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CONTROL OF THE CONSTITUTIONALITY AND LEGALITY OF GENERAL ACTS OF LEGAL ENTITIES WITH PUBLIC POWERS IN THE REPUBLIC OF NORTH MACEDONIA

In conditions where the realization of works of public interest under equal conditions in material and immaterial sense (public powers) as functions of the state are entrusted to special legal entities, we face the existence of legal entities with public powers. As independent bodies, their establishment as well as their public powers are regulated by law, and given that such powers give them authority over government, the rules concerning government bodies also apply to them.

In order to avoid possible abuses and violations of the law, it is necessary for the exercise of public power to be fully regulated by law, and the performance of functions to take place in a responsible and transparent manner. Having in mind that they are established by the Government, it has the right to supervise the legality of the work of the entity to which those public powers are entrusted.

In the Republic of North Macedonia, there are currently eight legal entities with public power, established and regulated under special laws, and with the status of a legal entity, they operate at the national level. Of these eight, four are funds, two are councils, one is established as an agency and one as an institute.

In order to ensure the constitutionality and legality of the general acts of state bodies, institutions and other legal entities, it is performed through additional supervision as a type of legal supervision. If such a case occurs, and if the supervisory body finds material or formal illegality of the act, it will initiate the procedure for compliance with the law.

Key words: Legal entities; Public authorities; Supervision; Control; General acts.

1. INTRODUCTION

There are two types of subjects in law:

- Natural persons (people) and
- Legal entities (organizations with legal properties and capacity).

In the first case we are dealing with the person as an individual, and in the second with several people who can only achieve a certain benefit through association.

For the purposes of this paper, I will explain legal entities as a category in the text that follows.

Legal entity. As I have already mentioned, a legal entity is a set of several natural persons, who have joined together in order to achieve a common goal, all on the basis of legal regulations. To be a legal entity, for an organization, means - to have rights and obligations in civil relations. A legal entity indicates only one legal characteristic of an organization - its legal status (that in the field of law it is subject to rights and obligations). Such a legal entity may also have illegal characteristics (economic, political, cultural, etc.).

The state decides on each association more specifically and separately. Thus, we can say that any jointly determined goal by natural persons to establish a legal entity may not be accepted by the state body that has the final say. In order to be able to justify the purpose of the establishment, and to give permission for it, it is necessary to justify that interest of association and the impossibility of the same goal to be achieved by an individual.

In order for an organization to be a legal entity, it needs to be:

1. legally regulated,
2. legally acceptable, and
3. to legally recognize its ability to have rights and obligations (eg companies, donations, funds, associations, etc.)

For a legal entity to exist, it must meet several conditions: to have a purpose, membership, organs, means, statute, uniqueness and identity.

In order to acquire legal capacity, the statute needs to be approved by a competent state body.

Types of legal entities. The basic division of legal entities is: legal entities of public law and private law. The former has, in fact, a state-legal character, as a result of state sovereignty; these include Ministries, independent state regulatory bodies and agencies, etc. which independently regulate a certain area of social life on the basis of legal norms.

Those legal entities that are part of private law are of non-state character and they do not hold public power (such as companies).

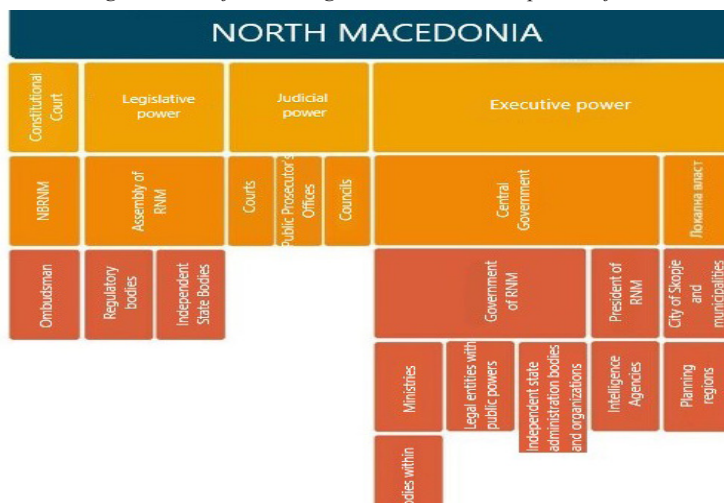
2. PUBLIC POWERS OF LEGAL ENTITIES

According to legal science, “public powers and duties” refers to the realization of works of public interest under equal conditions in material and non-material terms. These functions are functions of the state whose performance is entrusted to special institutions, organizations and communities and refer to: arranging certain relations of wider importance, resolving individual administrative matters, keeping records, issuing public documents, etc. In order to be able to perform public functions, these entities and their public powers are regulated by law. The public power of these legal entities gives them the ability in relation to individuals, legal entities and other entities to act with authority in power, and therefore the rules that apply to government bodies also apply to them.

To this end, it is necessary that the exercise of public power be fully regulated by law in order to avoid the possibility of abuse and to ensure the responsible performance of the necessary functions in the interest of the body on whose behalf it is performed. A very important element here is that the public power itself be controlled by the state, which has the right to supervise the legality of the work of the entity entrusted to it.

Because legal entities with public power are accountable to the Government of the RNM, they are part of the executive, more precisely under the central government. The Centers for Planning Regions, which are legal entities with public powers at the regional level, are part of the local government. The same can be illustrated in Chart no. 1 in continuation.

Chart no. 1 - Organization of the state government in the Republic of Macedonia



Source: *Annual Report from the Register of Public Sector Employees 2018*, Ministry of Information Society and Administration, March 2019 http://mioa.gov.mk/sites/default/files/pbl_files/documents/reports/izvestajreg2018.pdf

Holders of the central executive power in the Republic of North Macedonia are the President and the Government, which has four secretariats (Secretariat for Implementation of the Framework Agreement, Secretariat for Legislation, Secretariat for European Affairs and Administrative Affairs operated by the General Secretariat), Service for general and common affairs, and additionally with the Law on Organization and Work of the State Administration Bodies, 15 ministries have been determined, which have 29 bodies. Furthermore, holders of executive power are also 32 independent bodies of the state administration and administrative organizations and **8 legal entities with public powers**.

3. LEGAL ENTITIES WITH PUBLIC POWERS IN THE RNM

In the Republic of North Macedonia there are eight legal entities with public power, and all of them are formed and regulated by special laws. They are established and have the status of a legal entity and operate at the national level. Four of the legal entities with public power are registered as funds, two are councils, one is agency and the other an institute. In terms of their functions, the policy implementation function is entrusted to three legal entities with public power, then three of them deal with implementation and control, while one (inspection council) is directly involved in all three phases of the policy cycle. One of them is responsible for policy planning and implementation functions. Those financed by the state treasury are a total of seven out of eight legal entities with public power, while only the Health Insurance Fund of the Republic of North Macedonia is fully self-financed by the health insurance of the citizens. In contrast, the Inspection Council is fully funded by the state budget. Other legal entities with public power fill their budgets through self-financing and donations and other sources.

Namely, Table 1 lists the legal entities with public powers in the Republic of North Macedonia together with the relevant law that regulates and establishes them, and what kind of institution it is.

Table 1 - Legal entities with public powers

Name of the institution	Law by which the institution was established	Type of institution according to law	Subtype of institution according to law
MACEDONIA HEALTH INSURANCE FUND	Law on Health Insurance	Legal entity with public powers	Fund
PENSION AND DISABILITY INSURANCE FUND OF MACEDONIA	Law on Pension and Disability Insurance	Legal entity with public powers	Fund

GEOLOGICAL INSTITUTE OF MACEDONIA	Law on Geological Survey of the Republic of Macedonia	Legal entity with public powers	Institute
INSPECTION COUNCIL	Law on Inspection	Independent body of state administration	Council
DEPOSIT INSURANCE FUND	Law on the Deposit Insurance Fund	Special financial institution	Fund
INNOVATION AND TECHNOLOGICAL DEVELOPMENT FUND	Law on Innovation Activity	Legal entity with public powers	Fund
ADVICE FOR ADVANCING ADVANTAGE AND SUPERVISION	Law on Audit	Legal entity with public powers	Council
NATIONAL AGENCY FOR NUCLEAR TECHNOLOGIES	Law on the Establishment of the National Agency for Nuclear Technologies		Agency

Source: *Public Administration of the Republic of Macedonia, UNDP, <https://qb.mk/wp-mapana/>*

For the purposes of this paper, I will try to elaborate on some of the legal entities with public power in more detail.

1. *Health Insurance Fund.*
2. *Fund for Innovation and Technological Development.*

3. INSPECTION COUNCIL

a) Health Insurance Fund. The Health Insurance Fund of the Republic of North Macedonia was established by the Law on Health Insurance¹ in order to implement compulsory health insurance, as an institution that performs activity of public interest and public powers determined by the Law².

With the termination of the functioning of 35 municipal self-governing interest communities for health care³, the Health Insurance Fund first starts operating within the Ministry of Health. This organization was established in order to implement the compulsory health insurance on the principles of mutual solidarity, for the entire territory of the Republic of North Macedonia, but in this composition, the Fund did not have independence, although in its

¹ Official Gazette of the Republic of Macedonia “No. 25/2000, 96/2000, 50/2001, 11/2002, 31/2003, 84/2005, 37/2006, 18/2007, 36/2007, 82/2008, 98/2008, 6/2009, 67/2009, 50/2010, 156/2010, 53/2011, 26/2012, 16/2013, 91/2013, 187/2013, 43/2014, 44/2014, 97/2014, 112/2014 and 113/2014

² Health Fund, www.fzo.org.mk

³ Amendment 64 of the former Constitution of the Republic of Macedonia

capacity as a legal entity, there is no statute or governing body, and the director is appointed by the Government and is accountable to the Minister of Health.

In 2000, two decisions were made by the Government and the Assembly appointing members of the Board of Directors and Acting Director, which met the conditions for the Fund to be able to operate as an independent institution in order to implement mandatory health insurance.

The health insurance of the citizens today is regulated in the law which established the Health Insurance Fund as an independent legal entity with public powers, and the full implementation of the health insurance is prescribed in the same legislative framework. The law prescribes public powers of the Fund, but also prescribes its scope of work. The management of the Fund is in the hands of the Board of Directors, and it is managed by a Director.

Like any legal entity, the Fund has a statute and a single bank account. The Statute was adopted by the Board of Directors in December 2011, and published in the Official Gazette in 2012 (No. 27/2012, on 24.02.2012). The Statute "regulates the activity, organization and manner of operation of the Health Insurance Fund of Macedonia, the management bodies and their scope, the rights, obligations and responsibilities of the bodies of the Fund; the representation of the Fund, the procedure for selection and dismissal of the Fund Director, the organization and performance of professional, administrative and other matters, the public in the operation of the Fund and its bodies, the procedure for adopting acts of the Fund and other issues of importance for the operation of the Fund".⁴ Pursuant to the Statute and the Law, the Fund is an independent legal entity that performs activity of public interest and has public powers determined by the Law.

Its Board of Directors includes representatives from the Ministry of Health, the Ministry of Finance, the Federation of Trade Unions of Macedonia, a representative from the Chambers of Owners, a representative from the Medical Chamber, Dental Chamber and Pharmacy Chamber, a representative from the Association of Pensioners and a representative from the Association of Consumers.

The director is appointed by the Government, at the proposal of the Minister of Health, through a public competition.

The Statute and the general acts that regulate the rights and responsibilities, but also the other general acts of the Fund are submitted in the form of a proposal, and are determined at a session of the Collegium of the Fund, and then adopted at a session of the Board. If any of those acts requires consent in accordance with the Law, they shall be submitted to the appropriate competent authority in order to obtain consent. Then, they are published in the Official

⁴ Article 1 of the Statute of the Health Insurance Fund of Macedonia

Gazette of the Republic of North Macedonia. The procedure is performed in the same way if there is a need to supplement and amend these acts.

On 21.04.2015, the Board of Directors of the Fund adopted a statutory decision to amend the Statute of the Health Insurance Fund of the R. of Macedonia in terms of an article referring to business trips. On August 29, 2019, a new statutory decision was adopted by which the name Republic of Macedonia is changed to the Republic of North Macedonia.

b) Fund for Innovation and Technological Development. Founded in December 2013, in order to encourage innovation, the Innovation Fund has the main goal of providing additional sources for financing innovation, due to the need to build a competitive knowledge-based economy. Its job is to develop and provide services and allocate funds accordingly, with the innovation strategy and the work programs of the Fund that are regulated by Article 29 of this Law.

The work of the Fund is mainly related to financing the preparation, implementation and development of programs, projects and other activities in the field of implementation of innovation policy.

These activities are part of the professional and other activities related to the acquisition of funds in the Fund, management of their funds and their use, implementation of programs, projects and mediation related to the financing of innovation activities by funds of international organizations, financial institutions and state administration bodies, agencies or public enterprises and public institutions, as domestic and foreign legal and natural persons, especially in the areas of innovation activity, science and technology in accordance with the priorities set in the innovation strategy, recording data on the users of funds granted by the Fund, encouraging and establishing cooperation with international and domestic financial institutions and other legal and natural persons, in accordance with the innovation policy and other strategic plans and programs, as well as with ratified international agreements for purposes determined by this Law; establishes an Equity and Mezzanine Investment Fund, selects a private fund management company through a public call, which will manage the Fund's assets intended for realization of equity and mezzanine investment instruments and participates in the establishment of the National Office for Technology Transfer, for support and encouraging the cooperation of the universities with the industry and monitoring and evaluation of the projects for which it has allocated funds, in order to develop an entrepreneurial society in the Republic of North Macedonia.

The Fund, like other legal entities with public powers, has its own Statute, rulebooks and other general acts in accordance with the law. The Statute is adopted by the Management Board of the Fund with the prior consent of the Government, which regulate the organization and manner of work, the

manner of proposing representatives of the Fund's bodies, the competence of the Management Board and the Investment Approval Committee, representation of the Fund, the rights, obligations and responsibilities of the employees of the Fund, the manner of organizing the affairs and other issues of importance for the operation of the Fund. The Rulebooks are adopted by the Board of Directors of the Fund with the prior consent of the Government.⁵

In terms of its structure, the governing bodies of the Fund are: Board of Directors, Investment Approval Committee and Director. The appointment of the members of the administrative bodies and the director is carried out by the Government of the Republic of North Macedonia.

The Fund allocates funds through a public competition, based on several criteria, which are prescribed by the Fund, but with the prior consent of the Government. The Fund concludes an agreement for the allocated funds. Furthermore, the Fund evaluates and monitors the projects for which it has allocated funds, taking into account the development of the entrepreneurial society of the country.

Supervision over the implementation of the provisions of this Law is performed by the Ministry.

Supervision over the financial operations of the Fund, having in mind that it uses funds from the Budget of the Republic of North Macedonia, for the same supervision is performed by the State Audit Office. For the other funds available to the Fund, it is performed in an agreed manner between the Fund and the lender.

c) *Inspection Council.* In order to make long-term efforts to reform the inspection of the implementation of the laws in the Republic of North Macedonia, the Government of the Republic of North Macedonia in October 2013, with amendments to the Law on Inspection introduced the establishment of a special independent body of the state administration - Inspection Council to coordinate the work and reforms of the inspection in the country, as well as to introduce a systemic framework for ensuring the independence of the inspectorates in the management of the budget, human resources and other resources for the functioning of the inspectorates.

In 2014, a President and six members of the Inspection Council were appointed in areas of inspection, and thus the Government established the Inspection Council. They are further elected through a public competition, and are dismissed by the Government of the Republic of North Macedonia.

The Inspection Council is in fact an independent state body with the capacity of a legal entity, it is established for the implementation of the scope of competencies determined by the abovementioned law. It has its

⁵ Official Gazette of RM no. 79/2013, 137/2013, 41/2014, 44/2015, 6/2016, 53/2016 and 190/2016

own budget account, and is a first-line budget user, independently conducts employment procedures in accordance with law and decides on employment rights and obligations. It has its own professional-administrative service, which is headed by the Secretary General of a legal, professional, responsible, timely and economical principle of operation.

As a separate legal entity, the Inspection Council has its own stamp, logo, website and toll-free telephone number where anyone can report irregularities, deficiencies, untimely actions or corruption related to the work of inspectors and inspection services.

The Inspection Council has competence over 28 inspection services, but still has no competence over the inspection services and inspectors in the units of local self-government and the City of Skopje, Public Revenue Office, Ministry of Interior. Of these, 14 are organized as inspectorates and the remaining 14 as organizational units in other state administration bodies.

4. CONTROL OVER THE LEGALITY AND CONSTITUTIONALITY OF THE GENERAL ACTS OF THE LEGAL ENTITIES WITH PUBLIC POWERS

If we take into account the legal theory, the terms “control” and “supervision” can be considered synonymous and refer to monitoring, verification and evaluation of activity, acts and behavior in order to ensure their full material and formal legality.⁶

Numerous state bodies and institutions appear as parties / entities that are the bearers of performing the function of supervision, depending on the type, subject and character of the supervision.

The state bodies appear as subjects of supervision in cases when the subject is the protection of the legality of the legal order through the legal norms and their implementation and observance. Hence, the most important body of this order is the Assembly, if we talk about the so-called independent state bodies (usually agencies and directorates), and their directors or collective governing bodies are also elected by the Assembly.

Also, in numerous cases, the Government appears, which as an executive body, can control the acts and the work of the state administration bodies. It usually occurs in the form of legal oversight, where special commissions within the Government and established by it will appear as second instance bodies competent to decide on appeals filed against first instance administrative acts (decisions) which are adopted by the highest administrative bodies, and in that case it performs instant supervision.

⁶ Davitkovski, B., Pavlovska-Daneva, A., *Administrative law: first part (substantive law)*, 3. amended ed. University “St. Cyril and Methodius”, Skopje 2018.

The most typical example of supervisory powers are the inspection bodies, which specialize in supervision in certain areas, i.e. whether institutions, bodies or companies operate in accordance with the regulations.

In certain cases, the ministries also appear as subjects of legal supervision, especially when it comes to giving consent for adoption of certain acts and decisions by some government agencies, constituent bodies, institutions, organizations with public power, public enterprises and the like. It is about making supplements.

The rule of law, i.e. the principle of legality of the acts and activities of companies and institutions is ensured by **legal** means. Thus, the state bodies have the authority to stop the execution of the general acts of the trade companies and the institutions when they are in contradiction with the Constitution and the law and can initiate a procedure for assessment of their constitutionality and legality before the Constitutional Court, which can ultimately annul or repeal such general acts.

State bodies have supervisory powers determined by law and in relation to specific administrative acts adopted by companies and institutions and organizations that in the exercise of public power decide on the rights, obligations and interests of citizens and other legal entities established by law.

Regarding the control over the legality of the general acts of the legal entities with public powers, as prescribed in the laws that regulate them, it is performed by the ministry that is responsible for the work of the institution/organization or the Government of RNM. An activity that can be carried out is stopping/suspending the execution of the act and initiating a procedure for assessing the constitutionality and legality of the act before the Constitutional Court.

Although the bodies, institutions and other legal entities are authorized to adopt acts independently, with the additional or reparative supervision the legality of the general acts of the state bodies, institutions and other legal entities is controlled. These acts as statutes, rulebooks, etc., regardless of the fact that the institution that carries them is independent and thus regulates its internal relations, however, they must be in accordance with the Constitution and laws. In order to ensure the constitutionality and legality of the general acts of state bodies, institutions and other legal entities, it is performed through additional supervision as a type of legal supervision. The control over the legality of the general acts of the state bodies, institutions and other legal entities is in the hands of the state administration bodies. However, if we take into account the term additional supervision, this actually indicates the fact that the control is performed after the general act has already been adopted in the state body, institution or some other legal entity and after that act already produces legal effect. If such a case occurs, and if the supervisory body finds material or formal illegality of the act, it will initiate the procedure for compliance with the law.

In case of illegal deficiencies identified by the supervisory body, it can be resolved in two ways.

- With a **preventive** or **pre-procedure** - where the body pointed out the perceived shortcomings of the organization regarding the legality of its general acts - and then it agreed and voluntarily harmonized them with the Constitution and the law, while acting on the remarks of the administrative body.

The Constitutional Court has the authority to make decisions in accordance with the laws of the Constitution, but also for the conformity of the general acts with the Constitution, i.e. whether they are contrary to the law. Having in mind that, when the administrative body stops the general act from its further execution, that body is obliged to immediately initiate a procedure for assessment of the constitutionality and legality of the act before the Constitutional Court of RNM. Furthermore, it will decide whether the general act is in accordance with the Constitution, or contrary to the law, and if it is found to be true, it will annul or repeal the general act in its entirety or some of its provisions. The same applies in the opposite direction, if it considers that the act is in accordance with the Constitution and is not contrary to the law, the suspension of the act will be lifted and it will remain in force.

- **Repressive / inspection supervision** is legal supervision where specialized administrative bodies - inspectorates that are formed as special bodies are authorized to perform supervision. This supervision is also called repressive supervision - because the character and nature leads to the application of the means and sanctions used by the authorized bodies in case of illegal actions and violations of the law.

As such a body is in fact one of the legal entities with public powers that were developed in the text above, the Inspection Council, and according to the function has the right to implement, create and control policies.

5. CONCLUDING REMARKS

For the purpose of efficient and effective work, even when it comes to the state, and independent bodies as legal entities with public power, a system of control must be established. In fact, control means continuous monitoring of the implementation and realization of the set tasks and works and comparison of the achieved results with the set goal, with the possibility to have a corrective influence in case of their deviation. This principle of control is necessary for any type of organization, regardless whether it is part of the state administrative system, or at least of the entire government organization in a country, even if it is a private sector organization.

For that purpose, the additional / reparative supervision controls the legality of the general acts of the state bodies, institutions and other legal en-

entities, where their general acts such as statutes, rulebooks, etc., i.e. controls whether they are in accordance with the Constitution and the laws.

In order to ensure the constitutionality and legality of the general acts of state bodies, institutions and other legal entities, it is performed through additional supervision as a type of legal supervision. The control over the legality of the general acts of the state bodies, institutions and other legal entities is in the hands of the state administration bodies. However, if we take into account the term additional supervision, this actually indicates the fact that the control is performed after the general act has already been adopted in the state body, institution or some other legal entity and after that act already produces legal effect. If such a case occurs, and if the supervisory body finds material or formal illegality of the act, it will initiate the procedure for compliance with the law.

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КОНТРОЛА НА УСТАВНОСТА И ЗАКОНИТОСТА НА ОПШТИ АКТИ НА ПРАВНИ ЛИЦА СО ЈАВНИ ОВЛАСТУВАЊА ВО РЕПУБЛИКА СЕВЕРНА МАКЕДОНИЈА

Резиме

Во услови каде остварувањето на работи од јавен интерес под еднакви услови во материјална и нематеријална смисла (јавни овластувања) како функции на државата се доверуваат на посебни правни лица, се соочуваме со постоење на правни лица со јавни овластувања. Како самостојни тела, нивното воспоставување како и нивните јавни овластувања се регулирани со закон, и имајќи предвид дека ваквите овластувања им даваат авторитет на власт, така и за нив важат правилата што се однесуваат на органите на власта.

Со цел да се избегнат можни злоупотреби и повреди на законот, неопходно е вршењето на јавното овластување целосно да се регулира со закон, а вршењето на функциите да се одвива на одговорен и транспарентен начин. Имајќи предвид дека се воспоставени од Владата, истата има правото да врши надзор над законитоста на работата на субјектот на кого му се доверени тие јавни овластувања.

Во Република Северна Македонија во моментот работат осум правни лица со јавно овластување, формирани и регулирани со посебни закони, а со статус на правно лице и работат на национално ниво. Од овие осум, четири се фондови, два се совети, едно е воспоставено како агенција и еднокако институт.

Со цел да се обезбеди уставноста и законитоста на општите акти на државните органи, установите и другите правни лица, истата се врши преку дополнителниот надзор како вид правен надзор. Доколку дојде до таков случај, и доколку органот во спроведување на надзорот увиди материјална или формална незаконитост на актот, ќе ја отпочне постапката за усогласување со законот.

Клучни зборови: *Правни лица; Јавни овластувања; Надзор; Контрола; Општи акти.*