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PARTY AND ENFORCEMENT OF DECISION IN THE ADMINISTRATIVE PROCEDURE

1. Enforcement of Decision and its Significance to the Party in the Administrative Procedure

The execution of the decision is the last phase in the administrative procedure. The aim of the execution is to implement the content of the **administrative act**[1] i.e. to give life to the decision. It means harmonizing the legal and factual situation. The execution is duty upon the executor (the party) in sense of performing the act, the suffering or the omission ordered by the decision. "The execution of an administrative act is a direct implementation of the content of its norm. An enforceable act is an act requiring a certain action: to travel abroad with a passport issued, to start the construction of building upon the receipt of a construction license; to pay a tax debt; to recall a conscript notification or a compulsory vaccine; to cancel (failure to take place) a reported public gathering that had been prohibited in the meantime.''[2]

The goal of the execution in the administrative procedure is to bring in conformity the facts with the dictum of the decision.[3]

The ultimate goal of the administrative procedure shall be accomplished exactly by the execution, at the moment of change in the real world the administrative relation and situation i.e. when legal and factual reality are brought in accordance.[4] The execution of decision is not necessarily an execution via coercive measures – it can also be achieved via voluntary acts. If the party voluntarily performs the obligation defined in the dictum of the decision, there is no coercion on the part of state institution. There will be no coercion if the party acquired a certain right by the decision. Thus, the use or the failure to use such right is of no concern of any state institution. But, if the party fails to comply with an obligation voluntarily and such obligation is being ordered by the decision – the state shall undertake an execution procedure (administrative or judicial) in order to bring the factual and legal situation in accordance.

Arsen Janevski and Tatjna Zoroska-Kamilovska[5] point out that: "By taking over the responsibility for protection of subjective rights, the state has prescribed for a special procedure for non voluntary execution by which the legal protection mechanism of civil subjective rights becomes complete. The execution procedure can be defined as a legally regulated activity of a competent state institution whose aim is the final implementation of a request that had been

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[1]Ivo Krbek, *Stranka u upravnom postupku*, Zageb, 1928, p. 151.
[2]Zoran Tomich, Ph.D., *General Administrative Law*, Beograd, 2009, p.329.
[3]Rafael Cijan, *The Execution of an Administrative Decision*, Beograd, 1966, p. 234.
[4]Gelevski Simeon, *Administrative Procedure Law*, Skopje, 2009, p. 246.
[5]See their work: *Civil Procedure Law and Enforcement Law*, Skopje, 2011.

decided upon in a cognition type of procedure (litigious, extrajudicial, criminal and administrative) or the securing of the future implementation of a request".

The civil execution procedure possesses a subsidiary character in relation to the administrative procedure (the latter is not of such scale and detail). The judicial execution procedure is a regular auxiliary instrument during judicial administrative execution, in a situation when the execution of a decision bears upon monetary obligations. The judicial execution is carried out according to the provisions of judicial execution laws.

As a consequence of the specifics of the administrative procedure, the legislators (starting with Austria in 1925 until the contemporary codifications) provide rules ensuring a specific legal regulation of administrative decisions in the administrative procedure. In the former Yugoslavia, the codifications of administrative procedure also contained particular sections and chapters on administrative execution.

In the LGAP of the Republic of Macedonia of 2005, the same has been done in two chapters: Chapter XVII entitled ''Execution i.e. General Administrative Execution Procedure'' and Chapter XVIII entitled ''Execution for Purposed of Securing''. These two chapters contain 33 articles in total and they largely regulate the conditions, sequence, form and sum of procedural activities to be undertaken by the administrative subjects within the procedure for coercive administrative execution of administrative procedure decisions. In fact, this is an obligation for coercive execution of decisions, not to voluntary execution. With regard to coercion, it is necessary to provide several general remarks on the party whose rights and acts are susceptible to coercion, not the parties themselves. However, in the development phases of the administrative execution procedure, there had also been personal forms of coercion. For instance,[6] according to Raphael Zijan: "While the Law on General Administrative Procedure from 1957 during the coercive execution also accepts the solution on a custody (for the party) contained in the LAP from 1931, the new Law on General Administrative Procedure from 1965 provides for no such possibility, although it retains the earlier solution on pecuniary penalty as a means of coercion (towards the party).'' The Articles 286 and 287 in LGAP from 2005 provide for use of coercive measures within a determined timeframe.[7]

[6]Rafael Cijan, op. cit, p. 23.

[7]Article 286 entitled "Coercive Enforcement" reads as follows:

Paragraph 1

If the party under duty to allow or suffer an action behaves contrary to such obligation or if the object of enforcement is an action of the party that cannot be undertaken by anyone except the party, the institution enforcing the decision shall force the party to the fulfillment of the obligation by filing a request for the commencement of an minor offence procedure.

Paragraph 2

The institution carrying out the enforcement shall first threaten the party with a compulsory means, if the latter does not fulfill the obligation within the prescribed time limit. If within this time limit the party undertakes an action contrary to its obligation or if the prescribed time limit expires with no success, the compulsory means mentioned in the threat shall be undertaken

The pecuniary penalties under the LGAP are regulated in Article 282. However, according to Articles 70, 114, 172, 184, 195, 200 and 286, pecuniary penalties are executed in minor offences procedure and they are paid to the budget of the Republic of Macedonia.

The LGAP of the Republic of Serbia from 2010, in the subsection on coercive execution in Article 276, provides that: "Pecuniary penalty which is being decided upon for the first time cannot be less than 5000 dinars, nor higher than 20000 dinars. The pecuniary penalty may be imposed several times, wherein the sum of such penalties cannot amount to more than 10 times of the sum of the first pecuniary penalty.'' Once again in paragraph 4: ''The paid in pecuniary penalty cannot be reimbursed.''

In the subsection on coercive execution or in other phases of the procedure, the legislators provide for various coercive (physical and monetary) measures, but not custody as a consequence of the decision. In this part, the administrative procedure has accomplished a democratic advancement. The argument of professors Janevski and Zoroska-Kamilovska[8] is quite legitimate - they point out that the execution procedure, as a rule, is procedure of pecuniary execution, not personal one. The object of execution is securing certain parts of the debtor's estate (things or right). As an exception, when the nature of the claim makes it impossible, the object of execution may be directly or indirectly, a certain ability of the debtor (for example, under a duty that only a specific person can perform). For instance, in the administrative procedure, it is only the party who must go to the JPA, as it was in former Yugoslavia. However, new laws and regulations provide for performances that are not limited only to the party, which can discharge of such duties, even, if necessary, through coercive measures that do not include custody.

For the party, the legal regulation of the execution procedure for the administrative decision is of great importance. "A codified execution procedure in the administrative procedure contributes to application of the law and its implementation by the administrative institutions, since the administrative act deeply affects the rights and duties of the party, the necessary guarantees can be proposed solely in a procedure prescribed by law. For those reasons, any arbitrariness during the execution phase will constitute not solely arbitrariness in the method of administrative action, but arbitrariness in the manner of achievement of the aims pursued by the law, the latter being impermissible in a state that abides by the rule of law."[9]

The legal procedure of the execution of the decisions in an administrative procedure is regulated in chapter XVII, while the execution for purposes of securing claims in chapters XVII and XVIII of the LGAP of the Republic of Macedonia from 2005. We shall discuss them in the following parts of this paper.

immediately while simultaneously a time limit for fulfillment of the obligation shall be determined.

[8] Arsen Janevski and Tatjana Zoroska-Kamilovska, op. cit, p. 7.

[9] Rafael Cijan, op. cit, p. 19.

2. Object of Execution of the Administrative Procedure, Types of Execution and Jurisdiction

The decision is object of execution in the administrative procedure. However, the decision the procedure resulted with can be enforced only after it became enforceable. According to PS42: "The enforcement shall be carried out against a person who is liable for complying with the obligation (enforcee), the person and the obligation being specified in the enforceable decision. The conclusion permitting the enforcement of the decision cannot decide to outreach the frame of the dictum of the enforced decision, in the current case it is exactly what happened. (Judgment of the SCRM U. no. 1900/97 of 09.12.1998)".

Article 270 of the LGAP determines when the decision of the administrative procedure becomes enforceable, as follows:

A decision rendered in a first instance procedure becomes enforceable in the following cases:

-upon expiration of the time limit for an appeal, if the appeal has not been filed;

-by its communication to the party, in cases when no appeal is allowed;

-by its communication to the party, if the appeal does not delay the enforcement;

-by the communication to the party of the decision refusing or rejecting the appeal.

A second instance appeal becomes enforceable if it changes the first instance decision, at the moment of its delivery to the party.

Usually, the decision becomes enforceable within 15 days of the day of the adoption, or if it explicitly determines the timeframe of the enforcement (for example, 3 days, immediately etc.) then it becomes enforceable upon the expiry of this time limit.

The enforcement may also be carried out based on a party agreement, but solely against a person who participated in the agreement (based on the minutes of the agreement).

If two or more parties with identical claims participate in the administrative procedure, the appeal of any of them prevents the enforceability of the decision (in relation to the parties who did not file an appeal). In two-party or multi-party proceedings wherein the parties hold conflicting claims i.e. interest, the appeal of one of the parties does not prevent (delay) the enforceability of the decision in relation to the other parties.

The object of enforcement in the administrative procedure is the decision that became enforceable i.e. its dictum provides for pecuniary claims or non-pecuniary obligations. It means that effectively the object of enforcement is money or human conduct. Monetary obligations mean payment of a certain amount of money, while non-pecuniary obligations may be the following:

-an obligation to perform an act;

-an obligation to refrain from an action i.e. omission or allowing an action;

-giving a thing other than money.

There are two types of enforcement of decisions in the administrative procedure, such as:

- administrative enforcement,
- judicial enforcement.

The administrative enforcement is carried out when non-pecuniary obligations are object of enforcement (actions, suffering, permission, giving things etc). There is an exception only with respect to pecuniary obligations stemming from labor contract i.e. resulting from the consent of the party itself as to administrative restraint upon the salary. Otherwise, for all other pecuniary obligations the enforcement is undertaken by the court.

The objects of judicial enforcement of decisions rendered in administrative procedure are enforcement for purposes of reimbursement of pecuniary obligations (for instance pensions, rents, disability allowances etc). Consequently,[10] it follows that there is a concentration of enforcement of the pecuniary obligations by the courts, which has been done in order to achieve an economic and rational enforcement. It is not allowed to carry out a judicial enforcement of non-pecuniary obligations. In cases of enforcement of court decision brought down in administrative procedure, it is necessary to carry out certain preliminary actions. The court must address the state institutions that have adopted the decision to be enforced. However, these are already issues related to the enforcement procedure before a court and we will discuss that in the forthcoming pages of this paper.

The competent institutions for enforcement of administrative procedure decisions are:
-for administrative enforcement, the administrative institution that has rendered down the decision, while
-for court enforcement, it is the competent court, according to the laws on court enforcement.

Article 277 of the LGAP provides for the jurisdiction on the administrative enforcement in the following manner:

‘’The administrative enforcement is to be carried out by the institution that had decided upon the matter in first instance, unless a special legal provision provides for the jurisdiction of another institution. If such an institution is provided for, then it is competent on the matter instead of the first instance institution.’’

For the institutions of public (not state) administration which are not authorized by law to enforce themselves their own decisions, such decisions will be enforced by the state administration institution competent for general administrative affairs, unless the law provides for the jurisdiction of another institution. PS42: “The social care centers are not authorized to enforce themselves their decisions. Their decisions are to be enforced by the administrative institution competent for the general administrative affairs. (Judgment of the SCRM, U. no 751/93 of 16.09.1993)

The Ministry of Interior is obliged to assist upon request by the competent enforcement institution, if the latter expects resistance during the enforcement by the party.

The enforcee is the party (natural or legal person) who is under duty to fulfill the obligation, while then enforcer is the

[10]Brana Markovich, *Polozhaj i uloga stranke u upravnom postupku,* 1995, Beograd, p. 365.

institution undertaking the enforcement, alone or with assistance of the police when coercive measures are undertaken (in cases when there is resistance during enforcement).

Judicial enforcement is carried out by the courts under the laws regulating judicial enforcement.[11] "In the enforcement system which existed in the Republic of Macedonia till 2005, the court was the one to decide upon enforcement (adoption of an enforcement decision) and afterwards performed the enforcement itself. By the adoption of the Law on Enforcement in 2005, the enforcement procedure is exempted form the jurisdiction of the courts, in the sense that the enforcement is carried out by an enforcer, not the court. Accordingly, the Law on Courts prescribes that the basic courts with basic and extended jurisdiction have jurisdiction, inter alia, to decide in first instance as to enforcement and securing of claims."

Accordingly, a basis for enforcement of pecuniary claims decided upon in enforceable decision in administrative procedure for the basic court having jurisdiction to carry out the enforcement is the enforceable decision and the conclusion of the state administration.

According to Professor Gelevski,[12] "Competent institutions for judicial enforcement of administrative acts are the basic courts in the Republic of Macedonia. Judicial enforcement is undertaken when it is about enforcement of administrative acts whose object of enforcement are pecuniary obligations i.e. when the decision imposes on the party an obligation to pay a certain amount of money. Judicial enforcement takes places under the rules of judicial enforcement".

3. Enforcement Procedure of Decision and Party in the Administrative Procedure

The enforcement procedure of the decision in an administrative procedure may commence after the decision becomes enforceable:

-ex officio; and

-upon a party proposal.

In ex officio cases, the competent state institution makes the initiative, if it is a matter of public interest.

The party submits a proposal for enforcement of an enforceable decision when it is in her/his interest.

The state administrative institution carries out the enforcement procedure in order to fulfill non-pecuniary obligations in an administrative act.

The enforcement procedure is carried out by a competent court in order to fulfill pecuniary obligations.

The first instance institution that has rendered down the decision may carry out the administrative enforcement procedure of an enforceable decision, but it can also be another institution (second instance or the general administration institution when a public administration institution – public service adopts an enforceable decision).

[11]Arsen Janevski and Tatjana Zoroska Kamilovska, *Civil Procedure Law, Enforcement Law,* 2011, p. 39 et sub.

[12]Gelevski Simeon, *Administrative Procedure Law,* Skopje, 2009, p. 249.

When the institution competent for the administrative enforcement is the first instance, its action is based on the decision that became enforceable, but also on the conclusion permitting the enforcement. According to Article 278, paragraph 1 of the LGAP, the institution competent for the administrative enforcement adopts a conclusion permitting the enforcement, ex officio or upon a request of a party. The conclusion states that the decision became enforceable and determines the mode of execution.

Against this conclusion, the dissatisfied party has the right to appeal to the competent second instance institution.

When the competent institution for administrative enforcement of a decision is not the first instance institution, but a second instance or another institution – the procedure is as follows:

The party requesting the enforcement of the decision submits a proposal for enforcement to the institution that adopted the decision. If the decision became enforceable, it puts a confirmation on the decision that it became enforceable (enforceability confirmation) and delivers it to the other institution competent to carry out the enforcement and simultaneously proposes a mode of enforcement. The institution that is competent to enforce the decision shall render down the conclusion on the permit for enforcement and the mode of enforcement (therefore, the second instance, i.e. another institution). Against this conclusion on the permit for enforcement, the party also has right to appeal, but only related to the enforcement (the mode of and the means of enforcement) and not against the decision which is to be enforced.

We will explain at this point the procedure for judicial enforcement of the decision that became enforceable in the administrative procedure. When the judicial enforcement is to be carried out (pecuniary claim) by the institution or the organization whose decision should be enforced, it must first determine that the decision became enforceable and put a confirmation of enforceability on it. Afterwards, it may deliver it to the court together with the request. The administrative institution may also propose to the court the mode of enforcement and point out the things that the enforcement may be carried out upon.

According to this, basis for judicial enforcement is the decision rendered in an administrative procedure that contains a confirmation of enforceability. However, the enforcement is carried out according to the rules of judicial enforcement. The conclusion for enforcement, according to the judicial regulations, is brought by a court.

The enforcement of a decision (administrative or judicial) is carried out against a person (party) who is liable to fulfill the obligation (enforcee).

The enforcement of a decision in administrative procedure, if in the interest of the party itself (he/she wants to exercise the right), depends on the party him/herself. However, if an obligation should be fulfilled and the party fails to do it voluntarily, the enforcement shall be carried out coercively. In relation to the enforcement and its aims, we should also mention some other rules that are favorable for the party and its position in the enforcement procedure. According to Article 273 of the LGAP:

Para 1. "When there is a possibility to carry out the enforcement in the manner and by using the means susceptible to achieve the goal and is the most favorable one to the enforcee."

Para 2 "During non working days, state holidays and other holidays and non working days which are being feasted,[13] as well as at night, the enforcement actions may be carried out only if there is a danger of a delay and if the enforcing institution issued a written instruction thereupon."

In the above-cited Article 273 of the LGAP, the mode and the exercise of the enforcement are regulated.

We will cite the comment of professor Tomik[14] with respect to the mode of decision enforcement: "Besides the principle of legality in the administrative enforcement procedure, the principle of proportionality is valid as well. The condition for the application of this principle is the existence of a possibility for enforcement exercise in several ways and through the application of various means that can be graded according to the degree of strictness. If there is such a possibility, the enforcement agent is under duty to apply this particular method i.e. the means of enforcement that is the most favorable to the enforcee. The agent is under this duty if the latter is capable, in a least detrimental way, of achieving the goal of the execution.''

In relation to the time of enforcement, it is not allowed to enforce on Sunday and on state holidays and other non working days and at night –unless the delay may cause a danger. For the exception of this rule, there must be a written instruction.

If the rules concerning the principle of proportionality and the time of enforcement are not respected as well - the party has right to an appeal in the proceeding.

"The enforcement agent has a discretionary power to determine the least detrimental means of enforcement as to the enforcee. But, it must give consideration of the opportunity of the means of enforcement and the special protection of the enforce."[15]

Concerning the forms of administrative enforcement, enforcement of non-pecuniary obligations, one can distinguish:
-enforcement via other persons; and
-enforcement with coercive measures.

PS45: "In the process of determination of the procedural costs due by the enforcee, the institution must determine whether there was a need and justification for all the actions undertaken within the concrete enforcement procedure." (Judgment of the SCRM U. no 2593/97 of 03.12.1998)

If the obligation of the party (enforcee) consists of an action that can be performed by another person (and he/she failed to perform or failed to perform it fully) – the action will be undertaken by another person, but at his expense. The enforcee (i.e. the liable party) must previously receive a warning. If the action is not performed within the prescribed time limit, another natural or legal person shall do it

[13]According to the latest laws of the Republic of Macedonia, the list of state holidays and other non-working days has been rather extended (state, religious and other holidays).
[14]Zoran Tomik, *General Administrative Law*, Beograd, 2009, p. 332.
[15]Gelevski, *Commentary of LGAP*, Skopje, 2005, p. 277.

instead. The party may be requested to pay the costs in advance and prior to the beginning of the enforcement whilst the final calculation shall be made subsequently.

The second form of administrative enforcement is the enforcement by coercive means. PS45: "When the taxes due are not paid in by the taxpayer within the prescribed time limit, the payment will take place compulsory and the institution is under duty to send a written warning to the taxpayer". (Judgment of the SCRM U. no 2718/96 of 10.12.1997)

There are two types of coercive enforcement, as follows:
-indirect coercion (monetary penalty) and
-direct coercion (direct physical coercion).

An indirect coercion (through monetary penalty) shall be applied in two cases. First, when the enforcee's obligation consists of refraining from action (for instance, he/she is under duty to allow something or to suffer something and he/she acts contrary to this obligation). Second, if the object of enforcement is an action of the party (enforcer) which cannot be undertaken by another person instead.

The institution carrying out the enforcement of these obligations of the party cannot enforce them through other persons (and at the expense of the enforcee). For those reasons, indirectly, by indirect coercion, by filing in a request for the commencement of a minor offence procedure and through the issuance of consecutive monetary penalties shall force the enforcee to fulfill the obligation. However, it shall first issue a warning and determine a time limit for voluntary fulfillment.

If the party (the enforcee) takes an action contrary to his/her obligation within the prescribed time limit or if the prescribed time limit expires with no result, the coercive means set forth in the warning shall be put in action immediately. Simultaneously, a new time limit for compliance shall be determined.[16] It means, therefore, that the monetary penalty shall be immediately cashed in. "For the realized compulsory payment, the enforcement agent shall issue new conclusion with new time limit for compliance, threatening with a new (as a rule, stricter) monetary penalty. If the enforcee fails to comply even with this conclusion, then the new monetary penalty shall be executed. The enforcement agent shall continue to issue new monetary penalties as long as and until the enforcee complies with the obligation provided for in the decision.[17]

Enforcement by direct physical coercion is provided in Article 287 of the LGAP: "If the enforcement of a non-pecuniary obligation cannot at all or cannot be timely carried out by the application of means provided for in Articles 285 and 286 (through other persons or by monetary penalties) of this Law, the enforcement, according to the nature of the obligation, may be carried out by direct coercion, provided that a legal regulation for such enforcement is allowed".

Three conditions are necessary in order to apply direct coercion:

[16]LGAP, Article 286, paragraph 1 and 2.
[17]Zoran Tomik, *General Administrative Law*, Beograd, 2009, p. 333.

-the enforcement through another person or by monetary penalty is impossible;
-provided that such enforcement is allowed by a legal regulation;
-the obligation is of such nature that it is possible to discharge it by direct coercion.

According to professor Gelevski:[18] "It is about finding the right means for enforcement through direct coercion of the obligation of the enforcee after there had been an unsuccessful attempt for enforcement through another person i.e. monetary penalties. It all depends on the assessment of the institution whether it would immediately decide upon enforcement via direct coercion or depending on its assessment and the nature of the obligation itself (replaceable or irreplaceable). Otherwise, the notion of direct coercion encompasses various forms of physical coercion used during the enforcement on the part of institutions competent for enforcement with the assistance of the police".

Stay and Postponement of the Execution

Stay and postponement of the enforcement may be done at any stage of the enforcement procedure, if the conditions provided for in the LGAP are fulfilled. Those conditions are as follows:
There may be stay of the enforcement if:
-the obligation has already been complied with;
-the enforcement was impermissible, but it has already begun;
-the enforcement has been carried out against a person who had no obligation whatsoever;
-the person requesting the enforcement gives up the request;
-the decision to be enforced has been revoked or abolished in the meantime.

The institution that carries out the enforcement shall adopt a conclusion for stopping the enforcement. With the conclusion, all actions undertaken as to enforcement that had been previously completed are abolished.

The postponement of the enforcement shall take place in the following cases:
-if it is found out that a delay with respect to the compliance of the obligation is being allowed;
-if, instead of the interim decision that is enforced, a new decision on the main issue is adopted and the latter is different from the interim one.

The postponement of the enforcement shall be approved by the institution that adopted the conclusion on the permission of the enforcement.

3.1. The Appeal in the Procedure of the Enforcement of Decision and the Party in the Administrative Procedure

The enforcement of the decision as the last stage in the administrative procedure is of great importance for the party. On one hand, when the party exercises rights and interests stemming from the dictum of the decision (and eventually he/she is being prevented from doing so) and he/she may request their realization. On the other hand,

[18]Gelevski Simeon, *Commentary of the LGAP*, Skopje, 2005, p. 300.

when the party is liable to obligations stemming from the dictum, even when he/she avoids their fulfillment – the enforcement agents should do so in a legally prescribed manner.

Therefore, the determination of the rules for enforcement of decisions in the administrative procedure (rights or obligations for the party, natural or legal persons) or rules of legal behavior of the enforcers are of utmost importance for the legality in the application of law. They are compulsory for all participants (enforcers and enforcees) in the procedure of administrative enforcement.

With regard to the rights of the party stemming from the decision, whether the party will exercise them or not is upon his/her will. However, if the party is being prevented from the exercise, he/she may request from the enforcement institutions to secure them. Reversely, if the party has to comply with obligations, monetary, acts or refraining from acts and similar, and the party refuses or avoids compliance, the enforcement institutions possess legal instruments with respect to securing compliance, via direct and indirect coercion.

Thus, it is about a set of interactive relations, voluntary and non-voluntary, between the enforcee and enforcer, which deeply affect both the interest of the parties and the public interest (stemming from the dictum of the enforceable decisions – but also from the enforcement procedure). In addition, guarantees that can be ensured solely by a legally provided for enforcement procedure are also needed.

During the enforcement, several arbitrary and irregular events may occur. For instance, the enforcement of non-enforceable decision or decision without a confirmation of enforceability may begin, although no conclusion for enforceability has been adopted or the modes and the means for execution determined therein are disproportionate to the aim to be achieved i.e. they are not the least burdensome ones and the most appropriate for the enforcee (the party) etc.

During the enforcement procedure, the party may file an appeal against the conclusion for enforcement and the right to protection of his/her interests within the enforcement procedure. With such an appeal, the party may attack the mode and the means of enforcement and their legality and rightness, but not the legality of the decision on the main administrative case that had became enforceable.

The appeal can be directed against:

-the legal acts (decisions and conclusions) rendered within an administrative procedure;

-actions (material acts of enforcement).

By recognizing the right to an appeal, the protection of the legal situation of the party is enabled against possible infringements in the administrative enforcement procedure. This right is recognized with no limitations of the reasons related to the enforcement that may be set forth in the appeal.[19]

The appeal is filed to the immediately higher institution than the one competent to enforce (meaning it is filed to the second instance institution). The time limit for filing an appeal is the usual,

[19]For instance, the control can relate to the minutes in the procedure of enforcement (citation: Tomik, op. cit, p. 334).

the same as in the case of appeal in a regular administrative procedure. However, the appeal does not delay the enforcement – it does not delay the enforcement that has already begun.

The appeal is filed by the party (enforcee), but it also can be done by the person requesting the enforcement.

An appeal in the enforcement procedure can be filed for reasons of the costs of the enforcement. "The costs of the enforcement, as a rule, are to be born by the enforcee (the party). If the costs cannot be paid by the party, the costs shall be born by the party who has requested the enforcement. Otherwise, the costs of the enforcement procedure shall be determined with a conclusion by the institution that carries out the enforcement. Against this conclusion an appeal is allowed by the enforcee and by the requestor of the enforcement".[20]

4. Enforcement Procedure for Securing an Interim Conclusion and the Party in the Administrative Procedure

4.1. The Party and the Enforcement for Securing in the Administrative Procedure

The administrative act shall be enforced at the moment of becoming enforceable, in order to secure realization of the dictum of the decision i.e. the obligation stemming from it. However, when the aim of the enforcement is to secure enforcement prior to the moment of enforceability of the decision, we encounter the "enforcement for securing". The recourse to this procedural device is necessary when there is a danger of waiting for the enforceability of decision – the enforcement itself shall be made impossible or it would be significantly more difficult. That will be the case if there is a danger for misuse of property, contract with third persons or in any other way – the future enforcee significantly aggravates or makes impossible the future enforcement of the obligation that shall stem from the dictum of the decision.

The party or another person shall submit the request for enforcement for reasons of securing. They must make at least likely this danger of impossibility or aggravation. "This danger must be real and objective (for instance, bad business practices, overdebtness of the enforcee, actions directed towards aggravation of the fulfillment of the obligation)".[21]

Upon the party's proposal, it is the institution that has rendered the decision (first instance institution) that decides by a conclusion. A separate appeal is allowed against this conclusion, but the appeal does not delay the enforcement of the decision. By the conclusion actually a license to enforce the decison is given (although

[20]Zoran Tomik, op. cit, p. 334:"Ground for appeal against an action undertaken during enforcement may, for instance, be a violation of the rules according to which the enforcement should be carried out in a manner and by application of the means which lead to the aim but is the least burdensome to the party or, the enforcement is being carried out during state holidays or at night, whilst there is no danger of delay and there is a written instruction by the institution competent for the enforcement".

[21]Gelevski, *Administrative Procedure Law*, Skopje, 2009, p. 251.

the decision is not yet enforceable) in order to secure future enforcement. The enforcing institution[22] does it on three possible grounds:

a) Upon a proposal by the party in favor of the enforcement;

b) Upon a proposal of the institution that adopted the decision, when this institution is not simultaneously the one competent for enforcement; and

c) Ex officio, in one party cases.

In this conclusion, unlike the conclusion on the enforcement permission, it is determined that the decision has not become enforceable yet and there is danger that the enforcee makes impossible or aggravates the enforcement itself.

But, the enforcing agent may condition the enforcement by a certain amount of money deposited by the initiator.

The enforcement for securing may be carried out in an administrative or a judicial way.

4.2. Party and Interim Conclusion for Securing in the Administrative Procedure

This procedural device represents even greater deviation from the rules of enforcement in administrative procedure. In accordance with Article 292, paragraph 1 of the LGAP, if the obligation of the party exists or it is made probable and there is a danger that the party will, by disposing of its property, by a contract with third parties or in another way, make impossible or aggravate the fulfillment of the obligation, the institution can, even prior to the adoption of the decision, enact an interim conclusion, in order to secure compliance with the obligation.

Sometimes, this institute may be applied when the procedure has not been even initiated. However, one has to be careful to do so only when the strict preconditions provided for by the law are fulfilled. Those preconditions are: the existence of a party or a state institution request to enact an interim conclusion; the existence or probability of a future obligation; danger of making impossible or aggravating the fulfillment of the obligation.

The institution enacting the interim conclusion is the institution that is competent to adopt the first instance decision. The interim conclusion must be elaborated in detail.

The enactment of the interim conclusion may be conditioned by giving a guarantee provided for in Article 220, paragraph 2 of the LGAP (for reasons of damages that may be incurred to the adversary party by the interim securing of the enforcement).

Against the interim conclusion, a separate appeal may be filed and the appeal delays its execution.

The party in whose favor the interim conclusion has been adopted shall be liable to compensate the damages to the adversary party, if an enforceable decision determines that it had been unjustified. If it has been done mala fide, a minor offence procedure may be initiated against the party who has proposed and gained interim conclusion.

[22]Gelevski, *Commentary of the LGAP,* Skopje, 2005, p. 302.

SUMMARY

In the paper "Party and Enforcement of Decision in the Administrative Procedure" the author elaborates in a very serious manner the last stage of the administrative procedure, i.e. the enforcement of decision.

The act of enforcement of decision is of great importance for the party, either when the party exercises rights and interests or it must fulfill certain obligations stemming from the dictum of the decision.

The author analyses the enforcement procedure and the legal guarantees for the party in the proceedings, considering all legal aspects and activities. Therein, she argues in favor of achieving the goal of the enforcement, while the means and the mode of enforcement should be least burdensome for the party.

The author argues in favor of strict legal procedure in the enforcement of decision in the administrative procedure, as well as in favor of strict legal guarantees for the party in the proceedings.