Case of administrative dispute

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Abstract

The activity of administrative bodies includes big numbers of various acts and actions, through which the will of public administration is formed. The will of public administration bodies, expressed in administrative individual and normative acts, in administrative contracts and real acts, finds its reflection in the Constitution, laws and other provisions of legal character. All this activity is not inerrant and therefore, it is not uncontrollable. The supervision of executive activity is subject to political control of administrative acts through authorities designated for this purpose, as well as internal control and the judicial control. The institution of judicial control of administrative acts and actions appears as very important and widely treated in the legal doctrine. The protection of constitutional and legal rights of private persons is accomplished by subjecting administrative activity both to internal administrative control, as well as to the judicial control in accordance with legal provisions.
The judicial control of administrative acts represents a constitutional guarantee for citizens to protect their rights through public and fair trial by an independent and impartial court. In this way, the Constitution empowers the common administrative court that invalidates an action or administrative act, but not all administrative acts may be subject to administrative dispute, with the exception of cases against which the administrative conflict cannot be carried out (negative enumeration).

Keywords: administrative bodies, administrative actions, administrative acts, administrative supervision, judicial control.

Introduction

The information that the public administration is a necessary tool for the execution of significant number of activities, that the state administration has broad powers and is well organized, it is required a multifaceted control over the administration, in order to safeguard the activity's lawfulness and effectiveness (Borkovic, 1987, 82).
To ensure the lawfulness, liability, and efficiency in the work of public administration bodies and public services, permanent control is needed, which also means limitation of excess and abuse of power.
Administrative dispute exists when the legal issue that belongs to the conflict, is an issue of pertaining to the administrative law, and based on that it is not important which body issues the act, but it is important that with that act, administrative law provisions have been implemented fairly (Gelevski & Davitkovski & Grizo, 2011, 597).
Administrative conflict enables the parties to present their views through a contradictory debate. Administrative conflict appears between individuals and the public administration body, or in other words between entities that issue administrative acts and on that occasion they demonstrate power, and those entities who are in a submissive position to administer legal relationships (Sadushi, 2005, 254).

Administrative conflict is inextricably linked to the notion of administrative work, which is why it is defined as a conflict that takes place between individuals, legal persons, institutions in one side and administrative bodies and other state bodies of public service on the other side, that are related to the legality of the decision issued in the administrative work in the context that led in court, in a separate administrative procedure (Gelevski, 2003, 254).

Judicial control of the administrative work of the administration is a judicial method that eliminates the illegality (lawlessness) in administration in order to avoid illegality in administration. While performing the functions assigned to courts, in certain cases judicial control in this area is not only excessive, but often takes into account the position of judicial bodies, the general system of state bodies and the method and tools they use, which is one of the most appropriate controls that exist in the governmental system (Dobjani, 2003, 225).

Case of administrative dispute

In order to protect the rights and freedom of citizens and to initiate an administrative dispute, it is necessary for the administrative body to issue an act, which must meet the following specific conditions:

1. an act issued by an authorized issuer, i.e. be issued by a state body or working organization in activities exercised under public authority i.e. (for giving a construction land for temporary use and termination of use of that land, not judicial authorities);
2. authoritative act - to be issued in an authoritative way (unilateral expression of will to create legal and administrative relationship), i.e. it should be an act of power and not an act of activity (work) (Sokoli, 2014, 224);
3. a legal act – to have the function of a legal act and not of material act, i.e. to create legal consequences on the rights and obligations of legal entities (Popovic, 1979) e.g. (finding, evaluation and the opinion of the medical commission of Health Insurance Fund is not an administrative act for which a court protection is provided, but a professional opinion is needed);
4. an act issued in administrative matters - in which primary availability is designated, i.e. placed on any right, obligation or legal interest of a certain party, e.g. (demand of the plaintiff, to take measures for warning and punishment of employees of the state body due to abuse and exceeding of official powers in receiving any complaint does not represent an administrative work, since warning and punishment of employees in the Ministry of Interior does not represent the realization of the right of the plaintiff in any administrative matter);
5. concrete and individual - an act by which is decided for a particular case on the rights and obligations or legal interests of certain legal entity (of an individual or legal entity), i.e. administrative dispute may not be initiated against the common acts of the state bodies that carry out public authorizations, as the same acts are abstract rules on which legal relations of individuals or legal entities are based, e.g., (Urban planning is a common act, which is issued for carrying out of activities from their powers);

6. be a final act in administrative proceedings (administrative dispute may be initiated against the administrative act issued by the second instance body after filing the complaint against the act issued by the first instance body (Sokoli, 2014, 223).

Administrative act is an act by which the state body or the organization in the exercise of public authority decides on any rights or obligations of a particular person or organization for certain administrative issues.

Administration legal acts are divided in two categories:

- Normative acts or acts of general character (provisions),
- Individual acts.

Normative acts are acts belonging to an indefinite number of persons and indefinite number of cases (Stavileci, 1997, 110). Normative acts or general acts are acts through which administrative bodies generally regulate certain norms of behavior, an indefinite number of cases. By normative acts, administrative bodies are not required to regulate material-legal relations, with provisions that regulate the ways of law enforcement. Such acts are: laws, decrees, resolutions, rules, administrative ordinances and guidelines. These acts cannot be subject of administrative dispute. Cases of administrative dispute cannot be acts issued on matters where judicial protection is guaranteed outside the administrative dispute and on issues decided by the Assembly and the President of the Republic.

The administrative act is a legal act of the administration, where the administrative body in an authoritative way solves a particular issue, the so-called "concrete legal-authoritative act issued in administrative work". Also, the administrative act is defined as an act or action, by which is decided on the rights, obligations or legal interests of parties in administrative proceedings, respectively, an act by which under the law is decided on the rights, obligations and legal interests of certain persons in a given situation which has the character of the administrative work.

What is the difference between administrative acts on the one hand and administrative provisions, judicial act and legal work on the other hand?

The common characteristic of administrative act and administrative provisions is the authority, and the difference is that the administrative act is an individual act, and administrative provisions is a general norm or part of the common act, without which there is no administrative act.

Administrative and judicial acts are legal acts that are issued in individual cases. The difference between them is that the administrative act specifies the availability, and judicial act determines the sanction, if it is proved that the provisions of legal acts have been violated.

Administrative act and legal work are individual legal acts that are distinguished on the basis of their authority, i.e., the administrative act is an authoritative act, whereas the legal work is a private act (Popovic, 1979, 114). According to the body which issued the decision it should be made a difference between the decision issued by the (individual) body, a decision issued by a collegial body and a decision issued by two or more bodies.

According to their form, decisions may be: written or oral..

Partial decision is issued in case when it comes to such an administrative situation, or

when in an administrative case it is decided on more issues, but only some of them have met the requirements for consideration, while on other issues it will be needed to be decided with special decision. Additional decision is the act by which issues are solved and are not discussed in the proceedings.

Collegial administration bodies issue valid decisions with the participation of more than half of the total number of members of a collegial body, for which issuance the majority of those that are present have voted. Decisions issued by two or more bodies are complex decisions.

If the law anticipates for an administrative case to be decided by two or more administrative bodies, each of these administrative bodies shall decide on the administrative issue, while administrative bodies between themselves will make an agreement for the decision to be issued only by one body. The body that issues such a decision must cite the act of the other body who participated in resolving the issue. In these decisions, we distinguish: a decision issued by a body in cooperation with another body, certified or approved decision by another body. Decisions in administrative proceedings are issued in writing. The joint decision is issued when it comes to a matter that belongs to a larger number of people, but in these decisions all the persons should be named in the enacting terms of the decision, and in the explanation of the decision should be counted the grounds belonging to each person. Common decision is a special type of joint decision, which is issued when it comes to administrative matters belonging to a greater number of persons, that are not known to the authorities. The common decision contains data from which it can be easily ascertained to which persons the decision belongs. Common administrative act is an act which belongs to several persons, and they are not named in the act. E.g. the act by which the inhabitants of a road are ordered to take part in fire extinguishing action. Declarative acts are called acts by which only the existence of administrative legal relations is proved. The action of these acts is the moment when the relationship is created, ex tunc. These acts have a retroactive effect, i.e. that these acts apply from the moment when they are stated-

Subject of an administrative dispute are discretionary administrative acts, or acts issued on the basis of free evaluation through which the administrative body is entitled, when and what administrative act shall be issued or which of the opportunities provided by law will be used. Subject to judicial control cannot be parts of the administrative act in which the administration is free to decide, with which the administration can make a discretionary assessment. The opportunity of the administrative body requires certain freedom of decision, which is why even the court cannot be involved in the research of opportunity of such acts. Subject to judicial control are those parts of the act, which are issued under a discretionary assessment, who are legally related.

According to the administrative doctrine, discretionary power must be controlled. Uncontrolled or absolute discretion is unacceptable and should be avoided (Sadushi, 2005, 280).

Judicial control of the legality of administrative acts issued under discretionary evaluation is manifested through: control with the authorization of administrative body, who decide on a discretionary assessment; the control how the competent

authority has acted in the limit of the powers in carrying out the free assessment; control of the facts on which the issued administrative act is issued based on the free assessment; control of the use of formal-procedural provisions, the control of legal intention and the control of case or local jurisdiction. It should be noted that there are absolutely no free acts; the discretion of the administrative authorities does not mean free discretion from all legal limits. Discretion must be exercised according to the purpose for which it is given and the legal restrictions that apply to its exercise must not be exceeded, but the discretionary power must be exercised in accordance with the Constitution and the spirit of the positive legislation. Discretion does not mean arbitrariness. Discretion means that the right or action shall be made and exercised according to the rules of reason and justice, and not by private opinion. So, the right or the action should not be arbitrary, vague, but legal and to be exercised within the limits the authority itself should be limited to, in order to achieve a lawful purpose.

The legal basis, on which the rule of discretion is based, is something that is called permissible as long as it is not prohibited. Discretionary assessment must be applied in the way the public or social interest foresees them. During its execution, the administrative body operates under the principle of opportunity. Discretionary assessment applies when legal-material conditions are met. Here it should be noted the difference between discretionary assessment and free assessment of facts.

Administrative acts will gain the epithet of incomplete acts, when they are issued on the basis of free evaluation, during which it came at the incorrect use of discretionary powers, during the solving of administrative issue. Administrative dispute cannot be initiated; the administrative act cannot be initiated, because of incompletion of acts. In discretion we have excess and abuse of power. In this context, there is a difference between exceeding and abuse of discretion.

The use of discretion is not for the proper purpose but for its misuse. The opposite of discretionary administrative acts are legally related acts during the issuance of which the administrative body is not free in the selection and deployment. When these acts will be issued by administrative bodies, conditions and contents of these acts is strictly defined by the law (Gelevski & Davitkovski & Grizo, 2011, 268).

The basic criterion for the classification of administrative acts in positive and negative is the changing of legal relations. Positive acts are those administrative acts which produce a change in existing legal relationships, whether new relationships are created, or the existing ones change or end. A positive act for e.g. is the decision by which a certain person is taxed.

Negative acts are those administrative acts by which the change of existing legal relationship is refused. The initiation of an administrative dispute through the indictment is conditioned upon consumption of legal remedies in the administrative procedure. So, the law envisages (Pollozhani & Salihu, 2004, 153) the rule that the body of the second instance related to the appeal cannot change the decision to the detriment of the applicant, except in cases when the decision could be annulled or dissolved in accordance with the right to supervision, extraordinary to be broken or declared invalid. This means that the parties in the second instance process cannot realize fewer rights than in the first instance process, except in case of drastic illegitimate job of first instance body.

The Law on Administrative Disputes of the Republic of Macedonia provides the opportunity to initiate an administrative dispute even when the competent body has not brought an act at the request of the party. But the law implies that the principle of double degree in the administrative procedure must necessarily be observed during the initiation of administrative dispute. The "silence of the administration" is evident when the party receives a negative response from the first instance body, and then submits a complaint to the second instance body, while the latter is not declared on the basis of the complaint, the party in accordance with (Article 22) of the Law on administrative disputes, may initiate an administrative dispute, after the deadline (60 days or a shorter deadline set with special provisions, i.e. within 8 days after the repeated request) provided in the law for the issue of the decision based on the administrative act. If the party did not accept the act required by the body of first instance within the time prescribed by law (60 days or shorter prescribed by a special provision, i.e. not within 7 days limit after the repeated request) the party may initiate an administrative dispute following the appeal to the second instance body which in due time does not issue a decision based on the complaint.

Changes in the Law on administrative dispute, expand the case of judicial and administrative review, so that in addition of state administration and local self-government acts and organizations with public authorizations, as cases of an administrative dispute anticipates other provisions of the Government which provide adjustment of individual reports, decisions of the Parliament and the President of the country when it comes to appointments and dismissals, acts of public administration bodies or organizations, issued in a misdemeanor procedure, administrative contract, among which particularly emphasizes the concession agreements and public procurement contracts, conflict of jurisdiction between bodies, subject to administrative dispute may be the demand for the return of items taken (confiscated), and compensation for the damage caused to the plaintiff by execution of the contested act.

In this way, the negative enumeration in determining the case of administrative dispute is reduced compared to the previous situation. Administrative dispute may be initiated for the legality of the act of state bodies, government authorities and holders of public authorizations issued in the form of the provision that regulates the individual relation and the implementation of concession contracts, public procurement contracts of public interest and for any other contract in which one party is a state body, an organization with public authorizations, public enterprises, municipalities, related to the public interest or public service execution (administrative contracts).

Conclusions

The activity of every public administration body is materialized with the issuance of the act. Administrative body with an administrative act creates a new legal relationship that changes relationships by perfecting them more or by extinguishing them. The existence of diverse legal relations arising in the activity of public administration necessarily brings different types of administrative acts which differ in their content and form

The creation, change or termination of a legal relationship occurs only as a result of a voluntary and conscious behavior of human and in the case of the administrative conflict, of concerned body. The aim for the issuance of an administrative act represents the government's will of the administrative body. Also the legal consequences arising from the administrative act are those which are wanted from the administrative act. However, legal consequences can arise from an administrative act, which are not wanted by the entities of the act.

Judicial control of administration enables the restriction of the almighty administration and legality in their work by issuing legal and right decisions which do not affect the rights of entities, i.e. control from the third entity (Administrative Court). The administrative bodies shall do the whole work in accordance with the principles of the rule of law, the administration to act in an impartial manner, apolitical and oriented towards the citizens. Their task should be carried out in an efficient, effective and transparent way.

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