CONSISTENT APPLICATION OF ARTICLE 6 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN ADMINISTRATIVE JUDICAL PROCEDURE IN THE REPUBLIC OF MACEDONIA - REALITY OR FICTION?

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Abstract

It is undeniable, that the administrative judiciary is the basic guarantee for the protection of rights, obligations and legal interests of natural and legal persons when they are violated by a final administrative act. This means that the administrative-judicial procedure has two main objectives, on the one hand, to protect the rights and interests of individual and legal persons, and on the other hand, ensuring legality in the operation and enforcement of the administrative activities by the bodies of the administration, through the control of administrative acts. Hence, the quality of administrative and judicial control is directly linked to efficient and effective procurement of administrative and judicial protection. Therefore, we believe that the administrative dispute is the right mechanism for independent and fair control over the legality of administrative acts, which needs to be constantly modernized and adjusted to the current developments and challenges in the field of administrative judiciary following not only the needs and problems of the current judicial practice, but also the comparative experiences. In this paper, we will try to give a brief analysis of how the administrative judicial proceedings in the Republic of Macedonia complies with the principles of judicial procedure mentioned in Article 6 of the European Convention on Human Rights and Fundamental Freedoms. Thereby, we will put emphasis on several institutes such as the dispute *in meritum*, hearing, enforcement of judgments and the right to trial within a reasonable time.

Key words: administrative judiciary, dispute in meritum, hearing, reasonable time, European Convention for the Protection of Human Rights and Fundamental Freedoms

I. Introductory remarks on the model of organization of the administrative judiciary in the Republic of Macedonia

In the Republic of Macedonia in the period from independence until today (1991-2014godina), in reference to the administrative judiciary two major changes are made to the legislation in 2006 and 2010, both novelties are related to the change of the organizational

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model of administrative judiciary. Namely, until the Law on Administrative Disputes in 2006 in the Republic of Macedonia the judicial control over administrative acts was exercised within the Supreme Court of the Republic of Macedonia. The procedure was conducted in accordance with the Law on Administrative Disputes of 1977 aligned with the changes to the social and political system of the Republic of Macedonia. Starting from the basic criteria according to which the administrative judiciary is divided into continental European model or Anglo-Saxon model, which is the criterion of conducting administrative proceedings by special administrative courts and criterion the existence of a special law on administrative judiciary, which lists special rules for the use of administrative and judicial protection. Until 2006, the Republic of Macedonia had accepted the mixed concept for the organization of the administrative judiciary. This means, that the Republic of Macedonia had met one of the criteria of the continental system, which is the existence of a special law on administrative disputes, and one of the criteria of the Anglo-Saxon system, which is the jurisdiction of the Supreme Court as a court of general jurisdiction to decide in administrative disputes. From several years of operation and handling of the special administrative departments within the Supreme Court of the Republic of Macedonia, came a number of indicators that pointed to the need to introduce a new model of organization of the administrative judiciary. These were primarily the need for greater efficiency in the resolution of administrative disputes, concerning the achievement of greater efficiency in resolving administrative cases, the need for more specialized judges who decide in administrative disputes, as well as the disengagement of the Supreme Court on administrative cases with what he would be more efficient in its operations. These reasons indicated the need for the establishment of a new court that would be responsible for resolving administrative disputes. So, first with the Law for Courts of 2006,[1] and then with the Law for Administrative Disputes in 2006,[2] establishment another court which would be responsible for resolving administrative disputes was established, and it is the Administrative Court.

In this way, by these legal decisions the territorial and substantial jurisdiction of the Administrative Court was determined, as a specialized court to handle administrative disputes. However, what should be noted is that the Administrative Court remains within the judicial branch of power, despite the fact that there are comparative experiences where the administrative courts are part of the executive branch of power – for example, in France. In this way the Republic of Macedonia has fully accepted the European-continental concept of organization of the administrative judiciary, fulfilling the criteria of special courts and special

[1] Article 22 of the Law on Courts, Official Gazette of the Republic of Macedonia, no. 58/2006.
[2] Article 4 of the Law on Administrative Disputes, Official Gazette of Republic of Macedonia no.62/2006

administrative procedure. In this context it is the opinion of Koprić according to which "the specialization of the judiciary is an important condition for quality administrative judiciary and judicial control over the administration."[3]

The next novelty in the organization of the administrative judiciary in the country was made in 2010, by adopting the Law on Amendments to the Law on Administrative Disputes. Thereby, the administrative judicial procedure became a proceeding with two instances.[4] Namely, according to this law the complaint as a regular remedy turns into a rule, instead of the current practice in which the complaint was used as an exception. This new legal decision, was based on the interpretation of Amendment XXI of the Constitution of The Republic of Macedonia, that the complaint is required in legal proceedings, and thus in administrative and judicial proceedings.[5] As a competent authority to act on a complaint according to the Law is the Higher Administrative Court, which is established by the Law on Courts[6] of 2010, and Article 4 of the Law on Administrative Disputes, according to which competent authorities to resolve administrative disputes are the Administrative Court as first instance, the Higher Administrative Court as the appellate and Supreme Court of the Republic of Macedonia, which decides on extraordinary legal remedies.[7] The Higher Administrative Court was established in 2010, despite our standpoint that this was not the most appropriate solution, and that better alternatives excised.

Even though we believe that this organizational solution was not the most appropriate, because there were offered other alternatives about which body should be responsible for deciding on an appeal,[8] the Higher Administrative Court was established in 2010, and decides in second instance administrative procedure. We would like to point out, that despite the three years of existence and work of this court, it decides on the basis of the rules of civil procedure, which means direct interference of two completely different areas and procedures

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[3] Koprić, John, Administrative Justice in the light of adaptation to EU standards, the reform of the administrative judiciary and administrative procedures, Croatian Academy of Sciences and Arts, Zagreb, 2006, p. 62. And Borkovic points to the benefits of the system of administrative courts highlighting the creative role that the administrative courts had played in the development of administrative law, particularly for the French Council of State and the Austrian Administrative Court. Borkovic, Administrative Law, op. cit., p. 489. In addition to the system of administrative courts, which has its roots in France, is also referred to as the so-called. French system, and is represented in most European countries (Austria, Belgium, Bulgaria, Czech Republic, Finland, France, Greece, Italy, Latvia, Luxembourg, Netherlands, Poland, Portugal, Romania, Spain, Sweden, etc.), there is and the so-called. a system of regular courts, which is historically linked to the United Kingdom, where it transferred to Australia, Cyprus, Estonia, Denmark, India, Ireland, Israel, Canada, Malta, Norway, New Zealand, United States, etc.)., acquisitions of D . Đerđa, Administrative action in Croatia: present situation and reform directions Coll. Right. Fac. Univ. rij. (1991) v. 29, no. 1,(2008) .

[4] Law Amending the Law on Administrative Disputes, Official Gazette no. 150/2010.

[5] Amendment XXI of the Constitution, "(1) The right to appeal against decisions made in the first instance court."

[6] Article 22 of the Law on Courts, Official Gazette of the Republic of Macedonia, no. 150/2010.

[7] Article 4 of the Law on Administrative Disputes, Official Gazette of the Republic of Macedonia, no. 150/2010.

[8] See in particular: N.Grizo, S.Gelevski, B.Davitkovski, A.Pavlovska-Daneva, Administrative Law and Public Administration, Skopje, 2011, pp.632-635.

and turning the court into litigation (civil) court. Therefore, we recommend that this legislation should be subject to appropriate changes and to be supplemented with a completely new regulative that will regulate the entire procedure and rules by which this court will decide. The second drawback of this legal solution is the opening of the possibility that the defendant could challenge the decision of the Administrative Court, and the prolongation of the protection of the rights and interests of the party.[9]

II. The principles of judicial control according to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

In the first part of the paper, the emphasis has been placed on both organizational changes that have taken place regarding the reform of administrative and judicial protection. In contrast, in this part of the paper we will specifically address the analysis of several institutes in administrative judicial proceedings such as the obligation of the court decisions, hearing, and trial within a reasonable time and in full jurisdiction dispute. This is in order to assess the present situation in terms of the way these institutions are used and how often comes to their exertion by the Administrative Court and that way we will find out whether there is a need for substantive reforms in the administrative judicial proceedings in the Republic of Macedonia. We chose these three institutions starting from the basic principles of judicial procedure referred to in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In fact, we believe that the Republic of Macedonia as a country aspiring to EU integration has to meet European standards in terms of administrative and judicial protection; hence, our attempt to portray whether there is a consistent application of these principles in administrative and judicial legislation. In fact, the fulfillment of these principles in the Republic of Macedonia is significant, not only because it is a Party to the Convention, but also because in recent years there is a tendency the administrative judiciary in all Member States to be based on certain shared core values including those listed in the Convention, regardless of the fact that most legal and administrative systems between countries have differences in terms of cultural, political, economic, social and historical conditions of a particular society.

In addition to this, is the Cardona opinion that there should be harmonization of the principles and mechanisms of administrative judiciary, in addition emphasizes the role of the

[9] Ibid. pp. 632-635.

European Court of unification of administrative justice in the member states of the European Union, creating its judicial practice and also European administrative law.[10]

Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states: "The right to a fair trial –

1. Everyone is entitled to a fair and public, within a reasonable time by an independent and impartial tribunal established by law, to have his/hers civil rights and obligations or any criminal charge against him reviewed and determinate. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of private life of the parties, or when the court considers necessary in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offense shall be presumed innocent until his guilt has been established according to law.
3. Every accused has the following rights:

a. immediately, in a language which he understands to be informed promptly of the nature and cause of the accusation against him;

b. to be provided with time and the necessary facilities for the preparation of his defense;

c. to defend himself in person or through legal assistance of his own choosing, and if he does not have sufficient means to pay for legal assistance, to be given free official lawyer when the interests of justice require so;

d. to examine or to have examined witnesses against him and to obtain the examination of witnesses on his behalf under the same conditions as witnesses against him;

e. to have the free assistance of an interpreter if he can not understand or speak the language used in court. "

This same provision is also provided in Article 47 of the Charter of Fundamental Rights of the European Union, according to which everyone is entitled to a fair and public hearing within a reasonable time by previously established legally independent and impartial court.[11]

In the paper, we refer to the application of this Article in administrative judicial proceedings because from the end of the XX century is valid not only for civil proceedings,

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[10] Cardona, op. cit., pp. 3-4., taken from D. Đerđa, Administrative action in Croatia: present situation and reform directions Coll. Right. Fac. Univ. rij. (1991) v. 29, no. 1, (2008)

[11] Charter of Fundamental Rights of the European Union, taken from: http://eeas.europa.eu/delegations/the_former_yugoslav_republic_of_macedonia/documents/more_info/publications/charteroffundamentalrights_mk.pdf

but also for administrative disputes, however its legal theory of the last few years defines an aspect according to which Article 6, regulates many other types of disputes between individuals and the state than you could guess from its original view. Here, for instance, cases concerning public control of land, allocation permits, compensation for unlawful actions of the authorities, social security rights and welfare are now also covered by the right to a fair trial.[12]

Analyzing the paragraph 1 of this Article, we can notice several principles relating to the enforcement of proceedings, and therefore we believe that this includes administrative judicial proceedings, such as: a fair and public trial, trial within a reasonable time, in front of independent and impartial court established by law to be review and determine his civil rights and obligations. This means that in Article 6, ECHR guarantees the right to a fair hearing which is accomplished by conducting an oral, adversarial public debate, the possibility of judicial control over the actual situation in the administrative procedure and ability to control the judgment of a court of first instance.[13]

From this stance, several obligations may be drawn to be regulated by the legal regulations relating to this matter, and that is ensuring a principle of transparency in the proceedings, the trial be accomplished and completed within a reasonable time, the procedure to accomplished by independent Court and finally what is questionable and which may be used for varying interpretations and solutions is the section that says "to review and determine of his civil rights and obligations or any criminal charge against him," concerning the attainment of the principle of hearing and determining the factual situation by the court.

a. Determining the actual situation by the Administrative Court or solving the dispute of full jurisdiction

The issue of determining the factual situation within the administrative dispute seems questionable and entails many open questions pertaining to the other rules of administrative and judicial proceedings. Otherwise, this provision of the Convention is particularly considered by the European Commission and by the European Court. So, to the question whether Article 6 of the Convention allocates that the procedure should be oral too and whether the court (meaning Administrative Court) needs to decide upon the facts, states: "in

[12] D. J. Harris, M. O'Boyle, E.P. Bates, C. Buckley, Law of the European Convention on Human Rights, 2014, p.184 .

[13] Advising new Law on Administrative Disputes and the new organization of administrative justice, NEWS CROATIAN PUBLIC ADMINISTRATION, whatever. 10 (2010), no. 2, pp. 581-613 http://www.iju.hr/HJU/HJU/preuzimanje_files/2010-2%2019%20Savjetovanje.pdf

the practice of the European Commission of Human Rights and European Court of Human rights is accepted the interpretation that the court which decides on the "civil rights or obligations" must have the authority to independently establish the facts, that is to independently deduce and evaluate evidence. In other words it must be a court which decides in full jurisdiction ". In this context, we stress the principle of fairness, which according to the practice of the European Commission and the European Court is considered that a fair procedure itself requires, among other things, be an oral and adversarial.[14]

However despite the attitude of the Commission and the Court there are some examples that deviate from this decision, but only if they have placed in relation to this article. As an example, we would present the experience of the Republic of Croatia. In fact, the Croatian Assembly in ratifying the Convention has used the reservation institute, in respect of a public hearing in administrative and administrative judicial proceedings against Article 6 of the Convention, and accordingly it is not mandatory. But in contrast positively legal editing and limiting hearing in administrative court proceedings, Koprić considers that the absence of an oral adversarial public debate and with this the possibility of courts to control the actual condition significantly limits the Administrative Court effects to the reduction of mistakes in administrative procedure.[15] So today, according to the latest Administrative Disputes Act of 2014 Croatia according to Articles 33 and 36 of this law adjustment with the Article 6 of the ECHR is made. Following the legal decision in administrative proceedings the court freely assesses the evidence and determines the facts. The court may take into account the facts from the previous procedure, but it is not bound by them when deciding.[16]

Namely, this section raises the question whether the courts, in particular the Administrative Court should decide on the basis of previously established facts by the bodies of public administration which brought the contested decision, or the Court should establish the facts itself. If we accept the second alternative then the role of the Administrative Court of the Republic of Macedonia will significantly change the same court of cassation or court whose main goal is the implementation of judicial control of legality in dispute, would turn into a court with full jurisdiction, which should adopt the merits and solve the administrative matter. In this way, instead of the current rules by which the procedure is led as written and

[14] See judgment Fredin v. Sweden, Publications of the European Court of Human Rights, Series A, Vol. 283, 1994, acquisitions of D. Đerđa, Administrative action in Croatia: present situation and trends of the reform 14 Coll. Right. Fac. Univ. rij. (1991) v. 29, no. 1,(2008).
[15] Koprić, John, in the aspect of Administrative Justice, op. cit., pp. 58-59., Acquisitions of D. Đerđa, Administrative action in Croatia: present situation and trends of the reform 14 Coll. Right. Fac. Univ. rij. (1991) v. 29, no. 1, (2008).
[16] Article 33 of the Law on Administrative Disputes, Official Gazette, no.152 / 2014.

non-contradictory procedure will have to be substituted by introducing the principle of hearing the parties or contradictory procedure and principal of public hearing.

This implies, that if the provisions of the Convention are interpreted that the court should decide based on the actual condition established by it, then the administrative dispute of full jurisdiction should be turned into the rule. In contrast, the previous legal solution for deciding *in meritum* valid is the act, under which this dispute is an exception. Namely, in accordance with paragraph 1 of Article 40 stipulates that: "The court finds that the challenged administrative act should be annulled, may, if the nature of the case and the information in the procedure provides sound grounds, with the judgment to resolve the administrative matter."

The following wording: "the court may, if the nature of the matter allows", is unclear and debatable. This in turn means that the court may, but not necessarily settle the dispute it in full jurisdiction. The court considers whether the nature of the matter allows, but there is no listed specific characteristics which define the nature, whether it means lack of documents, data or there is a risk for delay of the proceedings, if the court decides to present evidence.[17] Consequently, we believe that in order for this issue to turn into the rule in administrative proceedings and the administrative court to make meritorious decisions which are to replace the contested administrative act, the law on administrative disputes needs to be subject to certain additions and specifications. Here, we should be particularly careful and accurately specify in which case the court may itself determine the facts. Namely, not every administrative judicial procedure requires the court to present evidence. It is mostly a dispute in which the suit contradicts the previously established facts in the administrative procedure. Here, one should point out the problems with which the court will be faced when it comes to submission of documents, presentation of evidence, and hearing of experts when they can certainly affect the duration of the procedure.

b. Public hearing in administrative proceedings

The principle of transparency, under the Convention, is mandatory for judicial proceedings. However, in the administrative judicial proceeding in the Republic of Macedonia it has not been thoroughly developed yet. Namely, in the Republic of Macedonia, Article 30 of the Law on Administrative Disputes provides that "for administrative disputes the court normally decides in a closed session. The Court will hold a public hearing: due to the complexity of the matter in the administrative dispute in order to better clarify the state

[17] See also in: Dr. Bosiljka Britvic Vetma, Ph. D.. Boris Ljubanović: The powers of the administrative judge in the dispute at least jurisdictions, Proceedings of the Faculty of Law in Split, Vol. 50, 2/2013., pp. 429- 441

when establishing the actual situation when evidence are deduced and in the cases stipulated in Article 22 of this Law.[18] For the same reasons, the party may propose to hold a public hearing. But according to the empirical data of the Administrative Court, the court rarely decides to resolve disputes in a previously conducted public hearing.[19] As possible reasons for this would be stated would have provided increased expenses in the procedure, the need for convening the experts, presentation of evidence and so on. The Republic of Croatia has solved this issue so that the latest Law on Administrative Disputes of 2014 introduces the principle of transparency as a fundamental principle in administrative judicial proceedings, which reads: "In administrative disputes, the court decides on the basis of direct and public hearing".[20] Only with the exception of four cases referred by law the court may not hold a hearing, namely: if the defendant has admitted the claim in full, in case in which the decision is based on a final judgment, if the court finds that the actual decision or action contains defects that prevent the assessment of their legality, or if the facts are indisputable and the parties do not expressly require the conduction of a hearing.[21]

c. Trial in reasonable time

"The purpose of the guarantee of "reasonable time ", which applies to criminal and non-criminal articles is to protect the parties in the proceedings, a from big procedural delays."[22] As he told the court in the case of H v France the warranty underlines the importance of administering justice without delays which in turn could jeopardize its efficiency and credibility.[23] Furthermore, the reasonableness of the length of the procedure depends on the specific circumstances of the case, there is no absolute time limit.[24] As factors that influence and that may be taken into account in determining the reasonable time for deciding in administrative court proceedings we could mention the complexity of the

[18] Article 22 of the Law on Administrative Disputes, Official Gazette of the Republic of Macedonia no. 62/2006, if the appellate authority within 60 days or a shorter period determined by special regulation does not decide on the appeal against the first instance decision and fails to decide within seven days a repeated request, the party may initiate an administrative dispute as if the appeal were denied. (2) As prescribed in paragraph 1 of this Article the party may act if her claims are not made ECISION first instance authority whose act is no appeal. (3) If the first instance authority whose act may be appealed within 60 days or a shorter period determined by special regulation does not decide on the request, the party has the right in its request addressed to the appellate authority. The decision of the appellate body, the party may initiate an administrative dispute under the terms of paragraph 1 of this Article and if the body did not decide.
[19] See: Report on the work of the Administrative Court, http://www.usskopje.mk/.
[20] Article 7 of the Law on Administrative disputes, NN 20/10, 143/2012, 152/2014.
[21] Article 36, Law on Administrative Disputes, OG 20/10, 143/2012, 152/2014 .
[22] Stogmuller in Austria A 9 para. 40 (1969), taken from D. J. Harris, M. O'Boyle, EP Bates, C. Buckley, Law of the European Convention on Human Rights, 2014, p.234.
[23] A 162-A para 58 (1989). , Taken from D. J. Harris, M. O'Boyle, E.P. Bates, C. Buckley, Law of the European Convention on Human Rights, 2014, pp234.
[24] Konig v FRG A 27 para 99 (1978)., Taken from D. J. Harris, M. O'Boyle, E.P. Bates, C. Buckley, Law of the European Convention on Human Rights, 2014, p.234.

case, actions to be taken by the parties in court proceedings, whether it will be decided in dispute of full jurisdiction or in the dispute on legality, whether the decision will be made on the basis of prior hearing or not, will be decided on the basis of the actual state established in the administrative proceedings or the court will decide to establish it itself etc.

There is, however, another dimension to the guarantee for a reasonable time, which is that the Convention obliges the parties to organize their legal systems in a manner which will enable the courts to comply with the requirements of Article 6 (1).[25] Accordingly it follows that the state can be held responsible not only for the delays in the operation in a case in operation generally speaking, for expeditious system for implementation of justice, but for not raising the funds in response to the increasing number of cases before the courts as well as the structural deficiencies in its system of justice that causes delay.

The Court imposed the issue of whether the state may be required to restructure the functioning of the justice system in order to eliminate the delay as his permanent trade. This issue was raised in the case Neumeister v Autria in which many of the delays occurred on preliminary test procedure or phase, and the same question was raised in the case Konig v FRG, in the different context of the developed system of administrative courts in West Germany.[26] Faced with procedures that lasted almost 11 years and have still not been resolved, the Court first observed that its function is not documented on the structure of the courts under consideration, however, it was found that the aim is to provide the individual with a wide range of remedies for his complaints. While the State is to draw conclusions and, if necessary to simplify the system in order to comply with Article 6 (1) of the Convention. The implication is that if for a case is necessary, as it seems at first glance, an unreasonably long period, the state will not escape liability in the case arguing that it was effectively within the limits set by needlessly complicated court structure.[27]

In terms of length, it is considered that each case should be considered individually so no objective restricting the time, but in all it cases that lasted 8 years or more the court actually found a violation of Article 6 (1).[28] On the other hand, the cases in which the facts

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[25] Zimmermann and Steiner v Switzerland A 66 para 29 (1983), taken from D. J. Harris, M. O'Boyle, E.P. Bates, C. Buckley, Law of the European Convention on Human Rights, 2014, p.239.

[26] A 8 (1968).,) I A 27 para 100 (1978).,),, Taken from D. J. Harris, M. O'Boyle, E.P. Bates, C. Buckley, Law of the European Convention on Human Rights, 2014, p.240.

[27] D. J. Harris, M. O'Boyle, E.P. Bates, C. Buckley, Law of the European Convention on Human Rights, 2014, str.184, p.239 .

[28] For exepitons see: Katte Klitsche de la Grande v Italy A 293-B (1994) (8 years for four degree civil action in a sensitive and complicated area of law did not constitute a violation). One of the worst cases Poiss v Austria A 117 (1978) (19 years to complete the procedure of malorization of land. The previous text refers to the decisions made by the court. For an overview of the practice of the Commission concerning a reasonable time see Stavros, pg. 105 ff., taken from D. J. Harris, M. O'Boyle, E.P. Bates, C. Buckley, Law of the European Convention on Human Rights, 2014, pg.184, p.239.

suggest a specific need for expediency, the period of two years is also considered unreasonably long.[29]

d. Enforcement of court decisions

Regarding enforcement of judicial decisions by administrative authorities in accordance with international documents three general provisions are provided:

1. "Member states should ensure that administrative authorities implement judicial decisions within a reasonable time. In order to achieve the full impact of the decisions they need to take all necessary legal actions
2. In case of non-implementation of the court decision by the Administrative body should be provided adequate procedure which requires the implementation and enforcement of the decision, in particular through the payment of a penalty.
3. Member States shall ensure that the administrative authorities are responsible, if they refuse or neglect the enforcement of court decisions. Public authorities responsible for the enforcement of judicial decisions are subject to disciplinary, civil or criminal responsibility, if they do not execute decisions ".[30]

According to the Recommendation of the Committee of Ministers of the Council of Europe, the member states are recommended to ensure effective and efficient performance of judicial decisions, through court or other judicial or non-judicial enforceable titles, to take all measures they deem necessary for the progressive implementation of "Guiding principles of execution."[31] Some of these principles are to have effective implementation or enforcement of court decisions, the enforcement procedure should: include defining enforcement and the same to have legal framework, with which will be determined powers, rights and responsibilities of the parties and third persons; States should establish mechanisms to prevent abuse of the process of execution of any party; the enforcement procedure should not be postponed except in exceptional cases specified by law.[32]

Regarding the meaning attributed to the execution of court decisions in the Council of Europe, and for respecting the same by the EU member states or countries aspiring to EU

[29] H v UK A 120 (1987) (case with access of the parent), D. J. Harris, M. O'Boyle, E.P. Bates, C. Buckley, Law of the European Convention on Human Rights, 2014, pg.184, p.239.
[30] International documents for independent and efficient judiciary, opinions (13-16) of the Consultative Council of European Judges of the Council of Europe reference documents and law of the European Court of Human Rights, OSCE 2014, p.41.
[31] Recommendation Rec (2003) 17 of the Committee of Ministers to member states on enforcement procedure (adopted by the Committee of Ministers of 9.9.2003. At the 851st meeting of the Ministers' Deputies), acquisitions of http://www.pravosudje.ba/vstv/faces/docservlet? p_id_doc = 3331
[32] Recommendation Rec (2003) 17 of the Committee of Ministers to member states on enforcement procedure (adopted by the Committee of Ministers of 9.9.2003. At the 851st meeting of the Ministers' Deputies), acquisitions of http://www.pravosudje.ba/vstv/faces/docservlet? p_id_doc = 3331

integration we would start from defining the term Court by the European Court which he gives in one case Belilos v Switzerland:[33] "court" is characterized in terms of the essential word with his judicial function, or by deciding on matters within its competence based on the rules of law and procedure which will take place in the prescribed manner. He must also allow a number of other requirements to be independent, especially from the executive; be impartial, the length of the mandate of its members, the guarantees offered in its procedures some of which appear in the text of Article 6 (1).

In connection with the element of the functioning of the tribunal an important feature is that it must be competent to make legally binding decisions; the power to make recommendations or to advise are not enough.[34]

The mandatory judgments of administrative courts is condition sine qua non of administrative judicial protection. In order for the court verdict to reach its goal-the protection of subjective rights of the party, and also protecting the fair legality, it is necessary to provide an opportunity for its implementation.[35]

The effective enforcement of a binding judicial decision is a fundamental element of the rule of law. It is necessary to ensure public confidence in the authority of the judiciary. Judicial independence and the right to a fair trial (Article 6 ECHR) is questioned if the decision is not enforced.[36]

In terms of the legal decision in the country, and which according to the Law on Administrative Disputes reads: "when a court annuls an act against which was initiated administrative proceedings, the case returns to the way it was before adoption of the annulled act. If the nature of the matter that was the subject of the dispute, instead of the annulled act requires the bringing of another act the competent authority is obliged to act without delay, and no later than 30 days from the date of delivery of the judgment. The competent authority shall be bound by the legal opinion of the court,also with the notes of the court regarding the procedure."[37] Our position is that this provision is not providing sufficient guarantees for

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[33] A pair of 64 132 (1988). Cf Le Compte, Van Leuven and De Meyere v Belgium A 43 para 55 (1981), and H v Belgium A 127-B para 50 (1987)., taken from D. J. Harris, M. O'Boyle, EP Bates, C. Buckley, Law of the European Convention on Human Rights, 2014, p.184, p.243

[34] Benthem v Netherlands A 97 (1985), In the case of Van de Hurk v Netherlands A 288 para 45 (1994), Article 6 was violated because the government was authorized by law not to execute certain court decision, even though such authorization has never been used, taken from D. J. Harris, M. O'Boyle, E.P. Bates, C. Buckley, Law of the European Convention on Human Rights, 2014, p.184, p.244

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

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

[37] Article 52 of the Law on Administrative related disputes, Official Gazette of Republic of Macedonia no.62 / 2006.

proper implementation of the decisions, so often the parties invoke Article 53 of the Law on Administrative Disputes, with which are trying to protect their rights and interests by asking for decision *in meritum* by the court.[38] Hence, there is an inevitable need for specification and amendment or further regulation of the issue of obligatory decisions of the Administrative Court and to incorporate provisions that will anticipate certain types of liability (eg discipline) and certain sanctions for individual responsibility, and for institutions that will fail to act upon them.

III. Conclusion

Having in mind, that the administrative judiciary affects and has an impact on the quality of the work of the administrative organs, more specific on the ensuring the lawful work and lawful acts of the organs of the public administration, as well as the prompt and true guarantying of human rights and obligations as the sole purpose of the administrative court protection, we consider it necessary in the administrative judiciary in the Republic of Macedonia to have some proper measures undertaken for it to be modified in compliance with the European principles for the administrative judiciary, and of course with the European standards for the general administrative procedure, because these two should be seen as one. Namely, in order for the rights and obligations to be lawfully realized, as well as their protection, just administrative and administrative judicial procedure is required, that should be a true controller over the legality in the administrative procedure and a guarantee for respecting the principle of Rechstaat and the rule of law in a state.

Faced with the new challenges that point at the need for complying the administrative judiciary in the Republic of Macedonia with the European standards and principles, it is impossible to oversee the need for the change and complement of the Law for administrative disputes. With the intent to comply with the European legislation, and more specifically with the principles of the administrative judiciary in the Republic of Macedonia, it seems necessary to take proper steps in order to surmount the noncompliance of our legislature with

[38] Article 53 of the Law on Administrative related disputes, Official Gazette of Republic of Macedonia no.62 / 2006, (1) If the competent authority after the annulment of an administrative act not passed immediately, and no later than 30 days a new administrative act or decision execution of the judgment pursuant to Article 40 paragraph 5 of this law, the party may by special request for issuance of such act. If the competent authority has not made a decision within seven days of the request, the party may request issuance of such act from the court that rendered the judgment. (2) Following the application of paragraph 1 of this Article, the court shall apply to the Authority on the reasons for the failure to issue the administrative act. The competent authority is obliged to give explanation immediately, but no later than seven days. If he fails to perform this or if the explanation in the opinion of the court does not justify the non-enforcement of the judgment, the court will issue a decision that shall replace the act of the competent authority, if the nature of the subject allows it. This court decision will submit to the authority responsible for enforcement and shall duly inform the supervising authority. The implementing authority is obliged to enforce this decision.

article 6 of the European convention for the protection of human rights and basic freedoms. Because of this, while making the new adjustments first of all the basic principles that the administrative judiciary procedure is founded on, should be defined, and then on certain regulations from the Law of administrative disputes should be defined more precisely and should be adjusted, those that refer to the spoken hearing, the dispute for full jurisdiction, the procedure for complaints and the execution of the court rulings.

What can be concluded is that the Law for administrative disputes from 2006, is really a fair and progressive regulation of high quality from the area of administrative judiciary that helped make a real institutional reform in the Republic of Macedonia establishing the Administrative court as a separate court whose basic characteristics are specialization, competence, quality and efficiency in the realization of the administrative judiciary protection of the rights and obligations of the individual and legal persons, i.e. the realization of control over the final administrative acts. But, we find that today it should be considered whether this legal solution can be modified so that it will ensure a more efficient and an administrative judicial control of higher quality, and all this will be in accordance with the European standards for administrative judiciary, in a way that the Republic of Macedonia would be another step closer to entering the European family. From what was previously mentioned in this article we think that the changes in the Law for administrative disputes should include a couple of institutes like enlarging the area of control of the Administrative Court, the oral hearing should become a rule in the administrative judiciary procedure, but only if the court has received a motion that disputes the legality of the act only in regards to the wrongly or impartially declared state of facts by the accused authority, i.e. the authority that brought the act to force. In this direction, the court itself should be allowed to bring forth evidence and facts. In regards to the trial in a reasonable time we think that this institute should be put in the Law for administrative disputes with a regulation that will guarantee the just and efficient ruling to the sides, but also to enable certain factors that can be used to influence whether a certain case will be considered simple or complex in order to influence the judges for the rulings to be brought to force in e reasonable time. The question that implores the compulsoriness of a court ruling also deserves special attention because for the party the aim is to not only have a ruling but to also its realization be possible. And henceforth we consider that this part of the Law should be supplemented with some regulations that will increase the courts 'jurisdictions in regards to the allowing of the granting the permission to rule sanctions to the administrative organs that will not execute the decision. And in the end, regarding the complaint as a regular legal remedy in the administrative judicial procedure in accordance to the legal solution from 2010, we still hold the opinion that it should be used restrictively, i.e.

only if the Administrative Court based its decision on a state of facts that it itself concluded. We find that every other interpretation or use of this legal remedy, would only stretch the administrative judicial procedure, and prevent the party from timely realization of their rights. Finally, we find that it would have negative implications upon the principle for trail in a reasonable time.

Finally, we would like to point out that if the principles from article 6 from the European convention of human rights are accepted and implemented in the administrative judiciary in the Republic of Macedonia that would have an effect with two consequences, from which one is positive and the other is negative. The positive one is that in the Republic of Macedonia there would be administrative judiciary that is in accordance to the European values and standards, and not only that, but also the parties will be happy that in this manner will be more sure in the effectiveness of the administrative judiciary protection of their rights, interests and obligations. However, what remains uncertain is whether these wider competences of the Administrative Court – not only to control the administration – but also to assess facts and decide *in meritum* upon the administrative matter influence on the separation of power principle.