The Imperative Character of the Administrative Conflict in Kosovo

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Abstract: This paper aims to show the importance of the institution of administrative conflict in the true and qualitative protection of the rights and interests of the parties. The control of the legality of certain administrative acts by the judiciary is an indisputable fact that provides not only objective protection, but also subjective protection of the violated rights and interests of the parties. The parties request protection or intervention of the judiciary for the realization of their rights in various areas such as: denationalization, administrative contracts, concession, electoral process, minor offenses, pension rights, disability insurance, customs rights and tax procedures, property rights (eg privatization of construction land, transformation of construction land), and other rights provided by law. This judicial intervention enables the realization of a right violated by the final administrative act. Given the fact that the basic condition for initiating an administrative court procedure or administrative dispute is the existence of a final administrative act, the path to the realization of that right or correction of the wrong is long and complicated. According to the legal provisions in Kosovo, where judicial protection is not realized by specialized administrative courts such as the Administrative Courts of the countries of the region, the legal protection of the subjectively violated norm passes through several institutions as well: before the second instance institution after a complaint in administrative appeal procedure, before the Basic Court (administrative department), before the Court of Appeals and the Supreme Court as the last instance which acts on the basis of extraordinary legal remedies.. Passing through these institutions complicates the realization of the right of the party and does not guarantee the de facto realization of the legal rights of the parties.. As a rule, always after the end of administrative disputes we do not have a meritorious placement of judicial bodies in full jurisdiction, but the "won" case is returned to the administrative authorities and the administrative procedure begins again! To prove what we said above, we will try to answer the following questions: Does the court decision provide a guarantee for the acquisition of a violated right for the party, or return to administrative reconsideration? How is the principle of compulsory court decision applied? How to strike a balance between the decisions made and their execution?

Keywords: administrative dispute; court decision; binding court decisions

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1. Necessary Conditions for Quality Judicial Control

The administrative activity is extensive and it must be controlled (Stavileci, 1997).

In order for all this activity to be regular by the exercisers of administrative power, it is necessary to carry out permanent supervision and control both in terms of the devolitic principle (higher bodies control lower bodies), other forms of control thus inciting fear in the authority that it will be sanctioned in case of violation and improper application of the law.

Knowledge that the state administration is a necessary mechanism for performing a significant number of tasks, that the state administration has broad powers and strong organization, requires that a multifaceted control be placed over the administration, in order to ensure legality and efficiency of activity (Borkoviç, 1987, p. 177).

In order to ensure legality, responsibility, and efficiency in the work of state administration bodies and public services, permanent control is needed, which at the same time means limiting the excesses and abuses of the authorizations at their disposal. Control means a form of influence exercised by the superior administrative body over the subordinate body, either in relation to the performance of their official duties, or in order to ensure the regular implementation by the subordinate body of the laws and bylaws of the higher bodies (Batalli, 2014, p. 98).

The purpose of accountability when it comes to accountability is to prevent mistakes in governance and law enforcement, , to avoid when there are shortcomings or violations, to ensure the permanent improvement of the activity of public administration, in order for it to better realize the needs of society at a given stage (Dobjani, 2013, p. 226).

Law enforcement is one of the main goals in building, developing and strengthening the state and the rule of law. The principle of legality presupposes the strict and obligatory observance and implementation of the Constitution, laws and other bylaws by all state bodies, institutions, entities and public authorities, officials, non-governmental organizations and citizens. The state as a whole through the authorities strives and controls the accurate and uniform implementation of the Constitution and other bylaws together with the law and takes care that all these respond to the real needs and requirements in the establishment of social legal relations (Ismaili, 2007, p. 269).

Based on these constitutional principles of a state, the administration must also act, in order to fulfill its duties without affecting and violating the rights and interests of citizens, from the fact that the role of those exercising administrative power is twofold to implement the principle of opportunity (realization of the citizen's right) and protection of the public interest (Sokoli, 2014, p. 344).

In order to be able to realize all this, ie; not to affect and violate the interests and rights of citizens as well as the public interest, it is necessary that all holders who have authority means decision-making competence, as not all are legally entrusted with the power of decision-making, respect and apply the basic constitutional principles, so that the citizen as a party in a regular procedure can exercise his right, as everyone is prone to make mistakes and violations of citizens' rights, some of not knowing the interpretation and enforcing the norm while others abusing the rights of the parties from different points of view (Ligji i Procedurës Administrative, 02/L-28).

Given the fact that judicial intervention by the party is required only when internal control has not been shown to be efficient, real and objective, then the parties lose confidence in the administrative bodies who decide on administrative procedure which is a guarantee to the party that his law-based right will be respected and enforced, the party addresses the judiciary or requests the intervention of the competent court, but even here the party is conditioned to exhaust all administrative and procedural legal remedies, (Sokoli, 2014, p. 177) otherwise his right claimed by the judicial bodies will be denied.

Administrative Dispute is the second guarantee guaranteed to the parties against the realization of their rights after the exhaustion of procedural legal remedies (Ligji mbi konfliktet administrative i Republikës së Kosovës, 03/L-202, neni 65).

Administrative dispute enables the parties to present their views through an adversarial debate. Administrative conflict arises between individuals and the public administration body, or in other words between entities that issue administrative acts and who in that case manifest power, and those entities that are in a position subject to the administrative legal relationship (Sadushi, 2005).

Administrative dispute exists when the legal issue pertaining to the conflict is a matter of administrative law, and according to it it is not important which body issues the act, but it is important whether such an act has been implemented fairly the provisions of administrative law (Grizo, 2011).

Administrative conflict is inextricably linked to the notion of administrative work, which is why it is defined as a conflict that occurred between the individual, legal entity, institutions on the one hand and the administrative body and the other state body, public service on the other other regarding the legality of the ruling issued in the administrative work in the dispute that is conducted before the court in a special court procedure (Gelevsaki, 2003).

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

A) Administrative judicial control is exercised in a special administrative court procedure. The rules of conduct and decision in this procedure are regulated in a special law on administrative disputes, which in the Republic of Kosovo was approved for the first time by the Assembly of Kosovo on September 16, 2010, number 03 / L-202 and was published in the Official Gazette on October 21, 2010 regulating administrative court proceedings and which law is currently in force (Ligji mbi konfliktet administrative i Republikës së Kosovës, 03/L-202, neni 65).

B) The Administrative Dispute takes place in the procedure before the Basic Court in Prishtina, the Department for Administrative Affairs in the first instance, the Court of Appeal in the second instance and the Supreme Court in the third instance based on extraordinary legal remedies.

C) With regard to the parties participating in this process, the characteristic is that the respondent party always in the administrative dispute is the state body or public body that has the authority to make final administrative acts against which the law allows the development of administrative procedure.

D) The subject of control is always the final administrative act or the act against which the party can no longer use a regular legal remedy in administrative proceedings or has already been used. This is usually a second instance decision terminating the first instance administrative procedure or a decision against which according to the substantive rules the appeal is not allowed, but it can be challenged with a lawsuit in the Basic Court composed of the department for administrative matters,

Claimant: Sh. Sh. Pristina, street “Mother Teresa” nn The respondent: Ministry of Labor and Social Welfare Department of Pensions in Prishtina, **Claim** for annulment of Decision no. , dated, issued by the second instance body **Ministry of**

Labor and Social Welfare-Department of Pensions (Udhëzues për Procedurën e Konfliktit Administrativ, 2020).

Regarding:

- Because with the final decision the legal provisions were not applied correctly and
- Because in the procedure that preceded the act was not acted according to the rules of procedure, the factual situation was not established correctly, or if an incorrect conclusion was drawn from the verified facts in terms of the factual situation.

2. Reasoning

Summary of facts:

In MLSW Pension Department, the plaintiff filed a claim for recognition of the right of paying contributions to retirement age, for the third category (III), high school diploma.

Regarding the request, the plaintiff on xx received a ruling approving the request for recognition of the right to a pension contribution for the age of the second category (II), with secondary education, but not in the third category (III), for which he had applied and possessing evidence.

Against the decision no. x, the plaintiff dated x, has filed a complaint with the Ministry of Labor and Social Welfare-Complaints Council of the Department of Pensions, as a second instance body, through which he has requested that after receiving this complaint, to change the appeal decision, so that the complainants Sh. Sh., From Prishtina to be recognized the right to a pension contributing age for the third category (III) with higher education.

On date xx, the body of the second instance, the Department of Pensions, acting according to the complaint no. dated, has issued decision no. X, dated x, according to which the plaintiff's appeal for recognition of the right to categorization for a pension-contributing age pension was rejected as unfounded.

Considering as unfair the decision of the body of the second instance, and which was taken in contradiction with the legal provisions because the legal provisions were not applied at all or were not applied correctly, and that the rules of procedure were not acted upon, the factual situation has not been established correctly and

from the established facts a wrong conclusion has been drawn from the point of view of the factual situation, the plaintiff relying on the provision of article 13 par.1, related to article (16 par.1 point 1.1 and 1.3 of the Law no.03 / L-202) for Administrative Disputes has addressed this court to oppose the appeal decision, for the following reasons: Lack of legal form.

The appeal decision does not contain the elements required by Articles (83-86) of the Law on Administrative Procedure, especially due to lack of reasoning, respectively the reasoning contains vague, contradictory and inaccurate data..

In the reasoning of the appellate decision, no legal reasons were given for the decisive facts raised by the plaintiff through the appeal to the second instance body, while even the reasons given for these facts do not relate to the claims of the plaintiff raised by appeal, because the plaintiff's request was to be recognized the right to a pension contributing age for the third category with higher education, while the reasoning of the appeal decision states that the general conditions and criteria were not met and no data was attached for 15 years of contributory experience as well as relevant evidence of the level of school preparation.

The reasons given in the appellate decision are unclear, contradictory and inaccurate, because the plaintiff's work experience has not been contested even once, not even by the first instance body, the plaintiff is a beneficiary of the age contribution payment pension for the second category and possesses abundant evidence for this fact. According to Article 86.3 of the Law on Administrative Procedure it is stated that "Reasoning with vague, contradictory or inaccurate data is equivalent to lack of reasoning". We consider that each party has the right to well-reasoned decisions and the same is an obligation for administrative bodies.

Incorrect or incomplete determination of the factual situation;

To the respondent, the plaintiff has submitted a request for recognition of the right to a pension contribution age payment for the third category with high school education comfort (article 4 par. 1 point 1.3) of Administrative Instruction 09/2015.

In the sense of the provision (of article 5.3, in conjunction with article 6 of AI 09/2015), the plaintiff has attached to the request all the necessary legal documents, including the diploma for higher education which education he has completed in school technical in Prishtina in the direction of engineering two-year regular high school completed in 1970.

PROOF: Higher education diploma with no. x.

Moreover, he has been working since 1970, in the profession, all his work experience has been evidenced as a highly qualified worker until his retirement and on this basis he has met all the criteria to be categorized for age retirement. Paying contribution of highly qualified or grade III.

Evidence: The labor card

We consider that the reasoning of the appeal decision regarding the level of secondary school preparation is unfounded and is contrary to the evidence provided by conform to the Administrative Instruction 09.2015 and the law on State Funded Pension Schemes, the relevant evidence has attached the relevant diploma with no. X dated x, certified by notary x, with no. date x.

Wrong application of substantive law:

The respondent in the reasoning of the appellate decision erroneously applied Article 8 of Law no. 04/ L-131 on Pension Schemes financed by the state, which hereby defines only the conditions that a person must meet to be recognized this right, while in the case of the plaintiff was not and is not disputed the duration of work experience and for this he has provided a lot of evidence, and on its basis he has also been a beneficiary of the Age Contribution Pension for the second category.

His request is based on the provision of article 4 paragraph 1 point 1.3, related to article 5 par.3 of Administrative Instruction 09/2015 which states: "The beneficiary of the Highly Prepared Contribution Pension is considered the pensioner, respectively the insured who has a good education".

On this legal basis, the plaintiff had based the request for recognition of the right to a pension contributing age for the third category III in both the body of the first instance and the body of the second instance and in both cases together with the request and attached the complaint as evidence to the work book which testifies on work experience and high school diploma with no. x, date. x,

Therefore, for the above reasons, I file this lawsuit and propose that this court, after conducting the procedure of administering evidence and declaring the parties, take:

JUDGMENT

- **Approved** plaintiff's claim Sh. Sh. from Pristina.
- **Canceled** decision of the respondent MLSW no._____, date_____.
- **Owes** the respondent to pay to the plaintiff the difference of the unpaid amounts

for the category of contributory pension of age for the third category (III), from the date of submission of the claim until the issuance of the final judgment all with legal interest from 8% per year.

- Each party bears its own procedural costs.

Prishtina, date 25.11.2019 CLAIMANT, Sh. Sh.

The subject of administrative and judicial control may be the "silence of the administration" as a separate institute in the administrative procedure in which the administrative body does not respond to the request of the party or the complaint within the legally prescribed deadline, and therefore there is an assumption that the silence means the rejection of the act and the party is assured of the protection of the right before the judicial bodies.

E) The decision of the court deciding on the legality of the challenged administrative act or the powers of the Court as an arbitrator is also a special feature of judicial administrative control. Namely, if the court accepts the request in a dispute of legality it means that the court has the authority to annul the administrative act and return the case for retrial before an administrative authority.

If the court with a judgment decides the case in full jurisdiction then this means that the court decision will replace the contested administrative act and the administrative body is obliged to execute the decision within the time limit set by the court, **(Example 2. Judgment - decision on merit,** Basic Court in Prishtina - Department of Administrative Affairs, with Judge YM and the registrar NN, in the administrative dispute according to the lawsuit of the plaintiff NM who is represented by av.x, according to the authorization, against the respondent Ministry of Labor and Social Welfare-DAPK, of which is represented by the State Advocacy, for the annulment of the decision, in the main public hearing held in the presence of the plaintiff's authorized representative, and in the absence of the respondent party, on dt. x, get this:

VERDICT

The claim of the plaintiff N. M. from Prishtina is approved as grounded, the ruling of the respondent is annulled, the Ministry of Labor and Social Welfare in Prishtina / Department of Pension Administration with no. X I dates x.

I. I. The respondent, MLSW / DAP is obliged to recognize the right of the plaintiff to the pension for persons with disabilities for the period 5 (five) years from 01.02.2014 - 01.02.2019, in the amount of 75 euros per month, after this

period the plaintiff is obliged to undergo the re-evaluation procedure.
II. II. The respondent is obliged to retroactively compensate her unjustly terminated pension from 01.01.2012, in the amount of 60 euros for each month until March 2014, while from 01.04.2014 for each month in the amount of 75 euros until the execution of this judgment, the final payment taking into account the legal interest as for funds termed for one year without a definite destination in the banks of Kosovo, within 15 (fifteen) days from the date of entry into force of this judgment, under threat of enforcement by force.
III. Each party bears its own costs of the proceedings.

IV. This judgment replaces the annulled act.

Reasoning

The court held the main trial in this case based on the Judgment of the Court of Appeal A.A no. XX of date xx, taking into account the remarks and suggestions in this judgment. The Court decided in the main trial not to confront the medical experts appointed by the Court and the doctors of the medical commission of the respondent since based on Article 369 of the LCP par. 2 states that: "If the data of the experts in the ascertainment of the experts are essentially distinguished, or if their ascertainment is unclear, incomplete, or contradictory to itself or to the circumstances under consideration, these defects cannot be avoided by repeated hearing of experts, the expertise will be repeated with the same experts or with other experts". Based on this legal provision, the court could not apply the suggestions in the decision of the Court of Appeals, because in this case the court has assigned only one medical expertise, which is very clear to the court, it was not challenged by the respondent. at no stage of the proceedings in the court either directly or by submission, therefore the court did not need either the completion of the expertise or the hearing of the experts regarding the clarifications in the expertise dated_____, because the same is clear and the court has forgiven the trust.

As for the medical report of the medical commission of the respondent, the court has assessed the same as evidence, but the same commission is in contradiction with itself because once it declares the plaintiff incapable of work where with its decision and assessment dated xx, recognizes this right for a period of three years then on 21. 06. 2007 extends this right for another five years, while the same commission later on 06. 04. 2012, has refused to extend this right on the grounds that the plaintiff is fit for work. Taking into account this fact as well as the fact that the respondent did not implement the decision of the court dated 28.10.2013, by

which the decision was annulled and the case was returned for reconsideration, the court in the main trial of 07.02.2017, itself has decided the case pursuant to Article 43 par. 3 and 67 of the ADL, taking into account the opinion and findings of independent medical experts of UCCK.

The Court considers that the medical report of the medical commission of the respondent is not a medical expertise by independent experts of UCCK, appointed by the Court, but is a medical report of specialists in relevant fields determined by the decision of the respondent, which in the court has only the value of a piece of evidence provided for evaluation, and the same report can not be treated with Article 369 of the LCP, as the article in question relates to the obligation of the court in relation to the expertise determined by the court in court proceedings.

Therefore, the main trial in this legal matter was held within the meaning of Article 41 of the LAC, in the presence of the plaintiff's attorney, and in the absence of the defendant duly summoned..

The representative of the plaintiff in the session reviewing today's leading states that abide previous claims in the petition and denounced the judgment of the Court of Appeal that the case be returned to the retrial and that I confront the MPMS doctors with experts of UCCK. I propose to the Court to uphold the decision of the Basic Court A.nr.xx, further the plaintiff's attorney, in his closing statement states that, the Decision of the Court of Appeal A.A.nr. xx, is not fair, therefore I request that the decision of the Basic Court remain in force so that the respondent has been recognized the right to a pension for persons with disabilities.

The respondent through the submission of the datexx, has stated that she completely opposes the claim and the claim of the plaintiff, proposing to the court that it be rejected as unfounded while the challenged ruling remains in force as a fair decision based on law. While the same does not present in the court session even though regularly invited.

The court in the main hearing session of date xx, has administered the evidence and that: the ruling on the administration of evidence taken in the minutes of dt. xx.

The court assessed the legality of the ruling struck in accordance with Article 44 and Article 67 of the LAC and the evidence administered in the main trial session, where it found that the claimant's claim is grounded.

After the court with the judgment A.nr. xx dated xx once decided in this case, in which case the respondent body did not act according to the instructions given in

this judgment, therefore this court based on Article 43.3 and 67 of the Law on Administrative Disputes decided that meritoriously decide this administrative matter.

The court, in order to correctly establish the factual situation in this case, respectively to determine correctly the degree of physical incapacity of the plaintiff, ex officio has issued expert evidence, which was prepared by the University Clinical Center of Kosovo in Prishtina, respectively by the medical commission of UCCK, composed of three specialists, who in their written assessment of xx, based on the health condition, after direct examination of the patient NM, and findings made st post contusionem cerebri (condition after brain compression) st. Post shunt V-P lat.dex. pp.Hydrocephalus posttraumatica (condition after pump placement v (abnormal growth of male-type hairs across the body in females-hormonal disorder) hemiparesis lat.dex. (weakness of the right side of the body and limbs), fractura femoris lat.dex. (osteosynthesis) - (right leg itching) retardatio psycomotorica (stunting in psychomotor development) sy.ataxicum-ataxia cerebellaris (syndrome of imbalance) injuries which are considered as severe bodily and with permanent consequences, where based on the calculation formula according to the expertise it turns out that the plaintiff NM has permanent physical disability of general life activity.

From the evaluation of the opinion of the medical commission of UCCK dated xx, the court confirms that here the plaintiff has bodily injuries with permanent injuries which have affected the reduction of general life activity and that she has complete and permanent life disability. , this legal condition, for the recognition of the right to pension of Persons with Disabilities, defined by article 3 of Law no. 2003/23 on Pensions for Persons with Disabilities in Kosovo.

Therefore, the court confirms that based on the opinion given by the Medical Commission of UCCK dated xx and the evidence administered in the main trial session, the plaintiff meets the conditions for recognition of the pension for persons with disabilities, respectively the criteria from article 3 of Law no. 2003/23 on Pensions of Persons with Disabilities in Kosovo and on these reasons the contested decision of the respondent is unjust and illegal.

The court also assessed the allegations of the respondent and finds that the same are unfounded, because with the evidence administered, in the sense of the provision of Law no. 2003/23 on Pensions for Persons with Disabilities in Kosovo, it was established that the plaintiff meets the legal requirements for recognition of the claimed right.

Regarding the costs of the procedure, the court has decided, in the sense of Article 64 of the LAC, that each party bears its own procedural costs. Therefore, based on the above, this court in the sense of Article 43.3, 46.2, 5 of the Law on Administrative Disputes, has decided as in the enacting clause of this judgment.

A. BASIC COURT IN PRISTINA

B. **Xx** **dt. xx**

Recording Officer **The judge**

N.N. **Y.M.**

Legal advice:

An appeal against this judgment is allowed, within 15 days from the day of its receipt, to the Court of Appeals in Prishtina, through this court.

The above-mentioned characteristics of administrative judicial control clearly show that the realization of the right of the party will cause „waiting" for the party.

The court decision must be based on a properly defined objective situation, notwithstanding the preliminary administrative decision. On the other hand, it is of particular importance for the party to adopt a lawful decision which will be issued in a transparent procedure, in a timely manner and executed within a certain time frame.

Only in this way will the courts prevent the illegal actions of the administrative bodies while the parties will gain confidence that the court is an impartial body which enables quality and efficient protection of the rights and interests of the parties.

Efficiency, accuracy and the need for specialized resolution of administrative disputes are the only reason for the parties to turn to the courts.

However, the statistical data from the Reports of the Basic Court in Prishtina, the department for administrative matters do not show such efficiency.

In this regard, according to the Report of the Basic Court Prishtina, the department for administrative issues, the data published for 2018 and for the first quarter of 2019, are as follows, and that de facto situation is as follows:

Overview of work for the year 2018: (Raporti, 2018)

Outstanding cases at the beginning of the reporting period: **5304**

Cases accepted at work:	**3008**
Total subjects at work:	**8312**
Cases solved in the reporting period:	**2219**
Outstanding cases at the end of the reporting period:	**6093**
Unresolved cases in 2018 compared to 2017	**789**

Efficiency of the Court in Resolved Cases 73.77

Overview of work for the first quarter of 2019: (Raporti, 2018)

Courses received:	**765**
Solved cases:	**597**
Outstanding cases:	**1400**
Remaining subjects:	**62**

These data reflected in the reports of the Court first show the inefficiency of the administrative bodies taking into account the large number of lawsuits filed in court and then the inefficiency of the courts in resolving cases given the number of cases since preliminary in the following year as it grows and in this way citizens are facing undesirable situations in the development of administrative disputes.

All this due to the lack of staff, human resource capacity and the need to establish a specialized administrative court competent only for cases and administrative matters where the rights and interests of citizens will not be held hostage by a court overloaded with cases. of different natures and the same will not be carried from year to year in the hope that the same will never end 62.

The efficiency and speed of administrative disputes depends on the capacity of human resources, expertise, professionalism, objectivity and independence of judges in resolving administrative disputes and the conditions in which they work. For example, this would include financial, technical and technological conditions. What special attention should be paid to the correlation between the increase in the number of cases and the number of judges and judicial officials?

When it comes to court decisions, our position is that the right to a meritorious decision of the court on administrative disputes is the only way to realize the rights of citizens and prevent administrative bodies from issuing unjust and illegal decisions in administrative procedures.

4. Permanent Decision Condition for the execution of the Court Decision

Permanent court decisions are binding not only on the bodies that have participated in the issuance of the challenged administrative act, but also on other state bodies, parties, othercourts (Heywood, 2009).

Permanent court decisions issued in administrative dispute are binding on state administration bodies where the action of these final court decisions is absolute.

The purpose of the case law is to put the state administration bodies within the limits of the law and to guide them in the proper implementation of the law.

According to it, when an administrative act is annulled by a court decision, the annulment of the administrative act does not deprive the administrative bodies of any rights, but only corrects their unfair work.

This also belongs to other state administrative bodies which are obliged to execute final court decisions as the court decision will conclude that the administrative function has been implemented unfairly and illegally. Such a finding obliges not only the bodies that have participated in the issuance of the annulled administrative act but also all other administrative bodies that have the competence to issue administrative decisions (Sadushi, 2005).

The Law on Administrative Disputes stipulates that when the court annuls the administrative act against which the administrative dispute has started, the case is returned to the same body that issued the previous act, which the bloody court has now annulled. If according to the character of the case, which has been the object of the conflict, instead of the annulled administrative act, another act should be issued according to the remarks and suggestions given by the court on the occasion of the annulment of the administrative act.

The competent body has the duty to issue a new act for postponement, no later than within 30 days from the date of sending the judgment.

After the issuance of the judgment by the competent court in the administrative dispute, three different situations arise:

• The body acts in accordance with the remarks and suggestions of the court and that with that action it issues a new administrative act.

• The competent body issues a new administrative act contrary to the legal view of the court given in the judgment.

• The body does not issue a new administrative act at all within the set deadline, even though it has been obliged to do so.

Based on the request of the party, the court will request from the competent body the notification on the reasons for which the administrative body has not issued the new act.

The competent body has the duty to give this notification immediately, no later than within 7 days. If the administrative body does not do so, or if the notice given in the opinion of the court does not justify the non-application of the reasoning of the court, the court will issue a decision which replaces the act of the competent body. The decision issued by the court will be sent to the competent body exercising supervision. The administrative body competent for execution has the duty to execute the court decision.

When in an administrative dispute a judgment has been issued by the competent court, while the body has issued an administrative act for the execution of this judgment, but the body is required to review the judgment for this administrative act, review may be allowed if the cause of review arose at the body has issued the administrative act.

One of the characteristics of final court judgments is seen in the fact that it has the force of the adjudicated case.

The need for the security of the legal order, state security, protection of the rights and legal interests of citizens depends on the finality of court judgments, while the administrative bodies are required to calculate the final court judgments correctly, to execute them and not to oppose them. administrative bodies.

What is meant by the finality of court judgments?

In fact, the finality of court judgments consists of the impossibility for final court decisions to be annulled by regular legal means by state administrative bodies, parties, representatives of the parties as well as interested third parties.

Finality of the court judgment means refraining from criticizing the findings summarized in the enacting clause of the judgment and obliging the findings summarized in the enacting clause to be formally considered correct and no longer discussed after that.

Enforceability of court judgments and their enforcement is a necessary condition for judicial action.

The importance of judgments is seen in the fact that the judgment sets certain conditions for state administrative bodies as well as for natural and legal persons, as well as their implementation in practice is taken care of by the state by punishing with sanctions all those who do not execute decisions final court.

Based on the formal theory, with the use of all legal remedies in the administrative court procedure, the judgment becomes final and unchangeable in the sense that the administrative dispute cannot be a matter of repeated trial. In fact, formal finality is characterized by the impossibility that a final court judgment can be overturned by regular legal means.

Characteristic of material jurisdiction means that the right which has been fully judged is no longer contested, while the rejected legal claim cannot be realized through the court regardless of whether it is duly confirmed by the final judgment. The factual situation is correct, respectively whether the abstract provision has been correctly applied in the concrete case.

This means that the judgment of material jurisdiction imposes the obligation of the bodies to respect it, ie they do not have the right not to accept it by not executing them or by issuing a decision contrary to the court decision. The administrative bodies must act in the manner provided for in the judgment, as in the material validity of the court judgment is found the reason for the annulment of the administrative act which caused the violation of the adjudicated case.

5. Conclusions

- The establishment of a specialized administrative court will enable, first of all, the basic court to be released from a large number of cases of an administrative nature, while the resolution of administrative disputes by a specialized court will be faster and more efficient against realization of the rights and interests of the citizens;
- Giving priority to review in an expedited procedure cases with temporary measures, cases for people with disabilities, cases that have certain specifics, extradition cases, cases related to the termination of the vacancy or dismissal as well as the increase of the powers of the court to decide in full jurisdiction

guarantees the efficiency of the administrative court procedure against the realization of the violated rights and interests of the citizens;

- The Administrative Court should be composed of distinguished lawyers who would complete training on administrative matters, as well as judges distinguished from the Department of Administrative Affairs at the Basic Court in Prishtina;
- Recruitment of judges should not be on a partisan basis but on professional judicial preparation and experience;
- The court has a greater right to decide in full jurisdiction, the only way that cases are not returned to the administrative bodies and thus turn the delayed justice into injustice for the party;
- All cases that are assigned to judges, the same to be suspended and to be considered sanctions against judges in case of non-issuance of decisions based on lawsuits, the only way to raise awareness of responsibility to the court;
- The internal administrative control which is initiated based on the complaint to be real, impartial objective is the only way that guarantees the realization of citizens' rights and the only way to prevent injustices and illegal actions of illegal administrative bodies, be transferred to judicial bodies in court proceedings;
- Complaints as a regular legal remedy guaranteed against almost all administrative acts have the impact that the bodies that decide in the second instance, make fair decisions by implementing and respecting the law and the right, and not by serving the superior with the only purpose is to remain in the same position again.
- A fair decision based on the complaint would regulate the unfair administrative activity and would prevent the collection of cases before the court as well as the court's intervention in the administrative activity;
- All this will be possible only if the recruitment in the administrative bodies would be done on the basis of professional training, their experience through real and not fictitious competitions.

References

*** (2020). *Udhëzues për Procedurën e Konfliktit Administrativ/ Guide to Administrative Dispute Procedure*.

*** (2007). *Fillet e së Drejtës (Botimi i tretë i plotësuar)/ Beginnings of Law (Third Completed Edition).* Prishtinë, Kosovo.

*** *Ligji i Procedurës Administrative i Kosovës/ Kosovo Administrative Procedure Law.*

*** *Ligji mbi konfliktet administrative i Republikës së Kosovës/ Law on Administrative Disputes of the Republic of Kosovo*.

*** (2018). *Raporti/ Report.* Gjykata Themelore Prishtinë.

Batalli, E. S. (2010). *E Drejta Administrative/ Administrative law.* Prishtinë.

Borkoviç, I. (1987). *Upravno Pravo/ Administrative Law.* Zagreb. Croatia.

Dobjani, E. D. (2013). *Kontrolli mbi Administratën Publike/ Public Administration Controls*. Tiranë, Albania.

Gelevsaki, S. (2003). *Upravno Procesno Pravo/ Administrative Procedure Law.* Skopje, Republic of North Macedonia.

Grizo, S. G. (2011). *Administrativno Pravo/ Administrative Law.* Skopje, Republic of North Macedonia.

Heywood, E. (2009). *Politics.* Skopje.

Ibraimi, X. (n.d.). Prishtina, Kosovo.

Ismaili, O. (2007). *Fillet e së Drejtës (Botimi i tretë i plotësuar)/ Beginnings of Law (Third Completed Edition).* Prishtinë, Kosovë.

Sadushi, S. (2005). *E Drejta Administrative 2 Botimi i tretë i ribotuar/ Administrative Law 2 Third reprint.* Tiranë, Albani.

Sokoli, A. (2014). *E Drejta Procedurale Administrative/ Administrative Procedural Law.* Prishtinë, Kosovë.

Stavileci, E. (1997). *Hyrje në Shkencat Administrative/ Introduction to Administrative Sciences*. Prishtinë: Enti i Teksteve dhe i Mjeteve i Kosovës.

Udhëzues për Procedurën e Konfliktit Administrativ/ Guide to Administrative Dispute Procedure (2020). *Akademia e Drejtësisë së Kosovës/ Kosovo Academy of Justice.*

Xhemazie Ibraimi. (n.d.). Kosovo.