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Organization of administrative institutions and notions as a complete factor for the state

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Abstract---Needs for institutions of administrative law was present for a very long time. With the intention to fulfill this need I have drafted and systemized relevant categories of public administration, in that way that are dedicated to the standards of relevant texts from the field of law in general and of public administration in particular. In one way or another, these categories are unique, adapted to reformed educational programs. By having in mind the legal terminology in this field, the purpose is to unbuckle and study general notions and categories, in relevant fields of the law. Therefore, because of the mentioned reasons above, this educational treatise is defined to be used up to the issuance of new legislations of countries that have passed or still are in the transition phase, for example the Republic of Kosovo, the Republic of Albania, the Republic of Macedonia, of students of these countries, to whom the study of these categories is dedicated, in relevant universities where the law in general is studied.

Keywords---Administration, Organization of the State, Institutes of Administration, Norms, Acts, Sources of Law.

Administration

The central notion in which administrative law is based is defined by the character of the political – social regulation of a country – administration. In the legal administrative literature today it is defined based on the empirical content of the relevant social occurrence, so that later, based on that definition, to be able to

implement rigorous measures of formal derivative disciplines, especially of law, and even though law may be able to give perfect formal definitions of administration, the impression that definitions can't respond to the requests of a formal discipline still remains. Etymologically, the word 'administration' originates from old Latin ("ad minister") which was used by the Romans to show the activity that was developed under someone's subjection, under someone's direction. The theoretical definition of administration is based on the character of a certain political-social system, within which it executes its function. The word 'administration' has several meanings. By defining the main meaning of administration we take a look at the context in which the notion is given. In the everyday vocabulary, administration means an organizational unit of a sector, the governing body of a unit, offices of an enterprise or institution etc. The word 'administration' is linked with the verb 'administrate'. The administration extends in the public and private works and is based in the force with which someone limits an unlawful will or behavior. Depending on if we talk about administration as a type of organization or administration as some kind of activity, in the theory of administrative law we encounter two definitions of administration: the organizational or subjective definitions, and the functional or objective definitions of administration, which define the administration by the activities that are executed from a certain organization. In the theory of administrative law, two main meanings of administration dominate: according to the organizational or formal meaning, the administration presents the entirety of bodies, an apparatus that carries certain functions, while according to the functional or material sense, the administration presents the entirety of functions, a certain activity. In the organizational or formal meaning, the administration is an entirety of bodies with authority, having a variety of general interest tasks that belong to the state. In the functional or material meaning, the administration is the entirety of functions that belong to the administrative activity. The notion of administration, seen from these two viewpoints, is defined in a positive and negative way; defined as negative, this notion entails that activity which is not legislative nor juridical, but what is left from them, while defines as positive, this notion entails legal acts, the means of administrative activities, the function of administration that is expressed through legal acts issued by them and through its administrative activities.¹

Remark: the efforts to define the administration as an expression of its form, organization and function have been more successful, in the basis of seeing the administration separate from other state bodies' organization and function.

II. Administration

An organizational unit of a sector in a "certain branch", "leading body" of an organizational unit of a sector "along with the relevant apparatus", the offices of an institution or service, the building of a body or institution, the entirety of employees that perform in an organizational unit.

¹ Zenaid Gjelm, Teoria e Administratës Publike, Prishtinë, Maj, 2008

Municipal administration

A label for the form and organization of the administration in municipalities, as the basic unit of the local self-government; according to the Law for Self-Governing of Kosovo (2008), the municipal administration is organized in directorates, every municipal administration has a staff leader, and every municipal directorate is managed by the director.

Public administration

A notion that is given with special terminological difficulties; there are differences in defining the public administration. Traditionally, the label 'public' sends us to the difference between the 'public' and 'private' sphere, even of 'public law' and 'private law' even though it doesn't have reasonability – at least not absolute. The definition of the notion of public administration, similar to defining the notion of administrative activity, is done in different ways and by different authors. Public administration belongs to notions that are used in a variety of cases, by different theoretical viewpoints that put its meaning to question. It has a more general meaning than the one of administration, by lying not only in the bodies of state administration, but in other bodies and organizations that exercises administrative work. The most general definition of public administration could be the one that would present the public administration as an entirety of public administrative work and institutions of public administration. According to the Political Vocabulary of Oxford, public administration has to do with the institutions of state bureaucracy, organizational structures that built the basis of implementing decisions, and rules, based on which public services are done². Public administration is built by two essential elements: 'public body' and 'general interest'; according to Bertrand and Lang, public administration is different from other governing forms because of its competence and because of the fact that its last purpose is the general interest; the Code of Administrative Procedures of Albania, considers these as bodies of public administration: the bodies of state power that execute administrative functions, the bodies of armed forces, and every other structure, whose employees enjoy the military status, for as long as they execute administrative functions.

State administration

In a more general sense, state administration presents the entirety of employees that work in the state apparatus or in organizational units of state, the system of state bodies that execute the state power in the form of state activity. The state administration is considered as one of the instruments of state apparatus through which the state executes its activities, broad and versatile, an activity that lies in different social spheres, political and economic, and which cannot be exercised in a single form but in a variety of special forms, by which as more important are: first, the state administration in the form of a state instrument and the state administration and second, the state administration in the form of state activity. The first term is known as a formal or organizational meaning of state administration, while the second term is known as material or functional meaning

²EsatStavileci, AktiAdministrativ,fq.34,E drejta Administrative, Prishtinë 2002.

of state administration. Despite the existence of these two special meanings of state administration, first as a certain system of administrative organizations and second as a certain system of functions, the two meanings cannot be separated from each other and be independently treated. Those two meanings of state administration fulfill each other because they appear as plaited and inseparable. The science of administrative law studies them beside each other.

Administration

The direction and leading of work according to rules and laws, the care for a property or value that is well-used based on rules or needs, governance, management, usage.

Public administration

The study of public administration through institutional description and political evaluation, and of the analysis of inter-governmental relations; a theory of public sector's organization; a branch of political sciences. To understand the nature and the purpose of the administration of public sector, we have to explain and unbuckle its content. In this case, a number of questions arise: Is the science of public administration a static or dynamic concept?, Where lies this science?, Is the public administration a serious field for studies?, How can it be summarized in such a way that includes its variety of structures? etc. The reviews about the relations political science and public administration are important. It is worth mentioning that the organization of public administration came as a result of the awareness of political researchers. Later, some kind of retreat happened, while today, many political researchers seem to be bringing it back in the political sciences by talking about the problems and issues of public administration.

The act

1. A simultaneous action of people which is done for a certain purpose; 2. A legal decision with state and social validity, official letter, a document that represents a decision of a judicial body which proves that a certain action was officially done; 3. A term which is used in international relations for multilateral agreements concluded in international congresses or conferences.

I. Administrative act

From many meanings, first we emphasize: the administrative act as an essential concept of administrative law, the origin of which is related to the French term "acte administratif"; secondly, as an act that regulates in details the activity of the subjects in the relations they create; thirdly, as an act that has legal consequences; fourthly, as a legal act. The administrative act is expressed with different names: decision, order, regulation, ordinance, permission, license, diploma etc.³ The constituent elements of the administrative act are: authority, its legal nature and its concreteness. For the full understanding of the administrative act it is important to mention the reviews about the form and content, the purpose, reason, and its characteristics in general: first, the administrative act is

³ Agur Sokoli, E Drejta e Procedurës Administrative, fq.163, Prishtinë, 2005.

a legal act; second, the administrative act is a unilateral act; third, it is an administrative activity, and fourth, the administrative act is a subordinate law.

II. Administrative act

It is a formal expression of state will for the regulation of a certain legal relation, which are issued by state administration bodies, defined with constitution and laws. They are also acts that are issued by the organizations and communions that are charged with administrative legal relations in exercising public authorizations. It is mostly defined as a legal act by the help of which decisions are taken related to concrete cases. The administrative act covers the majority of the activities of administrative authorities by which they impact the legal interests of the subjects of law. Every order, decision or other activity executed by administrative authorities for the regulation of a concrete case or general ones in the sphere of public law is called an administrative act. They can create rights, privileges, responsibilities and duties, or they can change and terminate them. The terms that qualify the administrative act as a source of law receive different designations, such as: decision, order, ordinance, regulation, to the terms that are usually used by the bodies of administration, such as: permission, protocol, letter, testimony, license. The administrative act must be defined as a declaration of the clear will of state power in the activity of public administration, issued in full compliance with the constitution and laws in general, to create, change or terminate relevant legal consequences, implemented by the free will of subjects to which it is directed, or by the coercive power of state. We can say that the administrative act is one of the main forms in the executive and decision-making activity of public administration. The entire executive activity of every public administration body is finally materialized in the moment of the issuance of the act, because it is the administrative act the one that created new legal relations for the subjects it is directed to, that changes former relations by making them more perfect or by terminating them.

Relatively invalid administrative act

It is the kind of act issued against the law; an act that is not entirely invalid, that produces the effects of a valid and regular administrative act for as long as it is not an object of administrative or judicial appeal within the deadlines set by the law, or if it is not revoked nor repealed by the competent administrative body; unlike the absolute invalidity, which is a condition that procures nullity from the moment of its issuance, the relative invalidity brings legal consequences. In reality, the relatively invalid administrative act causes the legal consequences that are required by the interested subject.⁴ It represents the legal power of a valid act up to the moment that the administrative body or court declare its invalidity. From this moment, the administrative act ceases to exist. An act can be considered relatively invalid in a variety of cases: if its content does not comply with the content of the law; if its content does not comply with the purpose of law; if the will of the body is partial (when there is a lack of will due to the error or deception of the administrative body); if there is a lack of will as a result of fraud

⁴StevanLilic,UpravnoPravo,fq.222, 1999,Beograd.

by the interested party; if there is a lack of will due to the incapacity of the administrative body etc. (SokolSadushi, *ibid*).

Legal act

Human action, a decision by which law is created; an action, the purpose of which is to create legal norms and to regulate social relations.⁵ Legal acts can be: general legal acts and individual legal acts. The first ones create general legal norms that regulate certain social relations, for example a general legal norm is a norm that obliges all citizens that realize revenues to pay taxes. The second ones create individual legal norms. The individual act is issued based on a general norm and with the purpose to implement it. With the same example, the individual legal norm defines precisely the amount of the tax for every person.

Binding administrative acts

They are types of administrative acts, characterized by the effects they bring to the subjects to whom they are directed to, with the obligation that is usually prescribed in the form of performing certain actions that require the realization of the purpose they were created for, an obligation that in the mean time can be presented in the opposite direction, i.e. by not doing those actions. In case the requests of the subjects are not accepted, in the administrative act there exists the binding element. In the practice of Albania, giving a fine to a vehicle driver is an administrative act, that obliges you to perform the concrete action – to pay the fine. If you fail to perform the order, more serious measures are taken, while, for example, the order for the suspension of constructions of an object without permission, expects for the subject to stop the constructions, otherwise sanctions will be applied against them.

Declarative act

An act that verifies certain facts or circumstances that are essential for a legal relation or condition.

Discretionary act

Constitutive act the content and initiative of which depends by the will of bodies.

Executive act

1. An act that is issued pursuant to a law and concretizes the manners for implementing this law. 2. An adopted act by the institutions of EU by a simple decision unlike legislative acts, during the performance of their executive functions where the Council of the Union itself can perform such functions or give them to the European Commission.

General legal acts

Presents the act which contains the general legal norm and from which individual legal act derive, respectively individual legal norms. For example the constitution, law, subordinate acts, decree, ordinance, instructions, statute, regulation etc.

⁵FejzullaBerisha,JusufZejneli,E drejta Administrative,Universiteti “HaxhiZeka”FakultetiJuridik,Pejë,2015.

Subordinate acts

Presents the acts with lower legal power than the law which is issued by executive-administrative state bodies. It is more presented in the form of general acts, such as: the decree, decisions, general instructions, recommendation and conclusions.⁶ While the bodies of state administration as usually issue regulations, administrative ordinances and instructions, these acts have normative character and are binding for everyone.

Normative acts

The legal act that defines the rules of behavior in a general – abstract sense, that are valid for an indefinite number of people and cases. Every law, decree, resolution, regulation, administrative ordinance, instruction, rule, or another known act and represented with legal power within the set territory by the public authorities of that territory.

Decisions

Presents a concrete legal act, by which concrete administrative cases are solved authoritatively. Subordinate decision, a written official letter that presents a decision that creates, fulfills, changes or terminates a legal action. The constitutive parts of the decision are: entrance, subjects, the case, date and the issuing place of the decision, the clause – the normative part of the decision, the content of the decision, the justification of the clause, legal advices for the possibility of using legal means (appeal). The decision must also contain the name and sign of the official person of the state authority that has issued the relevant act.

Autocracy

Autocracy is a type of regime by which the power is concentrated to a single person or individual. This term is also used to show a variety of state structures and political regimes, by including totalitarianism, fascism etc.

Authority

The right and ability to make proposals, or to give advices that are accepted without conviction, reasoning or force. Based on the system of certain legal rules, those in duty have the rights to take decisions or to issue instructions, i.e. these persons have the authority by the rules and practices that compile the relevant activity.

Authorization

It is a legal act for representation, which the authorizer through legal work, with its own will, gives it to the relevant representative, where the authorized one acts

⁶SokolaSadushi, “AktiAdministrativ”, Tiranë, 2005

in the name and account of the authorizer. The decisions of the representative have the same force as given by the party itself.

Ombudsman

A public functionary that examines the complaints of citizens for maladministration in different fields of public administration. It is the institution that protects constitutional and legal rights of the citizens, violated by the bodies of state administration or the bodies of other organizations that have public authorizations.⁷ For the first time, this type of institution was applied in Sweden, while today it exists in many countries of the world, that contributes in a more efficient limitation and control of state administration in the interest of the protection of human rights. Ombudsman's have control over the activity of administrative bodies while in some countries like Sweden and France, they can also have control over the activity of courts.⁸ The ombudsman can give critics to the competent body or give proposals for the improvement of someone's activity, to propose the implementation of relevant procedures to authoritative state bodies that are competent to issue acts, but it cannot undertake binding measures against the same bodies. i.e. the power of Ombudsman is moral, and he impacts with the force of his authority and not by binding measures.

Constructive administrative acts

Types of administrative acts, characteristic for the legal effects that they bring; types of administrative acts that support or confirm an important legal advantage for the concrete subject; types of administrative acts that contain the constructive element, that is expressed with gaining a benefit or a right, of course if that is the way it is settled by the law; for example when a subject is given the right by a competent body, for a construction, or for a license etc.⁹ In these cases the administrative body is obliged to recognize the right of the subject within its competences.

Written and verbal administrative acts

Types of administrative acts, clearly defined by each other by the form of their issuance. Administrative acts, as a rule, are issued in written form and that form defines their format; exceptionally administrative acts are also issued verbally and in that case the body that issues the act also takes the responsibility to release the administrative act in a written form within the deadline.

Administrative acts issued with the request of interested subjects

Concrete initiatives of a subject for the issuance of an administrative act; a request of a subject towards competent bodies to give them a certain right through an act by a procedure that is set by law.¹⁰ The Code of Administrative

⁷FejzullaBerisha,JusufZejnli,E drejta Administrative,Universiteti "HaxhiZeka" FakultetiJuridik,Pejë,2015.

⁸Vodickrozpostupke 1,drugozmenjeno i dopunjenoizdanje, "PravniPregled",2001,Bgd.

⁹Z.Ballanca, E drejtaadminostrative RPSH,vëllimi i parë,Tiranë,1974.

¹⁰A.Koxhaj,Administrimi i SektoritPublik, Tiranë,2002

Procedures of Albania considers the protection of public interests as an obligation of administrative bodies, and the protection of constitutional rights of private persons; those bodies, by helping the citizens, have the obligation to fulfill their legal requests (for example the permission to carry firearms, giving the license to open a radio or television, the issuance of permits to exercise a particular activity etc.); in the administrative practice, the administrative body is obliged to consider the request of the interested subject within the deadline set by law, but the submission of the request by the interested subject doesn't mean that the administrative body has to necessarily take his request into consideration. The administrative body can consider the request lawful, but can refuse it as unacceptable. According to the Code of Administrative Procedures of Albania, the failure to consider the request within the time period set by law, or the failure to give a response, even in the form of a negative legal act, allows the subject to ask for an administrative or judicial review of the act, and ask for legal responsibility from the respective body that has legal liability to not stay indifferent towards the request.

Individual acts

Types of administrative acts, characteristic for the character of their content; administrative acts that regulate concrete relations for a certain case and towards an identifiable subject or group of subjects; administrative acts that are issued based on a general norm to solve a concrete case; the individual character of administrative act is issued by analyzing its content; the individuality of the administrative act is understood by the legal relation that is regulated by it; its individual character remains even if the administrative act extends its effects not for a single person, but for a wider group of category of verified and identifiable subjects, like in the administrative practice in Albania, where the decision of the Council of Ministers for the expropriation of some families in a village for the construction of a highway, contains elements of an individual administrative act, because the legal relation that it want to regulate and the consequence it brings, is special and individualized, for a certain problem and for something concrete.

Legally connected acts and acts based on free choice

Categories of administrative acts; administrative acts legally connected which are previously defined about when will they be issued and what content will they have, because, same as initiative, the content of administrative acts are set by law, for example the decision to give the permission for constructing.¹¹ While administrative acts based on free choice are those administrative acts where the competent organ can decide, based on its obedience and the evaluation of the general interest, for the concrete case, for example the decision about giving citizenship, about giving providing aid for certain persons etc.

Constitutive and declarative acts

Categories of administrative acts; a subdivision of administrative acts based on the fact whether they create, change or terminate legal relations or if they only

¹¹AgurSokoli:E drejtaProceduraleAministrative,faqe 161,Prishtinë,2005

verify the existence of a certain legal relation. Constitutive acts are the acts by the help of which legal relations are created, changes or terminated, for example the decision that allows the construction of a certain building in someone's property or the permission to carry firearms. Declarative administrative acts are the acts that only verify the existence of a certain administrative legal relation, for example the cessation of military service for a certain person with the force of law.¹² The effect of the first administrative act is *ex nunc*, respectively from the moment of its issuance, while the effect of the second administrative law is *ex tunc*, respectively from the moment that the relation is created.

Negative acts

Types of administrative acts, characteristic for not changing certain legal relations. Different from positive administrative acts, they don't accept the change of a relation, nor the creation of a new one.

Positive acts

Types of administrative acts, characteristic for changing certain legal relations. Administrative acts that create, change or terminate a legal relation. Different from negative acts, they accept the change of a relation and the creation of a new one.

Municipal Assembly acts

Acts that are issued by the assembly of the municipality within their competences; acts that are valid for the territory of the municipality that has approved them. According to the Law for Local Self-Governance of Kosovo, some municipal assembly acts are: the rules of procedure of the Municipal Assembly, municipal regulations and other necessary acts for the efficient functioning of the municipality.

Acts issued by the initiative of the body

Administrative acts issued when the body believes that they have to interfere for the solution of legal disputes, by setting the form and manner about the appearance of state will. It is a right, but also an obligation of the body to put an administrative proceeding in motion, to issue, by its own initiative, an administrative act, mostly in order to determine a certain obligation.

General (normative) acts

Types of administrative acts, characteristic for their content; administrative acts that set different behavior rules for a certain legal relation or for a complex of legal relations; administrative acts that regulate legal relations as a whole and for a wide category of subjects; administrative acts that do not refer to a concrete act, but to a number of possible or hypothetical cases; administrative acts that regulate general relations.¹³ A general administrative acts is, for example,

¹²FejzullaBerisha,JusufZejnli,E drejta Administrative,Universiteti "HaxhiZeka"FakultetiJuridik,Pejë,2015.

¹³FejzullaBerisha,JusufZejnli,E drejta Administrative,Universiteti "HaxhiZeka"FakultetiJuridik,Pejë,2015.

according to the practice in Albania, the administrative act that requires vehicle drivers not to drive when there is a risk of collapse, or when the citizens of a country are forbidden to sell agriculture or livestock products in a certain area, where there is an infection by a product etc. According to J. Corno (The administrative law of RPSH, Tirana, 1974), "general administrative (normative) acts are the acts that are addressed to a large number of people that regulate a certain relation or a complex of relations in general."

State administration acts

All kinds of acts issued by the administration in the execution of their administrative activity; acts of state administration bodies are not only the administrative acts which in fact are only a kind of acts that are issued by the state administration bodies in the execution of the functions set by the constitution and law, same as the fact that administrative acts are not only acts that are issued by the bodies of state administration, because other bodies and institutions issue administrative acts as well in exercising their public authorizations. The acts issued by the bodies of administration are classified in legal acts (general or normative and individual acts) and in material acts.

Acts of giving and taking statements

Category of material acts that summarize the data of administrative bodies for a variety of cases, for example the data that present the economic and personal situation of different subjects; acts that are similar to declarative acts, but unlike them, the acts of giving and taking statements do not produce legal effects.

Acts of identification or documentation

Category of material acts, which contain the evidence and documentation of different cases and data, such as: files, records, protocols as public documents, statements that are considered as true until proven otherwise.

Notification acts

Category of material acts: announcements, commentaries and other indicators about certain data for different people; act that, unlike administrative acts, don't produce legal effects.

Acts of one body and composed acts

Category of administrative acts, clearly distinct from each-other, depending on the number of organs that take part in their issuance; administrative acts of one body are characterized by the fact that they are issued by a single body, while composed administrative acts are the acts issued by two or more bodies, by cooperating with each-other, expressed by issuing mutual administrative acts or by approving, validating or giving permission for the issuance of an act by another body.

Individual acts and general acts

Categories of administrative acts; a subdivision of administrative acts based on who they belong to: individually specified and unspecified people.¹⁴ An individual administrative act is, for example, the administrative act for the permission to open a craft activity, while the general administrative act belongs to more persons that are not written by name in the administrative act which orders the residents of a neighbor to take part in extinguishing the fire; we observe that the general administrative act is different from the general normative act that doesn't have its attributes, because the first one doesn't contain the general norm, but contains a specific norm for a specific case (for example extinguishing the fire, the avoidance of floods etc.), therefore it is considered as an administrative act.

Legal acts of administration

An expression of the will of administration bodies by exercising the work they have been entrusted and with the intention to make changes in certain legal relations.¹⁵ The legal acts of administration are classified in general (normative) acts and in individual (concrete) acts. General (normative) acts are issued by the activity of the state administration bodies and which regulate norms of behavior abstractly and in general; these norms of behavior belong to an uncertain number of people and cases. Individual (concrete) acts belong to individually specific persons.

Material acts of the administration

Types of not legal acts, which, by being so, don't produce legal effects; acts which keep different records about different phenomena; act by which the authority of the bodies is not expressed; simple administrative and professional acts (See: administrative actions). As material acts we mention: acts of identification and documentation, acts of giving and taking statements, notification acts etc.

Positive and negative acts

Categories of administrative acts, clearly distinguished between each-other based on the criteria of whether they change or not a legal relation. Positive administrative acts are those that change the existing legal relations, by creating a new one or by changing the existing one, for example the decision that sets the amount of the tax for a certain person. Negative administrative acts are the ones that refuse to change the existing legal relations. they are issued by the initiative of the party,¹⁶ for example the administrative act that refuses the request for the permission to carry a fire gun or that refuses the request for opening a craft workshop. If the body doesn't declare at all, we have to deal with the so-called administration silence, for example when the body doesn't issue the administrative act within the time period set by law.¹⁷ If the competent body

¹⁴ Sokol Sadushi, Drejtësia Kushtetuese ne Zhvillim, Toena, Tiranë, 2012.

¹⁵ Luan Omari, Sistemi Parlamentar, vështrim historiko-juridik, Botimi i katërtë, Elena Gjika, Tiranë, 2004

¹⁶ Durguit Leon. Traite de droit constitutionnel, Paris, 1923

¹⁷ Esat Stavileci, Nocionidhe Parimetë Administratës Publike, Aspektet metodologjike dhe shqyrtime krahasimore, Akademia e

doesn't issue it within the set period, then the party has the right to directly appeal to a higher body than the one that has refused it. Remark: we must separately talk about positive and negative acts.

Acts that are issued by the official duty of the body and acts that are issued with the request of a party

A subdivision of administrative acts, distinguished from each other based on who takes the initiative for their issuance – the bodies itself or parties.¹⁸ In administrative acts that are issued by the official duty of bodies the initiative is on the side of the bodies, and, as a rule, they set obligations for the parties. When the administrative acts are issued with the request of the parties, the bodies recognize them certain rights.

Absolutely invalid administrative act

A type of administrative act, which, because of the fundamental violation of law doesn't have the legal power of a valid administrative act and it is objectively considered that it has never existed (See: invalidity, as a condition where there is complete absent of the legal action of the act). The Code of Administrative Procedures of Albania: "absolutely invalid administrative acts do not produce legal consequences, despite the fact if they have been declared as such or not" (Article 117, item 1). The cases when an administrative act could be considered as absolutely invalid are: when the administrative act is unidentified as in known as such; when the administrative act is issued by an administrative body that has gone beyond its competences and if the form and procedure for the issue of the administrative act has been violated flagrantly (See: the Code of Administrative Procedures of Albania, article 116, letters 'a', 'b' and 'c'); the invalidity that is defined through revocation by the body that has issued the act, with repeal by a higher administrative body or court. Every public or private subject that faces this kind of act is not subjected to its rules. In fact, the absolute invalid administrative act can be totally ignored by the interested people or by other administrative authorities.

Appeal

The expression of the dissatisfaction of a party with the decision of a relevant body of the first level about the administrative procedure; a right of parties for the protection of their legal rights in administrative procedures; a regular legal measure in the administrative procedure, that serves for the protection of the legal rights and interests of the party, and for the protection of legality in general; a measure which intends to correct the injustice of the first level. This right may be excluded only if it is expressly prohibited by law (See: administrative appeal, as an alternative denomination).

Shkencave dhe e Arteve e Kosovës, Prishtinë, 2005

¹⁸O.A.German, Le controle du pouvoir d'appréciation du juge dans la détermination de peines et des mesures de sûreté, Revue

internationale de droit pénal, No. 1-2, Paris, 1957, fq. 243-244

Administrative appeal

An important legal measure for the realization and protection of the constitutional rights of individuals and other subjects of law; a legal measure of the subject, through which it requires the repeal or the change of an administrative act; an important constitutional principle.

The sources of administrative law

The administrative law, has no self sources in principle; sources of administrative law are general sources of law, in the material and formal meaning. By law sources in the material sense, the theory of state and law presents the force that creates the law, a force that is conditioned by the rise and development of the economic structure itself, by the type of certain relations, of life conditions that are spontaneously presented in those relations etc., while with law sources in the formal sense, the same theory means the form of legal norms, the ones that are in force.¹⁹ The constitution is the legal basis for the entire administrative legislation of a country. In reality, it contains a number of legal norms that regulate social relations in the field of state administration of that country. A part of laws also contain norms with normative character, thus they are formal sources of administrative law. The administrative law of a country can be summarized in a special code. The issue of understanding the sources is a general theoretical issue for all special branches of law, including the administrative law. In this way, understanding administrative sources cannot be done separately from the meaning of law sources in general.

Bureaucracy

Despite numerous efforts to define the notion of bureaucracy, because of the complexity of the phenomenon itself, in theory there is no 'generally acceptable' definition. However, bureaucracy in the most general sense is defined as a governance of people from the office (a meaning that originates from the etymology of the word); a negative phenomenon in the system of governance, social class which mainly consists of professional leaders; a social class that is separated from society and out of its control; a form of exercising the power in which individuals, groups or classes are put upon the society; a special class that mainly consists of employees and administrative functionaries; an executive apparatus of state, which functions despite from the institutions of the political system etc.²⁰ This term, as a rule, expresses a corpus of administrative officials, and the procedures and duties that include a certain term of administration, for example a state body. The term is mentioned in France from the start of the XIX century. Although Max Webber is not the one who invented the concept of bureaucracy, he is known as the author of original contributions in the study of this phenomenon.

¹⁹FejzullahBerisha, Hyrjenëtdrejtën, Universiteti "HaxhiZeka" FakultetiJuridik,Pejë,2015.

²⁰O.A.German,Le controle du povoird'appreciation du jugedans la determination de peines et des mesures de surete,Revue internationale de droid penal,No.1-2, Paris,1957,fq,243-244

Bureaucratization

A certain way of exercising the power with consequences for the administrative apparatus and for the society as a whole, that is expressed with the increasing number of administrative organizations and the growth of the administrative apparatus in general, with tendencies of social isolation and the immobilization of the leading class, by forcing the citizens to be passive in the political life with the tendency of 'individuals alienation from the political power', bureaucratic power; a manner which expresses and the bureaucracy; the bureaucratic regime, bureaucratic apparatus, bureaucratic mentality and the bureaucratic way of thinking are characteristic features of bureaucracy. ²¹It can occur for the notion of bureaucratization to be mixed with the one of bureaucracy, even though they are different from each other, they have the same origin. In reality, bureaucratization is presented as a way in which bureaucracy is manifested. Therefore, bureaucratization entails a manner of behavior, which can be qualified as an irresponsible behavior with people (See: bureaucracy).

Centralism

The territorial principle of governance; a situation where a state or organization is governed by a center; the regulation of essential issues from the top of the organizational pyramid of a state; a manner of governance in a certain hierarchy.

Centralization

Marks the concentration of the power in a mutual state center (central power).during the existence of centralization, the functional independence of lower territorial bodies or the local administration bodies was minimal or inexistent. Although in the centralist system there can be different organizational or territorial similarities (regional, provinces etc.), they don't present initial expressions of citizens' requests for an independent governance of local work. The bodies that conduct administrative functions in these territorial units are appointed by the central power, which has hierarchical control over them.²² In systems with strong centralization these territorial administrative units have no rights for independent decisions. Centralization also means the concentration of financial means, respectively there is no financial autonomy of lower bodies.

Administrative issues

Every administrative matter or case by the appliance of which a state body creates certain rights and obligations for the party in the administrative procedure; in defining the administrative issue we have to start from the administrative field, by administrative matters that are regulated with relevant material – legal dispositions. ²³Every individual case from the relevant

²¹ Luan Omari, Sistemi Parlamentar, vështrim historiko-juridik, Botimi i katërtë, Elena Gjika, Tiranë, 2004

²² Sokol Sadushi "E drejta administrative 2 – Teoria e aktit administrative", Tiranë, 2005

²³ Kodi i Procedurës Administrative të Shqipërisë, neni 66,

<https://www.dap.gov.al/images/Legjislacioni/AP/ligj%20per%20proc%20admin.pdf>

administrative field is an individual administrative issue, while the purpose of every administrative case is the issuance of the relevant administrative act. The concrete administrative case is always defined by the concrete case.

Certificate

A certificate is an official document that provides data on a person. Depending on the content of data we distinguish several kinds of certificates: birth certificates, death certificates, marital certificates and certificates that prove the performing of an activity.²⁴ A sample of certificates of activities is the certificate of educational courses which includes every document that is given after the successful termination of a course, program or after passing the exams in educational institutes, regularly registered and licensed.

Decentralism

A type of governing system, a principle of political, economic and judicial leadership and organization; a system that is based in dividing the responsibility from the central bodies in the local ones. As a notion and as a concept, decentralism is related to the territorial system of governance. Territorial governance is a very complex process, which has more functions that are exercised based on two principles: centralism and decentralism. Although the national definition of each principle is different in theory, however their content complies with the notions that define those contents.²⁵ Decentralism, in a wide sense, entails every weakening of the center's impact in its parts; transfer of certain authorizations from the 'top of the pyramid' in other functional carriers, which at the mean time also transfers the responsibility, in proportion with the authorizations. Decentralism is expressed as delegation, which means transferring the duties from the center to lower levels, as an organizational decentralization, as a transfer of duties and in the same time as an organization of new units; as a political decentralization, as a transfer of duties, organizational growth of lower levels. The practice shows us many advantages of decentralization, but disadvantages as well. From the theoretical and empirical studies, the need to build a model of decentralization arises that would be socially acceptable, politically suitable, professionally rational, organizationally functional and ethnically opened. The issue of decentralization in Kosovo is very controversial, because of its ethnic attributes.

II. Decentralization

The delegation of central bodies' power to lower levels of the hierarchy or from the central bodies to the local ones and the recognition of the autonomy of local bodies in the political, normative and administrative sense.²⁶ 2. A system of governance, of political and economic leadership that presents the process of the transfer of power from central political and administrative bodies in the chosen

²⁴EsatStavileci,HyrjenëShkencat Administrative,fq.191-204 dhe 205.

²⁵LibërUdhëzuesMbiDecentralizimin në Kosovë-Edituar nga Robert D.Ebeldhe Gabor Peteri, Prishtinë,2007.

²⁶SkenderGojani.Fjalor i TerminologjisëJuridike,Prishtinë,2013.

local bodies and the existence of an administrative, political, normative and financial autonomy of lower bodies.

III. Decentralization

Unlike centralization, this is a process where the power is transferred from the political and administrative central bodies, in the chosen local bodies that are interested in implementing policies in certain regions, as a response to the constant change of local requests. With the decentralization of local bodies the law defines special competences with local character according to which they govern independently, by even having a financial autonomy. In this case local governing bodies are not appointed by the central power, but by the local communion itself, respectively the representative bodies of that communion.²⁷ II. The delegation of central bodies' power to lower levels of the hierarchy or from the central bodies to the local ones and the recognition of the autonomy of local bodies in the political, normative and administrative sense.

Branch

A form of internal organization of administrative activity which includes a group of administrative duties that are similar to each other that compose an entirety. In principle, for a branch or a couple of branches, independent administrative bodies are formed.

I. Decree

A written act by a higher state body or by the head of the state, that has legal power; the decree of the Presidium of the National Assembly; royal decree; legal act with individual character which is issued by the president to give legal power to something.

II. Decree

Legal act with normative character which is issued by the president and that has the force of law.

III. Prohibitory decree

An act of a high body of state power which expressly prohibits the conduction of certain activities; prohibitory measures; prohibitory law etc.

IV. Enactment

The act of issuing the decree; decide something through a decree; give legal power to. Removing tax decree, election decree etc.

V. Decree

Legal act that has to do with the administrative nature depending on the issue it solves, for example an act with which the President of the Republic appoints an ambassador, as a representative of the state in another state.

²⁷SkenderGojani.Fjalor i TerminologjisëJuridike,Prishtinë,2013.

I. Delegation of competence

A right of higher administrative bodies to transfer the attributes of exercising their executive powers to lower bodies of the hierarchy. The delegation of competence is done by the superior authorities to subordinate bodies. The delegation is not done in every body and case of public administration. In reality, it is the law who predicts the type of organ that conducts the delegation, along with the concrete action that has to be done.²⁸ The organ that delegates a competence cannot authorize the delegated organ to re-delegate this competence to another body, except in cases when the law itself allows this. If we have in mind that the competence is the right and obligation of the body to conduct a certain duty.²⁹ The delegation is an exception, therefore it is allowed and in practice they try to avoid the delegation of competences, only in cases when it is necessary.³⁰

II. Delegation of competences

The transfer of competences from one person, body or branch to another one, according to constitutional and legal rules. It is a right of higher administrative bodies to transfer the attributes of exercising executive power to other state bodies. The delegation entails a form of decentralization.

Conclusions

The exercise of an administrative activity by legal authorization; a delegated power by law in non-governmental bodies and organizations that don't exercise the administrative activity as a "source power" previously given by law, but as a delegated power by state bodies and with that case they are given the ability to present themselves in certain legal relations as carriers of rights and obligations with administrative character. The public authorization doesn't present the administrative activity nor the administrative function in their full meanings. The public authorization, is in fact a delegated activity by the administration, a 'delegated' function from the administrate to non-governmental subjects, which are differently named in different constitutional system of states. Two main elements define the core content of the legal situation of these non-governmental subjects: firstly, the legal administrative capacity, i.e. the entirety of rights and obligations, provided and charged by the state in the field of administrative activity, and secondly, the capacity to represent themselves in certain legal relations as carriers of administrative rights and obligations. The volume of administrative functions that are given to these non-governmental subjects is set by normative acts of relevant state bodies and it is not the same for everyone. Their legal administrative situation is set by the constitution, while in details it is set by legal administrative norms with legal acts of relevant state bodies.

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²⁸SkenderGojani.Fjalor i TerminologjisëJuridike,Prishtinë,2013.

²⁹SokolSadushi "E drejta administrative 2 – Teoria e aktit administrative", Tiranë, 2005

³⁰King,David S.1984.Fiscal TIERS:The Economics of Multi-Level Government.Londër:Allen&Unwin

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