

KEY ASPECTS OF CIVIL CONTROL OVER ADMINISTRATION

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Abstract. *The article tries to present the main aspects of civil control. Civil control is a necessary component of any democratic country. It is an important form of participation of citizens in governing the state and municipalities, a manifestation of the active role of citizens in assessing the activities of the administration. Civil control is based on the civil beginning, which in turn is an important factor for the establishment and functioning of the Bulgarian society as a European one.*

Emphasis is placed on the right of citizens to challenge administrative decisions by judicial and administrative procedures as well as proposals and signals as main forms of civil control over the administration.

Keywords: *civil control, governance, protection of the rights and interests of citizens*

The problem of civil control at this stage of development of society is gaining a greater importance and relevance. The civil control over the administration is an absolutely necessary component of a democratic state. This control is an important actionable form of citizen participation in the government, in particular the activities of state administrative bodies. The civil control over the administration has an emphasized expression of active /civil/ democracy. At the same time, the civil control over the administration is essential to protect the rights and interests of citizens.

Methods and procedures provided for civil control over the administration are an extremely important guarantee to defend the legitimate interests of citizens and their organizations and protect their rights in the field of administrative activities of the state. Through funds provided by law for exercising control over the administration, the individual citizen is protected by the dominant authority of public administration, which could lead to arbitrariness, illegal and improper actions affecting the rights and legitimate interests of the citizen¹. The civil control is based on the civil beginning, which in turn is an important factor for the establishment and functioning of the Bulgarian society as a European one. The results of the civil control may be a reason to start some kind of legal control. Civil rigor is a manifestation of the ability of citizens and their organizations to participate in the management of the state and municipalities.

Civil control can be defined as a control by citizens and their organizations over bodies of government and their administrations in order to protect their legitimate rights and interests. This type of control can be seen as a form of citizen participation in governance and means to protect their rights and interests.

Civil control occurs as both a right and a responsibility. The participation of citizens in government refers to the fundamental rights of citizens. This right applies to their political rights and immediately and effectively expresses the national sovereignty and democracy of power. As a right - the right of civil control over the administration is an extremely important individual right enshrined in the Constitution² and laws of the country. Pursuant to Art. 45 of the Constitution of the Republic of Bulgaria, "Citizens have the right to lodge complaints, proposals and petitions with the state authorities". In principle, the right of defense is a basic human right. Enshrined in Art. 56 of the Constitution, the right to defense is a fundamental right of citizens of the Republic of Bulgaria³.

Civil control occurs as a responsibility, too. Exercising civil control, occurrence of civil rigor is vital to the development and improvement of government.

The main task of the civil control over the administration is to guarantee the normal and proper implementation of public management as well as the protection of the rights and interests of

¹ Kandeva, Em., Public Administration, Ciela, Sofia, 2007, p. 406-407.

² CONSTITUTION OF THE REPUBLIC OF BULGARIA, (CRB), Promulgated, State Gazette No. 56/13.07.1991 (effective 13.07.1991), amended and supplemented, SG No. 85/26.09.2003, SG No. 18/25.02.2005, SG No. 27/31.03.2006, Decision No. 7 of the Constitutional Court of the Republic of Bulgaria of 13.09.2006 - SG No. 78/26.09.2006, SG No. 12/6.02.2007.

³ Nenovsky, N., Constitutional right to protection, Sibi, Sofia, 1998, p. 21-23.

citizens and their organizations. Civil control is important for both sides in the system of governance - for the subjects of management and the objects of management.

The main forms and means for the implementation of civil control over the administration are:

- The right of citizens to appeal individual and general administrative acts through administrative channels. Contesting administrative acts under an administrative order is a combination of consistently developing legal acts that are legally regulated, and are aimed at ensuring a legitimate and properly functioning administration. The administrative control within the field of public administration is carried out by authorities and officials within the system of executive power. Administrative control is an integral part of administrative activities. The administrative control is a guarantee for the implementation of the issued administrative acts by the governing bodies and is a means to verify their quality with a view to the established criteria and standards of government. Administrative control is the ability of the administration itself to rectify disadvantages. The purpose of administrative control over management decisions is not to allow their issue, action or execution to be carried out in breach of the principle of legality and the requirements for their accuracy⁴.

- The right of citizens to appeal administrative decisions in court. Judicial control is much more reliable and has much larger guarantees for citizens than ordinary administrative control⁵. Administrative justice is carried out by administrative courts as judicial proceedings are before two instances, unless the Administrative Procedure Code /APC/ or another law states otherwise. Administrative courts resolve disputes concerning improper development of administrative relations and have the protection of individual rights that have been violated. Administrative acts may be challenged in court only in terms of their legality. Judicial control is a control regarding the legality of the acts. During the judicial control it is monitored whether the challenged administrative act complies with the legality requirements. It is not only the individual, but also the general and normative administrative acts that can be the subject to judicial review. Court proceedings begin at the request of an interested person or the prosecutor in the specified by APC or any other law cases. The right to challenge the administrative act belongs to citizens and organizations whose rights, freedoms or legitimate interests are violated or threatened by it or it creates obligations for them⁶. The right to judicial protection of citizens and legal persons against administrative acts is constitutionally regulated⁷.

- Civil control over the administrative penal activity of the administration. Administrative penal justice covers proceedings challenging the punitive decrees and electronic tickets and proceedings challenging the judgments in administrative cases. Through the administrative penal justice, a judicial review of the legality of the penal provision and the electronic ticket is conducted, as well as actions regarding their issue, the legality of the actions in establishing administrative violation and the judgments of the trial court in the administrative penal proceedings challenging the penal provision and the electronic ticket. The penalty decrees and electronic ticket may be appealed in court⁸. Before the court there is raised an administrative law dispute to be solved, which has an administrative and penal character.

Proprietary responsibility of the state and municipalities for damage caused to individuals and legal entities. The legal framework for the responsibility of the state and municipalities for damages is enshrined in the Constitution and the Law on Responsibility of the State and the Municipalities for Damage⁹. Under the provisions of the Constitution "The state bears responsibility for damages caused by illegal acts and actions of state bodies and officials"¹⁰. This text is elaborated in art. 1 LRSMD, which states that, "The state and municipalities are responsible for damages caused to citizens and legal persons due to illegal acts, actions or lack of actions of their bodies and officials during or in connection with the performance of administrative duties." Claims for damages caused to citizens or legal persons because of illegal acts, actions or lack of actions on behalf of administrative authorities and officials are considered under Chapter Eleven of the APC. For unsettled issues about the proprietary responsibility, the provisions of the Law on Responsibility of the State and the Municipalities for Damage are applied.

⁴ Dermendzhiev, I., D. Kostov, D. Hrusanov, Administrative Law of RB, Common part, Sibi, Sofia, 2012, p. 259- 260.

⁵ Dermendzhiev, I., Administrative Law, Sofia, 2005. p. 293.

⁶ Art. 147 of the ADMINISTRATIVE PROCEDURE CODE (effective 12.07.2006), Promulgated, SG No. 30/11.04.2006., last amended and supplemented, SG No. 27/25.03.2014.

⁷ Art. 120, para. 2 of CRB.

⁸ LAW ON ADMINISTRATIVE VIOLATIONS AND PENALTIES, Reflected denomination since 05.07.1999, Promulgated, SG No. 92/28.11.1969, last amended and supplemented, SG No. 81/20.10.2015.

⁹ LAW ON RESPONSIBILITY OF THE STATE AND THE MUNICIPALITIES FOR DAMAGE (title amend. – SG No. 30/2006) Promulgated, SG No. 60/05.08.1988 (effective 01.01.1989), last amended and supplemented, No. 98/12.11.2012.

¹⁰ Art. 7 of CRB.

Civil control exercised through suggestions and warnings. The right to suggestions and warnings is constitutionally established, enabling citizens to ask the competent authorities to protect their rights and legitimate interests, to express their public will, social freedom, and to participate in state government. Proposals and signals are a means for improvement and democratization of the administration. Proposals and signals are a means of carrying out public control over the administration's activity. They are a manifestation of citizen participation in governance. This right can be used to trigger all control mechanisms to ensure a lawful and properly functioning administration¹¹. The right to suggestions and warnings is a real guarantee for the realization of the legitimate rights of citizens. It provides the ability to protect their interests and restore their violated rights through state authorities. By the proposals citizens do not pursue a personal goal and they do not seek to protect their rights from violation. However, they make a proposal for improving the state power by going through one of the fundamental civil rights, namely direct participation in state government. Proposals and signals help to increase the level of protection of individuals' rights by creating an alternative to judicial appeal. At the same time, they contribute to the democratization of the governance process by creating a direct dialogue among citizens and administrative authorities. The object of this control is the entire state administration. The specific objects are all administrative bodies, officials and civil servants. This control is comprehensive and does not make any exceptions. It has unlimited possibilities for control impacts. The institute of proposals and signals may be considered as a unique form of dialogue between the state and citizens.

- Civil control performed by the Ombudsman. In the legal system of democratic countries the Ombudsman institution is an important mechanism for protecting human rights and strengthening the rule of law in the activity of the state administration. The Ombudsman is the response of civil society as a result of the enhanced state influence, accompanied by weakening the public and management moral standards. The Ombudsman makes it possible to mitigate the profound contradictions between the state and the social environment. It ensures the responsibility of the administration for its actions before the public. An important role of the Ombudsman is to inform members of civil society about the mistakes and abuses of the administration. Complementing the existing system of legal protection, the ombudsman institution allows citizens to express their attitude towards administrative regulations and procedures. Citizens turn to the institution when the state authority has violated the rights of the citizen through a decision or action, i.e. the access to the Ombudsman is a direct one. The Ombudsman is not only a mechanism for settling disputes between the citizens and the administration out of court, but it also helps to limit corruption. That is why, by revealing instances of maladministration and recommendations to overcome them, the Ombudsman shall help to reduce corruption in administration. The main task of the Ombudsman is to protect the rights and freedoms of citizens when they are violated by state and municipal authorities and their administrations. It strengthens trust among citizens and the state and harmonizes "administration-citizen" relations. The Ombudsman is an independent body which is subject only to the Constitution, laws and ratified international treaties to which Bulgaria is a party. In the Ombudsman's activities, which are public, they use funds provided by the law¹² and the Constitution of the country. They operate on the basis of the law and the Ombudsman Rules of Organization and Procedure¹³.

Based on the abovementioned, one can conclude that the establishment of legal mechanisms for safeguarding and protecting the rights of citizens and reducing administrative arbitrariness on behalf of the state, its bodies and officials, is one of the most important tasks of any democratic society. In a democracy, feedback mechanisms are indispensable and necessary, primarily and mostly for the state authorities themselves. It is exactly because of this that the reviewed forms of civil control have such a big and great importance, both for protecting the rights and interests of citizens and improving the work of the administration.

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¹¹ Kandeva, Em., Fundamentals of Public Administration, Ciela, Sofia, 2003. p. 317.

¹² Ombudsman Act, Promulgated SG No. 48/2003 (effective 01.01.2004), amended SG No. 15/15.02.2013.

¹³ Ombudsman Rules of Organization and Procedure (effective 18.09.2012), adopted by the Decision of the National Assembly on 04.09.2012, Promulgated SG No. 71/18.09.2012.