

# On the interlocutory order of public law from the perspective of effective remedy

-- A dialogue with the decisions of the  
Highest Administrative Court

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## Abstract

Effective remedy is not only a guiding principle for legislation; the content of the existing law must be interpreted in its spirit. Interlocutory order (IO) serves interim relief before the final disposal of a matter, fulfilling the functions of safeguarding the rights, distributing the risk of wrong decisions and interim satisfaction. Starting from these institutional arrangements, this essay analyses the decisions of the Highest Administrative Court concerning IO.

The court should explain the route to claim one's right, if the applicant is not clear of them. First, a precautionary IO should be awarded to the grieved, complaining of his classification as bad bidder in matters of public procurement. Secondly, the court should employ its enlightening right before dismissing an application, if the grieved confuses the prerequisites of IO and suspension of an administrative act. Thirdly, the needs of legal protection have to be satisfied before an IO is passed. A precautionary IO is in Principle prohibited, but may be passed in exceptional cases, when required through effective remedy.

Whether the application can be justified depends on the court's summary judgment of the applicant's claim and reasons in relation to IO. The court will issue IO only in matters of continuous legal relationships, in order to avoid forestalling the decisions on the main issue. For the same reason, an

application will be dismissed when the administrative has discretion. In contrast, this essays believes, that there exist exceptions to the prohibition of winning the case without its disposal. Most important of all, the court should weigh up the conflicting interest behind the abstract legal concepts, rather than mechanically interpret them.

**Keywords:** interlocutory order, interim relief, effective remedy, bad bidder, the subsidiarity of interlocutory order, needs of legal protection, model of weighing up interests, winning the case without final disposal