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The Administrative Acts of the Council of Ministers of the Republic of Bulgaria

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Abstract

The Government of the Republic of Bulgaria is one of the highest political institutions involved in state administration. It has a key role in its realization since it directs and implements the internal and external policy of the country. The Council of Ministers implements these functions by adopting various types of legal acts. Acts of the government have a by-law character, as they regulate public relations in a secondary way. This is because they are always adopted based on and in fulfillment of laws. The legal acts adopted by the government are decrees, orders and decisions, and the decrees are a specific act characteristic only of it. The resolutions of the Council of Ministers have a normative character. On the one hand, they are decrees with which it regulates in a primary way public relations not regulated by law in the sphere of executive power. And on the other hand, they are decrees through which it adopts rules and regulations. The subject of this article is the analysis of the legal essence of the legal acts of the Council of Ministers of the Republic of Bulgaria, the procedure for their adoption, as well as the procedure for contesting them.

Keywords: government, decrees, rules, regulations, orders.

1. Introduction

The government of the modern country is a supreme state body that works collegially. The Council of Ministers (the government) is an executive body which is the head of its system (Spasov, 2004, p.66). The Council of Ministers coordinates the activities of other bodies of the executive power for the implementation of a unified state policy. It carries out the leading functions of the state administration, as it directs and implements the internal and external policy of the country in accordance with the Constitution and the laws. The Council of Ministers performs its functions and powers by adopting relevant legal acts and performing certain actions.

2. Types of acts adopted by the Council of Ministers.

The Constitution of the Republic of Bulgaria provides that the Council of Ministers adopts decrees, orders and decisions. Acts of the Council of Ministers always have a secondary character – they are created and adopted "on the basis and in execution of the laws." With decrees, the Council of Ministers also adopts rules and regulations (Art. 114, Constitution of the Republic of Bulgaria, 1991). The Organizational Rules of the Council of Ministers add that the Council of Ministers adopts decrees, orders and decisions, thus solving issues within its competence, as well as that the Council of Ministers by decrees adopts rules or regulations or regulates public relations that are not subject to legal regulation, according to its competence established by the Constitution and laws.

The Law on Normative Acts stipulates that the Council of Ministers issues two types of decrees when it adopts rules, regulations or instructions and when it regulates public relations not regulated by them in accordance with the laws in the field of its executive and dispensational activity.

Therefore, the first group of acts adopted by the Council of Ministers are normative administrative acts, and namely decrees, rules, regulations and instructions. Normative administrative acts adopted by the Council of Ministers contain by-laws, have multiple legal effects and are aimed at an unlimited range of legal entities. The organizational regulations of the Council of Ministers are a normative administrative act of a structural nature, which regulates the main issues related to the activity and organization of work of the Council of Ministers and the structure and functions of its administration.

The second group of acts adopted by the Council of Ministers are the non-normative administrative acts to which orders and decisions refer. Orders and decisions can be individual administrative acts, general administrative acts and acts of an internal service character ("administrative non-normative internal service acts" – Decision No. 8 on case No. 13/2017). The Council of Ministers adopts decisions or orders on issues, which do not have a normative character (Regulations of the Council of Ministers).

Acts and orders of the Council of Ministers can be authoritative statements of the will of a central collective body with general competence, which create rights or obligations or directly affect the rights, freedoms or legal interests of individual citizens or organizations or of an unlimited range of legal entities, as well as the refusal to such acts are issued. Depending on the circle of legal entities whose rights, freedoms or legal interests are affected, acts and orders can be individual or general.

The Council of Ministers can establish with orders commercial companies with state participation, make changes in the statutes of already established commercial companies with state participation, make changes in the management bodies. These orders are not individual or general administrative acts, but are the acts in which the Council of Ministers acts as a collective body that exercises the rights of the state by taking decisions within the competence of the general meeting of partners/shareholders and exercising the rights of a partner/shareholder in public enterprises.

Decisions are non-normative administrative acts by which the Council of Ministers approves bills, proposals to the National Assembly for adoption of a decision or to the President for the issuance of a decree in the cases provided for in the Constitution and laws, opinions on cases before the Constitutional Court, amendments to strategic documents – programs and plans, approving agreements, appointing regional governors, approving loans, announcing properties – public state property for private state property, approving strategies for managing public debt, appointing members in state bodies – commissions, councils and others, approving financial payments to the central and local budgets. Depending on the legal consequences that these acts cause, they can be of individual, general or internal service character.

3. Contesting the acts of the Council of Ministers

Normative administrative acts adopted by the government are subject to judicial review. The Constitution stipulates that the courts shall exercise control over the legality of acts and actions of administrative bodies, and citizens and legal entities may appeal against all administrative acts that affect them except those expressly specified by law (Article 120, Constitution of the Republic of Bulgaria, 1991). Thus, the Constitution regulates the principle of direct judicial review not only on administrative acts, but also on by-laws. Acts that exercise legislative initiative, as well as those that create rights or obligations for bodies or organizations subordinate to the body that issued the act, are excluded from direct judicial review, unless they affect rights, freedoms or legal interests of citizens or legal entities. (art. 2, paragraph 1, items 2 and 3, Administrative Procedure Code, 2006). Administrative acts that directly implement the foreign policy, defense and security of the country are not subject to judicial appeal, unless otherwise provided by law (Article 128, Paragraph 3, Administrative Procedure Code, 2006).

Judicial review regarding the legality of the rule-making activity of the executive bodies has as its main objective the defense of the principle of legality in their activity. "The possibility of appealing the by-laws to the court is a powerful means of deterring and controlling the executive power" (Kandeva, 2013, p. 341) The provision of Art. 125, para. 2 of the Constitution (Constitution of the Republic of Bulgaria, 1991) obliges the Supreme Administrative Court to rule as the first instance on disputes about the legality of administrative acts issued by the Council of Ministers and by the ministers. The Constitutional Court in its decision (Decision No. 8 on case No. 13/2017 of the Constitutional Court) gives a mandatory interpretation of this provision of the Constitution. The Constitutional Court accepts that the provision of Art. 125, para. 2, of the Constitution obliges the Supreme Administrative Court to rule as the first instance on disputes about the legality of administrative acts issued by the Council of Ministers and by ministers performing their constitutionally assigned functions and exercising powers in the management and implementation of state administration. This is determined by the place of the Council of Ministers and the ministers in the hierarchy of the executive power, who, within their competence, based on and in implementation of the Constitution and laws, regulate important public relations in the state with by-laws. The Constitutional Court accepted that "the significance of their acts, resulting from the nature and scope of the regulated matter and from the explicably large number of their addressees, also determine the need for control over their legality to be exercised by the Supreme Administrative Court as the first instance." (Decision No. 8 on case No. 13/2017 of the Constitutional Court).

The Code of Administrative Procedure stipulates that the Supreme Administrative Court shall have jurisdiction over disputes against the acts of the Council of Ministers, the Prime Minister, the Deputy Prime Ministers and the Ministers, issued in the exercise of their constitutional powers of leadership and implementation of the state administration as in the cases provided for by law , as well as when these bodies have delegated their powers to the relevant officials, the administrative acts issued by them are contested before the relevant administrative court (Art. 132, para. 2, item 2, Administrative Procedure Code, 2006).

The Constitutional Court in its decision has indicated the acts adopted by the government and the ministers, which due to their nature are not subject to contestation before the Supreme Administrative Court. First of all, these are acts of a purely political character, with which the Council of Ministers and the ministers adopt programs, strategies, concepts, guidelines, etc., the acts for exercising the right of legislative initiative, the acts that are proposals being addressed to other state power bodies, which authorities are competent to issue the act and the acts of the Council of Ministers for referral to the Constitutional Court.

Next are the acts of the Council of Ministers and of the ministers, which they issue not as a body of authority, but as an equal party in legal relations regarding the management and disposal of state property, because they have civil law consequences as competent to rule on them are the general courts. This also includes criminal decrees, which, despite being issued by the Prime Minister and the ministers, have the character of judicial acts and are subject to contestation as a first instance before the relevant district court in accordance with the Law on Administrative Violations and Penalties. This group also includes the acts of the Prime Minister and the ministers, issued when appointing, punishing and dismissing persons from their administration, working under an employment relationship, which acts according to the Labor Code, which are appealed before the relevant regional court.

Acts of the government and ministers of an internal nature, which create rights or obligations for bodies and organizations subordinate to them, are not subject to judicial review before the Supreme Administrative Court, i.e. these are the so-called "internal service administrative acts". This includes the administrative acts of the Prime Minister and the ministers, which they issue as the appointing authority regarding the establishment, amendment and termination of the employment relationships of civil servants, are also administrative acts and are subject to judicial review for legality, but they are aimed at organizing the activities of the auxiliary administration of the Council of Ministers and of the ministers and are similar in content to the acts of all other appointment bodies from all three authorities. They are not related to the powers of the said bodies for implementation of state administration (Decision No. 8 on case No. 13/2017 of the Constitutional Court).

It is in this direction that proposals for changes in the current legislation should be considered and made, as the Administrative Procedure Code should explicitly and in detail indicate the acts that are not subject to contest before the Supreme Administrative Court.

By-laws adopted by the government can be contested entirely or in their individual provisions only through court proceedings. Only normative acts that have entered into force are appealed. According to the provisions of the Administrative Procedure Code, citizens, organizations and bodies whose rights, freedoms or legal interests are affected or may be affected by it, or for whom it creates obligations, have the right to contest a by-law. Anyone who has a legal interest may join the dispute or intervene as a party alongside the administrative body until the beginning of the oral contestations at any stage of the case, without having the right to request a repetition of procedural actions performed (art. 189, para 2, Administrative Procedure Code, 2006). The permission adopted in the code regarding the legal interest is also in accordance with the decision of the Constitutional Court (Decision No. 5/17 April 2007, Constitutional Court). According to the decision of the Supreme Court, the interest should be legitimate, personal and justified and should be proved in all cases of contesting of a normative administrative act.

The grounds for contesting the subordinate administrative acts are listed in Art. 146 Administrative Procedure Code, but they reflect the specifics of the normative acts. The particularity of the requirement for competence is manifested in the following two guidelines, namely – the bodies that can issue normative acts are empowered by the Constitution or by law, and that the competence to issue normative acts cannot be transferred (Art. 2, Law on Normative Acts, 1973, Art. 76, Administrative Procedure Code, 2006). The competence of the authority to issue the by-law is assessed at the time of its issuance. Failure to follow the established form is the second requirement. The written form is an absolute requirement for the normative acts, since the absence of a form established by law is equal to the absence of a declaration of will. The next ground for contesting is a significant violation of administrative procedure rules, which is influenced by the normative nature of the appealed act. The Administrative Procedure Code, in the order for issuing the normative administrative act, has provided for an explicit obligation for the competent authority to issue the normative administrative act after discussing the project together with the submitted opinions, proposals and objections. The fourth reason for annulment of the normative acts is a contradiction with the substantive legal provisions, directly arising from the nature of these acts. Normative administrative acts are issued pursuant to a law or by-law of a higher degree. Issuing by-laws is a manifestation of the regulatory nature of administrative activity (Kandeva, 213, p. 349). The compliance of the by-law with the substantive law is assessed at the time of the court decision. The last reason is the non-compliance with the purpose of the law, which is related to the main purpose of the by-laws, and namely the implementation of the law. The purpose of the law should also be the purpose of the by-law administrative act.

By-laws can be contested without time limit. A subsequent contestation to a by-law on the same grounds is inadmissible. Here, it is irrelevant whether the appellant is repeated or whether it is a repeated contestation of the prosecutor. As Prof. Todorov and Prof. Lazarov point out, “it is not possible to attack the same provision with new legal arguments or with arguments of contradiction with different legal norms of a higher rank” (Todorov, Lazarov, 2018, p. 329). In cases where the contestation is regular, the court announces it in an announcement in the "State Gazette", in which it indicates the contested administrative act or part thereof and the number of the initiated case. This happens within a month. A copy of the announcement is placed in the designated place in the court and is published on the website of the Supreme Administrative Court. Parties to the case are the disputant and the authority that issued the by-law. The contestation does not suspend the operation of the by-law, unless the court orders otherwise.

By-laws are contested before the relevant court, which hears the case in a panel of three judges. The case is heard with the participation of a prosecutor. The court ex officio checks whether the five requirements for legality of the act have been met. The court may declare the contested act null and void in whole or in part, cancel it in whole or in part or reject the contestation. When the court has judged that the act or a separate part of it is illegal, it can cancel the act or the corresponding part, but it cannot change its content. The court rules only on those parts of the act that are the subject of the complaint or protest. The court decision applies to everyone. The court decision declaring null and void or revoking the by-law and against which no cassation appeal or protest has been filed within the time limit or they have been rejected by the court of second instance, is promulgated in the manner in which the act was promulgated, and enters into force from the day of its promulgation. The by-law is considered to be repealed from the day the court decision enters into force. The legal consequences arising from a by-law that has been declared null and void or has been revoked as voidable shall be settled ex officio by the competent authority within a period of no longer than three months from the entry into force of the court decision.

4. Conclusion

Bulgarian legislation comprehensively regulates the powers and acts issued by the Council of Ministers, as well as the procedure for contesting them. Compliance with its norms is a guarantee of legality of government acts and actions. The possibility of contesting the acts is a guarantee of protecting the rights and interests of citizens. It is on this that the attitude depends, as well as increasing the trust of citizens towards the bodies of the executive power.

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