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THE IMPERATIVE CHARACTER OF THE RULING OF THE ADMINISTRATIVE JUDICIARY IN THE REPUBLIC OF MACEDONIA- REAL OR FICTIVE PROTECTION OF THE RIGHTS AND INTERESTS OF THE CITIZENS

Abstract

With this paper an effort is made to show how much the concept of the administrative judiciary protection in the Republic of Macedonia ensures true and quality protection of the rights and interests of the parties. Inarguable is the fact that the administrative judiciary has a great meaning not just for ensuring an objective lawfulness through appraisal of the lawfulness of certain administrative acts, but also by ensuring a subjective lawfulness, in the regards of attaining the subjective rights and interests of the parties. Namely, the parties look for an administrative judiciary protection when it is about attaining their rights in multiple areas such as denationalization, pension rights, the right of retirement and disablement insurance, the rights of customs and tax procedures, property rights (for example privatization of building land, transformation of building land, the right of using a building land) and other rights posited by law. From this kind of legal protection for the parties depends whether they will attain a certain right, which they think they are deprived from with the contested act, or it will be confirmed the lawfulness of the made decision by the administration. From here, we think that for the parties the point of having the administrative dispute is for finally attaining their right. However starting from the fact that the basic condition for starting an administrative dispute is the existence of a final administrative act, which is made as a result of having an administrative dispute, the road to protection and attaining of a certain right for the party is long and complicated. Namely, according to the new legal decisions in our country, the administrative legal protection can be obtained in front of four institutions or

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specifically: in front of a first degree institution in an administrative procedure, in front of a second degree institution after a motion in the administrative procedure, in front of the Administrative Court and in front of the Higher Administrative Court. However going through these four institutions does not mean de facto realization of the legal right of the party. By rule, to be more precise, always after finalizing the administrative dispute, the parties whole "won" case is returned in front of the authorities. And the administrative procedure starts again!

Taking into consideration the previously mentioned, we will try and answer the following questions: Whether the ruling of the administrative court is a guarantee for attaining a certain right for the party? In what way is the principle of mandatory court ruling is implemented? How to achieve balance between the speed of making the decisions and the effectiveness in the execution of the decisions?

Keywords: enforceability, executive title and finality of the administrative judiciary decisions, compulsoriness of court rulings, European convention for protection of the human rights and freedom.

1. Basic preconditions for quality administrative judiciary control

The judiciary control over the administration in the Republic of Macedonia is one of the forms of conducting an external control.[3] Depending on the case of control, the subjects of control and the controls authority, meaning the sanctions and the measures that the courts can issue on the controlled subject, this judiciary control can be conducted by the Court – of – First – Instance – of Skopje – Skopje 1, Court – of – First – Instance – of Skopje – Skopje 2, the Administrative Court and the Supreme Court of the Republic of Macedonia. In particular, labor disputes or disputes over material and criminal liability of officers take place by way of civil or criminal litigation, if implemented control over general acts of the administration responsible for its implementation is the Constitutional Court of the Republic of Macedonia, while control over concrete, final administrative acts is the Administrative Court. The Appellate courts and the Supreme Administrative court are second degree courts which decided on the ordinary filed legal remedy, and that is the appeal in the judiciary

[3] When we are talking about external control over the administration firstly we think of the control which is conducted by a representative body in particular the Ombudsman of the Republic of Macedonia, control of the public opinion and the judiciary control. Unlike the internal control which is conducted by administrative authorities or between administrative bodies.

procedure, however the Supreme court of the Republic of Macedonia mainly decides on extraordinary legal remedies.[4]

In this paper, we will focus on the characteristics of administrative and judicial control over the administration, and as basic features of this type of control can be specified:

A) Administrative and judicial control is exercised in a special administrative procedure. The rules of conduct and deciding in this procedure are regulated in a special Law on Administrative Disputes which in the Republic of Macedonia was first adopted in 2006 and modified in 2010.[5]

B) The procedure is carried out by a specialized court to handle administrative disputes, and as a first instance is the administrative court and the Supreme Administrative Court as a second instance. These courts are functionally and organizationally independent from the administrative organs, in meaning the controlled subject, which corresponds with the principle of separation of the powers;

C) in respect of the parties participating in this process it is characteristic that always sued in the administrative dispute is state body or public body that has authority to make final administrative acts against which the law allowed conducting administrative proceedings.

D) Subject to control is always final administrative act or act against which the party can no longer use a regular legal remedy in administrative proceedings or it is already used. It is usually the second instance decision that ended the first instance administrative procedure or decision against which according to the material regulations an appeal is not allowed, but it can be challenged in a lawsuit with the Administrative Court. Subject to administrative and judicial control can be "silence of administration" as a separate institute in the administrative procedure in which the administrative body does not respond to the party's request or the appeal within the legally defined term, and therefore there is a presumption that a negative act is adopted and the party is ensured protection of the right to administrative and judicial proceedings. In positive enumeration to determine the subject of administrative proceedings, in the Law on Administrative Disputes is listed and an assessment of the legality of

[4] Specifically see also: N.Grizo, S.Gelevski, B.Davitkovski, A.Pavlovska-Daneva, Administrative Law, Skopje, 2011, str.249.
[5] Law on Administrative Disputes, Official Gazette of the Republic of Macedonia no.62 / 2006 and Law Amending the Law on Administrative Disputes, Official Gazette no. 150 of 18.11.2010.

individual acts issued in electoral procedure, amongst administrative disputes the court decides for a dispute arising from the implementation and enforcement of the provisions of concession agreements, procurement contracts that are of public interest and for each contract in which one of the parties is a state body, an organization with public authorities, public enterprises, municipalities and the City of Skopje concluded public interest or performing public service (administrative contracts) the court decides when the Second Instance against individual administrative act, has not provided legal protection and legality of administrative acts issued in misdemeanor proceedings.[6] But also in administrative proceedings may be required and the return of seized items and compensation for the damages inflicted to the plaintiff by the enforcement of the act contested.[7]

D) The court's decision with which is decided on the legality of the challenged administrative act or the powers of the Court as an arbiter is also a special feature of the administrative and judicial control. Namely, if the court accepts the claim in a dispute of legality means that the court has the authority to annul the administrative act and return the case for retrial in front of an administrative authority. In case, the court decided to bring a decision *in meritum* or to resolve the dispute in full jurisdiction it implies that the court's decision shall replace the contested administrative act and the administrative body is obliged within the deadline set by law to act on the decision.

The abovementioned features of the administrative judicial control are bringing about few expectations of it. Firstly, it is expected that the administrative judicial control is exercised in a lawful, objective and transparent manner. Secondly, the procedure should equally protect the public interest and the interests of the parties. Thirdly, the court decision should be based on properly established objective state, no matter whether it will be determined in the administrative proceedings, or the court shall decide to present evidence on its own. On the other hand, for the party not only is important to adopt a lawful decision, but it is just as important to make it "in time" or in "a reasonable time" and be executed within specified time limit. This is the only way in which the party will have confidence that the administrative courts are providing quality and efficient protection of their rights and interests. This means that in its operation the Administrative and the Supreme Administrative Court shall take all measures possible to use all its capacities, human (human resources), material (financial, spatial), technical (equipment, technology, communication) and cooperation between institutions, in order to achieve its primary purpose of existence, and

[6] Article 2 of the Law on Administrative Disputes, Official Gazette of the Republic of Macedonia no. 62/2006.

[7] Article 11 of the Law on Administrative Disputes, Official Gazette of the Republic of Macedonia no. 62/2006.

that is a guarantee and provision of efficient and effective independent administrative and judicial protection of the lawfulness of the administrative acts. This reinforce not only repressive but also preventive and advisory role of these courts in relation to the administrative bodies. That is, to transparently and effectively remove the unlawful acts of the legal system and the citizens would be able to exercise their rights and interests in a timely manner.

After all, efficiency, accuracy and the need for specialized solving of administrative disputes were part of the reasons for the establishment of the Administrative Court. However, the statistical data from the Reports of the Administrative Court do not show that such efficiency has been accomplished. In that sense, according to the Report on the work of the Administrative Court in 2011, during 2011, in the Administrative Court were established 11867 cases on different grounds, so taking into account the 13866's unresolved cases from the previous reporting year and 7 wrongly recorded cases during 2011, a total of 25 726 cases were in the court, of which 9746 were resolved and 15980 cases remained unresolved.[8] According to the performance report of the Administrative Court in 2012, in 2012, the Administrative Court established 14 675 cases on different grounds, so taking into account the 15 980 pending cases from the previous reporting year, and 64 wrongly recorded cases in 2012, a total of 30591 cases were in the Court, of which 16363 are resolved and 14228 cases remain unresolved.[9] According to the performance report of the Administrative Court in 2013, during 2013, in the Administrative Court were established 12754 cases on different grounds, so having in regard the 14 228 pending cases from the previous reporting year, and 69 wrongly recorded cases , and 92 reestablished cases again during 2013, a total of 27005 cases were in court, of which 14544 have been solved and 12461 cases remained unresolved.[10] According to the performance report of the Administrative Court in 2014, in 2014, the Administrative Court were established 13585 cases on different grounds, so taking into account the 12461 pending cases from the previous reporting year, and 68 cases recorded incorrectly, and 160 reestablished cases during 2014, a total of 26138 cases were in court, of which 15395 are resolved and 10743 cases remain unresolved.[11] According to the report on the operations of the Higher Administrative Court in 2012, in 2012, in the Higher Administrative Court were formed 1750 cases on different grounds, so taking into account

[8] Annual Report on the work of the Administrative Court in 2011, www.usskopje.com.mk
[9] Annual Report on the work of the Administrative Court in 2012, www.usskopje.com.mk

[10] Annual Report on the work of the Administrative Court in 2013, www.usskopje.com.mk

[11] Annual Report on the work of the Administrative Court in 2014, www.usskopje.com.mk

the 5 unresolved cases from the previous reporting year, during 2012 in total there were 1755 cases in the Court, of which 1715 were resolved and 40 remained unresolved cases of which 37 cases were administratively returned.[12] According to the report on the operations of the Higher Administrative Court in 2013, in 2013, the Higher Administrative Court formed 1982 cases on different grounds, so taking into account the 40 unsolved cases from the previous reporting year, a total of 2022 cases were in Court, of which 1935 were resolved and 87 cases remained unresolved.[13] According to the report on the operations of the Higher Administrative Court in 2014, in 2014, the Higher Administrative Court established 3948 cases on different grounds, so taking into account the 87 unsolved cases from the previous reporting year, in 2014 a total of 4035 cases were in Court, of which 3953 were resolved and 82 cases remained unresolved.[14] These data put into question the justification for the establishment of a specialized (and another two stages) administrative judiciary in the country, because comparative indicators show that citizens are facing the same unwanted circumstances in the conduct of administrative disputes, as at that time they were led before the administrative unit in the Supreme court.

Efficiency and quality of the exercise of administrative proceedings is inevitably determined by the personnel or human resources capacity of the administrative courts. Specifically, it depends on the expertise, professionalism, objectivity and independence of judges in the resolution of administrative disputes and the conditions under which they work. For example, here would be included the financial, technical and technological conditions. What should be paid special attention to correlative relationship between the increase in the number of cases and number of judges and judicial officers. When it comes to the decisions of the Administrative Court it is our position that, despite seeming opposite from the separation of powers principle, the decisions *in meritum* are the only way that the rights of the citizens are realized and the administrative bodies are prevented to make the same decision over and over again, even though it was already suspended in an administrative procedure. In this regard, the powers of the Administrative Court should be increased in order of taking appropriate measures to prevent non-compliance with court rulings, or more precisely, to guarantee the enforcement of court decisions in administrative proceedings.

[12] Annual Report on the work of the Higher Administrative Court in 2012, www.vusskopje.com.mk

[13] Annual Report on the work of the Higher Administrative Court for year 2013, www.vusskopje.com.mk

[14] Annual Report on the work of the Higher Administrative Court for year 2014, www.vusskopje.com.mk

2. The basic condition for execution of the judgment (or decision) of the Administrative Court - final, enforceable judgment or final

The execution of administrative court decisions is one of the most important issues in the exercise of administrative and judicial protection. But to answer this question it is first necessary to enumerate the conditions when a court decision becomes final, enforceable and executive and the difference between them.

Final administrative-court ruling is that a judgment is made by a first instance administrative court against which the party may initiate an appeal to the administrative appellate court. What we want to emphasize is that in the Republic of Macedonia until 2010, the judgment of the Administrative Court also was final and binding and enforceable as a result of the nonexistence if a second instance to decide on appeal. But the decision of the Constitutional Court of Macedonia U. 231/08 of 16.09.2009 ("Official Gazette" No. 117/09) the right of appeal has become the rule in administrative proceedings, the two-instance administrative dispute became legal, not factual possibility, because the law did not envisage existence neither the second instance, nor a secondary proceeding. As a bridging solution, until the establishment of the Higher Administrative Court with the Law on changes and amendments to the Law on Administrative Disputes of 2010, the Supreme Court took over responsibility for handling appeals against decisions of the Administrative Court.[15]

Institute of enforcement of court judgments arising from the needs of the legal system as well as the requirements of the protection of citizens' rights and general legal certainty. We conclude that the effectiveness can occur in two forms both formal and material validity of which the formal limits the right to use legal means and material guarantees inviolability of the right which is adjudged in the dispositive of the decision. The final judgment shall bind all or have the effect erga omnes not only for the parties, the defendant and the plaintiff, but the person concerned if such appeared in the proceedings and the court as an arbiter, and other institutions that will apply this judgment. For the court final verdict means res judicata verdict or adjudication, for what due to the principle non bis in idem the court cannot decide twice for the same thing, which means that the previous decision cannot be changed. From here, this obligation is governed by the Law on Administrative Disputes, according to which if in the court arrives lawsuit for a finalized case or there is a final decision, the court is

[15] Conclusion on the adoption of a tentative legal position of the Supreme Court of the Republic of Macedonia, Skopje, 24.12.2009

obliged to dismiss it in the preliminary procedure. The first instance judgment can become final in two situations: when against it according to the law is not allowed to use the appeal and the party does not exercise the right of appeal. Unlike the first instance verdict, the second instance becomes final in moment of the delivery to the party.

Regarding the question of when the judgment becomes enforceable we will start from the fact that the appeal against the judgment of the Administrative Court does not delay the execution of the judgment. Hence, we conclude that final and enforceable judgments can be executed. Which means that at the moment when the party received the first instance decision (judgment or decision) it becomes enforceable, unless the judgment has other set deadline for compliance? What should be pointed out that even if the judgment is made base on previously held hearing and it is published, it will still become enforceable at the time of delivery to the party.

3. Obligatory action of administrative court rulings as a mechanism for quality judicial protection and assurance for legal protection of the parties in an administrative dispute

To explain the importance of compulsoriness of court decisions, we will start from the determination of the fundamental role of government in society. Namely, "the essential role of government consists of the creation of laws, law enforcement and interpretation and application of laws in particular cases."[16] "In one of the basic features of power is the ability to issue binding general decisions and forcefully implement them while judicial authority implies institutional mechanism of application of legal norms in specific cases. "[17]

Therefore, court decisions or judgments are prohibitive or imperative norms that create the duty for the court and the parties involved in administrative proceedings. "Their action also applies to the court and other state authorities, which are obliged to ensure their application, as a prerequisite for the maintenance and development of the community, peace, order, legal security and other legal values."[18]

[16] Endrrju Heywood, Politics, Skopje, 2009, p.26
[17] Vlado Kambovski Judicial review, Skopje, 2010, p.100.
[18] Vlado Kambovski judicial review, Skopje, 2010, p.101.

The judgment is particularly characterized by its mandatory nature as for the defendant, and the court, the plaintiff and the act itself.[19] And mandatory also means opportunity for coercive enforcement of judgments. With the verdict the defendant is shown the correct application of the law, which in itself has justification of the verdict and specific directions by which should act upon re-examination.

In the Macedonian legislation the compulsoriness of the court judgments is governed by several legislative texts.[20] For example, under Article 5 of the Law on Administrative Disputes is stipulated that judgments of courts adopted in administrative disputes are binding and enforceable. There we will certainly look into Article 13, paragraph 4 and 5 of the Courts Act, under which judicial decisions are obligatory for all legal and private persons and have greater force than the decisions of any other authority, and everyone is obliged to respect the valid and enforceable court decision, under threat of legal sanctions.[21] According to Article 15 of the Law on Courts "every public authority shall, when it is placed in their jurisdiction, to ensure the enforcement of the court decision. The supervision over the enforcement of court decisions is by the court in accordance with law ", according to article 16 of the same law" enforcement of a final and enforceable court decision is implemented on the quickest and most efficient way possible, and it can not be hindered by the decision of any other state authority. "

The effect of the judgments delivered in the administrative procedure is regulated under Article 52 and Article 53 of the Law on Administrative Disputes. According to Article 52, when a court annuls an act against which administrative proceedings were initiated, the case returns to the way it was before adoption of the annulled act. If by the nature of the matter that was the subject of the dispute, instead of the annulled act should be brought another the competent authority is obliged to act without delay and not later than 30 days from the date of delivery of the judgment. The competent authority shall be bound by the legal opinion of the court, and the court's comments regarding the procedure.

According to Article 53, paragraph 1, if the competent authority upon annulment of an administrative act does not bring immediately and within 30 days a new administrative act or an act for enforcement of the judgment according to Article 40 paragraph 5 of this Law, the party may request for issuance of such Act. If the competent authority has not issued an

[19] Specifically see: S.Gelevski, Administrative Procedure Law, Skopje, 2007, p .286-288
[20] Article 5 of the Law on Administrative Disputes, Official Gazette of the Republic of Macedonia no.62 / 2006th
[21] Article 13, Law on Courts, Official Gazette of Republic of Macedonia no. 58.2006.

act within seven days of the request, the party may request issuance of such act by the court that rendered the judgment.

This means that the effect of the judgment against the defendant can differ. It depends on whether it was a judgment with which the court rejected the claim, or rejected the complaint. Further on, it depends on whether the court acted in lawfulness – dispute and annulled the disputable concrete administrative act or accepted the claim and brought a decision *in meritum* to finally resolve the dispute in full jurisdiction. If the court decided in full jurisdiction, then, this decision has the same effect as the judgment given in a dispute against the silence of the administration, where the court decided to resolve the administrative matter. "When the Administrative Court will reach a decision *in meritum* and resolve the administrative matter, such a judgment from a formal party is considered a judicial act, since it has been made by an Administrative court in an administrative procedure, but in material terms is an administrative act, because completely solves the administrative work and replaces the act of the competent authority of the public administration."[22]

If in the proceedings participated a third interested party, the judgment has the same obligatory action against that person, because it has the same rights as a party in the proceedings.

In practice administrative bodies often act on the ruling, but there are instances in which the body rejects silently or failed to take appropriate action to enforce the judgment. The question in hand is: what to do in this situation? In the Law on Administrative Disputes are provided two alternatives. The first is to inform the superior authority or official for non-compliance with the judgment. The second consists in Article 53 of the Administrative Disputes Act which is considered quite restrictive, and that's Administrative Court to issue a decision, not a decision as a political decision, but a decision as an act that was supposed to be brought by the defendant. For example, the operative part of the decision would read: "The complaint of the plaintiff is accepted, the applicant's appeal was accepted, and the first instance decision is annulled." We conclude that the decision directly affects threatens the independence of administrative bodies and directly reflects the principle of separation of powers, but is accepted with the explanation that there is no other way for the realization of citizens' rights.

[22] Krijan et al., Op. cit. (fn. 7), p. 280.Marko Šikić: The obligation and the enforcement of decisions rendered in administrative proceedings Proceedings of the Faculty of Law in Split, Vol. 49, 2/2012, p. 411th to 424th

However, such effects of the conduct administrative proceedings or administrative claim court protection of the legality of administrative acts in Macedonia represent a true rarity. Mostly the "justification" for it made by the Administrative Court is that the Court does not possess the records on the issues on which it should be decided upon. Common are situations in which parties multiple times begin and end the circle drawn in the norms stipulated by the Law on Administrative Procedure and the Law on Administrative Disputes. In fact, they both pass through, usually mandatory stages in the administrative procedure (first instance and appeal), then dissatisfied with the decision of the appellate body to bring an administrative dispute with a lawsuit, to spite the resulting judgment by the Administrative Court in their favor with that annuls the solution the party appealed against, however under the new request of the client it happens that the governing body brings the same decision again, or decide contrary to the directions given in the judgment of the Administrative Court.

In our opinion, this is firstly due to the poor and socially insufficiently proven authority of a number of administrative judges, among other things, can be seen from the judgments whose explanations are scant, inconclusive and not sufficiently substantiated. The independence of the judicial system which, of course, includes the administrative judiciary in recent years, according to EC reports on progress of Macedonia, is seriously threatened and this is an additional reason for the ignorance of the administrative bodies of the judgments of the Administrative Court and the Supreme Administrative Court. Finally, the capacity and competence of the public administration is also called into question due to its growing partisation, politicization and pressures of management that are performed before each election cycle. Hence, to their officials more important become the opinions and informal orders and demands of their superiors, primarily political officials of the authority of government in which they work, rather than the letter of the law expressed in a court order made by a court whose independence is also questionable.

This skepticism about the conditions with the effectiveness of administrative and judicial procedure in Macedonia, and ultimately the legal justification of the decision on the establishment of specialized administrative judiciary in the country is shared by a number of practitioners. Thus, the lawyer Zarko Hadzi-Zafirov[23] states: *in meritum* address the cases Considering the fact that the Administrative Court began its work late, he brought a large became instance which only confirmed the decisions or delineated injuries and thereby ,,

[23] Specifically,, see: Reform of administrative law and administrative courts,, published in the professional journal Legal dialogue, No. 3, June 2011, the Institute of Human Rights.

backlog, instead of beginning to annulled the unlawful decisions of administrative bodies and objects are back in the administrative authorities. All this leads to the conclusion that the Administrative Court, because it is usually not engaging and still refraining from deciding *in meritum* on cases it only multiplies cases and backlogs are not reduced, which calls into question the idea of purposefulness expeditious, efficient and effective court."[24]

Because of this, our proposal is to supplement the Administrative Disputes Act with additional guarantees for execution of court rulings and no matter how much such provisions are unusual for developed democracies and legal systems. Thus, the idea of adding another member to the Law on Administrative Disputes should consider, which will provide direct sanctions for the official who did not act on the judgment of the Administrative Court, but also for the person responsible for managing the administrative authority. The sanction should be cumulative, meaning to provide a fine in an amount, and disciplinary action (of course only for the officer, because appointees not subject to the discipline of responsibility, instead they bear political responsibility). A different view of solving the same problem has professor Kamarikj considering it "useful and necessary to constitute a right for the Supreme Court to immediately undertake enforcement measures of coercion against state authorities who refuse to obey the judgments delivered in the administrative disputes."[25]

4. The mandatory and enforceable court decisions in accordance with international laws and documents

In terms of positive law measures which should be taken we would give several examples of positive comparative legal solutions regarding this issue and indicating examples of international documents regulating this issue.

Inarguable is the fact that the obligation of the judgments of the administrative courts is condition sine qua non of administrative and judicial protection. In order for the court ruling to achieve its goal: the protection of the subjective rights of the parties, and protecting the fair legality, it is necessary to provide the opportunity for its implementation.[26]

[24] Zarko Hadzi-Zafirov,, Reform of administrative law and administrative courts,, published in the professional journal Legal dialogue, No. 3, June 2011, the Institute of Human Rights, taken by Stamen Filipov Niezvrshuvanje decisions in administrative disputeshttp://www.ihr.org.mk/mk/praven-dijalog/praven-dijalog-br4/137-neizvrsuvanje-na-odlukite-vo-upravnite-sporovi.html

[25] Kamarić Mustafa, Appendix question of the relationship of the judiciary and administration, Archive for Legal and Social Studies, No.1, str.460.

[26] Mark Šikić: Obligation and the execution of decisions made in the administrative dispute, Proceedings of the Faculty of Law in Split, Vol. 49, 2/2012, p. 411th to 424th

The effective enforcement of a binding judicial decision is a fundamental element of the rule of law. It is necessary to ensure public confidence in the authority of the judiciary. Judicial independence and the right to a fair trial (Article 6 ECHR) is questioned if the decision is not executed.[27] According to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, everyone is entitled to a fair and public, within a reasonable time by an independent and impartial tribunal established by law for his civil rights and obligations to be reviewed and determination. In accordance with the practice of the European Court of Human Rights in Strasburg for a body to be considered a court in compliance with Article 6 paragraph 1 of ECHR is not enough for such authority only to make recommendations, or tips, but its decisions must be made mandatory.[28]

Here we would mention Recommendation Rec (2003) 16 of the Committee of Ministers to member states on the implementation of administrative and judicial decisions in the field of administrative law Recommendation Rec (2003) 17 of the Committee of Ministers to member states on enforcement. Refusal of execution of a judgment of the French administrative courts a violation of the principle of the verdict and work entails responsibility. The party in this case may seek damages.[29] Recommendation (2003) 16 on execution of administrative and judicial decisions under which Member States should guarantee respect for judicial decisions by administrative bodies. Consequences of failure to implement judgments: allowance of other party, forced execution, at least in terms of financial commitments, authorization of the interested party to execute what the other party should be performed with reimbursement, setting a deadline for enforcement, initiating a procedure for determining the disrespect of the court or giving penalty or other sanction.[30]

Regarding enforcement of judicial decisions by administrative authorities are provided three general provisions as follows:

- Member States should ensure that administrative authorities implement judicial decisions within a reasonable time. In order to achieve the full impact of the decisions they need to undertake all necessary measures provided by law

[27] International documents for independent and efficient judiciary posts (13-16) of the Consultative Council of European Judges of the Council of Europe with reference documents and law of the European Court of Human Rights, OSCE, 2014, p.20.

[28] Mark Šikić: Obligation and the execution of decisions made in the administrative dispute, Proceedings of the Faculty of Law in Split, Vol. 49, 2/2012, p. 411-424.

[29] J.Jerinic, judicial administration, Belgrade, 2012, the 340th

[30] Council of Europe (1997), str.102-103, acquisitions of J.Jerinic, judicial administration, Belgrade, 2012, the 343rd

- In case of non-implementation of the court decision by Administrative body there should be provided adequate procedure that will require the implementation and enforcement of the decision, in particular through recovery of a penalty.
- Member States shall ensure that the administrative authorities are responsible, if they refuse or neglect the enforcement of court decisions. Public authorities responsible for the enforcement of judicial decisions are subject to disciplinary, civil or criminal punishment, if they do not execute decisions.[31]

Given the above it seems that the only possible solution is sanctioning bodies and authorized officials for non-compliance with the decisions of the Administrative Court. In Macedonia provision for sanctions foreseen in Article 377 of the Criminal Code, according to which the official or responsible person who does not act upon a final decision of a court which has decided to return the employee to work, shall be punished by a fine or imprisonment one year (paragraph 1). Official or responsible person in the legal entity which is a public authority and which refuses to execute a final and enforceable court decision that is obliged to perform, shall be punished by a fine or imprisonment up to three years (paragraph 2).

Comparative experiences also say that punishment is necessary to be legally provided. So, in the Republic of Serbia in accordance with Article 75 of the Law on Administrative Disputes stipulates that if the head of the body does not respond to the summons of the court or state the reasons for failure of the requested documents, the court shall impose a fine ranging to 10 000 to 50 000 dinars. If it fails to act on the judgment again, the court shall impose a fine of 30 000 to 100 000 dinari. The imposed fine running officially.[30]

In Bosnia and Herzegovina Article 64 of the Law on Administrative Disputes is almost identical to Article 53 of the Law on Administrative Disputes in the Republic of Macedonia, except that Article 64 stipulates that if the responsible person in the competent institution does not act in accordance with that provision it is seen as a serious breach of duty. Hence, the court has the authority to propose the initiation of disciplinary proceedings against the person. At same time the court informs and the Council of Ministers of Bosnia and Herzegovina.[32]

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[31] The Law on Administrative Disputes ("Official Gazette" of the Republic of Macedonia no. 111/09)

[32] ("Official Gazette of Bosnia and Herzegovina" no. 19/02) Pursuant to Article IV. 4. a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, the House of Representatives, held on 20 June 2002, and of the House of Peoples held on 25 June 2002, adopted the Law on Administrative Disputes of Bosnia and Herzegovina

European Court in Strasbourg warned Croatia that the repeated retrial can be considered as a mistake in the procedural system.[33]

Conclusion

As a conclusion from the above we can emphasize three basic tenets that should be the base of the administrative and judicial system in the Republic of Macedonia, and those are: the appropriate regulatory structure and achieving efficient and effective administrative and judicial protection of the rights and interests of the parties in the administrative dispute . Related to the research subject of this paper, we consider that all these postulates are directly related to the execution of court decisions. This is why the state should take all necessary measures and positive legal and institutional which will provide assurance that the administrative bodies in the legally defined term will act on the requests of the Administrative Court of the submission of the records necessary for solving of administrative disputes, and guarantee that administrative bodies in due time will execute the court decision specifically verdict and act upon the instructions given in the judgment. Only in this way the effectiveness of the administrative dispute will be fulfilled.

Our view is that the current legal solution regarding the obligation of the court judgment does not provide sufficient protection of the parties in relation to the conduct of administrative bodies in judgment. On the contrary, examples from practice show that very often the administrative bodies do not act on the judgment, act contrary to the instructions of the court or do not decide within the deadline determined by law. According with the legal decision under Article 53 of the Administrative Disputes Act provides the possibility of the party to appeal again to the Administrative Court for failure after conviction by a competent authority. In this way the party only enters into the institutional maze between administrative bodies and the Administrative Court, from which the output is very long, and the principles of effectiveness and efficiency cannot be achieved. This supports the fact that in 2013 273 cases were in work of the Administrative Court under UI number (Enforcement of a judgment of the Administrative Court), which means that the parties have appealed to the Administrative Court under Article 53 of the Law on Administrative Disputes.[34] Considering this fact, and consequently the obligation of the courts for delivering unified monthly, quarterly, semi-annual and annual reports on the work of courts statistics to higher courts, the

[33] V. decision in the case against the Croatian Christmas of 29 June 2006 acquisitions of doc. Ph. D.. Mark Šikić: Obligation and the execution of decisions taken in administrative proceedings Proceedings of the Faculty of Law in Split, Vol. 49, 2/2012, p. 411th to 424th

[34] Annual report of the Administrative Court in 2013.

Judicial Council of the Republic of Macedonia, the Council of Public Prosecutors, the Ministry of Justice and National Bureau of Statistics,[35] we believe that these competent institutions following the data obtained from. the courts, specifically related to our work, the work of the Administrative Court, should take an initiative and to submit proposals with experts how to overcome certain inconsistencies That appear in the execution of court decisions. Namely, there is a need to reassess the section on mandatory court rulings and to take measures that will clarify these provisions and in a clear and understandable manner will regulate further the open issues such as the rights and obligations of the parties relating to the performance, costs of the execution, the term in which it should be performed, to provide an opportunity for disciplinary action for officials who will not act on the judgment, amount and payment of the fine as a sanction, prize for failure to foresee authorities to be responsible for implementation, because at the moment the court has no repressive mechanism that can force the authority to act and make a decision, and at the same time if it made decision *in meritum* it is unable to resolve the disputed administrative work.

This way will be clear the need to introduce and define new principles governing judicial proceedings such as a trial within a reasonable time, effectiveness of judicial decisions etc., all of which illustrate to ensure legal certainty and the protection of the rights and the interests of citizens and legal persons in the administrative dispute. Namely, the effectiveness is that it is perceived by compulsion of judicial decisions, mechanisms for their implementation and consequences of possible non-compliance with the judgement.

What we can conclude is that to prove the credibility of the administrative judiciary appropriate measures must be taken and legislative and institutional and personnel that would provide appropriate conditions for consistent and genuine implementation of judicial decisions, and to predict appropriate sanctions for those who fail to act in accordance with the legal regulations. Time is sometimes the real key and answer to the question of whether the parties really exercised their rights to exercise proper care, a guarantee must be provided within the legal framework provided. Therefore, we believe that efficiency should not always be before effectiveness, through which is perceived the diligence and impact of the materialized justice.

[35] Court Rules, Official Gazette of the Republic of Macedonia no. 66/2013.