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RUI JOSÉ DA CUNHA



## Case-law on Administrative Procedure - Supreme Court of Macau

CASE No.: 126/2014

DATE: Judgment of 1st July 2015

### 1. FACTS

A company established in Macau filed a pleading regarding an administrative contract, in which it was a party, against the Special Administrative Region of Macau, cumulated with an application for annulment or declaration of nullity or inexistence of an order given by the Chief Executive, which rejected the complaint that the plaintiff had lodged related to the execution of the administrative contract, under the Article 113.º, no. 3 of the Administrative Procedure Code of Macau (CPAC).

According to the above referred article, whenever filing a pleading about administrative contracts there is also the possibility to cumulate the pleading with an application for annulment or declaration of nullity or inexistence of administrative acts related with the formation and execution of administrative contracts.

Notwithstanding, the Chief Executive contested this pleading, invoking the incompetence of the Administrative Court to examine the cumulated case. However, the Administrative Court rejected the defense of the Chief Executive and upheld to its first decision.

Faced with the above mentioned decision, the Chief Executive appealed to the Macau Court of Second Instance (TSI) which, following the Administrative Court, decided that the first court

had competence to examine the application for annulment or declaration of nullity or inexistence of order given by the Chief Executive.

Following the TSI’s decision, the Chief Executive appealed to the Supreme Court of Macau (TUI) on the grounds of opposition of judgments.

### 2. DECISION

TUI decided that the competent court to examine the application for annulment or declaration of nullity or inexistence of the order pronounced by the Chief Executive, was not attributed to the Administrative Court but to the Court of Second Instance of Macau, concluding that in this case the two pleadings could not be cumulated and examined by the same court, i.e. the Administrative Court.

### 3. IMPLICATIONS FOR MACAU LAW

For Macau, this decision implies the need to conform to the interpretation given here, namely the interpretation of the Article 113.º, no. 3 of the CPAC.

The decision of the Superior Court of Macau means that, despite Article 113.º, no. 3 of the CPAC allows the accumulation of pleadings, if different hierarchical levels of courts are competent to examine each one of the pleadings, the accumulation stated in the referred article will not be possible.

We should to highlight in this respect the relevance given to the principle of public matter in detriment of a procedural economy principle.

For your own consultation of the case under analysis please visit:  
<http://bo.io.gov.mo/bo/i/2015/30/out01.asp>