

Administrative control over the legality of the acts of the administrative bodies in the Republic of Bulgaria and the Republic of North Macedonia

Boban SHAJKAROSKI¹

¹PhD in law, bobansajkarovski@gmail.com

Abstract: The relevance of the topic is due to the need for a theoretical understanding and evaluation of the current legislation of the Republic of Bulgaria and the Republic of North Macedonia, which already regulate the administrative control over the legality of the acts passed by the administrative bodies in these two countries.

Our goal is to analyze the application of the institutional legal framework of the constitutions and laws of these countries to the acts of the administrative authorities, not only from the point of view of violation of the rights and interests of individuals, but also in cases of sentencing in the case of a confirmed violation, because we are mainly focused on legality control.

Key words: Control, administrative act, legality, administrative bodies.

Introduction

The limits of legality are of particular importance in the field of public administration, because the administration is in constant contact with the citizens and its actions result in a series of changes in the legal sphere of individuals. ¹(ibid. p.318) State authorities, together with the activities established by them, also perform activities to control the rule of law, together with authorities specially created with the sole purpose of monitoring compliance with the principle of legality. Each higher authority in the system of public administration is authorized to exercise control over the legality of the lower ones, i.e. subordinate bodies, as an integral part of the "leadership, organization and control" cycle.²

The state, in an attempt to protect the rights of citizens and perform optimal management of public affairs, cannot be satisfied only with the consistent observance of the principle of legality and the legal regulation of the basic rights and freedoms of citizens.³

This legal institution serves as an important way to protect the rights and interests of citizens and individuals. In the Republic of Bulgaria, with the adoption of the Code of Administrative Procedure,

a new comprehensive regulation was created for issues related to the issuance, challenge and execution of acts of an individual, general and secondary nature, such as the provisions of all acts of the Code of Administrative Procedure and special laws have full force. In the Republic of North Macedonia, control, i.e. supervision over the administration is legally regulated by the provisions of the Law on Organization and Work of State Administration Bodies.

In the Republic of Bulgaria, as well as for example in the Republic of North Macedonia and Ukraine, as parliamentary states, the principle of the supremacy of the parliament is implemented, i.e. supremacy of the legislature.

Our task is to analyze, first of all, the "administrative control" that is carried out over the activities of the public administration.

Administrative control should be understood as all types of activities aimed at obtaining information about the effectiveness of the functioning and the current state of the institution's management system based on the reaction or abstention from such a regulatory legal system in the field of public administration as a whole.

1. Administrative control in the Republic of North Macedonia

In the legal theory, we have several different definitions and views regarding the definition of the concept of the control of the administration, but its determination consists mainly in the analysis of whether the acts are in accordance with the generally adopted rules and regulations for their execution, as well as their formal and material legality.

¹ Milanov Zhivko. Local self-government. - Sofia: SU Publishing House, 1995.

² ibid. p.318

³ Angelov A., Stainov P. Administrative law for the People's Republic of Bulgaria Obshchast, Sofia: Nauka and art. - 1957. - P.315.

In ordinary and everyday speech, the term control refers to all possible forms of controls, reviews, inspections and supervision in general. However, in the law, in the legislation and especially in the administrative law, under the term supervision is meant the organized activity of precisely determined special state bodies (executive and administrative bodies - mostly), which are entrusted by the Parliament with this very activity, to determine illegalities and for them to be able to pronounce and apply sanctions.⁴

Control is a process of collecting and analyzing information, the purpose of which is continuous improvement of the efficiency and effectiveness of administrative services. It is used to ensure the responsibility of employees for the resources used and for the results they produce (responsible authority, initiatives...).

In the Republic of North Macedonia, the control, i.e. the supervision over the administration is legally regulated by the provisions of the Law on the Organization and Work of the State Administration Bodies, in accordance with Article 38 paragraph 1 of this law, the supervision over the work of the state administration bodies includes the supervision over legality and the efficiency of their work. Article 38 of the Law on the Organization and Work of the State Administration Bodies includes the state administration bodies, public enterprises, public services and institutions, natural and legal persons exercising public powers, as well as the bodies of the units, as passive entities over which supervision is carried out. of the local self-government.⁵

- Subjects of supervision

Active – the entity that carries out and implements the supervision, usually from a position of authority. Passive – the subject on which the legality of work, acts and actions is evaluated.

The government, as an executive body, often appears as a subject of supervision, that is, control over the acts and work of the state administration bodies. The government appears as the subject of some types of legal oversight. For example, for a large number of issues, special commissions within the Government (founded by it) appear as second-level authorities competent to decide on appeals

⁴ Borče Davitkoski, Ana Pavloska-Daneva, Administrative law part one (substantive law), Skopje 2018, page 297.

⁵ Borče Davitkoski, Ana Pavloska-Daneva, Administrative law - Book two (procedural law) -Skopje 2018.

filed against first-level administrative acts (decisions) brought by the highest administrative authorities. It is about performing institutional supervision.

Of the state authorities, the most typical holders of the supervisory powers are the administrative authorities, for example, the inspection authorities.

The ministries themselves, as the most important organs of the state administration, also appear as subjects of legal supervision, especially when it comes to giving consent for the adoption of certain acts and decisions by some government agencies, constituent bodies, institutions, organizations with public authorities, public enterprises, etc. It is about performing additional and preventive legal supervision as types of legal supervision.

The State Audit Office and the Public Revenue Administration appear as entities in the exercise of financial supervision and are authorized to exercise control over the use and legal disposal of financial assets by budget users, as well as over the financial transactions of individuals and legal entities in order to control the execution of obligations for payment of public duties.

Institutions and other organizations that exercise public powers can also appear as subjects of the instance supervision when they decide on the right to appeal against the individual administrative acts of institutions and organizations that decided in the first instance.

- Types of control

Supervision over state administration bodies includes control over the legality and efficiency of their work.

Speaking about the types of supervision and control, the first division that can be made is according to the subjects of supervision:

- Supervision of administrative bodies in which the public administration appears as a passive subject,
- Supervision of administrative bodies, in which the public administration appears as an active subject,⁶

The basic rule in the supervision of administrative bodies is that the higher body of the state administration exercises control over the lower body. Pursuant to Article 41 of the Law on

⁶ Jeton Shasivari, Afrim Osmani, Administrative Law for the second year, page 71, Skopje, 2022 year.

Organization and Work of State Administration Bodies, control:

- over the ministries is carried out by the Government,
- over the bodies in which the body is composed - the ministries in which the body is located,
- above the administrative organization – the competent departmental ministry for the affairs of the organization;
- over the local self-government bodies - the Ministry of Local Self-Government.

Furthermore, surveillance, regardless of who appears as an active and who as a passive subject, can be divided into several groups, according to what appears as an object of control. According to this criterion, there are the following types of supervision:

- Supervision over the legality of general acts - preventive and additional,
- Supervision over the legality of specific acts - institutional,
- Supervision over the legality of the operation - inspection,
- Supervision (audit) on the legality of the material and financial operations - financial;

One of the most commonly represented divisions of control is the one that classifies it into:

- political and
- legal control.

The legal control of the administration implies the assessment of the compliance of the acts and actions of the administration with the valid regulations and is limited to the legal moments. Legal control can be defined as supervision that is established, regulated and sanctioned by legal norms. A characteristic of legal control are the prescribed legal sanctions for the purpose of ensuring effectiveness in the exercise of control (for example, the possibility of canceling or canceling an act).

The legal control of the administration in the theory of administrative law is divided into:

- administrative control of the administration,
- judicial control of the administration and
- special control of the administration.

The subject of legal control are the legal acts of the administration (general acts or administrative regulations, administrative acts and administrative

contracts) but also material acts (administrative actions).

The purpose of the control is to determine whether the work (act and action) of an administrative body or official is legal and correct (expedient), as well as undertaking legal interventions in order to correct those legal errors.

The purpose of legal control is firstly preservation (prevention), if no violation or threat of rights has occurred, or if there has been, re-establishment of the legality and expediency (correctness) of the administration's work. This is the immediate purpose of legal control. Indirectly, the legal control of the administration ensures protection of the rights and legal interests of citizens and legal entities in legal relations with the administration.

Legal control - implies an assessment of the legality of the administration's work.

Administrative control (administrative supervision) carried out by the administration itself, which is divided into internal administrative and external administrative.

Internal administrative includes:

- the instance control, i.e. control of the work and decisions of the lower authority by the higher administrative authority based on a complaint filed by the dissatisfied client.
- official supervision, ie control of the work and decisions of the lower authority by the higher authority, which has not only the right but also the duty to control the work of the lower administrative authority.

External control over the administration includes:

- control over the government, that is, of its members, which is carried out by the parliament and which can lead to their political responsibility;
- judicial control, which can be carried out by regular courts or by special specialized administrative courts;
- control by the public, above all, through the expression of its views; and
- control over the administration performed by the ombudsman.

Administrative control in which the administration is both the subject and object of the control, i.e. where one (higher) authority of the administration, which is a state administration authority, exercises legal control over the work and acts of the other (lower) authority on the basis of appropriate legal authorities (for example on the occasion of a

complaint or on the basis of official supervision, etc.).

While the control authority is a state administration body (for example a ministry, inspectorate, etc.), the subject of control can be a state administration body, but also any non-state administration body or organization (local self-government, public enterprise, public institutions, faculties and health facilities, other facilities, etc.)

Institutional supervision is a form of legal supervision that is carried out over the legality of specific administrative acts - decisions made by the administration bodies, as well as institutions, enterprises, citizens' associations and other organizations that make decisions in the exercise of public powers, with which decide on the rights, obligations or legal interests of individuals or legal entities.

Institutional supervision can be initiated on the basis of a complaint from an unsatisfied party, or ex officio, i.e. by right of supervision, and is carried out directly by higher or secondary state authorities.⁷

2. Administrative control in the Republic of Bulgaria

Acts passed by the state and municipalities, as well as refusals to pass such acts, are often essential for realizing the rights and legal interests of citizens and legal entities. Administrative acts in all their variants have an authoritarian character (there is no agreement between the will of the bearer and the addressee), and this is exactly what determines their great importance. Despite not being part of civil and commercial legal relations, they directly and indirectly affect the creation of rights, development and termination with all their legal consequences.

Given the fact that administrative acts are compiled by professionals from the relevant field who know the work without using legal services, their legality should not be questioned. But practice shows that this is not always the case. Against the background of the complex and constantly changing legal framework in all spheres of public life, as well as the constantly changing and often not entirely clear European norms, in fact the issuance of an illegal administrative act is not such a rare occurrence.

Issuance, challenge and execution of administrative acts is regulated by the Administrative Procedure Code (APK).⁸ Administrative acts are issued based on and implemented based on the law.⁹

It is traditionally believed that the concept of "control" defines the ways of checking the implementation of requirements for legality and correctness in the system of executive bodies by the body that stands at the top of the pyramid of management bodies of the system or subsystem in the administrative apparatus, and who at the same time is responsible for implementing the goals and tasks of the respective structures.

The use of the possibility of administrative control "disputes" is incorporated into the Bulgarian legislation in the Code of Administrative Procedure (APK), where the general conditions are stated.

Administrative control should be understood as all types of activities aimed at obtaining information about the effectiveness of the functioning and the current state of the institution's management system based on the reaction or abstention from such a regulatory legal system in the field of public administration as a whole.

The Constitution, as the supreme law, institutionalizes control in general as a guarantor of the correctness and legality of the form of control performed by state authorities.

Administrative control is one of the most important functions of the executive power, i.e. state administrative apparatus. The control functions of this higher apparatus are institutionalized not only by the Constitution of the Republic of Bulgaria (RBC), but also by the laws that refer to the processes of administrative management in the respective state.

Administrative control - as mentioned above - is a type of control activity carried out by government bodies, i.e. this type of control, as such with general competence, is performed by the public authorities in comparison with the bodies of a lower rank, regardless of the fact that they are also public bodies. The legal and proper functioning of the administration is primarily the exercise of administrative control. This gives us reason to conclude that from the highest point of the executive power pyramid / MC / to the lowest, the mayor. The regulation of new public relations may

⁷ Borče Davitkoski, Ana Pavloska-Daneva, Administrative law part one (substantive law), Skopje 2018 year.

⁸Administrative procedure code from 12.07.2006 year.

⁹ <https://www.bgkantora.bg/statii/Objalvane-na-administrativni-aktove>

be an apparent inconsistency in the implementation of institutional laws or rules of conduct and a de facto existing act that leads to legal consequences for the recipient. The legitimate interests of the injured subjects, rooted in official, internal departments, are affected by external relations or their personal rights and interests by the bodies of general competence. We are talking about bodies of the Council of Ministers, governors of regions, mayors of municipalities, regions and city halls or bodies with special powers whose diversity we will consider in matters of direction and rank.

In addition to the bodies with general competence, there are also state bodies with special competence with complex activities. These are state bodies at the central, district, municipal level, at the level of the city hall, namely:

- At the central level - ministers, presidents of state bodies, heads of state institutions established by a normative act /law or decree of the Council of Ministers/ that refers to the executive power.
- At the district level - specialized government bodies that perform functions in the structure of the district administration, departments, services, etc., represented by their heads.
- At the municipal level - specialized bodies of the city administration, administrations, departments, etc. represented by their managers.
- At the level of the mayor - usually the mayor's secretary or a special employee specially appointed for this purpose performs these functions.¹⁰

Different levels of management structures have temporary functions, taking into account their institutional powers, precisely and clearly defined by legal or by-laws.

The subjects of this type of control / control bodies / are in the structure of the sector - the minister-president, the director of the sector directly subordinate to the Council of Ministers, the head of a specialized department in the structure of a certain ministry.

The subject of such control are the leading administrative bodies of the lower management structures, taking into account the hierarchy of the departmental system, including the entire

apparatus. In this case, there is general and not specific control that covers every administrative activity carried out in a given department.

In this direction, preventive, ongoing and subsequent control is carried out.

Most often, preventive and current control is applied / performed ex officio by the respective manager / in relation to the legality, as well as in relation to the correctness of the issued administrative acts.

The form and method are important for the exercise of control and are determined by the relevant / governing body / manager.

This type of control does not apply to the activities of administrative courts.

Another type is specialized external control.

Specialized foreign control should be defined as supervision, because it is carried out on a specially determined basis in the normative act.¹¹

Actions that affect the rights and personal interests of citizens and organizations, i.e. interested persons, can be appealed in accordance with the provisions of the Code of Administrative Procedure after the expiration of their validity, notification of the issuance of an act, because the content of the document can also be disputed administratively .

According to the Code, the following acts are not subject to an administrative appeal:

- the president;
- the Council of Ministers;
- the prime minister;
- of vice prime ministers;
- of ministers;
- to heads of other departments and bodies directly subordinated to the Council of Ministers;
- to the Governor of the Central Bank, President of the State Control;
- of the Supreme Judicial Council;
- to the governor of the region;
- those who are allowed by a special law to appeal only to a court;
- of acts of bodies that do not have a higher authority of the administration.

¹⁰ Boban Shajkaroski, Control and supervision over the legality of the acts issued by the administrative authorities of Ukraine, The Republic of Bulgaria and The Republic of North Macedonia.

¹¹ Garashchuk V.M. Control and supervision in state administration. Adm. Law-Ukraine, Kharkiv - 2000. - 224 p.

Objections can be submitted by interested legal entities, citizens, companies, i.e. parties to the administrative procedure. The participation of a party in the procedure for adopting an administrative act is not mandatory. It is sufficient that he has the capacity of a party - the administered act to create rights or obligations for him (the party) or affect his rights or legal interests. That is enough for the procedural interest in contesting the act.¹²

The prosecutor can file a protest on his own initiative or at the request of an interested party and can only challenge the legality.

The interested person can dispute the legality and correctness (expediency) of an administrative act.

The prosecutor does not act at his own discretion, he has a legal obligation and can only dispute the legality of the action.

Only the content of the issued document, as well as the refusal to issue a document recognizing a subjective right (the exercise or return of rights or obligations, as well as the content of such an issued document) can be disputed administratively.

CONCLUSION

Challenging the individual administrative acts of the public authority as a legal means to ensure the legality and correctness of the administration's actions is of decisive importance for the implementation and protection from violations of the basic rights and freedoms of citizens. This conclusion logically follows from the presentation, which initially considers the main ways of control and supervision over the acts and actions of the public administration and notes the natural place of special normative strengthening of power both in the historical and comparative legal sense, as well as in the prospects for its improvement as a control approach.

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¹² Dermendzhiev I., Administrative Law of the NRB. Common part. - S., 1989.