

## Administrative Review Act - Object to Justice Administrative Assessment

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### Abstract:

*Administrative judiciary is sort of control over the administration or the administrative act. France considered the ' cradle ' of administrative justice and served as a ' model ' and ' example ' for administrative judiciary, later , was also attended by other European countries . Although ' propagated ' across which was installed as one of the ' perfect forms ' control over the legality of acts of administrative organs, judicial control of the administration ' not seen by an eye. Largest reserves appearing in the Eastern bloc countries, which also belonged to Albania.*

*First experiences with the administrative judiciary, organizationally speaking it was installed in three ways, in terms of its stakeholders: administrative judiciary through administrative bodies; administrative Judiciary through the courts; administrative judiciary through special administrative courts.*

*Administrative judiciary is widespread in European Union countries. As of 2007, the 16 countries of the European Union , out of its 27 members , as in Germany , Austria , Belgium , Finland , France, Greece, Italy , Latvia , Luxembourg, Netherlands , Poland , Portugal , Czech Republic, Sweden , Romania and Bulgaria , the administrative courts act as specialized courts . Among the important functions of the administrative judiciary are two basic, preventive function and repressive function <sup>1</sup>. The administrative courts protect, so prevention,*

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<sup>1</sup> Shih Kodin e Procedurës Civile të Shqipërisë, neni 325

*rights of individuals. This type of protection ' prevents bridging authority executive and administrative powers ' to the detriment of citizens. This function also expressed the administrative judiciary ' impact on administrative procedure'. Repressive function of administrative justice is expressed in the application of sanctions, when presented ' concrete violation of the legal order '.*

**Key words:** Administrative Review Act, justice administrative assessment

Administrative judiciary is sort of control over the administration or the administrative act, in the first special administrative act and the individual. This type of control is realized in the field of administrative activity which takes place through the most important form of its function. Surfaces as ' construction of legal theory and practice from the beginning of the XIX century, built under the slogan of the need to protect the objective legality and especially the rights of citizens subjective, France considered ' cradle ' of administrative justice. C ' is true, the French legal practice has created the first forms of administrative justice and administrative conflict (let contentieux administratif). In the early nineteenth century, the resolution of administrative disputes between public administration and citizens of specific advice was given and the State Council ( Conseil d' Etat ) . In this way, France served as a ' model ' and ' example ' for administrative judiciary, later , was also attended by other European countries<sup>2</sup> .

From the reviews incoming worth noting that the State Council in France , from an ' administrative body ' time ' turned ' into a ' special administrative court ' , with the authority to resolve administrative disputes . This fact ' greatly influenced ' in ' French attitude theory ' , in which special administrative courts were considered ' part of administrative power ' , not '

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<sup>2</sup> Ivo Borkovic, Upravno pravo (E drejta administrative), 'Informator', Zagreb, 1997, faqe 448

part of the judiciary ' . In fact, the French doctrine always has ' refused ' to the State Council and other administrative courts to handle as part of ' unique system gjyqësoro - legal ' , but has shown as ' special organization ' , born at ' arm administration ' <sup>3</sup>

Computes the administrative judiciary as one of the ' perfect forms ' control over the legality of acts of administrative organs , judicial control of the administration 'not seen by an eye ' . In fact , this type of control for a long time , almost ' was prohibited ' in many European countries . In countries supported the idea that judges " should not interfere " in the so-called " executive tasks ' . Reason ' found in ' the principle of ' separation of powers ' . Moreover , another reason stated . It was thought that judges ' are not ready ' to , effectively , ' to interfere in administrative matters ' . Largest reserves appearing in the Eastern bloc countries , which also belonged to Albania . Do establishment of administrative courts in the East , but as in Albania , the ' formal sense ' was seen as a result of a ' special view ' doctrine that was then , the political and legal , in those countries , about role of the state in general and administrative position , in particular <sup>4</sup> . In fact , according to this doctrine , an administrative institution regarded as ' bourgeois institution of law ' . So , as such , the institution ' did not fit ' the role of the state administration and his position <sup>5</sup> .

## **Ways organizational setup of administrative justice**

First experiences with the administrative judiciary , organizationally speaking it was installed in three ways , in terms of its stakeholders :

- Administration judiciary through administrative bodies .
- Administration Judiciary through the courts.

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<sup>3</sup> Ivo Borkovic, po aty, faqe 449

<sup>4</sup> Mr.sc. Ivica Kujundzic, Europeizacija upravnog sudstva-predstojece reforme, faqe e internetit: .upravni sudovi

<sup>5</sup> Mr.sc. Ivica kujundzic.

- administration judiciary through special administrative courts .

These three ways of installing the administrative judicial systems installed three administrative conflict resolution<sup>6</sup> . Administrative judiciary through self administration bodies , in principle , was not seen as a good opportunity , because by doing that kind of control that , in fact , become ' judge in his own cause ' and , consequently , the independence and objectivity called into question . Therefore , the best ways of installing the administrative organization of the judiciary remain ordinary courts and administrative courts separate . The second way of installing the administrative organization of the judiciary , it through the regular courts , the literature is generally known as Anglo-Saxon system , because it relates to the birth of her Great Britain , but also with its former colonies , particularly in the U.S. although the administrative judiciary through regular courts also spread to the Scandinavian countries , primarily in Denmark and Norway . Starting component of establishing administrative judiciary through regular courts of law itself was British , the ' inspired by the idea of the general law ' (Common Law ) that represents a ' common system ( unique ) legal norms and principles to which acts not only individual , but also public authorities ' . It is worth noting that the British and American system does not differ in principle , as it is worth noting that , in addition to the regular courts , legal protection is realized through the ' administrative tribunals ' ( administrative court ) that , as a rule , established an ad hoc basis , as for education , health , etc.

Administrative Judiciary : The development of the rule of law , made an immediate need to establish administrative supervision model which , as prejudiced , should ensure ' wide legal protection ' in the field of administrative activity . It was

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<sup>6</sup> Më gjerësisht: Esat Stavileci, Hyrje në shkencat administrative, Enti i Teksteve dhe i Mjeteve Mësimore i Kosovës, Prishtinë,1997

thought that this mission could be achieved if the carrier oversight would be a separate body , the independence and authority of which the administration would ensure that its activities , be brought within the legal norms of positive law <sup>7</sup>.

Administrative Courts : Request for installation of administrative justice through administrative courts relied on a number of facts , among which he specifically stated that the administrative judiciary through the administrative courts is a ' very appropriate form of legal protection , either because of the professionalism either because of their organizational independence ' . Certainly, on this and on a number of other facts , the European Union gave a great importance to the administrative judiciary generally . It seems that both are influential moments on the importance of the European Union provides administrative judiciary . First , because the ' vast majority of law generally is in the competence of the administrative courts ' . Secondly , because of the very ' European Union attaches great importance to protecting human rights and the protection of the public interest ' .

Administrative judiciary in countries of the European Union administrative judiciary is widespread in European Union countries . As of 2007, the 16 countries of the European Union , out of its 27 members , as in Germany , Austria , Belgium , Finland , France , Greece , Italy , Latvia , Luxembourg , Netherlands , Poland , Portugal , Czech Republic, Sweden , Romania and Bulgaria , the administrative courts act as specialized courts . How is the situation in other countries of the European Union ? . In the 11 other member states of the European Union , as Qipër , Estonia , Denmark , Ireland , Lithuania , Hungary , Malta , Spain , Slovenia , Slovakia and the UK, operating subsidiaries or specialized rooms for

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<sup>7</sup> Ivo Borkovic, po aty.

administrative law , within the regular high courts ( supreme )<sup>8</sup>.

Regarding the escalation of legal proceedings , the organization faced two models :

- Two Levels model .
- Three Levels model .

Model Two Levels faces in 11 countries , while three -tiered model in 15 countries .

### **Report constitutional judicial administrative judiciary**

Control exercising constitutional courts and administrative tribunals exercising control differ in form and in content . However , in some countries , the constitutional court allowed the trial on the legality of administrative acts and powers , so to speak, become ' part of the administrative judiciary ' . Thus , for example , in Spain , in Italy , in France and in Estonia , constitutional courts have ' additional powers ' in the field of administrative justice<sup>9</sup> .

### **What is meant the ' Europeanisation ' of administrative justice**

Prevalence of ever greater administrative justice in European countries has contributed to scientific conferences it comes to the so-called ' Europeanisation ' of the administrative judiciary. ' Europeanisation ' of administrative justice is a ' sign of identification with standards that are embraced by a number of European Union countries ' and now taking place in their legislation . However, the ' Europeanisation ' of the administrative judiciary also does not mean that administrative

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<sup>8</sup> European Laë 33 (2008) 437-450; Shih poashtu Rule of Laë Symposium Rule of Laë and the Kosovo Constitution, Minnesota Journal of International Laë, John Tunheim (2008).

<sup>9</sup> Themes, N., "Debates in Publik Security Reform, External controls, Eashington, DC;EOLA, 2000.p.6

gjykakat in those countries are coated with " the same clothes ' , but as it does not mean ' administrative justice identifying any adjustments mentioned by its organizational ' . In this context, Albania will have the opportunity to adjust the administrative judiciary and conditions of its specific circumstances , without having to ' blindly adhere to a model<sup>10</sup> ' .

### **Reform of administrative justice**

States that have embraced the standards of administrative justice in the ' wave ' of its reforms . They are doing and planning to make decisive steps towards the reform of administrative justice in their own countries . In what direction is developing and may develop administrative reform of the judiciary ? This is the question that is raised before them . First , in most countries are considered necessary for making the last analysis on the road and experiences in the field of administrative justice . Second, the revised legislation which refers to administrative procedures in those countries . Third , I consider the possibility of amending the legislation on administrative procedures , while in some countries and the drafting of new legislation . Fourth , is pursued innovations that are being applied in this area in several countries of the European Union and is required ' common denominator ' . European Convention on Human Rights itself contains some requirements that should have in mind that countries are making reforms in the administrative judiciary . On top of the requirements of the Convention is drafting new legislation , then the demand for ' education ' of judges and judicial advisors , as well as requests for the advancement of information technology in this field means creating opportunities and developing technologies; new ' judicial case management <sup>11</sup> ' .

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<sup>10</sup> Look more: mr.sc Ivica Kujundzic

<sup>11</sup> Dr. M. Dimitrijeviq "Uvod u pravo", Beograd, 1986, vepër e cituar, fq. 220

## **Administrative Judicial**

First, the 'growing influence' of judicial review of public bodies seen more interest in the administrative judiciary. Second, the construction of a particular model of judicial review generally, the primary purpose of expanding and strengthening it. Third, the pervasiveness of the principle of separation of powers in judicial control volume shown great interest in the democratization of society generally. Fourth, ensure the independence and impartiality of judges, with the primary aim of ensuring and strengthening the principle of legality in administrative judiciary.

## **Advantage of administrative justice**

From the many advantages of administrative justice, to mention only some of them, again without claiming a detailed breakdown, given the limited time for presentation at this conference. In the first place, and, above all, will emphasize the primacy of administrative justice 'democratization of the judiciary'. Another advantage of the administrative judiciary is 'functional separation of its system of courts of general competence'. Priority separate the administrative judiciary is 'growing confidence' of citizens and public opinion in legal administration work. Finally, the judicial administrative priority is the protection of citizens of 'arbitrariness of the administration'. Of course it would be completely impossible for other favors administrative judiciary. Without ranked according to their importance or may be, these favors administrative justice should be seen as more likely to:

- specialization.
- fuller Settlement of disputes.
- creative role in the development of administrative justice and administrative law.

Administrative judiciary through administrative courts and a very special advantage. It is expressed in powers of administrative courts. Indeed, 'the administrative courts have

full authority , not only in law enforcement but also in establishing the facts ' . The practice of administrative courts is diferente . In some developing countries the judiciary administrative control of the courts focus on the question whether the right decision was issued . In some other countries , the concentration of control of administrative courts in truth become material and its finding .

### **Report institutional administrative judicial administrative proceedings**

Even in connection with this report show two views . According to one view, the proceedings considered ' ongoing administrative proceedings ' . According to a different view , it is for two separate procedures , one that takes place in the administration and that it ends with the issuance of the act and the other in the courts , where the dispute the legality of administrative acts issued by the administration . Although there is a close connection between the rules that define the administrative procedure and judicial control , can hardly be accepted view that judicial review is a ' higher level ' of ' administrative procedure ' , given the fact that the administrative procedures actually , develops and ends within the administration . That judicial review is a higher institution in resolving administrative issues is quite questionable . In the administrative judiciary has a number of ' sensitive issues ' that are presented or that may occur . Sensitive issues arise , either in terms of volume , in terms of the control mode .

A question about ' sensitive issues ' that requires a direct response is : how is it possible that on the one hand , ' ensure ' effective judicial protection and legal , on the other hand , at the same time , ' respected ' needs to take ( extraction ) effective decisions in administrative proceedings ? There are a

number of tools that can help in this regard and who speaks the theory of administrative justice<sup>12</sup> .

First , it would be appropriate that the administrative courts ' powers be given as clear ' and this fact can be seen with much interest , as the courts , as well as the application of the principle of powers tëndarjes ' . The theory also speaks to another instrument : the ' possibility of applying consultative procedures ' in relations with the administration of the courts . Indeed , it is thought the possibility that public bodies can ask the administrative courts to interpret laws and regulations ' which can avoid making illegal decisions . However , this option may be associated with two observations that should be taken into account . First , be aware that the ' council by the courts for public bodies can be considered , in some way , ' preliminary ruling ' and , secondly , can be considered as ' privilege ' to public bodies .

Among these instruments , in literature it is also delaying the effects of the judgment , to delay the effects of judicial practice , etc. . Should be understood as instruments ? , Nothing more than as ' common purpose ' of public bodies and administrative courts ' decisions best legal ' . In this regard , the administrative judiciary should be understood as ' a stage ' in the process of the decision and ' tool to justify the action of the administration ' . Therefore , the conclusion is clear : separate actions should not be seen as kundërvetshme , but as complementary ( complementary ) . Judicial control should be understood as ' a tool for improving the rationality and quality of administrative decision ' . When an administrative court 's decision ' legitimate calls ' , this fact by itself increases the ' legitimacy of the administrative body . " Can occur and vice versa . If the opposite happens , the public body should ' feel thankful ' that bad decision is annulled .

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<sup>12</sup> Shih:Jon Elster,Rune Slagstad,Constitutionalism and Democracy, Cambridge Universitets forlaget,1988.

## Basic functions of administrative justice

Among the important functions of the administrative judiciary are two basic, preventive function and repressive function. The administrative courts protect, so prevention, rights of individuals. This type of protection 'prevents bridging authority executive and administrative powers' to the detriment of citizens. This function also expressed the administrative judiciary 'impact on administrative procedure'. Repressive function of administrative justice is expressed in the application of sanctions, when presented 'concrete violation of the legal order'. There are a number of problems that arise and that may arise in the practice of administrative courts. Among the most significant problems mentioned defense, 'no time', judicial - legal<sup>13</sup>. A number of subjects wait for 'trial', drag procedures and citizens lose confidence in the courts generally. Another problem relates to the inability to appeal the decisions of the administrative courts.

Should be reviewed when the court of appeal of administrative decisions excluded, although recent practices are favorable and, in principle, provide for appeal of decisions of administrative courts. As a third problem may be mentioned he expressed some countries in efforts to harmonize their legislation with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In these efforts, faces an insufficient degree of harmonization of administrative conflicts with the overall document. In connection with the conflict administrative, and can show specific problems arise. As if the attempt to 'summarize', could be separated these three problems: one, No regulation of an administrative institution, two full mospërkufizimi administrative conflict and, three,

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<sup>13</sup> Sokol Sadushi, E drejta administrative 2, Tiranë, 2005, faqe 254

moszgerimi sufficient supervision of legality in all individual acts of state authorities and the public . Are interesting to look at experiences in the region , where they highlight the administrative courts in Croatia and Slovenia .

### **The role of Courts control**

The functioning of courts administration of Kosovo is one of the issues with very interesting topic nowadays and that is also a challenge for the entire judicial system of the country , namely the functioning of the courts . Therefore administration towards regionalization can not control gjyqwsor feels good :

The money that can be said is that ' can not feel good ' , with the fact that it is placed ' under judicial control ' . Second , the possibility that the procedures developed in the issuance of an administrative act will lead to the court , creates a certain ' legal uncertainty ' , by the end of the process , on the regularity of the contested administrative act<sup>14</sup> . If we rely legjeslacioni and the organization and functioning of Administrative Courts in Albania , Albania , have not yet been established and no administrative courts operate . If the last sentence , saying the money , although I like many aphorism : the more trials , less justice , the answer to the question of the conference that the administrative judiciary in Albania should not be looked on as an alternative , but a necessity .

### **Albanian legislation in the field of administrative justice**

" Our legislation finds itself closer view that protects third group . The conclusion in the specific case of violation of legal provisions and legal consequences of regulation unfairly

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<sup>14</sup> (Shih: Upravni spor u praksi Upravnog Suda Hrvatske, në 'Zbornik radova Pravnog Fakulteta u Splitu', 1/1987; Krijan Pero; Krijan Zigic, Lidija, Komentar Zakona o upravnim sporovima, Novi Informator, 2006; Androjna, V., Upravni spor (Komentar, Ljubljana, Uradni list, 1977).

disadvantaged by the parties return to the previous situation , determine the type and nature of the conflict to be settled by a court under our legislation procedural. Për support this view , enough to refer to Articles 324 and 331 of the Code of Civil Procedure ' . The third group , as a criterion for determining the administrative conflict takes ' nature of legal provisions , the violation of which causes conflict ' . So ' conflict arises with the birth of administrative and legal relationship ' . Even a terminological explanation is necessary . In Albania civil procedural legislation , administrative conflict known as ' administrative dispute ' . Administrative Procedures Code is ' a special chapter ' is termed ' administrative adjudication of disputes ' <sup>15</sup> . Otherwise , about the meaning of an administrative , Sadushi in his book states that ' in the processing of this case , the author is based primarily on the text of prof . Esat Stavileci " entrance administrative sciences " .

This is a very convenient opportunity to appeal to the need for unification of the dictionary and to reiterate what was said in scientific terminology conference , organized by the two academies of sciences , in Tirana and Pristina .

## **The situation in Albania in the field of administrative adjudication**

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<sup>15</sup> Për më tepër rreth administrimit ndërkombëtar në Kosovë shih Christian E. Ford and Ben A. Oppenheim, "Neotrusteeship or Mistrusteeship? the "Authority Creep" Dilemma in United Nations Transitional Administration", 41 Vanderbilt Journal of Transnational Law, (2008), 55 - 105; Alexandros Yannis, "The UN as Government in Kosovo", 10 Global Governance, (2004), 67-81; Carsten Stahn, "Constitution without a State? Kosovo under the United Nations Constitutional Framework for Self-Government", 14 Leiden Journal of International Law, (2001), 531-561; Carsten Stahn, "The United Nations Transitional Administrations in Kosovo and East Timor: A first Analysis", 5 Max Planck Yearbook of United Nations Law (2001), 105-183; David Marshall and Shelley Inglis, "The Disempowerment of Human Rights-Based Justice in the United Nations Mission in Kosovo", 16 Harvard Human Rights Journal (2003), 96-145

By the way the bodies are structured to ' see administrative disputes ' , Albania as ' Anglo-Saxon system is closer ' because ' has not accepted the existence of administrative courts ' . Conflicts considered ' near normal court system . " However , ' if taken as a criterion ' for determining the object system , the judgment , and the procedure to be followed during the administrative conflict , then it can be said that the legislation in Albania ' approaches to the way the trial of cases by administrative courts ' . All this indicates that the administrative judiciary in Albania will not find it difficult to adopt the system of administrative adjudication of conflict through the administrative courts . Under current legislation in Albania , its every citizen can raise a claim in court , if it considers that the unlawful act ' has violated any right or legitimate interest ' are two significant moments that a citizen may suing in court . First , the plaintiff must argue before the court the illegality of the contested administrative act.

Secondly, the violation must be related to the direct personal interest or indirectly , to the plaintiff and that his interest should be based on law . First , in Albania are making efforts to get closer ' to Europe in the field of legislation . Secondly , are studying the possibilities of institutional adjustment experiences of EU member countries . Third , the reform process is open to the general area of justice and felt the need to consider the possibility of installing the administrative judiciary through the establishment and functioning of administrative courts , specialized courts like . Moreover , a bill was drafted and approval procedure is stopped because of his opposition to the opposition has done <sup>16</sup>. Meanwhile , there have been changes in the perception of administrative justice in the countries of Europe generally . First , understanding the principle of separation of powers , through the exclusion of the

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<sup>16</sup> Konferenca shkencore 'Gjendja dhe zhvillimi i terminologjisë shqipe, probleme dhe detyra', Tiranë, 19 qershor 2009

number of acts of judicial review , because of ' the nature of their alleged political '

### **The advantages of the administrative judiciary in Albania ?**

From the many advantages which can be attributed to the administrative judiciary in Albania , will turn to these as major . First , efforts to build the rule of law , of particular importance is the role that the administrative judiciary can play in strengthening the protection of the rights and interests of citizens . Second, efforts to institute legal protection generally , the administrative judiciary could be seen with a powerful impact on the protection and provision of objective legitimacy which in the past has been violated and continues to violate even today . Third , efforts to ensure that the same bodies of administrative review compliance with the law or any legal rate higher administrative courts can be presented as a powerful instrument of security that review <sup>17</sup>.

Nothing more and nothing less than ç'ofron , in fact , judicial control . First , in Albania seeks judicial review decision ( judgment ) on the optimal time and not just volume control range . Second, effective judicial protection measures . Third , ' sufficient degree of intensity ' in control of public decisions , including the full review of the facts and full respect for fundamental principles .

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<sup>17</sup> Sokol Sadushi, E drejta administrative, 2, Botime 'Ora', Tiranë, 2005, faqe 258