International Journal of Economics, Commerce and Management
United Kingdom Vol. V, Issue 3, March 2017
http://ijecm.co.uk/ ISSN 2348 0386

THE ROLE OF LAW COURT OVER THE ADMINISTRATIVE REFORM IN ALBANIA

Arjan Gjini
PhD, Candidate, Albanian University of Tirana, Albania
arjangjini@hotmail.com

Abstract

An effective judicial system has long been accepted by citizens of Albania. Administrative law court has already revealed its first consistencies. The stability of law courts structural reform should not be established without bearing in mind the government liability to ensure a system of justice in order to guarantee the citizens right from the administrative act, "to a public awareness during a reasonable period of time from an independent law court based on law within the definition of their civil, administrative rights and liabilities or any other form of abuse of administration against them". The European Convention of Human Rights does not intend to guarantee theoretical or illusionary rights but rather those practical and effective and this applies similarly to Albania Constitution. The application of prominent and proved principles is necessary to the planned reorganization of first instance courts and especially in the establishment of administrative law courts to ensure a correct legal process and it leads to the following conclusions. Albania nowadays is facing a situation where expectations from these law courts are high, as a form of regulation of a judicial control over various administration issues in general.

Keywords: Reform, law court, public institutions, administration, efficiency, control, standard

INTRODUCTION

Administrative judiciary represents a kind of control over the administration, respectively over the administrative act, firstly on the special and individual one. This kind of control is applied on the field of administrative activity through which the most important form of its function is developed.

Different European countries are considered as “the cradle” of administrative judiciary. The French legal practice has created the first forms of administrative judiciary and administrative conflict (le contenieux administratif). In the beginning of XIX century, the solution to administrative conflicts between public administration and citizens was given to specific councils and State Council (Conseil d’Etat). In this way, France was seen as a model and example to administrative judiciary which, later on, was followed by other countries of Europe.

It is to be emphasized the fact that State Council in France, from an “administrative body” was converted into a “special administrative law court” bearing the competence to solve conflicts that focused on administrative issues. Such an evidence affected greatly the attitude of French theory according to which specific administrative law courts were not considered “part of judicial power” but rather “part of administrative power”. Actually, the French doctrine has always refused to treat the State Council and other administrative law courts as part of the “unique judicial-legal system”. It has instead represented them as “specific organizations” created on the side of administration. The administrative judiciary is now spread all over Europe and this practice is recently installed even in our country. The creation of administrative law court is an innovation to our juridical system, as it not only facilitates the work of other law courts, individuals as well as public bodies but, the existence of such a law court constitutes a kind of guarantee for a fairer judgment.

THE CONTROLLING ADMINISTRATIVE LAW COURT OF LEGITIMACY

The regular legal process is not just a right. It is nowadays treated more as a constitutional principle that lies on some fundamental rights and liberties of man in general. It has a main function and intention to defend the individual from illegal interferences of public authorities. To make this defence more efficient, the constitutional legislator has predicted, despite administrative tool, also a legal one to the control of these acts. The actual choice targeted to this aim is satisfactory but, it is far from the aim of their creation. Contradiction in some countries is practiced by common law courts, in others by specific law courts, the so called law courts of human rights. Constitutional law courts can be named similarly and these are spread more in Europe than in other continents. The Albania Constitution checks the compliance with administrative act.

The compilation of statute to the organization and function of administrative law courts came as a result of the need to avoid dragging processes between business and state or even state and citizen, within the principles and recommendations of Europe Constitution, as well as the jurisprudence of European Law Court of Human Rights which, in most of the cases against Albanian state, noticed an encroachment of the regular legal process.

With an intention to respect and accept a judicial process within a reasonable deadline, the law predicts quick deadlines as far as the case observation by first administrative instance court and administrative court of appeals is concerned, aiming at a visible reduction of judicial processes dragging where administrative acts/actions are subject to judgment. Moreover, within this principle, the statute has taken into consideration also the legal predictions as far as acceleration and efficiency of the execution of judicial decisions are concerned, as an inseparable part of the regular legal process that aims at legitimacy efficiency.

The statute nowadays guarantees the defense of right and freedom of humans through the liability targeted to public bodies in order to prove the legitimacy of form and content of administrative action extracted from them and this seems to have positive impact.

THE ACTUAL ADMINISTRATIVE ORGANIZATION AND CONSIDERATION IN ALBANIA

There is established an administrative law court of two levels, that of low or initial level and the other secondary level from a court of appeal. The latter is one and only and is located in Tirane. The effective judicial consideration of administrative acts is an important element of the system of human rights defense and at the same time it is a necessary tool that helps in improving the quality of administrative activity and ensuring a better performance of public administration. What is more, it is a demand of a developing society, because insurance of international trade and investments require public decision-maker bodies that defer to effective tools of defense.

The establishment of administrative judicial system in Albania complies with European standards, if the independence and impartiality of law court is guaranteed. Administrative law court in Albania acts with one magistrate in the First Instance Court and three in the Court of Appeal. The administrative cases are observed with an administrative college in the High Court of Justice. The three levels of this court began functioning in the same day according to the law. The administrative court carries out the principle of public interest defense and legal rights & interests of private individuals. The body of public administration, as a rule, must prove the juridical and fact basis of the actions carried out by it. The administrative court, according to the nature of the issue, observes it verbally in a judicial session or based on documentary acts in a counseling room.

The physical presence of the subjects does not impact on the judgment pause. An innovation of these courts is the magistrates being assisted during the court by a legal assistant. The magistrate of the administrative First Instance Court and administrative Court of Appeal during his activity is helped by the legal assistant. The legal assistant helps and advices the magistrate on the preparation of the case being judicially courted and observed. He also prepares procedure act-projects necessary to the court.

Nowadays, the administrative courts of the two levels have subject and terrestrial competences over the issues being observed. Based on the statute, the administrative courts are competent about the disagreements that spring up from the administrative individual acts, normative secondary law acts and public administrative contracts, which are extracted during the practice of administrative activity from the public body, disagreements that spring up because of the illegal interference or failure to exercise the authority and tasks of the public body.

It is worth mentioning the differences of the competences among different administrative bodies in the predicted cases from the Code of Administrative Procedures, disagreements in the field of work relationships where the employer is the body of the public administration, the presented requests from administrative bodies to observe the administrative violation, to which the statute predicts the freedom restriction.

The law court predicts the suits on employment relationships which are observed in the administrative court of first instance which, in turn, includes the territory under which the employer usually carries out his job. The suits of administrative disagreements that have as subject the defense of legal rights and interests springing up from the immovable items are analyzed in the administrative court of first instance that includes the territory in which the immovable item or its major part is placed.

They are subject to observation and come to judicature of administrative court of first instance also the petitions related to the defense of constitutional and legal rights, freedom and interests that come from social and health insurance, economic help and payment of disability.
The subjects that are legitimated to make a claim in the administrative court are several and they can be listed as follows according to the statute:

a) Each subject pretending to have a violated right or legal interest from any action or inaction of the public body.

b) The body of public administration pretending to be violated in the activity of the competences from an administrative act or a normative secondary law act of a public body with which it has no hierarchical dependency relations. In this case, the state body might ask for the solution of competency disagreement and act repeal.

c) The employer or employee about disagreements related to the work relationships field when the employer is the body of public administration.

d) Each subject pretending to have violation on its legal rights and interests because of illegal interference of the public body that does not have the shape of administrative act.

e) Each association or interest group pretending to have violation on any public legal interest.

f) From a normative act.

g) From an administrative act in case that such a right is known by law.

h) Any other subject which this right is legally known to.

According to KPC, the declaration of facts by parties is made in any case before the first judicial session. In a motivated written request of the public body represented within the appointed term, according to the sequence b topic 1 of the article 25 of this law, the law court appoints it a second term that should end no later than 5 days before the date of judicial session. In cases of lack in evidences even after the second appointed term, the analysis of the issue continues only on the represented acts.

The unjustified behavior to represent facts from the public body even within the second appointed term constitutes the reason that the law court, on demand of one party, decides to fine the owner of the public body.

In this case the value of the fine is equal to 20% of the minimal salary at country level for every work day delay. In case that the public body does not present facts until the date of judiciary session, then the law court, considering other evidences and conditions of the issue, might consider as verified the facts claimed by the parties from which were previously required these verifying acts.

The law of Administrative Courts function determines the liability of the given decision execution by administrative courts. Based on this law, it is also appointed that final decision of the administrative court which has taken a strict form and the decision of suit insurance are implemented by the judicial executor with a request from the creditor part. Each act that results from the action of an unknown public body after the decision of the administrative court is made applicable and opposes to the provision of court decision, is futile, which means it is definitely invalid and as a result does not hinder the execution.

When there is an obligatory execution, based on law, during the mandatory execution procedure the judge of court body, that has taken a decision with the approval of the parties or judicial executor in a counseling room without the presence of the parties, orders the execution of certain actions and taking other necessary measures by determining in this way terms and their way of implementation. The fee of the execution is considered part of judicial expenses to which the court states in its final decision. They are calculated by the judicial executor and are paid by the debtor.

The bailiff judicial state service through the competent bailiff office as well as private bailiff judicial service are obliged to execute the decisions of the administrative court according to the rules of this statute. The judicial executor is supported by police service when it comes to carrying out the court orders when necessary.

The judicial executor in the end of the obligatory execution term, that is appointed by the judge, informs in written form the executor about the actions carried out by the public debtor body. In the case of unintentionally carrying out the liabilities, according to the decision or orders of the court with no wrongful causes, the judge mainly charges the owner of the public debtor body. The value of the charge equals with 20% of the minimal salary in country level for each day of execution delay. When finding the non execution of decisions without reasonable wrongful causes, the judge requires taking disciplinary measures and when the chance is given he makes a penal offence against the responsible individuals.

The statute has paid special attention to the guarantees of the execution of judicial decisions and this has had a positive impact but, however, it is rather delayed when it considers the great load and created retardation from a single court such as that of appeal.

CONCLUSIONS

It is obvious the positive progress from the establishment of administrative courts. A considerable number of issues remain to be solved and a legal debate would be valid.

The request of observation installation of the administrative issues through administrative courts was based on a number of facts, among which was carefully stated that the analysis through administrative courts represents a very “efficient form and manner of the legal defense, if for professionalism, if for their organizations independence”.

Naturally, based on this and a number of other facts, the EU gave a great importance to the administrative judiciary in general. It seems that there are at least two phases with the greatest impact on the importance that European Union gave to administrative judiciary.

Firstly, it is to be mentioned the cause that the largest part of the right generally exists in the competences of these administrative judiciaries. Secondly, worth pointing is the fact that EU itself gives special importance to the legal functioning of the public administration and defense of human rights, as well as defense of public interest.

At this point it is to be emphasized one fact, or say better a distinction between constitutional courts and those administrative. The control that constitutional courts and administrative ones have is different from one another in form and content.

The administrative court controls the legitimacy of administrative act. There is not a final division between the field of judiciary and constitutional object but, however, the distinction is to be there.

It is visible in some cases that even constitutional courts are allowed to judge the legitimacy of the acts of administrative powers and these somehow become part of

administrative judiciary. So, for example, in Spain, Italy, France and Estonia, the constitutional law courts have “additional authorization” in the field of administrative judiciary.

The foundation of these law courts has managed to give new solution and form to many of the issues and create effects towards a more efficient administration but, illegal issues and practices still take place. On this focus it is required much more integrity and good practices.

REFERENCES

Borkovic,I., Pravo, U. (1997). The administrative right, “informer”, Zagreb.

Law no. 49/2012 “To the organization and function of Administrative Courts and the consideration of administrative disagreements”.

The code of civil procedures in the Republic of Albania.

The statute of Administrative Courts organization.

Woehrling, J. M., (2006). The Judiciary Control of Administrative Authorities in Europe. Towards a common model, edited by SIGAMA (a common initiative of OSBE and EU).