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THE NEW LAW ON ADMINISTRATIVE DISPUTES – EFFICIENT COURT PROTECTION

I.INTRODUCTION

The rule of law and the civic sovereignty enable strengthening and respecting human rights, whereas the individual rights and freedoms gain uncontested character, especially by means of administrative dispute and by practicing administrative law.

The international community has been promoting and favouring the respect for human rights. Nevertheless, in reality, one may not expect each state to respect human rights on equal terms, precisely because the universal international papers, *inter alia*, the European Convention on Human Rights, ensure respect for fundamental human rights and freedoms for each individual. Our national law guarantees that the individual, the personality and the citizens shall not be atomised and absorbed by the technocratic administration system and by professionally hierarchised social structures, and therefore it is important to run efficient and effective administrative dispute based on substantive and procedural law, but also by mandatory application of the case law of the European Court of Human Rights[1]. The EU administrative procedure law relies on administrative principles (rule of law, transparency, proportionality, impartiality and efficiency), of the European administrative standards that are not determined statically, but they are rather developed on the basis of formally prescribed standards (hard law), case-law (case law, judge-made law) and based on good practices (soft law). The European courts play an active role in interpreting rules and standards and new situations get imposed on the national administrations[2].

The administrative dispute guarantees individual rights of citizens and legal entities and in recent years there was a step forward in safeguarding human rights and adopting legislation so as to make it easier for citizens to exercise their rights, and to regulate relations between citizens and the state. But one thing is for sure, often behind the declarative guarantees on human rights, the government is directed in the disguise of protecting public interest, so as to abuse its power[3].

The analysis of the new Law on Administrative Disputes[4], empirically concludes that the Law on Administrative Disputes adopted in 2006[5] has shown a number of disadvantages in the

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[1]Omejec, J., Pravne doktrine i načela interpretacije konvencijskih prava, metode i sudske tehnike rešavanja slučajeva, Novi informator, monografija –The Rights Privileging Model, Zagreb, 2013

[2]Koprić, I., Evropski standardi i modernizacija upravnog sudjelovanja u Hrvatskoj, Institut javne uprave, Zagreb, 2014

[3]Naskovska, E. "Criminal law aspects of power abuse in the Republic of Macedonia, doctoral dissertation, Faculty of Law Justinian I, Skopje, 2019

[4] Law on Administrative Disputes (Official Gazette of RNM, No. 96/2019)

[5] Law on Administrative Disputes (Official Gazette of RM, No. 62/2006 and No.150/10)

past, such as longevity of administrative disputes, Court's failure to reach full jurisdiction, non-enforcement of judgements rendered by the Administrative Court and other inconsistencies that cause problems to citizens in exercising their rights in administrative disputes. At the same time, the postponement of administrative disputes is observed when in a proceeding following an appeal, the public authorities are represented by the State Attorney's Office. The practice shows that disputes on administrative agreements, although explicitly set forth by the Law on Administrative Disputes of 2006[6] are not in correlation with the new concept of the Law on General Administrative Proceeding[7], as a number of substantial laws did not harmonise their provisions, and therefore, a large share of administrative agreements are decided before regular courts, thus creating a total disbalance in law enforcement. For illustration purposes, we shall indicate Article 72 of the Law on Health Insurance[8].

The new Law on Administrative Disputes[9] stipulates that again, an administrative dispute shall decide the lawfulness of individual acts of the Parliament, of the Government and of other public authorities, so as to ensure court protection, although, pursuant to a Judgement of the Constitutional Court of the Republic of Macedonia[10], an identical provision was abolished, that is, Article 2 paragraph 2 of the Law on Administrative Disputes of 2006. Referring to Article 13 of the Law on Courts[11] and the new Law on Administrative Disputes, there is associatively identical number as Article 13, under which, "The court's final judgement is binding on the parties and their legal successors". In terms of protecting administrative disputes and the compulsoriness of final judgements arising from illegal actions of officials and other participants in the proceedings, the new institute of imposing penalties[12] is a discipline mechanism destined to holders of public office in public bodies. The enforcement of the new Law on Administrative Disputes is expected to enhance the efficiency and effectiveness of the work of the administrative courts in the Republic of North Macedonia, and hence, the level of satisfaction and fulfilment of administrative justice.

Keywords: administrative dispute, efficiency, judicial reforms, court protection

II. ADMINISTRATIVE COURT PROTECTION IN THE REPUBLIC OF NORTH MACEDONIA

Following the independence of the Republic of Macedonia, the court protection of administrative proceedings remained under the jurisdiction of the Supreme Court of the Republic of Macedonia and it was this court deciding lawsuits on administrative disputes. However, under the Law on Courts[13] in 2006, an administrative judicial reform was

[6] Law on Administrative Disputes (Official Gazette of RM, No. 62/2006 and No. 150/10)

[7] Law on General Administrative Proceeding (Official Gazette No. 124/15, Decision of the Administrative Court of RM, U. Br. 94/2017-1 of 28.03.2018, abolishing Article 77 paragraph 2 of the Law on General Administrative Proceeding)

[8] Law on Health Insurance – consolidated text (Official Gazette No. 142 of 2016) Article 72 "Disputes arising between a health institution and the Fund shall be processed by a chosen court, or court of jurisdiction, as per the rules of a litigation proceeding.

[9] Article 3 paragraph 5 of the Law on Administrative Disputes (Official Gazette of RM, No. 96/2019)

[10] Decision of the Administrative Court of RM, U. Br. 75/2007 of 13 02.2008

[11] The Law amending and supplementing the Law on Courts (Official Gazette of RM, No. 83/18), Article 13 paragraph 4 of the Law on Courts adds the epithet "legal" and reads: "The court decisions are mandatory for all legal entities and natural persons and have higher legal power than the decisions of any other authority.

[12] In the administrative disputes there was a possibility for imposition of penalties as per Article 7-a of the Law on Administrative Disputes, referring to indirect enforcement of the Law on Litigation Proceeding.

[13] Law on Courts (Official Gazette, No. 58/06)

commenced in the Republic of Macedonia, establishing a new specialised administrative judiciary[14]. By establishing the Administrative Court, which commenced its operation on 05.12.2007, the unresolved cases in the administration area were taken over from the Supreme Court of the Republic of Macedonia. Further, the Law on Administrative Disputes was enacted,[15] defining the administrative dispute, as court protection of natural persons and legal entities, so as to ensure lawfulness of individual administrative papers. At the beginning of the work of the Administrative Court, the decisions were final, and no regular legal remedy could be introduced, but only extraordinary legal remedies could be introduced instead. Pursuant to the decisions of the Constitutional Court of RM[16] the first amendment and supplement was introduced to the Law on Administrative Disputes[17], hence introducing the provision on allowability of introducing regular legal remedy – appeal[18] against the decisions of the Administrative Court, under the jurisdiction of decision-making of the Supreme Court of the Republic of Macedonia, following the model of the Republic of Slovenia.[19] In 2011, under a Law on Courts[20], Higher Administrative Court was established, following the model of the Republic of Croatia[21], in the capacity of a second-instance court, to scrutinise the appeals filed against decisions of the Administrative Court and procedural rules were partly integrated on appeal proceeding, under the Law on Administrative Disputes[22], referring also to the application of the Law on Litigation Proceedings. By the time the new Law on Administrative Disputes of 2019 was enforced, the jurisdiction of the Supreme Court was applied only in adjudication of decisions adopted by the Administrative Court, in terms of protection against illegal actions and in terms of extraordinary legal remedy – Requesting protection of lawfulness. The new Law excludes the jurisdiction of the Supreme Court of RNM, except against decisions on conflict of duties, hence finally enclosing administrative justice within the jurisdiction of the specialised courts. The decisions of the Administrative Court, adopted in accordance with the Electoral Code, remain to be exception to the legal protection[23]. In drafting the new Law on Administrative Disputes, of special importance was analysing the administrative judiciary in Italy, Austria, Slovenia, and Croatia[24].

[14] Davitkovski, B., Pavlovska-Daneva, Novelties in the administrative procedural protection of the citizens' rights in the Republic of Macedonia, second Skopje-Zagreb Legal Colloquium, Symposium of Papers, Faculty of Law Justinian I, Skopje, 2009

[15] Law on Administrative Disputes (Official Gazette, No. 62/06, adopted on 19.05.2006, entered into force on 27.05.2006, and under application as of 27.05.2007)

[16] Decision of the Constitutional Court of RM, U. br. 231/08 of 16.09.2009 and Decision U br. 51/10 of 15.12.2010

[17] Law amending and supplementing the Law on Administrative Disputes (Official Gazette of RM No. 150/10)

[18] Deskoska Treneska, R., Constitutional aspects of administrative legal protection in the Republic of Macedonia, published in Annual Book of Papers at the Faculty of Law Justinian I, Akademski Pecat, Skopje, 2014

[19] Kovač, P., Effective Adjudication through Administrative Appeals in Slovenia, Utrecht Review, Issue 3, 2013

[20] Law on Courts (Official Gazette of RM No. 58/06, 150/10, 35/08, 150/10, 83/18, 198/18, 96/19) Decisions of the Constitutional Court of RM, U. br. 256/07, U. br. 74/08, U. br. 12/11

[21] [21]Štanisić, F., Britić, V., Horvat, B., Komentar Zakona o upravnim sporovima, Narodne novine DD, Zagreb, 2017

[22] Law amending and supplementing the Law on Administrative Disputes (Official Gazette of RM No. 150/10)

[23] Electoral Code (Official Gazette No. 40/2006, 36/2008, 148/2008, 155/2008, 63/2008, 44/2011, 51/11, 142/12, 31/2013, 34/2013, 196/2015, 35/2016, 97/2016, 99/2016, 136/2016, 142/2016, 67/2017, 125/2017, 35/2018, 99/2018, 140/2018, 208/2018, 27/2019, 98/2019 and 42/2020)

[24] Comparative analysis of good practices and administrative case-law within a Project of CLRA (Centre for Legal Research and Analysis) and *Price Waterhouse Coopers*, funded under the support of the United Kingdom

III. APPLICATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The enforcement of Article 36 of the Law on Courts enabled application of rules and the case law of the European Court of Human Rights, whilst the national judiciary gave its direct contribution to the work of the European Court of human Rights, in the area of the right to fair trial – Article 6 of the Convention of Human Rights and Freedoms. By deciding upon "Trial within Unreasonable Time"[25], the citizens are guaranteed protection against inefficient conduct of proceedings before the courts in RNM, and on the other hand, the Macedonian judiciary accomplished freer entry into case law as a source of law. However, in order to introduce efficiency in dealing with Article 11 of the new Law on Administrative Disputes, the Court shall be bound to conduct the proceedings rapidly, not using unnecessary actions and costs, and to adopt a decision within a reasonable time, that is, no later than nine months from the day of the submission of papers, or from the day conditions are created for deciding the lawsuit. By applying the new Law, reduction is expected of the accepted applications for trial in unreasonable time in administrative court disputes.

In 2018, new intervention was made in the Law on Courts[26], relating to direct application of the European Court's case law. Customary law is not a source of Law, as per the Constitution of RNM, but pursuant to Article 18 paragraph 6 of the Law on Courts, the Court shall be bound to apply the paragraphs stated in final judgements of the European Court of Human Rights. In administrative law, it is especially important to respect individual appeals, but for the same legal matter, it is vital to introduce uniform case law. The Supreme Court of RNM no longer has jurisdiction in administrative disputes[27], so a dilemma arises on how to ensure equal enforcement of laws, if there is no vertical jurisdiction, when compared to regular judiciary. Hence, for uniform judicial administrative case-law, cooperation between the Administrative and the Higher Administrative Court is inevitable.

IV. REDEFINING NEW ADMINISTRATIVE DISPUTES

In administrative disputes, the Court shall assess the lawfulness of the decisions adopted by the state administration. Namely, in 90 percent of the lawsuits filed before the Administrative Court, the lawfulness of a final administrative act is decided[28]. It is inevitable to underline that the lawfulness of administrative disputes, as a classic means of communication of the administration with the citizens is the main objective of conducting administrative proceedings. Citizens need legal solutions that would specifically help the exercise of their rights, through abstract legal norms. Hence, it is indisputable that the administrative act is the most important subject of addressing any law that regulates procedural rules of administrative proceedings. In the case law, according to the legal nature of the administrative act that is subject of the lawsuit, there are several administrative disputes that are addressed in Article 3 of the new Law. However, novelty are the administrative disputes against the lawfulness of

[25] Naskovska, E., Criminal law aspects of Article 10 of the European Convention on Human Rights and Freedoms, Prosvetno delo, Skopje, 2013

[26] The Law amending and supplementing the Law on Courts (Official Gazette of RM No. 83/18), Article 18 of the Law on Courts is supplemented by a new paragraph, reading: When proceeding, the Court shall be bound to apply the paragraphs stated in final judgments of the European Court of Human Rights.

[27] Conclusion at a general session of the Supreme Court of 12.2015 "The return of confiscated objects in cases of misdemeanours is under the jurisdiction of the Court, apo misdemeanour authority before which the proceeding is conducted".

[28] Davitkovski, B., Pavlovska-Daneva, A., Shumanovska-Spasovska, I., Davidovska, E., Gocevski, D., Building the capacities of the administrative justice of the Republic of Macedonia in the wake of challenges in achieving European standards, Faculty of Law, Justinian I, Skopje, 2015

the administrative act of a public body in a proceeding following an objection to real acts[29] or their omission, which harmonises with the Law on General Administrative Proceeding and thus overcomes the problem if a specific resolution is a final administrative act, or real act, due to the reason that there is court protection also in relation to administrative actions, real acts and notifications[30].

As a practitioner in terms of theoretical study, I find it important to underline the breakdown of administrative disputes into: dispute on lawfulness, dispute on full jurisdiction, dispute on redemption, objective administrative dispute and subjective administrative dispute[31], which was promoted by the Judge of the Supreme Court of the Republic of Montenegro, Sreten Ivanovic.

In most legal amendments and supplements regulating special administrative proceedings, especially in tax law, it was determined to discontinue two-instance administrative proceedings, the right to appeal is lacking and the first-instance public authority shall adopt final administrative acts, followed by legal court protection. However, on the other hand, establishing the State Commission deciding on Appeals in Inspection Supervision and Misdemeanours proved ineffective in practice, and therefore intervention was made through the new Law on Misdemeanours[32], that the Commission would be deprived from the authority over misdemeanour as of 2021. For the functional court jurisdiction, units qualified for protection of rights within the subject areas have been established, and each unit has one to two councils, depending on the inflow of cases, as determined by the Court's Annual Work Programme. The Administrative and the Higher Administrative Court shall decide within a council consisted of three judges, a president and two member judges. A novelty in the Law on Administrative Disputes is the compulsoriness to determine the value of the dispute, so as to decide whether a single judge shall decide in administrative proceedings in first instance, for disputes, the case of which expressed in monetary value shall not exceed the amount of EUR 10,000 in MKD equivalent, or for disputes in which only procedural actions in the administrative proceedings are disputed. The Council shall decide with a Resolution on the fulfilment of such conditions and on assigning the case to a single judge[33]. The lawsuits for repetition of the proceeding, as an extraordinary legal remedy, shall be decided by a Council of five judges.

Very important is the annual schedule of the judges and the establishment of councils, as the internal reorganisation should be considered, so as to achieve the monthly orientation output and overcome the inflow of cases, and on the other hand, through specialised units of judges, efficient and professional administrative justice shall be ensured. Very important segment in the functioning of the Administrative and the High Administrative Court enhancing the efficiency of decision-making, automatic computer system for information technology shall be introduced, the so-called AKMIS[34], aiming at establishing order of regulating the responsibility on case management, with special accent on the organisation of units for submission of judicial correspondence, as well as to ensure relevant European standards on trial in reasonable time. Due to the alertness in the non-objective distribution of cases in some courts, with the amendments and supplements to the Law on Courts[35], technical interventions

[29] U br. 294/19 – the lawsuit has been accepted

[30] Article 14, Law on General Administrative Proceedings (Official Gazette No.124/15, Decision of the Constitutional Court of RM, U. br. 94/2017-1 of 28.03.2018, cancelling Article 77 paragraph 2 of the Law on General Administrative Proceedings)

[31] Ivanović, S., Primjena Zakona o općem upravnom postupku i Zakon o upravnom sporu - sa sudskom praksom i registrom pojmova, Podgorica, 2008

[32] Article 131 of the Law on Misdemeanours (Official Gazette of RNM, No. 96/19)

[33] Article 16 of the Law on Administrative Proceedings (Official Gazette of RNM No. 96/19)

[34] Law on the Case Movement Management in the Courts (Official Gazette of RM, No. 171/10)

[35] Law amending and supplementing the Law on Courts (Official Gazette of RM, No. 83/2018)

were made in Article 7 of the Law to upgrade the case assignment system. Following the verification of the decision, it shall be anonymised and published on the court's website. The new Law on Case Movement Management in Courts shall establish that the publication on the court's website shall be done once the decision has been made final[36].

V. JUDICIAL PRACTICE IN ADMINISTRATIVE DISPUTES

Seen through the prism of the practice of the Administrative Court and of the countries in the region[37], which has been operational for more than ten years, one may conclude that the plaintiffs, with their lawsuit, often demand the Court to hold an oral and public hearing pursuant to the Law on Administrative Disputes, but a public hearing is held only in administrative disputes for which the Court has ex officio provided new evidence that were not disclosed in the administrative proceeding before the defendant authority. Pursuant to Article 40 of the Law on Administrative Disputes, the Court shall decide in full jurisdiction administrative disputes, when it is certain that relevant facts and evidence may be provided, which would be a reliable basis for resolving the legal matter, usually in cases when the factual situation was fully established, and the substantive law was also applied incorrectly in cases when the Court in several judgments for the same administrative case has provided legal opinion, which was not respected by the defendant authority. The practice of administrative disputes on silence of administration[38] shows that the number of such lawsuits has rapidly decreased since the beginning of the court's operation, and a tendency is observed of public bodies to be more efficient when deciding requests, as well as in the submission of case papers.

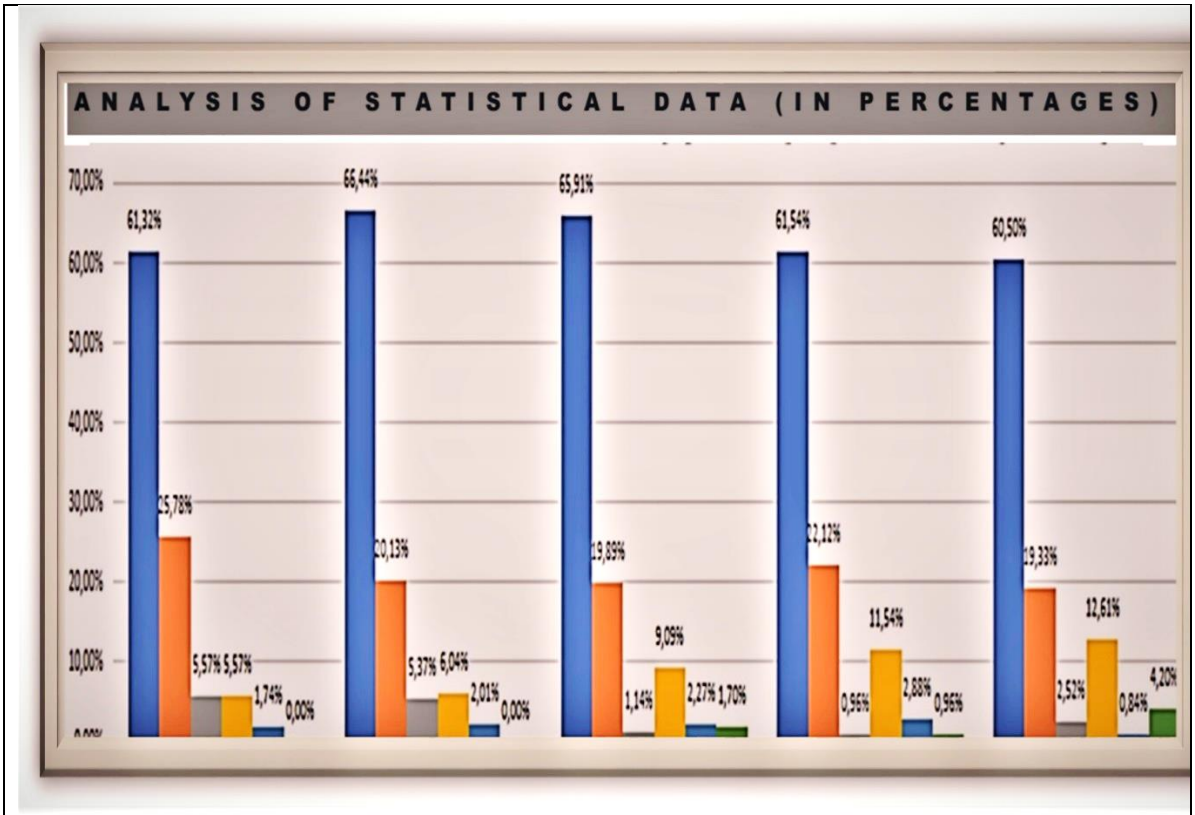
a. Non-enforcement of Administrative Court judgements

It is evident from the analysis covering the period between 2013 and 2017 (inclusive), on the average, 63% of the claims under Article 53 of the Law on Administrative Disputes have been accepted, in absence of decision-making of public bodies, the Court was obliged to adopt a resolution, which would replace the body's resolution. A graphic chart leads to the conclusion that the citizens in the capacity of plaintiffs, are familiar with the law and lodge a claim for enforcement of a court judgement, but they do not meet the deadlines prescribed by law and there is a certain percentage of requests that were rejected. The percentage of rejections is an average of 20% per annum, which indicates inefficient operation of the defendant authorities. Article 53, paragraph 2 of the Law, provides the Court to notify the authority with power to supervise the work of the authorities, but in practice, neither the Court nor the inspectors in charge do not initiate a procedure on the responsibility and unprofessional operation. The following statistics indicate an alarming disregard of court decisions, from a formally legal procedural point of view, and it is even more debatable whether they respect the legal opinion of the Court when adopting a decision on enforcement of judgments.

[36] Law on the Case Movement Management in Courts (Official Gazette of RNM, No. 42/20 of 16.02.2020 shall enter into force not later than 8 days from the day of publication, and it shall commence its enforcement within 3 months from the day of entry into force), in compliance to Article 9 paragraph 1 of the new Law, only final court decisions shall be mandatory published, using name and surname of parties/legal entities, with anonymisation of domiciles, seats, personal identity numbers or personal registration numbers of legal entities and of personal data of witnesses and damaged parties in the proceeding.

[37] Lonchar., Z., Narrowing administrative and judicial protection of citizens in the Republic of Serbia, published in Yearbook of Papers, Faculty of Law, Justinian I, honouring prof. Simeon Gelevski, PhD, Skopje, 2014

[38] Davitkovski, B., Pavlovska-Daneva, A., The institute of silence of administration in administrative proceedings in the Republic of Macedonia, Glossary of Papers, MASA, Skopje, 2009



RESOLUTION	ACCEPTED		DECLINED		INTERRUPTED		REJECTED		ANNULLED		PENDING (UNRESOLVED)		TOTAL CL
2013	176	61,32	74	25,78	16	5,57	16	5,57	5	1,74	0	0	287
2014	99	66,44	30	20,13	8	5,37	9	6,04	3	2,01	0	0	149
2015	116	65,91	35	19,89	2	1,14	16	9,09	4	2,27	3	1,7	176
2016	64	61,54	23	22,12	1	0,96	12	11,54	3	2,88	1	0,96	104
2017	72	60,5	23	19,33	3	2,52	15	12,61	1	0,84	5	4,2	119
ВКУПНО	527		185		30		68		16		9		835
		%		%		%		%		%		%	

VI. THE NEED OF A NEW LAW ON ADMINISTRATIVE DISPUTE

With due attention and analysis of the administrative justice, in the past ten years there is a movement forward noted, in regard to guaranteeing human rights and adoption of legislation, enabling citizens to easily exercise their rights.

The analysis of the need of a New Law on Administrative Disputes[39] states that the Law on Administrative Disputes adopted in 2006, proved series of disadvantages in the past period, in terms of longevity of the administrative dispute, lack of Court's proceedings in full jurisdiction, non-enforcement of decisions rendered by the Administrative Court and other inconsistencies leading to the problem for the citizens in exercising their rights in administrative disputes in question.

At the same time, the procrastination of administrative disputes is observed when, in a procedure following an appeal, the public authorities are represented by the State Attorney's Office. If the citizen in the capacity of a party has initiated an administrative dispute against the second instance decision of the state commission, there is no logical or legal justification for the State Attorney to represent the public body in such an administrative dispute, because they are not familiar with the case from the beginning of the proceeding and decision-making. However, in accordance with the case law of the Higher Administrative Court, the State Attorney's Office is obliged to represent the state authorities.

It is necessary to undertake measures for consistent application of the compulsoriness of the court judgments and to provide a way to determine how many of the final judgments have been executed within the prescribed period of 30 days. Within the statistics on administrative justice, there is no methodology containing data on the percentage of court decisions made by both the Administrative and the Higher Administrative Court, which does not provide the full picture of the efficiency and effectiveness of the administrative judiciary's work, and thus the degree of satisfaction and fulfilment of administrative justice.

Starting from the previously identified disadvantages of the Law on Administrative Disputes adopted in 2006 and further amended in 2010, a new Law on Administrative Disputes was drafted[40], which was also part of the Judicial Reform Strategy 2017-2022. The Law was adopted in May 2019[41], and there is a postponed application of 1 year after the announcement, during which time period it was necessary to prepare an implementation plan. For the impact of the application of the Law on Administrative Disputes, it is necessary to enforce legal solutions for at least one year, in order to see their expediency.

a. New solutions to the Law on Administrative Disputes

The new concept of the Law on Administrative Disputes firstly in Article 13 accentuates the compulsoriness of the final court decision[42]. To efficiently decide administrative disputes and to actualise the application of the case law, the institute model decision following the model of the Republic of Slovenia, as provided in Article 49 of the Law on Administrative Disputes was introduced. The novelties are aimed at determining the dispute value, scheduling public hearing, evidence trial, protecting the respect of the legal opinion given in the judgments, the judgements in full jurisdiction and the new institute on imposing penalties, as a means that

[39] Law on Administrative Disputes (Official Gazette of RNM, No. 96/19)

[40] The draft law was produced by a Working Group in the Ministry of Justice in March 2018, composed by administrative law professors, academic community representatives, judges – Supreme, Higher Administrative and Administrative Court, under participation of representatives from the Judicial Council of the Republic of Macedonia, the Ministry of Information Society and Administration, State Administration Inspectorate and the Ministry of Justice, as well as attorneys-at-law.

[41] Article 93 of the Law on Administrative Disputes (Official Gazette of RNM, No. 96/19 of 17.05.2019)

[42] Gelevski, S., Administrative Dispute and Administrative Judiciary, Bomat Graphics, Skopje, 2019

may be disposed of by the Court, which was not previously prescribed by the Law on Administrative Disputes.

b. Decisions in administrative disputes

The Court shall decide the lawsuit, but it shall not be bound by the reasons of the lawsuit. The Court shall ex officio pay attention to the reasons for invalidity of the administrative act (Article 35 paragraph 1 and paragraph 2). The Court shall decide on the basis of its own belief and assessment of legal and factual matters. In the cases when the Court intervenes in deciding the lawsuit, it may recognise it with its judgement, that is, adopt it, or it may reject it as ungrounded.

In addition to the standard decisions: decision and judgment, a new institute - a model decision – shall be provided by the Law.

c. Interim measure

As a rule, the lawsuit shall not postpone the enforcement of the act against which it has been filed, but there are laws[43] in which it was explicitly stated that also in such cases, the enforcement of the act shall be postponed by the time the administrative dispute is resolved on full jurisdiction. In addition to the lawsuit, the plaintiff may file an interim measure claim, in order to postpone the enforcement of the act, if he/she discloses evidence that the dispute would cause harm on him/her, which would be hard to repair, and the postponement of the enforcement shall not be contrary to the public interest, as well as if the postponement would not cause greater and irreparable harm to the opposing party. For each claim for postponement of the enforcement of the disputed act, the Court shall adopt a decision not later than seven days from the receipt of the claim. The Court may postpone the enforcement, or it may reject the claim (Article 28).

The Court has accepted interim measures, in order to avoid any serious and irreparable harm[44]. Deciding in a Council, the Court shall adopt a decision within seven days[45] from the day of the receipt of the claim. In the provisions on interim measures, it was not explicitly stated that a public hearing should be held related to the claim, but, in accordance with Article 38 paragraph 3, when the Court proceeds with a Decision, it shall not be obliged to conduct a hearing, except when adopting a decision on interim measure.

d. Model Decision

To effectively decide on administrative disputes, the institute model decision[46] set forth in Article 49 of the Law on Administrative Dispute was introduced. In case there are more than 20 lawsuits for annulment of administrative acts, in which the rights and obligations are based

[43]Article 43 paragraph 2 and paragraph 3 and Article 49 paragraph 2 and paragraph 3 – the lawsuit shall postpone the execution of the Decision, the trial before the court of jurisdiction is urgent in asylum-seeking procedure, but in accordance to Article 57 paragraph 5 and paragraph 6, in a dispute for confiscation of a passport and Article 65 paragraph 3 and paragraph 4, in a dispute on deprivation from freedom of movement, the lawsuit shall not postpone the execution, under the Law on International and Temporary Protection (Official Gazette of RM No. 64/18), Article.68 paragraph 6 of the Law on Misdemeanours (Official Gazette of RNM No. 96/19) – the lawsuit shall postpone the enforcement

[44]Meritoriously rendered judgement on public procurement, accepted lawsuit and a Decision on Temporary Measure shall not allow conclusion of a Public Procurement Contract, U-5 br. 834/2015, U-5 br. 835/2015 of 06.07.2015, the new Law on Public Procurement envisages that the Court shall proceed on lawsuits in a dispute, under full jurisdiction.

[45] In compliance with the new Law on Administrative Disputes, the Administrative Court, only in the first month of the law enforcement, has received more than 30 temporary measure claims, which is the total for all specialised departments, but having in mind that those decisions are not yet final, they may not be subject to elaboration.

[46] Zakon o upravnom sporu - ZUS - 1 (Uradni list RS st.105/06-12.10.2016)

on equal or similar factual situation and same legal ground, following the receipt of replies on lawsuits, there is a possibility for a model proceeding[47] to be conducted, in a way deciding on the first registered lawsuit, and the other proceedings shall be discontinued, until the final conclusion of the first administrative dispute.

e. Judgement in administrative disputes at full jurisdiction

To overcome one of the major weaknesses in the administrative practice, specific novelties shall be introduced to hold public hearings more frequently and to decide a dispute in full jurisdiction[48]. Pursuant to the current case-law and the new Article 60 paragraph 1 of the Law on Administrative Disputes, the judgment in a dispute of full jurisdiction shall annul the disputed administrative act and the Court shall decide the administrative matter, that is, the final judgment shall fully replace the annulled disputed act. Also, if the Court finds that the body has not adopted the individual act within the set deadline, it shall adopt the claim and resolve the administrative matter (Article 60 paragraph 2 of the Law on Administrative Affairs).

However, pursuant to the new Law on Administrative Disputes, the established court practice has already been accepted, when the disputed resolution may only be annulled with a judgement and the case may be returned for retrial, in three exceptional situations. The first, when the defendant authority was deciding based on a free assessment. The second, when in certain cases the Court cannot decide in full jurisdiction and cannot fully take over the role of the competent defendant, since the nature of the work would not allow it[49] (in specific cases, the Court has no power to extend specific approvals and findings on the basis of which a certain right of the plaintiffs would be recognised). The third exception is in the cases when the factual situation has been determined incorrectly and incompletely. In its judgments, the Court should order the defendant authority to adopt an individual act within 15 days of its entry into force and to make it known to the defendant authority that it is bound by the legal opinion. The new Law on Administrative Disputes stipulates that in case the court decides for the second time about a lawsuit filed by the same plaintiff for the same administrative matter that has already been decided and has already received a judgement by which the case was overturned for retrial before the first instance authority, in which case the Court shall be obliged to resolve the administrative matter itself, whereby the judgment shall completely replace the annulled individual act (Article 60 paragraph 6 of the Law on Administrative Disputes). In order to increase the efficiency of the court protection in administrative disputes, it is necessary, in addition to applying new provisions, to ensure technical and spatial equipment of the courts for smooth conduct of public hearings.

f. The institute of penalties

The new institute of penalties is a mechanism for disciplining public authorities and it is intended to protect the main features of the administrative dispute. The application of the institute was introduced in order to reduce irresponsible and negligent behaviour of public authorities during the procedure, as well as for the purpose of general prevention of all holders of public office and authorised staff in public authorities, so as to effectively protect the rights of the parties.

[47] In lawsuits with legal ground of higher monthly amount of retirement pension for holders of highest amount of family pension, when deciding, Article 230 of the Law on Pension and Invalidity Insurance was equally applied to all, which is an example when requirements are met for a model decision, in compliance with Article 49 of the Law on Administrative Disputes

[48] Article 60 paragraph 1 and 2 of the Law on Administrative Disputes (Official Gazette of RNM, No. 96/19)

[49] Article 60 paragraph 3 of the Law on Administrative Disputes (Official Gazette of RNM, No. 96/19)

Through the comparative analysis of legislations in the EU member states and in the region countries, respectively[50], one may conclude that this institute, even though stipulated in the laws on administrative disputes, is not applied in practice. The resolutions on imposing penalties are subject to constitutional control[51] related to the protection of the right to freedom of thought[52] .

The new Law on Administrative Disputes sets forth imposition of penalty in administrative disputes, in four possible legal situations:

1. In an administrative dispute, the public organ shall not submit the requested case papers[53].

2.Protection of order and discipline in the decision-making for each participant in the administrative dispute[54].

3.Protection against active disregard of the legal opinion in court decisions[55].

4.Protection against passive non-action as per a court decision[56].

g. Enforcement of decisions

The decisions adopted in administrative disputes are enforced in accordance with the regulations in the field of enforcement. The judgement is enforceable from the moment of its delivery to the party unless the judgement has set another deadline. The decision is enforceable immediately after its publication or submission to the party. The enforcement of monetary liabilities determined by the resolution shall be conducted in accordance with the Law on Enforcement.

VII. SUMMARY

This paper explores the main features of the new Law on Administrative Disputes, which shall come into force in May 2020, so as to ensure effective judicial protection of citizens and legal entities in administrative disputes. The paper points to the chronology of administrative law reforms with a view to the weaknesses between public office holders and the administration with the administrative judiciary, as well as of a number of incompatible legal acts. The continuation of the paper states the need for efficient implementation of the new Law on Administrative Disputes, which is the fundament for effective administrative-judicial protection, but also the fact that the new administrative procedural rules should be applied to avoid transforming the administrative dispute into litigation proceeding. The paper analyses basic preconditions for efficient implementation of the reformed administrative dispute, holding public hearings, deciding upon the administrative disputes in full jurisdiction, respecting the compulsoriness and enforcement of court's final decisions. The Law on Administrative Disputes finds a resolution for restrictive application of the right to appeal lodged by the State Attorney's Office of the Republic of North Macedonia. Under proper

[50] Kovacevic, A., Imposition of penalties in an administrative dispute, advisor in the Administrative Court of the Republic of Serbia, Newsletter of the Administrative Court of the Republic of Serbia, 2018 (practical commentary on the application of penalties)

[51] Decision of the Constitutional Court of RNM, U. Br. 57/2019 of 29.05.2019

[52] Naskovska, E., Criminal legal aspects of Article 10 of the European Convention on Human Rights and Freedoms, Prosvetno Delo, Skopje, 2013

[53] Article 36 paragraph 2 in relation to paragraph 1 of the Law on Administrative Disputes (Official Gazette of RNM, No. 96/19)

[54] Article 57 of the Law on Administrative Disputes (Official Gazette of RNM, No. 96/19)

[55] Article 60 paragraph 7 v.v. paragraph 5 of the Law on Administrative Disputes, the court, under a proposal of the plaintiff, or ex officio, shall impose a penalty on an officer in charge or on an authorised officer, in the amount of 20% of the monthly salary.

[56] Article 88 paragraph 3 in relation to paragraph 2 of the Law on Administrative Disputes, for disregarding the deadline. The Court may impose a penalty – in the amount of 20% of the monthly salary to the authorised officer/officer in charge in the public authority

application of the new Law on Administrative Disputes, the Court shall very rarely need to apply the new institute - penalties.

At the end, the paper concludes that judges have the professional potential for efficient legal protection, but urgent upgrades are needed with greater technical resources and judicial service staff, so that we can realistically expect to achieve the efficiency and effectiveness of the work of administrative courts and raising the degree of satisfaction and fulfilment of administrative justice.

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4. Decisions of the Constitutional Court of RM, U.Br. 256/07, U.Br. 74/08, U.Br. 12/11
5. Law on General Administrative Proceeding (Official Gazette of RNM, No. 96/19)
6. Decision of the Constitutional Court of RNM, U.Br. 57/2019 of 29.05.2019
7. Law on Case Movement Management in Courts (Official Gazette of RM, No. 171/10)
8. Law on Case Movement Management in Courts (Official Gazette of RNM, No. 42/20)
9. Law on Misdemeanours (Official Gazette of RNM, No. 96/19)
10. Law on Litigation Proceeding (Official Gazette of RM, No. 79/05, 110/08,83/09, 116/10, 124/15).
11. Electoral Code (Official Gazette of RNM, No. 40/2006, 136/2008, 148/2008, 155/2008, 63/08, 44/2011, 51/2011, 142/12, 31/13, 34/2013, 196/15, 35/2016, 97/2016, 99/16, 136/2016, 142/16, 67/2017, 125/17, 35/2018, 99/2018, 140/2018, 208/18, 27/19, 98/19 and 42/20)
12. Decision of the Constitutional Court of RNM, U.Br. 57/2019 of 29.05.2019
13. Explanation of the Draft Law on Administrative Disputes produced by the Ministry of Justice as a proposer, enclosed with the Draft Law and submitted to the Assembly of RNM The draft law was produced by a Working Group established in the Ministry of Justice in March 2018, composed of administrative law professors, academic community representatives, judges of the Supreme, High Administrative and Administrative Courts, representatives from the Judicial Council, the Ministry of Information Society and Administration, State Administration Inspectorate, Ministry of Justice, as well as attorneys-at-law.