***Ass. Prof. Zoran Jovanovski, PhD*[1]**

Military Academy "General MihailoApostolski", Skopje

Republic of North Macedonia

Administrative agreements in NRM

1. Abstract

The administrative bodies, as well as the legal entities entrusted by law with the exercise of public authorizations, are obliged to provide the parties (legal or natural persons) with protection and easier realization of their rights. However, enabling the protection and realization of the rights of the parties must not be to the detriment of the rights of third parties, nor to the detriment of any public interest determined by law. The administrative bodies are obliged to act according to the Law on General Administrative Procedure (LGAP), on the one hand to strive to protect the legal order and the rule of law, and on the other hand to provide protection of the legal rights of legal entities and individuals. All of these can be achieved by applying the administrative agreement as a legal institute which with the purpose and meaning due to which it was created justified its existence.The administrative agreement according to the LGAP of the Republic of Macedonia is an agreement between a public body and a right or natural person (party), whose subject is performing a public service under the competence of a public body when it is published by law, and is in public interest and it does not restrict the rights of third parties.

What is specific about administrative agreements is that they have a number of similarities with two other important legal institutes, namely, administrative acts and civil law agreements. However, despite the similarities between them, there are significant differences, which are the

[1]zoranjovanovski43@gmail.com

position and role of the parties in relation to the administrative, ie administrative agreements, so it is necessary to distinguish these agreements, ie distancing from administrative acts and civil law agreements.

According to the LGAP, the administrative contract can be annulled by a lawsuit in front of a constitutional court, it can be amended if the legal requirements are not met, or it can be terminated.

The administrative bodies should be a professional service, ie they should play the role of an efficient partner, and thus they will contribute to easier realization of the activities that are of interest and importance for the parties. However, this does not mean abandoning the legal mechanisms of acting from a position of power, but achieving a public interest, which does not always coincide with individual interests.

Keywords: administrative agreement, administrative body, public interest, party, government

2. Introduction

At the end of the XIX and the beginning of the XX century, state and legal concepts developed which led to major changes in the systems of European countries. The changes were aimed at overcoming the classical conception of governing bodies, as they could not meet the expected results of the new democratic society. In fact, the new concepts of the governing bodies contained legal elements, which included the social functions of the state and the rights, but also the realization of the rights and interests of the citizens, so the goal of the administration was not only its engagement in law enforcement, but also providing social welfare. Administrative bodies no longer used methods that involved power and authority, but tended to accelerate the development of society, so they transformed from public authority into a system of public services. New social changes have led to the emergence of new legal theories, as well as new legal agreements. A new form of act called administrative contract appears in the business acts of the management. Administrative contracts are a special type of contracts in which one of the contracting parties is a public legal body, and they are concluded due to performing a certain public work and realization of a certain public interest. The French and German legal systems have the greatest credit for the formation of administrative agreements.

3. Administrative agreements

The administrative bodies, as well as the legal entities entrusted by law with the exercise of public authorizations, are obliged to provide the parties (legal or natural persons) with protection and easier realization of their rights. However, enabling the protection and realization of the rights of the parties must not be to the detriment of the rights of third parties, nor to the detriment of any public interest determined by law.[1] The administrative bodies are obliged to act according to the Law on General Administrative Procedure (LGAP), ie on the one hand to strive to protect the legal order and the rule of law, and on the other hand to provide protection of the legal rights of legal and natural persons. This can be achieved by applying the administrative agreement as a legal institute that with the purpose and meaning for which it was created justified its existence.[1] Administrative agreements are: concession contracts, public procurement contracts that are of public interest, public service contracts, public works contracts and other contracts that according to the content of the case, the court will determine as administrative contracts. [1]

An administrative agreement is an agreement between a public body and a legal or natural person (party), whose subject is the performance of a public service under the competence of a public body when it is prescribed by law, and is in the public interest and does not restrict the rights of third parties.[3]The administrative agreement in the Republic of Macedonia is regulated by the LGAP.Administrative bodies are: the state, a unit of regional or local self-government and their bodies, legal entities partially or fully financed from the state budget or other public budget (public institutions, public enterprises, etc.).[6]

A party is any legal or natural person upon whose request an administrative procedure has been initiated, against which an administrative procedure has been initiated or is involved in that procedure for the protection of its rights or legal interests. A party can also be a public body, settlement or group of persons, although they do not have the status of a legal entity.[6]

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[1] Belovski, V., Administrative law, Faculty of law, UGD- Shtip, - Kochani, 2010. Page. 25

[3]Davitkovski, B., Pavlovska, Daneva, A., Administrative law. – University "St. Kiril and Metodius" – Skopje, 2018. Page 290

[6] Draft law on general administrative procedure, Ministry of information society and administration- Skopje, July, 2014. Taken on 03.01.2022.

There are three characteristics of the administrative agreements by which they are recognized and they are:

- The first characteristic is the subject of the contract,
- The second characteristic is the purpose for which it was concluded,
- The third characteristic indicates the conditions in the contract, ie acceptance of those conditions by the party or fulfillment on the terms by the party.

❖ The first characteristic indicates that one party is always a public authority. [8]

❖ The second characteristic means that the intention or goal of the public body to conclude such an agreement achieves a certain public interest, which may be different, but is basically the satisfaction of certain public needs. By concluding an administrative agreement, the public authority may allow the use of public property for the construction of public facilities such as schools, hospitals, roads, buildings, etc. and thus will enable the realization of some public interest. For example, public transport service, supply of water, gas, electricity and more. [8]

❖ The third feature is the existence of derogatory clauses, in fact it means that the management decides what the terms of the contract will be, and the party has to give their consent. That is, the party should have the will and interest to accept the conditions prescribed in the contract. The enforcement of rights and obligations applies to both parties, the only advantage or privilege being that the management of executive operations is in the hands of the governing bodies. The financial guarantee applies to both parties as well as the guarantee for some unforeseen cases, which means that the management would not harm the other party.[11]

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[8] https://scindeks-clanci.ceon.rs/data/pdf/1452-4457/... · PDF file UPRAVNI UGOVORI1 PDF Taken on 05.01.2022.
[11] https://www.stranipravnizivot.rs › SPZ › downloadProf. dr Dejan Milenković1 - Strani pravni život PDF Taken 05.01.2022

What is specific about administrative agreements is that they have similarities with two other very important legal institutes, namely administrative acts, and civil law agreements. However, despite the similarities between them, there are significant differences, and that is the position and role of the parties in relation to the administrative, i.e. administrative agreements, so it is necessary to distinguish this agreement, ie distance from administrative acts and civil law agreements.[12]

- Basic differences between an administrative act and an administrative contract:
- The administrative act is adopted by an authorized bearer, and in the case of an administrative contract one party is always a public body;
- An administrative act is a unilateral legal act, and an administrative contract is a bilateral legal act;
- The basic characteristic for the administrative act is the authoritarianism, ie. it can be adopted without the will of the party or it has a forced character, while in the case of an administrative contract, the party must have the will to conclude the contract;
- The specific administrative act refers to a specific case and has no effect on other entities, while the administrative contract has effect and impact on other entities.
- Basic differences between an administrative contract and a civil law contract:
- In a civil law contract there is almost unlimited freedom in choosing the party, and in an administrative contract the administrative body chooses the party based on strict rules, ie in a precisely defined procedure;
- One of the basic rules in civil law contracts is the equality of the parties, and in a management contract there are prerogatives of power and it is not equal to its contractor;
- The governing body controls the execution of the administrative contract and may impose sanctions, but also unilaterally terminate the contract;
- Economic effect on both parties concluding the civil law contract, and the administrative contract is concluded due to public interest. [12]

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[12]https://nardus.mpn.gov.rs/bitstream/handle/123456789/11073/Disertacija.pdf Legal nature administrative agreement - Doctoral dissertation, Ratko Radosevic - Faculty of Law - Novi Sad, 2018. Retrieved on January 8, 2022.

4. Control over the fulfillment of the contract and protection of the interests of the parties in the contract

In the procedure of control over the fulfillment of the contract, the administrative body may notice irregularities and shortcomings in the manner of its execution. For non-compliance with any of the agreed conditions, the governing body has the right to apply sanctions. [12] Because the purpose of sanctions in administrative contracts is not only to eliminate the consequences of non-compliance with the contract, but also to ensure the smooth and quality performance of the public service that is the subject of the contract. The sanctions applied by the governing body arise from a special legal regime.

The administrative body has the right to impose monetary sanctions, it can also impose compulsory sanctions, ie to be substituted in the place of the other contracting party that has seriously violated the contractual obligation.

Substitution as a sanction of the management, may consist in direct undertaking of the performance of the contracted activity of public interest by the administration itself or by forced substitution of the contracting party by a third party determined by the state. The administrative body has the right to unilateral termination of the contract as a sanction for breach of contract, without obligation to compensate the damage.

In administrative agreements, due to the existence of special prerogatives of the public bodies, ie due to the authorization of the unilateral intervention of the management in the implementation of the contract, the party can suffer deterioration of his situation without being guilty of it. Precisely because of this element of uncertainty, which could be indirectly detrimental to the interests of the public service itself, the term financial balance is introduced in the administrative agreement. and the theory of unpredictability. [12]

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[12]https://nardus.mpn.gov.rs/bitstream/handle/123456789/11073/Disertacija.pdf Legal nature administrative agreement - Doctoral dissertation, Ratko Radosevic - Faculty of Law - Novi Sad, 2018. Retrieved on January 8, 2022.

- In the case of the theory of arbitrariness, it is a matter of removing the unintended consequences for the party from a financial point of view, which occurred as a consequence of the use of its prerogatives in the direction of changing the contractual conditions by the governing body. [13]

It is necessary to distinguish whether there were unfavorable financial conditions due to the measures taken by the management as a contracting party, or due to the application of amended general regulations that apply to all similar cases and is independent of the will of the management body as a contracting party. The distinction is very important, because if the existence of the first of them is determined, the party has the right to full compensation, which includes the right to compensation of lost profit, while the second case results in the application of more restrictive compensation measures i.e only partial compensation and does not compensate the profit of the party, but only the damage suffered.[13]

- The theory of unpredictability has a dual role, on the one hand to protect and help the interests of the party caused by measures that could not be foreseen when concluding the contract with the governing body, and on the other hand to enable the normal realization and performance of public service, in accordance with the principles of the public service of continuity and adaptation to the new conditions. In the theory of unpredictability, the damage is shared by both the party and the public body. The extent to which each of the contracting parties will bear the damage is ultimately decided by the court. [13]

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[13]www.prafak.ni.ac.rs/files/disertacije/dis-zoran-filipovic.pdf · PDF file Administrative talks as an institute of public administration - Doctoral dissertation - Zoran. J. Filipovic - Nis. 2017 Retrieved on 09.01.2022.

The Law on General Administrative Procedure stipulates that an administrative contract may be annulled by a lawsuit before the Constitutional Court, may be amended if the legal requirements are not met or terminated. The management contract can be annulled if the conditions prescribed for its conclusion are not met by law.

The management contract may be amended or terminated due to some other reasons that occurred after the conclusion, and could not have been foreseen at the time of conclusion, because those reasons make it difficult to perform the obligations under the contract. Termination of the contract may occur for other reasons determined by a special law. The contract may also be terminated if the party does not fulfill the obligations of the contract, or due to danger to life and health of people or property if that reason cannot be removed otherwise.[14]

The administrative agreement is terminated with an administrative act in which the reasons are stated and explained. The annulment of the administrative agreement upon a lawsuit of the party or the public body is decided in an administrative dispute.[15]

The administrative dispute as an external objective mechanism for correction of the work of public bodies is of special importance for the bureaucratic system itself because it is an indicator of its work and provides guidelines for its further development, as well as for the individual because it provides judicial protection of the bureaucratic system. .[15]

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5. Example of an administrative agreement

[14]https://www.odvjetnik-strniscak.hr/strucni-clanci/upravni-ugovor/ Retrieved on 05.01.2022.

[15]http://www.vsrm.mk ›sud› statistika - Comparative analysis of good practices for administrative justice - 2018 Retrieved on 09.01.2022.

The scientific paperpresents an example of an administrative agreement between two public bodies: theNuclear Safety Administration of the Republic of Slovenia and the Atomic Energy Control Commission of Canada.

- Decree

Decree on ratification of the management agreement between: the Nuclear Safety Administration of the Republic of Slovenia and the Atomic Energy Control Commission of Canada in accordance with the Agreement between the Government of the Republic of Slovenia and the Government of Canada on cooperation and safe use of nuclear energy. The management agreement is concluded in Slovenian and English language. Signed on 31 May 1995 in Ljubljana.

- Objective

In order to enable the effective fulfillment of the obligations of the Agreement between the Government of the Republic of Slovenia and the Government of Canada on Cooperation and Safe Use of Nuclear Energy, signed on 31 May 1995.

- Definitions and conventions

The meanings of the terms "nuclear material", "material", "equipment" and "technology" in the text of this agreement correspond to the meaning in the agreement. The unit of measurement for the material is the kilogram.

- Annual report

The two administrations shall submit to each other an annual report, covering a period of twelve months, on all nuclear materials, supplies, equipment and technology in their territories subject to the Agreement. The annual report will be submitted as soon as possible, but no later than three months after the end of each period.

Administrations will consider all categories in their annual reports on nuclear materials and supplies:

(a) Natural uranium;

(b) Uranium enriched with the isotope U235 less than 20%;

(c) Uranium enriched with the isotope U235 of 20% or more;

(d) Depleted uranium;

(e) Uranium 233;

(f) Plutonium;

(g) Thorium.

For each category of nuclear materials and supplies, as well as for equipment and technology, the two administrations will list in their annual reports: initial inventory, received quantities, issued quantities, other stock changes, final inventory.

Both administrations will confirm receipt of the annual report by the other party within 30 days.

Within 90 days of receiving the annual report, both administrations will forward to the other party any questions regarding the statements in the report.

The two administrations will work closely together and provide all necessary assistance in resolving these issues for mutual benefit by the end of the calendar year.

- Relevance and proportionality

The annual report of the administrations does not require the identification of specific nuclear material or material that was the subject of the contract, but must specify an equivalent quantity. Replacement of nuclear material subject to the contract with lower quality nuclear material is permitted only with the consent of both administrations.

- Direct transmission procedures

Prior notice.

Prior to receipt of any transfer of nuclear material, material, equipment or technology subject to the contract , upon receipt, the administration representing the party making the consignment shall send a notification of the transfer to another administration .

Transport

Upon dispatch of the nuclear material, material, equipment or technology subject to the contract , upon receipt, the administration representing the party to the consignment shall notify the other administration. The notification must contain the information listed in Appendix A.

Confirmation

Upon receipt of the nuclear material, the material, equipment or technology subject to the contract , and the administration representing the receiving Party, shall notify the other administration. The notification must contain the information listed in Appendix A.

- Re-transfer procedures

Request for retransmission and response

The administration representing the party who made the shipment will request the prior written consent of the other administration, as provided in the contract, at least 6 weeks before the proposed date of transport. The application contains the information listed in Appendix A.

The administration to which the request for prior written consent has been addressed will respond to the other administration no later than 3 weeks after receiving such a request.

- Communication

Administrations will use appropriate secure channels to communicate about this arrangement, which are:

- Contact address of the Nuclear Safety Administration of the Republic of Slovenia.

- Contact address of the Atomic Energy Control Commission of Canada.

Administrations will provide appropriate controls to prevent unauthorized disclosure of confidential information relating to this arrangement and will keep each other informed of information requiring special protection.

- In general

The administrations will not have any claims against each other for reimbursement of the costs for the preparation of any reports provided for in this agreement.This arrangement may be amended at any time if the administrations so agree. The amendments will be in writing and will be valid when they are signed by representatives of both administrations.

- Appendix A.

(a) The reference number assigned by the administration representing the party who made the consignment;

(b) Name and address of consignor and consignee;

(c) Date of dispatch or receipt;

(d) Description (chemical form, physical form, identification numbers), weight and category of element or material, number of pieces of equipment or technology. [16]

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[16]https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina?urlmpid=199624.Retrieved on 03.05.2022.

6. Conclusion

From thescientific paperit can be concluded that the most important element, ie the purpose for concluding administrative contracts is the public interest. The survival of a society is inconceivable, if the governing bodies would not take care of education, health, culture, science, transport, infrastructure, providing citizens with electricity, water, etc. In fact, concluding administrative agreements does not hinder the efficiency of the administrative bodies, but on the contrary enriches its activity. Despite the fact that in recent decades more and more administrative agreements are concluded between private legal or natural entities and public bodies, the public bodies still have control over them, but at the same time they are given the opportunity to participate in the performance of public services in creative and dynamic partnership, by finding and optimally using confidential subtle measures to advance all the standards of society as a whole.

The seminar paper shows the differences between an administrative act and an administrative agreement because it has great practical value as the administrative act as a legal institute to achieve legal effect, is not always the most appropriate means to achieve a certain public benefit, because it too strongly expresses authority of the administration, and this may not be so necessary, so it must not be the only public law institute of the administrative bodies to achieve certain goals.

Governing bodies must have the role of an effective partner with citizens in meeting their needs, which means reducing their role as an active economic agent, where the market is a more efficient mechanism. This leads to the creation of space for wider action of market mechanisms in the field of health, education, communal activities, etc. The administrative bodies should be a professional service,thus they will contribute a larger share in the realization of the activities that are of interest and importance for the citizens. This does not mean abandoning the legal mechanisms of action from a position of power, but an easier way to achieve public interests, which do not always coincide with individual interests.

However, not by using coercive measures, but with goals that will preserve the constitutionality and legality, and will contribute to the promotion of social welfare, from all this it can be said that the best way to achieve these goals are administrative agreements.

The introduction of new legal institutes in the LGAP, such as administrative agreements, essentially expands the legal protection of the parties. There is a need for more frequent revision and harmonization of laws. It is also of particular importance to facilitate the procedure for concluding administrative contracts, ie to enable their use in cases not provided for by special laws, as well as to provide timely and effective legal protection to the parties. From all this it can be said that LGAP needs to be constantly modernized to be in step with the changes in society and the new expectations of citizens, companies, investors, and other entities.

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