

Judicial control over the acts of the administration with special reference to the types of court decisions made after an administrative dispute

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Abstract: The very principle of the rule of law without the existence of judicial control over the legality of the acts of the administration is insufficient, so it is considered that the principle of the rule of law acquires its full meaning and definitive construction only at the moment when judicial control over the administrative acts is introduced by independent courts. The administrative-judicial control over the acts of the administration bodies is a practice that dates back to ancient times. The administrative (administrative) procedure is initiated to realize the protection of the rights and legal interests of natural persons, legal persons and other parties, as well as the protection of the public interest that the bodies of the state and local administration are obliged to act on. The relations between the bodies of the administration (administration) and the citizens arise when the citizens demand the realization of certain rights and interests from these authorities or when the administration demands the fulfillment of certain obligations by the citizens. The rights, obligations and legal interests of legal entities in an administrative procedure are decided by a specific administrative act, which means that the party in the administrative procedure has the right to legal protection against the administrative act. Legal remedies in the administrative procedure are: appeal, objection and repetition of the procedure. The complaint is submitted immediately to the secondary authority and according to the decision made by the secondary authority, the party has the right to initiate a dispute before the Administrative Court. The administrative dispute brought before a competent court ends with court decisions that will be elaborated in this paper.

Keywords: administrative dispute, court decisions, verdict, decision and administrative procedure.

INTRODUCTION

One of the essential principles of the rule of law is the conduct of the administration under the legal order. This is the function of the institution of administrative dispute. The first sprouts of the administrative dispute, as a form of judicial control over the legality of administrative acts, appeared with the establishment of the contours of the legal state. One of the basic attributes that make up the existence of the rule of law is the principle of legality of administrative acts and actions.²

In the Republic of North Macedonia, on the other hand, according to Articles 22 and 25 of the Law on Courts and Articles 2, 4 and 8 of the Law on Amendments and Supplements to the Law on Courts from November 2010, the Administrative Court and the Higher Administrative Court are specialized courts within the only judicial system in the Republic of North Macedonia.³

The administrative dispute is part of the system of court proceedings in the Republic of North

Macedonia, together with civil and criminal proceedings.⁴

In legal theory, there is no unanimity about the concept and the legal nature of the administrative dispute. Depending on different points of view, but also due to different solutions in the positive rights of individual countries, the term administrative dispute is defined differently. However, they differ fundamentally and there are two fundamental points of view: formal and material point of view for determining the term administrative dispute.⁵

The administrative dispute is a mechanism of judicial control of the legality of the individual acts of the administrative bodies and bodies with public powers. The purpose of the administrative dispute is to ensure judicial protection of the rights and legal interests, as well as to ensure legality in the protection of the rights and legal interests of natural and legal persons, as well as other parties who are injured by the final individual decisions or actions of public authorities. In every dispute, including the administrative one, the parties with conflicting interests participate, with certain

² Dr. Dejan Vitanski, Public and State Administration, II edition 2014, p.228.

³ Law on Amendments and Supplements to the Law on Courts, Official Gazette of the RSM, No. 150 of 11/18/2010.

⁴ Commentary on the law on administrative disputes, Skopje 2022, <https://www.osce.org/files/f/documents/6/d/522136.pdf>, 17 pages.

⁵ Borče Davitkovski, Ana Pavlovska-Daneva, Administrative law (book two - procedural law), Skopje, 2020, page 75.

specificities, which are separated in a separate court procedure.⁶

1. Decisions in an administrative dispute

In the administrative-judicial procedure, the rights and obligations of the parties are decided, and two types of decisions are made in the form of decisions and judgments.

1.1 Court decisions in an administrative dispute

Decisions in the administrative-judicial procedure are made: when rejecting the lawsuit; and when stopping the administrative-judicial procedure; during interruptions of the procedure.

The lawsuit in an administrative dispute can be rejected without the court entering into a meritorious resolution, for the following reasons: if the lawsuit was filed out of time; the lawsuit was filed untimely or prematurely (premature lawsuit); the contested act, action or administrative agreement does not affect the claimant's right or legal interest (there is no foreign identification); an appeal could have been filed against the administrative act or action contested by the lawsuit, but it was not filed at all or was not filed in a timely manner; other judicial protection outside the administrative dispute is foreseen; it is an administrative matter for which an administrative dispute cannot be conducted, that is, the contested act is not administrative; there is already a final court decision made in an administrative dispute for the same matter (*res judicata*).

A decision in an administrative dispute is also made when the court stops the administrative-judicial procedure. The court will stop the administrative dispute with a decision in the following cases: if the plaintiff abandons the lawsuit; if a previous (prejudicial) question arose during the procedure, the Administrative Court made a decision to terminate the procedure and directed the plaintiff to initiate a procedure for resolving the prejudicial question before the competent court and/or authority within a given period, but the plaintiff did not do so (then there is a fiction that he dropped the suit); if the defendant authority in the

meantime passes a new administrative act, then the plaintiff, since his request is satisfied, has no interest in continuing the administrative dispute, and for that he gave an official statement to the court that he is satisfied with the new administrative act.

A decision in the administrative-judicial procedure is also made when the procedure is terminated. Such is the case when a previous question arises, so the Administrative Court will have to wait for that question to be resolved in order to continue.⁷ An interruption will also occur when the conditions for implementing a model procedure are met. Namely, the Administrative Court will conduct one procedure, and stop all others. As a reminder: there is a key difference in procedural law between the terms interruption and suspension. A procedure that has been suspended can continue, while the suspended procedure is closed, that is, the matter is considered to have been resolved.⁸

1.2 Court Judgments

Verdicts in an administrative dispute are court decisions with which the Administrative Court itself resolves the administrative dispute, that is, it gives an answer to the question of whether the disputed administrative act is illegal.

The purpose of judicial control over administrative acts, that is, of the entire institution of administrative dispute, is to protect the legal transaction from illegal administrative acts, and this is most effectively achieved and realized precisely through judgments. Accordingly, the meaning and effect, as well as the authority of judgments in administrative disputes, are of crucial importance in the protection of the rights of citizens and the principle of legality in administrative and legal relations. Through the judgments in the administrative dispute, the principle of legality in the resolution of administrative matters is affirmed in the best possible way. With the judgments in the administrative dispute, illegal administrative acts are annulled and the administration is forced to resolve them legally. The judgments in the administrative dispute have a mandatory character and everyone is obliged to respect them in the introduction of order and legality in the numerous

⁶ Center for Legal Research and Analysis, Manual for holding a hearing in an administrative dispute, <https://fosm.mk/wp-content/uploads/2020/05/priracnik-za-vodene-na-rasprava-vo-upraven-spor.pdf>.

⁷ Law on Administrative Disputes, Official Gazette No. 96 17.05.2019, Art. 44 and 45.

⁸ Borče Davitkovski, Ana Pavlovska-Daneva, Administrative law (book two - procedural law), Skopje, 2020.

administrative acts that decide the rights, obligations and interests of citizens and other subjects in the legal transaction.

1.2.1 Form and content of judgments in the administrative dispute

The form of court judgments in administrative disputes is written, and the judgment is always passed in the form of a written act. The judgment is passed by the Administrative Court on the basis of a conducted preliminary and regular procedure or only a preliminary procedure, if there was a basis for annulment. The court passes the verdict by a majority of votes, and a separate record is kept for the consultation and voting, which is signed by all members of the council and the recorder. If the court acted through an individual judge, then the individual judge makes the judgment. Consultation and voting is done without the presence of the parties. Accordingly, the three-member council passes the verdict with a majority vote.

Court judgments in the administrative dispute, as written documents, are composed of:

- introduction;
- dispositive (saying);
- rationale;
- and instruction on appeal, if it is allowed.⁹

The introduction of the judgment contains the following elements: designation that the judgment is pronounced on behalf of the citizens of the Republic of Macedonia; name of the court; name and surname of the president and members of the council, that is, the individual judge and the recorder; name and surname or nickname, residence, that is, residence or seat of the parties, of their representatives and proxies; basis of the subject; date of judgment.¹⁰

The operative part of the judgment is its most important part. It contains the decision, ie. the method of resolving the administrative dispute. If the claim is rejected as unfounded, then only the fact that the claim is rejected is indicated in the dispositive. If the lawsuit is upheld, then the contested administrative act is annulled. If it is a dispute of full jurisdiction, in the dispositive it is stated how the court decided the administrative

matter itself (for example, the amount of the pension is determined, i.e. the right to a pension, etc.). In the event of a dispute due to the silence of the administration, if the court upholds the lawsuit, in the dispositive order it will instruct the competent authority in what sense to pass an act that will resolve the given administrative matter (in this case the administrative act is not even annulled because it none). Otherwise, the dispositive must be separated from the reasoning.

The reasoning is also a very important integral part of the court verdict in the administrative dispute. It should contain the reasons that motivated the judicial council to make such a verdict. In the explanation, the facts of the dispute from which the court started (evidence) and regulations and legal rules that the court took as a basis for its judgment are presented. In the explanation of the judgment, the court states the reasons for which it annulled the administrative act, as well as the claims it accepted and the claims it did not accept. The reasoning should be clear and the position of the court in that dispute should clearly emerge from it, and it should be seen why the court considers the contested act to be legal or illegal. Otherwise, there should be a logical unity between the dispositive and the reasoning, that is, the dispositive should be a logical consequence of the reasoning.¹¹

Appeal instruction is possible, but not mandatory. Previously, it was a mandatory integral part of the verdict, however, since the appeal according to the current Law on Administrative Disputes is only exceptionally allowed, its existence depends on the admissibility of the appeal.¹² If the appeal against the first-instance judgment is allowed, then the instruction on appeal contains the following elements: within which period the appeal must be declared, the court to which it must be filed and the deadline for filing.

1.2.2. Types of court judgments in the administrative dispute

Judgments in administrative disputes can be diverse depending on the basis, that is, on the criterion for their distinction. There are several criteria for distinguishing them, but we will consider only three of them. The first basis for the division of judgments in an administrative dispute is the authority of the court and its action in relation to

⁹ Law on Administrative Disputes, Official Gazette No. 96, May 17, 2019, Art. 62.

¹⁰ Law on Administrative Disputes, Official Gazette No. 96 17.05.2019, Art. 62 paragraph 3.

¹¹ Law on Administrative Disputes, Official Gazette No. 96 17.05.2019, Art. 62 paragraph 4.

¹² Law on Administrative Disputes, Official Gazette No. 96 17.05.2019, Art. 62 paragraph 5.

the contested administrative act. According to this basis, rulings in an administrative dispute can be: a ruling in a dispute of full jurisdiction; judgment in a legality dispute (judgment of annulment).

Adjudication in a dispute of full jurisdiction is the rule under the Administrative Disputes Act 2019. According to the latest law that regulates the administrative dispute, namely, if the court finds that the contested administrative act is illegal, it will approve the claim with a verdict, annul the contested individual administrative act and resolve the administrative matter itself, while this verdict in the entirety replaces the annulled individual act. A judgment in a dispute of full jurisdiction is passed even when the dispute is initiated due to the silence of the administration. The Law on Administrative Disputes stipulates that if the Administrative Court determines that the public body did not pass the individual act that should have been passed within the set deadline, it will approve the claim with the verdict and will resolve the administrative matter itself.

An annulment judgment (judgment in a legality dispute) is provided for as an exception. Such a judgment will be passed by the Administrative Court only when the public body that is being sued made a decision based on a free evaluation or when the nature of the administrative work does not allow decision-making in full jurisdiction, that is, the court cannot fully establish the facts on the essential issues and it is necessary in an administrative procedure to determine the true factual situation. The annulment judgment only annuls the illegal administrative act and returns the case to the competent authority, which passed the annulled act, with the obligation to take it into a new resolution. In doing so, he indicates to the authority how to act. If the court once rendered a verdict of annulment, and the authority re-enacted the same administrative act as the already annulled one, then the court must render a verdict in a dispute of full jurisdiction.

Another division of judgments in the administrative dispute is the one based on the relationship of the court to the lawsuit, that is, it depends on the relationship of the verdict to the lawsuit. On this basis, judgments in the administrative dispute can be: respectful judgments; and rejection judgments.

Respectful judgment in the administrative dispute: if the court upholds the claim of the dissatisfied party (in whole or in part) because it considers that it is founded, and the contested act is illegal (due to formal or material illegality), the court upholds the claim with a judgment, so it annuls the contested act and replaces it (either in whole or in part and instructs the sued authority to adopt a new act).

Rejecting judgment in an administrative dispute: in practice, it often happens that a lawsuit against an administrative act is unfounded, so when the court determines that the administrative act is legal, then there is nothing else left for it, except to issue a verdict rejecting the lawsuit. The rejecting verdict, unlike the upholding one, does not lead to any changes, but only declares and finds that the contested act is not actually illegal, so there is no need to change anything in it. In this judgment, that is, in its operative part, it is only stated that "the lawsuit is rejected", and in the rationale the reasons (of the court) for rejecting the lawsuit are presented.

2. Analysis of administrative-judicial protection (administrative disputes) with reference to the work of the Administrative Court of the Republic of North Macedonia

The Administrative Court started its work on 05.12.2007. The purpose of its establishment was to ensure a higher degree of protection for citizens.

2.1 Review of the work of the Administrative Court Skopje

Administrative court	2020 year ¹³	2021 year ¹⁴	2022 year ¹⁵	2023 year ¹⁶
The rest	5038	4389	5580	5189
Seduced again	215	222	233	178
Newly formed	6627	8871	6401	5199
Total in work	11851	13434	12181	10540
Solved	7426	7854	6692	6184
Unsolved	4389	5580	5189	4356

¹³ Report on the work of the Administrative Court for 2020, Skopje-February 2021, p.4

¹⁴ Report on the work of the Administrative Court for 2021, Skopje-February 2022, p.4

¹⁵ Report on the work of the Administrative Court for 2022, Skopje-February 2023, p.4

¹⁶ Report on the work of the Administrative Court for 2023, Skopje-February 2024, p.3

From the above-mentioned overview of the work of the Administrative Court of Skopje, we can see that in terms of the largest number of newly established cases for work, there is a slight decline in the following years (2022 and 2023).

CONCLUSION

A large part of the activity performed by the administration is basically legal. At the same time, if such activity is not explicitly legally regulated and controlled, there is a potential danger of violating the principle of legality, and this would generate a shaking of the foundations of the legal state.

The importance of the administrative dispute is aimed primarily at the protection of subjective rights through the evaluation of the legality of the final individual administrative acts in which the public authorities directly influence by deciding on the rights, obligations or legal interests of the party, which includes the scope, quality and efficiency of judicial protection which has implications on the functioning of modern, democratic society and the establishment of modern public administration.

Through the decision on the administrative dispute, the individual rights of citizens and legal entities are guaranteed, and in recent years there has been progress in the guarantee of human rights and in the adoption of legal regulations in order for citizens to exercise their rights more easily and to regulate the relations between citizens and the state. But one thing is certain, often behind the declarative guarantee of human rights, the government aims to use its official position behind the veil of protecting the public interest.

The role of the administrative courts as guardians of the provision of objective legality is diverse, so the administrative dispute is a procedure for judicial

protection after the final administrative acts of the bodies of the public bodies, hence for its initiation only the violation of the right or legal interest of the party that is important initiates the administrative dispute. The judgments of the administrative judges, like any judgment of any court, should be legal, but at the same time fair, that is, they should leave an impression of fairness to the parties, as well as to the general public. The legal norm is operationalized in the court verdict, therefore in the verdict it is necessary to convey, as precisely as possible, the true meaning of the law and the thought (interpretation) of the judge who applies that law.

REFERENCES

- Borče Davitkovski, Ana Pavlovska-Daneva, Administrative law (book two - procedural law), Skopje, 2020.
- Dr. Dejan Vitanski, Public and State Administration, II edition 2014, p.228.
- Law on Administrative Disputes, Official Gazette No. 96 17.05.2019,
- Law on Amendments and Supplements to the Law on Courts, Official Gazette of the Republic of North Macedonia, No. 150 of 18.11.2010
- Report on the work of the Administrative Court for 2020, Skopje-February 2021, p.4
- Report on the work of the Administrative Court for 2021, Skopje-February 2022, p.4
- Report on the work of the Administrative Court for 2022, Skopje-February 2023, p.4
- Report on the work of the Administrative Court for 2023, Skopje-February 2024, p.3
- Commentary on the law on administrative disputes, Skopje 2022, <https://www.osce.org/files/f/documents/6/d/522136.pdf>, 17 pages.
- Center for Legal Research and Analysis, Manual for holding a hearing in an administrative dispute, <https://fosm.mk/wp-content/uploads/2020/05/priracnik-za-vodene-na-rasprava-vo-upraven-spor.pdf>.