

The Necessity to Precise Defines the Albanian Administrative Courts' Competences

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Abstract

The establishment of Administrative Courts in Albania is an important step done in the justice system. Administrative Courts decisions have a direct influence in creating an appropriate climate between public administration and private entities and solving with efficiency the disputes between them. In practical terms, the law "On Administrative Courts" which is being implemented presents some problems regarding the competences. Due to the lack of transitional provisions in the law, that should define the competent court for the cases previously recorded, there are some disagreements regarding the files which were being analyzing in the Court of First Instance. The unifying decision of United Colleges of Supreme Court¹ tried to supplement this lack, deciding to transfer all the files registered from the Court of First Instance to Administrative Courts. The aim of this study is to analyze the legal situation created after Administrative Courts establishment and their function. Is the Supreme Court decision in conform to the Albanian Constitution? The study is focused in the legal arguments of how to improve Administrative Courts function in order to guarantee effective protection of the rights and legitimate interests through a regular judicial process.

Keywords: Administrative Courts, competences, Supreme Court, lack of provisions

1. Introduction

The judicial reform in Albania is considered one of the most effective reforms which significantly improve the behavior of public administration bodies, making them more responsible and careful in fulfilling their legal duties. Administrative Courts aim to strengthen the justice system of the country, improve access to justice for citizens and businesses and facilitate faster procedural actions and trial.² The functioning of Administrative Courts from December 2013 consists in all three levels of the judiciary, including the Administrative College of Supreme Court. The procedures and specialized courts adjudicating administrative cases affect the performance of the administrative and consequently it enhances the climate for business activity.

The practice shows an increase in the number of cases that will be decided in accordance with the new rules. The new law provides a trial within a short time and therefore this law gives a more active role in the court process. Public administration bodies are more involved in the trial having the burden of proof regarding the legality of an administrative act even when they are sued as defendants.³ Another improvement that comes with Administrative Courts is the reduction of procedures and bureaucracy associated with the resolution of administrative issues by defining a procedure quite different from the ordinary civilian trials. Regarding the time, it is reduced the resolution period compared with the past and can achieve up to 60 days in the Court of First Instance. An innovation is the fact some courts decisions cannot be appealed⁴, such as:

- Administrative penalty for violations amounting to less than twenty times the value of the minimum wage; administrative act that has refused to give a monetary obligation in the amount of less than twenty times the value of the minimum wage; administrative act consisting monetary obligations in an amount greater less than twenty times the value of the minimum wage;

Despite the significant improvements, in practical terms, the functioning of administrative courts has presented some problems regarding the competences.

¹ Unifying Administrative Decision No.3, Date 06.12.2013

² OSCE Presence in Albania Report 2013

³ Article 35 Law no. 49/2012 "Organization and functioning of Administrative Courts for administrative disputes"

⁴ Article 45 Law no. 49/2012 "Organization and functioning of Administrative Courts for administrative disputes"

2. Competences of Administrative Courts and the Unifying Decision of United Colleges of Supreme Court.

Due to the lack of transitional provisions in the law, that should define the competent court for the cases previously recorded, there are some disagreements regarding the files which were being analyzing in the Courts of First Instance. For one thousand six hundred cases, the Court of First Instance in Tirana, has declared non-competence, has interrupted the review and has passed all the files to the Administrative Court. These decisions are based on a Unifying Decision of Supreme Courts⁵ which states that the Administrative Court of First Instance, the Court of Appeal and the Administrative college of Supreme Courts are competent for the review of all cases which consist in administrative disputes, despite of state, phase or stage of the trial.

The Supreme Courts, in order to argue this decision defines that: ⁶

If we refer to the articles of the law 49/12 and constitutional practice, that is not only an organic law which regulate only issues of administrative courts functioning. This law also provides general principles of administrative judgment, procedural norms regarding jurisdiction, competences, composition of the courts in all levels and the procedural phases of judgments until the execution of the decision. In its entirety this law has procedural nature.

In this context, in the point 13, the Supreme Court explains that the material and procedural law have different references elements regarding their implementation.

The implementation of material law is at the moment the restriction, violation or the right has arisen. For this reason, when at start or in continue of judicial process, changes the material law, the previous law will continue to be practiced. On the other hand, the implementation of procedural law is related to the moment of the judgment before the court. In difference with the material law, procedural law will be implemented when the court will be invested for the judgment of a dispute. If during the case, procedural law changes, the court will implement the new law except the cases when the law provides that for some time or in some circumstances, will implement the previous procedure law. ⁷

Regarding the law on Administrative Courts, as a procedural law without transitional provisions that describe the phase or state of the dispute, than is accepted that this law will be implemented for all the administrative disputes despite their phase or state or in which level of review is.

3. Is the Unified Decision of Supreme Courts in conforming to the Albanian Constitution?

The question that arises after this decision: Is constitutional the Supreme Court's Decision regarding the cases that had started being reviewing from the Civil Courts of first instance? Are we establishing an extraordinary court with the removal of competences and the transfer of a case currently on trial in another trial? Is this a violation of Constitution for a regular due process?⁸

The element directly violated, is court decision making set by the law at the time the claim is filed. Does the Unifying Decision also violate the independence of the judges? It is supposed that the decision change the law and the will of the legislator and on the other hand interfere against the constitution in the activity of civil courts at all levels.

4. Conclusions

The Constitutional Court,⁹ through the decision taken after the claims based in above questions, does not give them any question, but decides not to pass the case at the plenary session because of the applicant cannot be legitimized to invest constitutional adjudication. In my opinion regarding the questions raised above, there is no any violation of Albanian Constitution. The decision of Supreme Courts doesn't violate any principle of Constitution of due process or the independence of judges. The cases still not finished from the Civil Courts, pass to the Administrative Courts and are this instances that resumes the review of them. Since the Administrative Courts review only the cases for the ones are not given the decision, we are not before *res judicata*¹⁰. The decision doesn't violate Legal Safety. It is only a matter of time the centralization and efficiency of Administrative Courts. Creating experience and good precedents of accurate decisions, these courts will realize in the best legal way their mission for which they were created.

⁵ *Unifying Decision no. 3*, Date 06.12.2013 of United Colleges of Supreme Court

⁶ *Point 11, Unifying Decision no.3*, Date 06.12.2013 of United Colleges of Supreme Court

⁷ See *Decision no.106/2002; nr.11/2009 Constitutional Court, Albania*

⁸ *Article 42 of Albanian Constitution, Article 6 of European Convention of Human Rights*

⁹ *Decision no.110 date 29.05.2014 Constitutional Court, Albania*

¹⁰ *Principle of Procedure Law / Latin term for "a matter [already] judged"*

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