

Reasons for the cancellation of the administrative decision by the administrative court

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Abstract

Law enforcement is one of the main goals in the construction, development and strengthening of a state. The principle of legality presupposes respect, strict and mandatory implementation of the Constitution, laws and other legal acts by all state bodies, institutions and public authorities, officials, NGOs and citizens. The state as a whole through its powers controls the precise and uniform application of the Constitution and other legal acts together with the law. On the basis of these constitutional principles of a state the administration should act as well, in order to fulfill its duties and not to affect and prejudice the rights and interests of citizens. In order for this to be accomplished the administration should not violate the interests and rights of citizens as well as public interest. It is necessary for all stakeholders to respect and implement the fundamental constitutional principles, since all people are prone to make mistakes and violations of the rights of citizens, some of ignorance and others from the misapplication and misinterpretation of law.

In order for all this activity to be regular by the executors of administrative power, it is necessary to carry out supervision and permanent control both in terms of the devolutive principle (the highest bodies control the underrated bodies).

Keywords: administrative bodies, administrative decisions, administrative court, cancellation of administrative act, judicial control.

Introduction

The administrative procedure involves the actions undertaken by the administrative authority (body) to decide on specific administrative issues in order to protect the public (social) interest or the citizens as a party in the proceedings in order to exercise particular rights and interests. The administrative procedure is a guarantee for the party through legal procedural way and through the right implementation of legal provisions to realize its rights. The activity of administrative bodies passes through several phases and all this is crowned by issuing an administrative act through which is formed and emerges the will of public administration. This willingness of public and state administration bodies is expressed in individual and normative acts and finds its reflection in the Constitution, in laws and other bylaw provisions.

The knowledge that the state administration is a necessary tool to implement some significant actions, to establish a multilateral monitoring on the administration in order to safeguard the legality and efficiency of activity (Borkovic, 1987, 82). To ensure the legitimacy, accountability, and efficiency in the work of state administration bodies and public services, it is needed a permanent control, which also means a limitation of excess and abuse of authority. Control means a form of influence that the superior administrative body exercises over a subordinate body, whether related to the performance of their official duties, or in order to ensure the proper implementation of laws and bylaws of higher acts by the subsidiary body (Stavileci 2010, 100).

Administrative conflict allows the parties to present their views through contradictory debate. Administrative conflict appears between individuals and the public administration body, or in other words between entities that issue administrative acts and who manifest power on that occasion, and those subjects who are in a subjected position in an administrative legal relationship (Sadushi 2005, 254).

Administrative conflict is inseparably linked to the notion of administrative work, and for that reason it is defined as a conflict that occurs between individuals, legal entities, institutions on the one hand and administrative bodies on the other, related to the legality of the decision issued in the administrative work in the dispute that is held before the court in a separate administrative procedure (Gelevski 2003, 254). Judicial control of the administrative work of the administration is a judicial way (voie juridictionelle) to eliminate unlawfulness in exercising the administrative power that can be implemented.

The reasons for the cancellation of the administrative decision by the Administrative Court in the Republic of Macedonia

In accordance with the Law on Administrative conflict (Article 10), the administrative act shall be cancelled if:¹

- the law is not applied correctly;
- the decision is issued by an incompetent body;
- if in the procedure is not acted on the basis of procedural provisions, the actual situation is not properly verified, i.e. based on confirmed facts it has come to a wrong conclusion.

Court's advantage in an administrative conflict is the issuance of a decision on a legal issue. If the court in an administrative-courts proceeding does not confirm legal formal reasons for the cancellation of an administrative act (errors in the factual situation, violation of procedure and competence), the administrative contested act shall be annulled when it will establish that by an administrative act, the legal issue is not placed in the right way. The legal issue will be considered unsolved correctly when by the administrative act legal-material provisions are violated. Law violation can be done both in terms of the text of the law as well as the wrong interpretation of the law or wrong application of the law. The Administrative Court of the Republic of Macedonia, confirms that the indictment is based, since in administrative procedure even though the factual situation is uncontested, that the plaintiff's right for pension has been accepted by a Decision from 01/08/1990, while the same calculated from 01/03/1993, taken due to the establishment of private enterprise, the body erroneously applied the substantive law. In fact, the administrative body has concluded that in order for the claimant to lose his pension rights, founding of the company or founding of new employment relation again, is enough.

Violation of Law in view of the text can be direct and indirect. Violation is direct when administrative body issues an administrative act which is contrary to the text of the law in force. Indirect violation occurs with the completion of the text by the competent authority or with the creation of new legal norm. In this law there is no provision for the registration of temporary buildings, which does not mean that the temporary facilities built with the approval should be recorded together with the facilities built

1 Law on Administrative Conflict of RM 2006, Section 10.

without permission in a manner the first-instance body acted. According to the court, temporary facilities constructed of strong material, or in any other way connected to the ground as immobile, are real estate for which there is a right of ownership, and that this right shall exist until the object exists, respectively until the deadline set for the duration of the facility. Given the provisions of the Law on Cadaster and registration of real estate rights on the basis of which real estate are considered: land, buildings, outbuildings and other facilities built on the land.

The court found that the rights of temporary facilities of solid material or in any other way connected to the ground as real estate should be registered at the Real Estate Cadaster, built with the approval of the competent authority, with particular emphasis that we have to do with a temporary building. (Law on Cadaster of RM, as amended and supplemented, no. 04/09/2015)

Incorrect interpretation of the law, exist when facts or situations are given the meaning that they do not have in relation to the Law.

The case jurisdiction for consideration in the administrative procedure established by law

Local jurisdiction is determined on the basis of acts on internal organization of the bodies that decide at an administrative procedure. None of the authorities has the right to take certain administrative matters from the jurisdiction of another body. Competent review authority of a certain administrative issue can only, according to defined legal powers, transfer to another body the consideration of that issue.

The case jurisdiction and local jurisdiction cannot be changed by agreement of the parties and the bodies or by agreement of bodies, unless otherwise specified in the law.

If in accordance with the Law on General Procedure, local jurisdiction have two or more bodies, jurisdiction shall have the body which first has initiated the procedure. The body that initiated the procedure retains jurisdiction even when during the procedure will appear circumstances under which the local authority will belong to another body. But if the procedure is mitigated for the party, then the body which initiated the procedure has the right to submit the case to the body that under the new circumstances wins local jurisdiction. If the competent authority has carried out any action during the proceedings, the competent body which receives the competence estimates if any of those actions will have to be repeated. Each body performs official duties within the limits of its territory. If there is a risk of cancellation, while the official action should be carried out beyond the limits of body's place of living, the body than has the right to conduct outside the borders of his residence, but it is obliged to immediately inform the body in whose residence the action was taken. For the conflict of competences between the competent administrative authorities, competent is the Government of Republic of Macedonia. Conflict of competences between organizational units, established for the purpose of carrying out certain administrative issues within the competence of the state administration, is solved by the state administration body. In the collegial bodies, decisions on administrative matters shall be issued by a collegial body, if by law or legal provision is not assigned a member of the collegial body for issuing decisions in administrative proceedings. If for administrative appraisal of the case is competent the Government of RM, the municipal body, the procedure is conducted by the administrative body where the

administrative issue belongs to its jurisdiction, unless with another legal provision is not decided for the procedure to be conducted by another body. In administrative matters where a legal person or other person decides, who has been legally entrusted with public authorization, the decision is issued by the individual authority, i.e. the person who carries out an adequate function, whether by law or general act of the legal person is not appointed another organ or another person who will decide on the administrative issue.

Macedonia's legislation recognizes the right of the Court to establish the facts and to cancel the administrative acts, if it confirms that the administrative authorities have not proved factual situation fairly. The accused organ has rejected as ungrounded the appeal filed against the Decision of the Public Revenue Office, which the plaintiff was obliged to pay personal income tax of property and property rights for 2010 in the amount of 22 356, 00 Euro considering that the first instance body has issued a lawful Decision in accordance with the Law on Personal income tax, given that the claimant has provided a tax application.

Administrative Court by accepting the indictment as founded had concluded that the contested Decision is illegal and by such decision is violated the law because of erroneous and incomplete confirmation of factual situation and erroneous application of the law. The Court then concludes that in accordance with the Law on personal income tax, if the offered property revenues and property rights are smaller, the body of public revenue determines the potential revenue by comparing the price of rent the same buildings that are leased to approximately the same price. In the present case from the case file, the court has founded that it was tax income of the property in 2010 from the rental of business premises, and the body should have implemented (Article 36) of the Law on personal income tax, which is calculated with annual income tax. Such a wrong and incomplete action has confirmed the factual situation thus improperly implemented the law.

With the contested charges, the plaintiff's complaint filed against the Ministry of Internal Affairs is rejected, thus the plaintiff's request for the acquisition of RM citizenship has been rejected. Then the sued body has estimated that the plaintiff did not meet the requirements of (Article 9) of the Law on Citizenship, in conjunction with Article 2 and 8 of the Law on submission of residence and place of stay of citizens.

If the administrative act is based on untrue material facts, which do not have special importance for the issuance of a concrete administrative act, in accordance with the law, such facts shall not be a reason such an act of administrative court to be cancelled. What if the administrative act is based on many facts, some of which are inaccurate or untrue at some important points? In this case if the court finds that the incorrect facts were so important for the issuance of an administrative act, the administrative act shall be cancelled. Unless the court concludes that for the regularity of the challenged act is sufficient the existence of proven and correct facts, then the court will not take into consideration the wrong facts. The court will annul the administrative act due to the incompletely confirmed factual situation and in cases where the competent authority has not provided documents without which you cannot determine the factual situation and decide competently on it. The factual situation will be considered to be proved in an incomplete manner even when the competent authority has failed to make the assessment of certain facts that could affect the Decision of the administrative conflict. In order for and Administrative act to be valid, it is not necessary to prove the factual situation in the right way but it is necessary to derive a fair conclusion in relation to the factual situation. If it is acted

differently from this rule, the contested administrative act shall be annulled

Conclusions

The activity of every public administration body is materialized with the issuance of the act. Administrative body with administrative act creates a new legal relationship that changes previously created 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. Through administrative acts are expressed purposes, specific goals and objectives are accomplished, forms and methods of state management occur, the organizational and creative character of the administrative body that compiles and issues the act is determined, and a vision for the real existence of the state is created.

In the daily administrative activity the act may serve as a basis for issuing other administrative acts, as may also play the role of a legal fact. The creation, change or termination of a legal relationship occurs only as a result of a voluntary and conscious behavior of a human and in the case of the administrative conflict, of concerned body. However, from an administrative act can arise legal consequences, which are not wanted by the entities of the act. So, there may appear consequences that exceed the purpose for which this act was issued. If this act which violates or infringes the rights of certain entities is not regulated by the use of legal remedies in the procedure of issuance of the act (the complaint), then the subjects who did not achieve their rights in the regular administrative procedure, will require a third solution of implementing of the right, and this is through court, the initiation of administrative dispute in the Administrative Court or in Courts of general jurisdiction.

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.

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