

The Control of Public Administration

Albulena Brestovci

College AAB, Prishtina

Abstract

Public administration in Kosovo is in a development phase and it is being built under new circumstances which derived from the international civil administration. In this regard it is also ready to undergo under various forms of the control and supervision. With this paper the author makes an analysis of the ways of the judicial control the public administration undergoes based on the positive legislation in Kosovo. For the needs of this paper the combined methodology is used whereas the following methods will be used: method of systemic analysis, method of legal analysis, theological method and the method of theoretical analysis. Analysis, findings and conclusions will contribute the academic debate as well as they will serve the practical work which is being developed within the institutions of the public administration and the work of those that deal with the judicial control and the supervision of the public administration.

Keywords: administration, judicial control, institutions, Kosovo, supervision

Introduction

Kosovo Public Administration could be treated as it has passed through various phases of building and development, whereas Kosovo is one of the seven new states created in the process of the dissolution of former federal Yugoslavia. The process of dissolution of the Yugoslav federation was painful and with big consequences for Kosovo as the former federal unit. Firstly, in an unconstitutional way Kosovo status was abolished by an act of occupation undertaken by the other federal unit [Serbia]. After the Kosovo autonomy was unconstitutionally abolished, in Kosovo as a result we see two systems being built and consequently two administrative powers as well: one, of the power installed by the force from Serbia and second, the parallel power constituted against the Serbian forcefully installed power in Kosovo. And this that was known as the parallel system indeed was totally legitimate because it derived from the majority population of Kosovo which supported it. Of course the field of activities of this administration was narrow and this was dictated from the circumstances and the situation created as the consequence of occupation. Thus administration, based on the existing circumstances had limited space of acting, but it was very useful and it provided services for citizens in the field of health, education and in other fields. This way of organizing the life of the public administration and the parallel system of public administration which would provide services for citizens will continue until the end of the war in Kosovo.¹ The end of war brought the international civil administration in Kosovo as a power which was not applied until then in any other post conflict situation in the world.

International Civil Administration in Kosovo

Legal basis for establishing the international civil administration in Kosovo is the UN Security Council Resolution 1244. Based on this resolution, the international civil administration would be established through four pillars known as UNMIK (UN Mission in Kosovo) pillars. Regarding the organizing the temporarily administration,

UNMIK is led by Special Representative of the Secretary General, as the highest civil authority in Kosovo, who has four deputies. Each deputy is responsible before the Special Representative of the Secretary General and at the same time is the head of so called "pillar" which is obliged to exercise determined administrative functions. This "pillar (s)" is led by the

¹ War in Kosovo has ended with the end NATO of air strikes against Serbian military forces and with the UN Security Council known as 1244 Resolution.

determined international organization. Four pillars include police and justice (UN), Civil Administration (UN), democratization and capacity building of cadres (OSCE) as well as the economic development and reconstruction (EU).¹

In order to exercise the duties of the Special Representative of the Secretary General as the highest power in Kosovo to him were given competences of promulgating regulations, which from the obligatory force are laws based on which the life was organized in Kosovo. In addition to this, in Kosovo there were applied also laws of former Yugoslavia which were in force until March 22, 1989 conditioned with a classification that they were not discriminatory and that they were not against the rights known internationally regarding the human right. This in principle was called the applicable law.

During first five years after the conflict the process of establishing the public administration has passed through the three big phases: establishment of temporary UN power, creation of the provisional institutions of local governance and the launch of the plan for applying the standards for Kosovo.² Regarding public administration and its establishment in Kosovo, it could be said that the UNMIK pillar for public administration in Kosovo in 2003 started the process of creating the strategy for public administration in Kosovo. Thus since 2003 UNMIK transferred responsibilities to the provisional institution of local governance in Kosovo and this in the fields which were not reserved only for UNMIK, including the budget.³ From here the process of transfer of the power from UNMIK to the local institutions has continued during a long period of time, passing through a phase known as the phase standards before the status. This phase – standards before the status was a process which had to be monitored and evaluated as a pre condition for a green light before starting with the negotiations for the Kosovo final status. The process of monitoring of standards ends with the report of Kei Eide who was in charge with the competences of evaluating if Kosovo had fulfilled standards for going forward towards negotiations for the final status of Kosovo. And standards were the rule of law, free movement, sustainable return and the rights of communities, economic development, property right, negotiations with Belgrade for technical issues, Kosovo Protection Troops were the determined standards, whose fulfillment was the joint duty of UNMIK and the provisional institutions of self governance, whereas the middle of 2005 was determined as the period of standards of evaluation.⁴

Kei Eide positive report made Kosovo move forward defining the Kosovo final status through process of negotiations which would be led by former Finnish President Maryi Ahtisaari. Process of negotiations for solving the Kosovo final status has taken determined time and in these negotiation there were applied almost all forms of negotiations. But however the process for determining Kosovo final status was not finalized with an international agreement therefore President Ahtisaari came up with a solution which would be called the Comprehensive Proposal for Kosovo final status.⁵ This because Serbia did not accept the proposed Ahtisaari Plan. It should be noted that Kosovo accepted the mentioned Plan and based on this Kosovo Parliament being that all conditions were fulfilled for going forward, on February 02, 2008 declared Kosovo Declaration of Independence which will be developed as the independent state and which will be internationally recognized. Since then Kosovo has been recognized by 116 states.⁶ Starting from here the process of establishing and strengthening the Kosovo independent state takes high intensity and Kosovo right to self determination strengthens and it was sealed also by the opinion of the International Court of Justice in 2010. Thus Kosovo starts to act as the independent state and under the context of this topic it starts to establish its public administration. However the process of statebuilding and the development of the public administration was monitored and evaluated continually by the international community. Below are drawn some data according to the Progress Reports for some years. Thus there are underlined EU Progress Reports.

Administration from the Progress Report viewpoint

During the next years Kosovo should especially:

→ monitor application of the public administration reform from the strategic framework under the umbrella of a broader developing strategy, ensuring a clear connection between the public administration reform and the economic development;

¹ KIPRED, Misioni i Kombeve të Bashkuara në Kosovë dhe privatizimi i pronës shoqërore, Prishtinë 2005, pg.9.

² Mirlinda Batalli, *Reform of Public Administration in Kosovo*, Thesis, nr 1. (<https://aab-edu.net/uploads/docs/thesis/2012/01-2012-anglisht/01.%20Reform%20of%20Public%20Administration%20in%20Kosovo-%20Mirlinda%20Batalli.pdf>) (qasur me 20.09.2018)

³ Esat Stavileci, Agur Sokoli, Mirlinda Batalli, *E Drejta Administrative*, Universiteti i Prishtinës, Prishtinë 2010, pg.305

⁴ www.zeramerikes.com/a/a-30-a-2003-12-10-4-1-85537332/372595.html (accessed on 23.09.2018)

⁵ <https://www.kuvendikosoves.org/common/docs/Comprehensive%20Proposal%20.pdf>

⁶ www.mfa-ks.net

→ to increase accountability through total review of all agencies and to improve the access in the administrative justice by addressing issues which are not made administrative;

→ to approve general financial management of the program reform.¹

Development of the public administration and stagnations in this development will not be described or analysed with this paper, since stagnations are various and the resources for these stagnations are also various. The main aim is discussion about how is the solution of the administrative conflict as one of the forms of the control over the work of organs of public administration, which as it is seen from many reports should be deep and various. However, Kosovo has a good level of preparations for the public administration reform. A progress has been made with the fact that the general strategy of financial management and the Law on Public Administration were adopted. However, Kosovo has not addressed recommendations of EU Commission in the field of accountability. Recruitment on the non merit basis has affected the efficiency and the efficacy as well as the professional independence of administration. First reports of monitoring show that the reform package has considerable delays.²

Administrative conflict as a special form of control on the work of administration

Regarding the judicial control of the administration there are various thoughts in theory. Judicial control of the administrative work is the main form of judicial control over the administration which is exercised by courts.³ Courts while acting during the process of judicial control in one way contribute the process of legality. Even title judicial/court control shows that it as such has some specifics which make it to differ from other forms of administration. These characteristics could be divided into formal and material. Formal characteristics of judicial control are: 1. organs that exercise the control and 2. procedure according to which the judicial control is exercised.⁴

Judicial control as a special form on the administration is important and necessary, especially in the states of transition and in the post conflict states, thus consequently for Kosovo as well. Kosovo in many foreign or inner reports appears to be as a country where the administration is overloaded, to a determined extent politicized and in determined segments not professional. Under such circumstances there are not rare cases when the misuses of official positions are present, especially in the labor relationships, in violation of human rights, etc. In addition to all efforts on building a professional, effective administration which doesn't allow the misuse of position, which doesn't allow the violation of human rights, Kosovo Parliament has adopted the Law on Administrative Conflict.

Kosovo Law on Administrative Conflict

This law has been promulgated by the Kosovo Parliament in 2010. Its characteristics are as follows:

The aim of this law is to ensure judicial protection of the rights and legal interests of physical persons, judicial persons and the other parties, the rights which were violated by individual decisions or with the acts of public administration organs.⁵ During their work, courts act respecting some principles and under this context law underlines the principle of verbal review (art.6), principle of efficacy (art.7), principle of the help for uninformed parties. It is good that these principles are underlined and sanctioned by law because in fact these are the principles which are not respected well. Principle of the verbal review is one of the principles which is frequently violated in a way that parties are not given the possibilities to declare regarding their pretensions and thus the organ decides in contradiction to the European Convention for human rights. Court in the administrative conflict decides on the legality of final administrative acts by which administrative organs while exercising public authorisations, decide on rights, obligations and judicial interests of physical and judicial persons in the administrative

¹ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_kosovo.pdf (accessed: April 17, 2018)

² https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_kosovo.pdf (accessed: April 17, 2018)

³ Esat Stavileci, Agur Sokoli, Mirinda Batalli, *E Drejta Administrative*, Universiteti i Prishtinës, Prishtinë 2010, pg.139

⁴ Esat Stavileci, Agur Sokoli, Mirinda Batalli, *E Drejta Administrative*, Universiteti i Prishtinës, Prishtinë 2010, pg.141, cited by Bashkim Rahmani

⁵ Art. 1, Kosovo Law on Administrative Conflict

issues.¹ Law on administrative conflicts in a specific way gives the parties who could initiate procedure of administrative conflict and that as follows:

-the right to initiate administrative conflict have physic and judicial persons if they consider that by the final administrative act in the administrative procedure there is violated a rights or legal interest, - organ of administration, ombusperson, associations and other organizations that acts on protecting public interests could initiate administrative conflict, -organ has the right to initiate conflict of administration against the decision which was taken based on the appeal in the administrative procedure, if he/she considers that a righ or an interest was vioalated, -if with the administrative act was violated a law in favour of physic person, judicial person, the administrative conflict could be initiated by the authorized public prosecutor. Administrative organs are obliged that when they are informed about this to inform the prosecutor or the organ authorized by law.,- administrative conflict could be initiated by competent prosecutor or by authorized person if with the administrative act is violated the law against the national governance bodies or the organs accountable to them, against the interests of local governance and their constituents,when the property rightht of these organs were violated.²

Law on administrative conflicts with its disposal further foresees in a precise way and sanctions the court competences, the procedure of appeal against the decisions that made possible initiation of the administrative conflict, deadlines and the execution of the decisions which are taken in the administrative conflict. Besides creation of a legal infrastructure the issue of administrative conflict remains to be as something that has to be used and that has to be intensified, by what the public administration is strengthened and where the possibilities for misusing the official position and the violation of human rights will be reducecd.

Conclusions

Kosovo has passed through several phases of its development and these phases determined the level and forms od the development of public administration. Before the war (1999) there were also some phases through which the Kosovo public administration was built within the Yugoslav federation-within a system know as the system of socialist self governance in the system of delegation. No matter of weaknesses the pre Miloshevich system had there existed an administration which to some extent was efficass and professional and this always [talking] under the context of existing state system which was socialist which anyway was different from the clear communist systems. After the war, in Kosovo we hve the international civil administration which later on became mixt and which after 2008 became an administration which belongs to an independent state. It has been noted that Kosovo public administration is overloaded a lot and this has a dual impact: it doesn't help the process of professionalization of the administration in one side, and it has the budgetary implications on the other side. Engagements and the employment in the administration continue to be under a political impact even though a progress has been made. Beeing that however the administration remains to be under a political impact then this is a basis or a resource of appearance of various forms of misuse, nepotism, etc. Thus this administration has to be necessarily controlled and supervised by courts. But it ls not to be said that there is an enthusiasm only from the fact that there exist a legal infrastructure that makes possible the functioning of the public administration. The fact that existence of the administrative conflict doesn't mean that it helps without limit parties whose rights were violated. This amongst the other also from the fact that courts themselves are overloaded with huge amount of cases in one side and the judiciary system itself is mot criticized part of the system on the other side. Based on this, parties when their rightht are violated hesitate to initiate the court procedures whose endings are difficult to be foreseen.

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¹ Art 9, Kosovo Law on Administrative Conflict

² Art 10, Kosovo Law on Administrative Conflict

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