing fines in the context of administrative offences for breach of administrative law rules on urban planning<sup>2</sup>. Following on from this, the Supreme Administrative Court was asked to decide what courts have jurisdiction to hear actions to enforce administrative decisions imposing fines for administrative offences for breach of administrative law rules on urban planning in which (i) the administrative offence case was brought prior to the entry into force of the Decree-Law (01.09.2016)<sup>3</sup> and (ii) the corresponding enforcement has already started.

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1 Ruling of the Supreme Administrative Court no. 4/2020, of 07.05.2020, issued in the context of case no. 19/19.8BESNT-A, available at [www.dgsi.pt](http://www.dgsi.pt).  
2 This law amended the wording of article 4(1)(l) of the Statute of the Administrative and Tax Courts and it gave the administrative court's jurisdiction to assess "judicial challenges against decisions of the Public Administration imposing fines in the context of administrative offences for breach of administrative law rules on urban planning".  
3 Under article 15(5) of Decree-Law 214-G/2015 of 2 October.

The Supreme Administrative Court concluded that the administrative courts have jurisdiction to hear actions to enforce administrative decisions imposing fines in the context of administrative offences for breach of administrative law rules on urban planning brought after 1 September 2016 (the date of entry into force of Decree-Law 214-G/2015 of 2 October). This conclusion applies regardless of whether the administrative decision has been confirmed by a final judicial decision or not. The Supreme Administrative Court follows the grounds of several judgments of the Court of Conflicts<sup>4</sup> and bases its decision on three main points.

The first question addressed was the one regarding to the relevant moment in time to establish the material jurisdiction of the administrative courts. In this context, the Supreme Administrative Court held that the date of entry of the case into the court would be the correct point in time to determine which court had jurisdiction<sup>5</sup>.

**"The Court stressed that the appeal only begins when the Public Prosecutor's Office files the administrative offence case (an act equivalent to an indictment) and the appeal against it."**

Secondly, the Supreme Administrative Court examined the question of when the administrative offence proceedings are deemed to have been brought before the court. With regard to this question, the Court stressed that the appeal only begins when the Public Prosecutor's Office files the administrative offence case (an act equivalent to an indictment) and the appeal against it. Therefore, this will be the point when the judicial proceedings begin and, consequently, this point determines which body has jurisdiction to hear any challenge against a decision that imposes a fine.

In the words of the Court, the correct point in time to assess the jurisdiction to decide on judicial challenges against decisions imposing fines in the context of administrative offences for breach of administrative law rules on urban planning "(...) is not the start of the administrative offence case, which is heard by an administrative authority, but rather the entry into court, whether it is an appeal against the decision to impose a fine or the enforcement for payment of a fine".

Thirdly and finally, the Court held that the court that has jurisdiction to decide on the enforcement of an administrative decision imposing a fine will be the court that has jurisdiction to decide on any challenge against that decision.

4 In particular, the Ruling of 28.09.2017, handed down in Case No. 24/17, and the Ruling of 08.02.2018, handed down in Case No. 66/17. All are available at [www.dgsi.pt](http://www.dgsi.pt).

5 As is clear from the provisions of article 5 of the Statute of the Administrative and Tax Courts, and from article 259(1) of the Code of Civil Procedure and article 38 of the Law on the Organisation and Functioning of the Judicial System. The Court of Conflicts has repeatedly ruled along these lines, as can be seen, for example, from the following judgments: of 28.09.2017, rendered in cases no. 24/17 and 26/17 and of 09.11.2017, rendered in cases no. 12/17, 22/17, 33/17, 34/17, 35/17, 39/17 and 42/17. The Southern Central Administrative Court has also ruled in line with this, as is clear from the judgment of 19.04.2018 in Case no. 368/17.0BESNT. All are available at [www.dgsi.pt](http://www.dgsi.pt).

**"The Supreme Administrative Court has confirmed case law to the effect that the administrative court is the court with jurisdiction to hear actions to enforce administrative decisions to impose a fine, for violation of administrative law rules on urban planning."**

This enforcement action concerns an enforcement title produced in the context of a legal-administrative relationship: that is, an enforcement title arising from the violation of administrative rules on urban planning.

Accordingly, the enforcement of the decision imposing a fine may be challenged before the administrative and tax courts<sup>6</sup>.

Therefore, the Supreme Administrative Court has confirmed case law to the effect that the administrative courts are the courts with jurisdiction to hear actions to enforce administrative decisions to impose a fine, for violation of administrative law rules on urban planning, filed in court after 1 September 2016, regardless of whether or not they have been subject to a judicial challenge. ■

<sup>6</sup> Under article 157(5) of the Code of Procedure in Administrative Courts.