Judicial control of administrative activity and advantages of reorganization of the juridical system in the Republic of Kosovo

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Abstract

Scientific research paper entitled *"Judicial control of administrative activity and advantages of reorganization of the judicial system in the Republic of Kosovo"* is treated with standard writing, including the introductory part and corresponding chapters.

In the introductory part of the paper is emphasized the importance of the topic which is treated, with particular emphasis on the importance of judicial control in the Republic of Kosovo.

This paper aims to achieve three main goals: Firstly, highlighting the importance and ways of functioning of judicial control in general, secondly, explication the method of treatment and the importance of the application of judicial control in the Republic of Kosovo and thirdly, highlighting the challenges of judicial control in the Republic of Kosovo, especially after the reorganization of the judicial system.

The paper is structured as follows: introduction, general views on judicial control, including the importance of judicial control. Within the structure, important theses constitute those theses dedicated to administrative justice in the Republic of Kosovo, the legislative framework and judicial system reform in the Republic of Kosovo, including its impact on the functioning of the administrative judiciary.

In the last part of the paper there are clear and consistent conclusions and significant recommendations relating to general views about judicial control, with particular emphasis on their practical implementation in the Republic of Kosovo and the way of adjustment with the reforms in the field of administrative justice which are at the beginnings of the implementation.

Keywords: Control; Administrative Judicial; Judicial Reform; judicial reorganization; Administrative Laws

Introduction

In all countries with developed democracy, the control of the work of the administration by the courts is an acceptable and applicable principle in the best European practices and broader. The building of a modern, professional and efficient administration is the goal of every country that aspires the integration to the European Union. The development of the public administration and the reforms in this sector aims to bring closer the public administration with the citizen and offering more effective and quality services.

But all this important and wide variety of activities offered by the administration cannot remain uncontrolled, because the lack of control may result in violations and abuse of the rights of citizens. In this aspect the judicial control is considered as the most effective mean to protect the individual rights of the citizens from eventual violations and abuse by the administration. For more, judicial control of administration plays an important role for the economic development of a country. Efficient administrative courts also increase the transparency of administrative decisions and can play an important role in the fight against corruption.

The adoption of the new Law on Courts and the recent reforms to this Law[1], present the clear steps which have been undertaken with the purpose of improving the performance of the judiciary. The trial of administrative cases is expected to improve because until now has had many objections to the Supreme Court regarding administrative matters for which it has decided as first and last instance.

The establishment of a special department within the Basic Court of Pristina, is expected to bring more efficiently and effectively in the judgment of the administrative cases, and at the same time it will have an impact on improving the work of the administration because now the administration needs to be aware that there will be a substantial control over the legality of the acts such administration passes.

The Overall review of the work control of the administration

The public administration represents an important sector within the country. The scope of works that carries it is very large. All these works and actions manifested through issuing of various administrative acts [2] which affect different interests of all citizens, so all this work can not be left unchecked. In legal theory, control of the work of the administration means the impact that exercises superior authority to the

[1] Law on Courts, no. 03L-199, promulgated by Decree of the President of the Republic of Kosovo. DL-047-2010, dated 09.08.2010 (O fficial Gazette of the Republic of Kosovo / Pristina: Since V / no. 79/24 August 2010).

[2] In legal theory administrative act means expression of the body to create, alter or extinguish a report certain legal-administrative. In the event that this definition does not include all the acts that will be mentioned in this paper, then, for the purposes of this paper the term "administrative acts" shall have the meaning of any decision issued by an administrative body which produces legal effects on parties.

subordinate body, regarding to the performance of certain tasks, or the impact of specialized bodies of administration on the other bodies and other practitioners, with aim to ensure regularly implementation of the laws and sublegal enactment of higher bodies. [3] All this is realized in order to guarantee that the laws will be implemented properly and to protect subjective right of the citizens.[4]

Control of administration work is seen as a way to prevent or avoid intentionally or unintentionally mistakes of administration employees.

The control of the work of administration is performed in two different ways:

- internal control and
- external control.

The internal control is performed by the higher bodies of the administration. In the contemporary administrative systems there are two types of internal control of the work of administration: a) the institutional control, as a rule is accomplished based on dissatisfaction expressed by a party, namely, according to the appeal. Through the appeal the concrete lower administrative body act is ahead the highest administrative body. b) The hierarchical control is the form of control realized on the hierarchical authority, and hence the higher authorities not only have the right to supervise the work of lower bodies but they have an obligation to perform it. This type of control is committed through the inspection and audit.

The external control is conducted by specialized bodies that have the competence and the right to operate in this field. This type of control is committed by several bodies, among them may be, the parliament, the ombudsperson and the courts. Among the most important forms, what in theoretical aspect is also considered to be the most controversial form of work control of the administration, is the judicial control, consequently this is going to be the key part of this analysis.

The judicial control of the administrative activity

Activity of administrative bodies includes completeness of the acts and different activities through which creates and emerges the will of the public administration.[5]

The judicial control of the administration, implies the authority that is given to the political and administration independent body, to resolve conflicts that have been incurred by the functioning of the administration.[6] The conflict in the administrative field arises when a party alleges that through a particular administrative act subjective

[3] Esat Stavileci, " Entry in Administrative Sciences", Pristina, 1997, p. 98.

[4] Ibidem, p. 98.

[5] Sokol Sadushi, "Administrative Law", Tirana, 2008, p.265.

[6] Esat Stavileci, " Entry in Administrative Sciences", Pristina, 1997, p.129.

rights have been violated, respectively there were legal violations. In this regard the institution of judicial control is presented as a constitutional guarantee for the protection of the freedoms and human rights through the fair and public trial from independent court.[7]

Administrative judiciary appears from the beginning of the nineteenth century, built under the slogan of the need to protect legality objective and especially the subjective rights of the citizen.[8] France is considered the cradle of the administrative judiciary. In the early nineteenth century the settlement of disputes between citizens and public administration was entrusted to the State Council. In this form France served as a model for administrative judiciary that would adopted by other countries.[9] The administrative court in France was not part of the judicial authority, but was part of the administrative power.

Today in many European countries has special administrative courts which are part of the judicial authority but who are specialized in judgment only administrative cases.

Forms of the judicial control

Courts during the inspection of the work of administration, actually do the control of the legality of administrative acts, which control is performed or accomplished in two main forms:

- The general control, accomplished through administrative conflict procedure and
- The judicial protection of human rights, conducted by the Constitutional Court, when it is determined that the specific administrative act violated human rights. Typical form of administrative judiciary is the administrative conflict and is the only form that is studied by the administrative law as a science. Other forms of judicial control of the administration studied by other sciences such as constitutional law.

The administrative conflict

In the theory of law has debates and different perspectives about the definition of administrative conflict. Some authors define the administrative conflict according to formal criteria and in this sense the emphasize that administrative conflict is the conflict that proceeding at specific administrative courts and for the solution of which are competent special courts, respectively is that conflict that solves in special judicial proceedings. Others began the type of parties in an administrative and emphasize

[7] Sokol Sadushi, "Administrative Law", Tirana, 2008, p.266.

[8] Esat Stavileci, "administrative judiciary, opportunities and priorities", presented at Scientific Conference organized by the University "Marin Barleti" in Tirana with 04.02.2011.

[9] Ibidem.

sense of administrative conflict is, first of all, that conflict in which the administration appears as a party, either as plaintiff or as a defendant.[10] On all these elements are given in the two definitions, a generally acceptable definition is hardly given.[11]

The aim of administrative conflict is provision of judicial protection of rights and interests for legal and natural persons and other parties, the rights and interests that have been violated by individual decisions or by actions of public administrative authorities, as well as the protection of lawfulness.

The issue of administrative conflict in the Republic of Kosovo is regulated by the Law on administrative conflict.[12] With this law are regulated competencies and composition of the court as well as the rules of procedure, based on which the competent courts shall decide on lawfulness of administrative acts by which the competent authorities of public administration shall decide on rights, obligations and legal interests of legal and natural persons, and other parties, as well as for the lawfulness of actions of administrative authorities.[13]

Based on a law, an administrative conflict can start only against the administrative act issued in the administrative procedure of the court of appeals, but in some cases an administrative conflict procedure can also start against the administrative act of the first instance, against which in the administrative procedure, complain is not allowed.[14] But there is another situation where a party can open an administrative procedure that occurs in the case of inaction of the administrative body, even after the appeal in second instance. Therefore, the party who is dissatisfied with the decision of the first instance authority, carries the right to appeal within the legal deadline[15], but the body does not issue a decision on the appeal[16], what then arises the right to address the court.[17]

In theory mentions two fundamental conditions that an administrative acts to be object of administrative conflict: 1. The decision must be issued by a state body, organization or other community exercising public authorizations; 2. Administrative Act must be issued in an administrative cases.[18]

[10] Esat Stavileci, " Entry in Administrative Sciences", Pristina, 1997, p. 197.

[11] In Albania legislation used the term "administrative dispute".

[12] Law No. 03/L-202 on Administrative Conflicts, 16 September, 2010.

[13] Ibidem, Article 1.

[14] Ibidem, Article 13.

[15] Legal deadline for appeal in the second degree is 30 days. Article 131, Law no. 02 / L-28 on Administrative Procedure.

[16] In theory this is known as "administrative silence".

[17] The current law on administrative procedure law erroneously refers to civil procedure and not administrative law conflict; perhaps this will be changed with amending of this law.

[18] Stavileci, " Entry in Administrative Sciences", Pristina, 1997,p. 182.

In the legal view, a final administrative act may be contested at the court, in administrative conflict proceedings for the reason foreseen, such as:

- for the reason that, the law has not been applied at all or legal provisions have not been correctly applied.
- when the act has been issued by a non-competent body;
- when in the procedure that preceded the act, was not been acted according to the procedure rules, the factual situation has not been correctly verified, or if from the verified facts, incorrect conclusion in the light of factual situation has been issued;
- when with the final administrative act issued based on a free evaluation, the body has exceeded the limits of legal authorization or such act was not issued in compliance with the purpose of this law;
- when the accused party has issued again her earlier act, annulled before with the final decision of the competent court.[19]

Administrative Conflict begins with the claim. The plaintiff of administrative conflict may be a natural person, legal person, the ombudsperson, the associations and other organizations, that act for protection of the public interest, who considers that the administrative act has violated directly or indirectly any right or interest, based on the law. With indictment may be required: 2.1. the annulment or void publication of contested act; 2.2. Issuance of administrative act, which was not issued in the foreseen term; and 2.3. return of the taken things and compensation of the damage caused by execution of the contested administrative act.[20] Law on administrative conflict has determined that: "The legality of the contested administrative act shall be reviewed by the court within the limits of the indictment request, but shall not be obliged by the indictment causes". [21]For administrative conflict court decides the verdict.

In proceding of administrative conflict exists two type of legal remedy, ordinary legal remedies that is appeal and extraordinary legal remedies that are: request for extraordinary review of court decisions, request for protection of legality; the repetition of the procedure.

Regarding with legitimacy are known three concepts for administrative access to judicial proceedings;

- everyone has the right to oppose any administrative action without further requirements; (actio popularis, it is not widespread in Europe);

[19] Article 16, Law No. 03/L-202 on Administrative Conflicts, 16 September, 2010.

[20] Ibidem, Article 26.

[21] Ibidem, Article 44.

- the claimant must have a legitimate interest qualified to oppose an administrative action (the French model, precedents of the Court of Justice);
- access to court is allowed only when there is a claim for violation of individual rights (the German model).[22]

The judgment of administrative acts by the Constitutional Court

In the theory of law it is considered a very controversial issue, the ratio of the constitutional court with the regular courts, that adjudicate administrative issues, therefore which acts are the subject of which court. Clarifying the above mentioned division of control, it should be said, that there is an agreement that the acts of general character (normative) should not be subject of the regular courts interpretation, but that competence should be left to the Constitutional Court. In this regard only the acts of individual character can be treated in administrative judiciary contexts, and they may be the subject to regular courts.[23] This attitude, in a way is the matter of the law on administrative conflict, wherein in article 15, paragraph 3, states:

"Administrative conflict cannot be developed against administrative acts that constitute a general obligation issued by administrative authorities, unless they violate legitimate rights of the parties".

Constitutional Court of the Republic of Kosovo, in many cases has decided on institutions decisions, by which decisions the rights and freedoms of citizens have been violated, as defined in the constitution. Only in 2011 there were 18 cases or 10.98% of the requests to the court, referring to the decisions of government institutions11.[24] The decisions that allegedly violated human rights and freedoms are guaranteed by the Constitution.

The Constitutional Court can play a decisive role in the field of administrative justice, setting on normative acts of various institutions; it becomes an effective mechanism to ensure the constitutionality and legality of administrative acts in the last instance.

The importance of judicial control of the administration

Legal review of administrative decisions of independent court is a democratic principle that is recognized, present in major European practices and an important contribution to ensure order, especially to protect individual rights against administration. Moreover, administrative justice plays a decisive role for the economic development of a country.

[22] Ina Puravelli and Julejda Gerxhi, "The necessity of creating administrative court's based on the current state of the resolution not to take administrative clothing," Albanian Journal of Legal Studies, Volume 2, 2011.

[23] For more see, Sokol Sadushi, "Constitutional Control", Tirana, 2004, p. 96.

[24] Constitutional Court of the Republic of Kosovo, Annual Report 2011, http://www.gjk-ks.org/repository/docs/Raporti%20Vjetor%202011%20Versioni%20Final.pdf.

Almost all investment decisions and infrastructure projects must go through a licensing process, which may be subject to a legal review by the administrative courts. Efficient administrative courts also increase the transparency of administrative decisions and can play an important role in the fight against corruption. And last, but not least, judicial review of administrative action by a judicial public administrative functions well - apart from strict legal point of view of the individual case – is a stimulating force for modernization of public administration, improving the quality of services and as a result, increases the confidence of citizens to state institutions. Among the many functions that the administrative judiciary has we should mention two most important: the function preventive and repressive function. Preventive function prevents passing authorizations executive and administrative powers to the detriment of citizens. While the repressive function of the administrative judiciary is expressed in the application of sanctions, when presented concrete violation of the legal order. By addressing the importance of judicial review of administrative acts Professor Sokol Sadushi, says,

"Judicial control of administrative acts is a standard basis for the protection of human rights and fundamental freedoms, but at the same time it is also an indispensable tool for improving the quality of administrative activity, in order to ensure good governance." [25]

The European Union attaches particular importance to judicial control of administrative action. Council of Europe and the European Convention on Human Rights (ECHR) have played a special role in setting standards in the judicial control of public administration activities. The Council of Europe has adopted several recommendations and disseminating information, documents and studies on best practices.[26] EU through. broad interpretation of the article 6 of the European Convention on Human Rights and the interpretation of the application of Article 13 on effective remedies has had a powerful influence legal developments, and the setting of minimum standards of judicial control of the administration. The researchers note that "the primary requirement for member states of the Council of Europe remains the guarantee of judicial review of administrative matters, in terms of the European Convention on Human Rights, by an independent court, impartial and established by law".[27]

[25] Personal interview with Prof. Dr. Sokol Sadushi. Dated April 17, 2015.

[26] Some of the most important recommendations in the field of judicial control are the recommendations of the Committee of Ministers: No. R 2004 (20) "On judicial review of administrative acts"; Recommendation no. R 2003 (16) "On the execution of administrative and judicial decisions in the field of administrative law". Recommendation no. R 2001 (9) "on alternatives to legal disputes between administrative authorities and private parties"; Recommendation no. R (94) 12 "On the independence, efficiency and role of judges", etc.

[27] Personal interview with Prof. Dr. Sokol Sadushi. Dated April 17, 2015.

The systems of judicial control over administration

In the world there are mainly two systems of administrative justice system developed, French and Anglo-Saxon system. The French system provides for the creation of specific administrative courts which will have jurisdiction only adjudication of administrative matters. While Anglo-Saxon system provides that administrative issues were resolved within the regular courts.

This system is characteristic of Anglo-Saxon countries (common law), but is also applied in other countries. Under this system of public administration activities subject to the jurisdiction of the ordinary screening trial. But examination of this activity is subject to three key limitations: 1. Examines the issues that are related to the legality and overcoming power, but does not extend to judgment factual issues; 2. no trails to cancel, suspend or modify an administrative act, administrative activity, but limited in making decisions for reinstatement effects caused by administration activities, eg indemnification damages; 3. It is not a part of the judicial jurisdiction issues that entered the jurisdiction of solving administrative body, and this attribute of special committees usually have an administrative character.

"A long time, control of administrative acts by ordinary courts is considered" the only effective option "because of its position and the regular courts had the power structure of the judiciary who provide authority decisions issued by them", Academic Esat Stavileci says.[28]

But the way the review of administrative matters is depending on the system that prefers different countries and that is orientated models prefer integrated within the jurisdiction of the ordinary courts or administrative jurisdiction autonomous. In this aspect affects the number of different level courts dealing with administrative matters judgment. There are states which prefer two-tiered system,[29] as it has other countries adjudicating administrative acts necessarily pass judgment on three levels.[30] Not exempt any case where the level of judicial review remains in a degree of judgment.[31] On the other hand preference for the mixed system observed in some small countries of Eastern Europe, like Latvia, Estonia etc. [32] Under this system administrative issues

[28] Personal interview with Academic Esat Stavileci. Dated 10 May 2015.

[29] Finland, Lithuania.

[30] Denmark, Sweden.

[31] Austria's autonomous administrative jurisdiction exercised by the Supreme Administrative Court, as both the first and the last. However, there are two other levels of judgment within the administration, which should be exercised before being put into motion the court. The existence of a single court level has created no little debate which has raised the need for systemic change.

[32] In Latvia, autonomous administrative courts adjudicate in the first and second, and the Supreme Court established judicial system functions as the last degree of administrative issues. In Estonia, administrative matters adjudicated by administrative courts of first instance and appeal and third degree judged by an administrative room of 5 judges in the Supreme Court. In Slovenia, the Administrative Court which has the status of a higher court examines the administrative issues in the first instance, while complaints are reviewed by the Supreme Court, which has a Department of Administrative Review.

adjudicated at first or second administrative courts, and in the last instance by a judicial body set up at the Supreme Court.[33]

In theory there are various debates about the factors that influence the state to choose the type of control certain administrative acts. In this flow Professor Sadushi identifies some determinant and change from one state to another, dealing with the subject of administrative jurisdiction, the number and density of population and courts, the number of judges in relation to the number of inhabitants, the number of levels trial, the composition of the panel, the complexity of the law and judicial practice, judicial budget, tradition, etc.[34] It is frequently found in various systems of administrative adjudication of the dispute is the presence of a considerable number of administrative issues, which makes it necessary to create at least two judicial levels of administrative jurisdiction, without the need of an emerging values one model to another.

Currently, sixteen countries of the European Union[35] have separate administrative court. While in eleven other countries[36] operate subsidiaries specialized in administrative law, within the regular courts, usually in the context of the Supreme Court.

Great importance given to administrative justice within the European Union, has led to various debates to talk about what is already called the "Europeanization" of the administrative judiciary. 'Europeanization' has meaning within the EU standards in this field. [37]

Kosovo has chosen to meet the Anglo-Saxon system of administrative justice where administrative disputes resolved within the regular courts. Until 1 January 2013 judged competent administrative matters has been the Supreme Court, or special rooms for administrative disputes, which operated nearby. [38]

After the reforms and entry into force of the new law courts, administrative matters are within the exclusive competence of the Court in Pristina.[39] If this solution is good or not, this issue will treat in a particular part in this work.

[33] Personal interview with Prof. Dr. Sokol Sadushi. Dated April 17, 2015.

[34] From interviews with Professor Sadushi.

[35] Germany, Austria, Belgium, Finland, France, Greece, Italy, Latvia, Luxembourg, Netherlands, Poland, Portugal, Czech Republic, Sweden, Romania and Bulgaria.

[36] Cyprus, Estonia, Denmark, Ireland, Lithuania, Hungary, Malta, Spain, Slovenia, Slovakia and the United Kingdom.

[37] Esat Stavileci, "administrative judiciary, opportunities and priorities", presented at Press Conference organized by the University scientific "Marin Barleti" in Tirana with 04.02. 2011.

[38] Article 31.5 Law on Regular Courts, Official Gazette of SFRY, no. 21, April 28, 1978.

[39] Article 11.3 Law No.03 / L-199 on Courts, July 22, 2010.

The Functioning of the Administrative Judiciary in Kosovo

Since the end of the war the Republic of Kosovo has been the target of criticism from both local and international stakeholders. Numerous international reports [40] have revealed major deficiencies in functioning, ascertaining major violations of human rights and freedoms in many judicial proceedings.

The judicial protection of the rights of citizens guaranteed by the Constitution of the Republic of Kosovo [41], the Law on Courts [42], and the European Convention for the Protection of Fundamental Human Rights and Freedoms with its Protocols being directly applied in Republic of Kosovo [43], continues to be accompanied by the numerous challenges. Despite the efforts, many promises and declarations of progress in this field, great difficulties in realizing of this right has been faced, due to poor conditions in the judicial system in the country.[44]

Lack of functioning of the judiciary in the whole country, dragging civil and criminal proceedings in the processing of cases; large number of pending cases from previous years; low rate of execution of court decisions; prescription of court cases by the courts, corrupt elements in the courts; non-implementation of the European Convention on Human Rights, and not the interpretation of the decisions of the European Court of Human Rights in court decisions, are some of the forms of violation of the right to fair trial and within a reasonable time[45] frame and which consequently lead to the collapse of confidence in the justice system rule of law in Kosovo. [46]

Since January of this year entered into power in general law for courts,[47] which is realized through the reform of the judicial system in Kosovo. How these reforms will prove successful remains to be seen because it is still early to judge since there are

[40] European Commission, "Communication from the Commission to the Feasibility Study for a Stabilization and Association Agreement between the European Union and Kosovo", Brussels, 10.10.2012. http://www.meiks.net/repository/docs/Dokumenti_punues_i_Komisionit _Evropian_mbi_SF_per_MSA_mes_BE-se_dhe_Kosoves.pdf.

[41] The Constitution of the Republic of Kosovo,, Article 54 “Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated”.

[42] Law on Courts, no. 03L-199, Article 7, paragraph 3 (Official Gazette of the Republic of Kosovo / Pristina: Since V / no. 79/24 August 2010):’ Every person has the right to address the courts to protect and enforce his or her legal rights. Every person has the right to pursue legal remedies against judicial and administrative decisions that infringe on his or her rights or interests, in the manner provided by Law”.

[43] The Constitutional of Republic of Kosovo, Article 22, Paragraph 2, European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.

[44] Ombudsman of the Republic of Kosovo, Annual Report, 2011, p 98-105. http://www.ombudspersonkosovo.org/repository/docs/91976_RAPORTI%202011%20shqip.pdf. accessed by 20.01.2015.

[45] This shows the work report of the Constitutional Court in 2011, where 30 cases or 18:29% of cases in court are presented because it violated the right to a fair trial and impartial http://www.gjk-ks.org/repository/docs/Raporti%20Vjetor%202011%20Versioni%20Final.pdf.

[46] Ibidem, p 98.

[47] Law on Courts, no. 03L-199, Article7, paragraph 3(Official Gazette of the Republic of Kosovo / Pristina: Since V / no. 79/24 August 2010).

few months that this new law has started functioning in judicial system. However, in this paper will be analyzed this aspect, namely the impact of reforms in the judiciary, always bearing in mind the short time since the law took effect. In this paper, we will discuss all the changes that have occurred in the structure of the judiciary, regarding administrative issues and their judgment.

The trial of administrative cases before 1 January of this year has been the competence of the Supreme Court, namely its special room for this issue, which really was not specialized to adjudicate administrative matters. There were only two Supreme Court judge, assisted by two legal officer, dealing with all administrative cases in Kosovo. Knowing the role and volume works that the Supreme Court has it can be said that the judgment of administrative issues has not made a priority for judges as they were loaded with many subjects and all the court has only 13 judges, and only one of them dealt with administrative issues.

Under the law in effect at that time, it was possible to submit the request for extraordinary review of Supreme Court decisions in administrative cases. Claims can only be based on violations of the law and decided by a panel of five judges. If the appeal is decided by the same court which issued the initial decision (even if with a different college) raises questions whether the complaint is effective and impartial.[48]

In its report on the functioning of the administrative judiciary in Kosovo in 2007, the Organization for Security and Cooperation in Europe (OSCE), highlighting many shortcomings, mistakes and violations made by the Supreme Court at the time. Many violation of the principle of publicity, insufficient reasoning of court decisions and lack of hearing were observed. [49] "In terms of ECTHR case law and since the Supreme Court is the only court that reviews administrative decisions, OSCE believes that the LAD should be changed so that it is required by the Supreme Court to hold hearings when assessing the facts", adds the report.

The Supreme Court in its last year, with authority to adjudicate administrative matters, has had enough cases judged by administrative area. In the period January 2012 - November 2012, this court has decided to 1,131 cases,[50] while in the same period in 1419[51] received new subjects. The main problem is the large number of cases carried over from previous years, and in 2012 transferred 1,384[52] subjects is a huge number and it is difficult to compensate for time lost for trial within a reasonable time. While

[48] Organization for Security and Cooperation in Europe (OSCE) -Mission in Kosovo, "the first report on the fair's system administrative sis in Kosovo", April 2007.

[49] Ibidem.

[50] Supreme Court of the Republic of Kosovo, Report of Activities for 2012, p.7. http://www.gjykatasupreme-ks.org/repository/docs/RAPORTI_I_PUNES_SE_GJS_-_2012_735557.pdf. Accessed on 12.24.2014.

[51] Ibidem, p.7.

[52] Ibidem, p.7.

all pending cases but are referred to the Supreme Court choice administrative area, will be transferred to the Basic Court in Pristina, the Department for Administrative Affairs.

Legislation

Legislation in administrative field has a special place in all corpus of laws and other legal acts of a country. Through legislation the citizens right is realized, and from the issuance of an administrative act their interest are fulfilled and they use their legal rights, after that the public authorities issue administrative acts on a wide spectrum of fields which can be harmful for individuals rights and freedoms.

The constitution of the Republic of Kosova guarantees and protects the rights of citizens from any kind of arbitrariness from administrative bodies that could be manifested through issuing a certain administrative act. Consequently in article 54 the Constitution guarantees that: "Everybody has the right of judicial protection in case of violation or denial of any right guaranteed by the Constitution, or by law, also the right in effective legal remedies, if this right is violated."[53]

The constitutional framework, for temporary self-government Institutions[54] provided two principal mechanisms in the process of control legality of administrative decrees. 1. Administrative review and 2. Judicial review which could be done only after all the administrative control phases are exhausted. These two mechanisms still exist and are provided by Administrative procedure law and by Law on Administrative Disputes.

The constitution provides those that in legal doctrine are known as "general guarantees", that to be useful have to be concretized by concrete laws in relevant fields, in this case, in administrative field. The right for judicial review of an administrative act is guaranteed in a very concrete way by Law on Courts, wherein article 7 reads: "Every person has the right to address the court, to seek protection and enforcement of his legal rights. Every person has the right to use legal remedies against any court decision, or administrative decision which prejudices his rights and interests provided by law.[55]

Administrative Procedure Law

In the field of administrative decisions (judicial review), the Republic of Kosovo has two important laws that regulate this field, Administrative procedure law[56] and Law on

[53] The Constitution of the Republic of Kosovo, June 15, 2008.

[54] Regulation of Unmik No. 2001/9, on May 15, 2001, on the Constitutional Framework for Provisional Self-Government in Kosovo, as amended by Regulation UNIMK Regulation No.2002 / 9.03 in May 2002.

[55] Law on Courts, no. 03L-199, Article7, paragraph 3(Official Gazette of the Republic of Kosovo / Pristina: Since V / no. 79/24 August 2010).

[56] Law Nr. 02 / L-28 on Administrative Procedure, July 22, 2005.

administrative disputes.[57] Administrative procedure law regulates the administrative review of decisions. Under this law, every individual or juridical person who considers that is touched in a harmful way by an individual administrative act or collective act, can submit an application for administrative review before the body which issued it.

The administrative body that reviews the application or administrative complaint, can decide for:

- Leaving in force the act, or overthrow the appeal
- Revocation the act or accept the appeal
- To change the administrative act while accepting partially the appeal.
- The administrative body it is obligated and competent to issue the administrative act when is refused unfairly to be issued.[58]

Administrative procedure law it is a very important law in Republic of Kosovo's legal system. This law is a modern instrument which includes the main principles that regulate this field. Although practice has shown that this law has some lacks.

The first lack and the most important of this law is that instead of full replacement of the previous applicable administrative procedure Law of Federative Socialist Republic of Yugoslavia, it provides that "It replaces all the provisions of the applicable law which are incompatible."[59]

Since these two laws have a same field of action, the objective and application of new law is the development of a whole new administrative procedure, logically, the new law should replace completely the previous one. While not noted, that the new law abrogates the old one, it creates confusion, this because both instruments are in force and for every administrative issue, administrative authorities or court have to determine which provisions of the old law are valid. Changing this law and replacing completely the old one was also a recommendation of Organization for Security and cooperation in Europe.[60]

One of the main weakness of administrative procedure law that was mentioned in OSBE report, it is also the legal remedies issue. Law provides two forms of administrative appeals: the review (should be addressed to the body that issued it) and the appeal (addressed to the higher bodies).[61]OSBE emphasizes that: However, the law failed

[57] Law Nr. 03 / L-202 for administrative disputes, September 16, 2010.

[58] Law Nr. 02 / L-28 on Administrative Procedure, July 22, 2005.

[59] Ibidem, Article 142.

[60] Organization for Security and Cooperation in Europe (OSCE) -Mission in Kosovo, "the first report on the fair's system administrative sis in Kosovo", April 2007.

[61] Article 142, Law Nr. 02 / L-28 on Administrative Procedure, July 22, 2005.

to explain if the demand for review and if administrative appeal, are alternative or collective legal remedies.[62]

For more, law doesn't explain well the exhaustion of administrative remedies before the judicial review is required. Law provides that the interested parties may address the court only after they have exhausted administrative remedies of appeal.[63] In this sense OSBE emphasizes that: "since the law uses the "administrative appeal" expression, like for the review demand as for the appeal before the higher body, this provision may be interpreted like an obligation to be exhausted the both of administrative remedies, before the delivery of judicial appeal. But, the lack of clarity in other provisions, may lead to another conclusion.

Law on Administrative Disputes

Regarding judicial review of administrative decisions, law on administrative disputes 2010, regulates this procedure very well. The objective of this law is to ensure the judicial protection for individuals or legal person's rights and interest, and other parties, which rights and interests are violated by individual decisions or by actions of public administrative bodies. The law determines that the administrative dispute begins with the indictment before the competent court and through this indictment can be required the invalidation or the annulment of litigation act, issuance of the administrative act which hasn't been issued on time, to return the taken items and to compensate the damage caused by execution of the litigation administrative act.[64] Also law determines that the interested party may demand to review a final decision, when:

- Party understands new facts, finds, or creates opportunities to use new evidence, on the basis of which the dispute would be resolved in a more favorable way for the party, if these facts or evidences would be used in previous procedure.
- The court decision has come as a result of a judge offense, or any worker in court, or if the decision was issued by any fraudulent act of a party representative, his opponents, or opponents of representative, and this act is an offense.
- The decision was based on a judgment issued on criminal matters or civil matters, and this judgment is annulled later with a final decision.
- The document wherein the falsified decision was based, or if the witness, expert, or party during the hearing before the court has given a false statement, and the courts decision was based on it.

[62] Organization for Security and Cooperation in Europe (OSCE) -Mission in Kosovo, "the first report on the fair's system administrative sis in Kosovo", April 2007.

[63] Ibidem, Article 127.4.

[64] Article 26, Law Nr. 03 / L-202 for administrative disputes, September 16, 2010.

- Party finds or creates opportunities to use the previous decision that has been issued in the same administrative dispute.
- the interested person, didn't have the chance to take place in the administrative dispute.[65]

In general, judicial control of administrative decisions from regular courts, is well regulated by law. Lets see how will this work in practice after all the reforms made in court.

Reforms in judiciary [66]

Kosovo should orientate all of the energy to construct a necessary independence for the judiciary, because if the judiciary works in the right way then it affects the other segments of society and the state itself.[67]

Courts law entered into implementation since January 1st of 2013 and has changed completely the structure of the courts, instead of the municipal courts that were all over the country now we are going to have the Basic Courts which are not going to be all over the country but just in 7 main centers and in other municipalities their branches will be divided according to the regions.[68] Meanwhile instead of the district court it will be the Court of Appeals with Pristina as its center.[69]As for the Supreme Court it's the same as it has been, but it has a change because now they won't be dealing with administrative conflict issue because with this competence the new law will pass it to Basic Court in Pristina.[70]

But unavoidable is the question that if these new laws are functional and practical? There are at least two issues that I think that they are not well solved with this law. First the foundation of only one court which is the Basic Court as a replacement for seven District Courts that have existed before, I don't think that this is a practical solution. Because basing on this it means that all the citizens from all over Kosovo for their first instance complaints they have to come to Pristina and this will make the Court of Appeals very charged and now despite they have to consider the complaints to first instance decisions for many issues it also serves as a court of first instance.

[65] Article 55, Law Nr. 03 / L-202 for administrative disputes, September 16, 2010.

[66] The reform theory of the law defines as evolutionary change that occurs in the state and in the right.

[67] High Representative in Bosnia and Herzegovina, Ambassador Paddy Ashdown, noted that "In Bosnia, we thought that democracy is the highest priority and we measured it by the number of elections we organized. Later we understood that we had to enforce rule of law a priority, because everything else depends on it; functioning of the economy, political system fair and free, the development of civil society and public confidence in the police and the courts. " http://www.judicialmonitor.org/archive_0207/inrevieë.html (visited recently on 20 March 2013).

[68] Law on Courts, no. 03L-199, Article 9 and 10.

[69] Ibidem, Article 17.

[70] Ibidem, Article 17.

The second important issue is the solution that the law has made judging the economical and administrative subjects. The law says: "The department for economical issues and the department for the administrative issues operates in the Basic Court in Pristina, for all the territory of Kosovo."[71] So it means that economical and administrative issues will be only in Pristina and again the citizens from all over the Kosovo should come only in Pristina to address their problems, they have to spend a lot of money in traveling and they are gonna charge more a very charged court in Pristina.[72] Maybe the best in all of this is the fact that there will be a second instance for administrative conflict issue since until now we have had only the first instance and the last one. Now, dissatisfied parties with the decision that the Basic Court has made in Pristina can send their issue in the Court of Appeals.

The judgment of the administrative issues

Kosovo it's in an very important phase of the public administration reform, with the aim to create an administration that works based on european parameters and which is capable to offer efficient services for everyone and services that are based in the law and which don't break it. Assurances that administrative acts that come from public administrate are in consonance with the law are made with the process of their judicial control. Reform of the judiciary which we talked about above despite the other changes has brought new changes to judging the administrative issues too. In this stream the judgment of the administrative conflict issues now is an exclusive competence of the Basic Court in Pristina.[73]

This court is the only one in Kosovo that will have the department fort administrative issues. In this department, the law provides the administrative issues are judged from a professional judge. If the party is not contented with the decision that the Basic Court has made then the party can go to the Court of Appeals which has the competence to see all of the complains exercised against the decisions of the Basic Court.[74] In the Court of Appeals the issues are judged from three professional judges.[75]

Academic Esat Stavileci warns for this form of organization: "Every reorganization has their costs and won't be without them.We do not want this to serve as an experiment but as a model to advance the judicial control in the Republic of Kosovo. The judicial

[71] Law on Courts, no. 03L-199, Article 12.

[72] Head of Kosovo Judicial Council, Mr. Enver Peci in personal interview, conducted for this study, agrees that the solution that only in Pristina judged administrative matters was not the best choice. The same thoughts he has for the creation of a single court of appeal in Pristina which will be common to the whole of Kosovo. April 4, 2015.

[73] Law on Courts, no. 03L-199, Article 11.

[74] Ibidem, Article 18.

[75] Ibidem, Article 18.

control in general asks for new theoretic approach, a model of the transformation of legislation and specifically from countries with new tradition of judicial development".[76]

The department for administrative issues in the Basic Court in Pristina contains three judges that judge the administrative conflict issues. The work in this department started on March 28.[77]From January 1st when the reform has started in this department were accepted the subjects from the Supreme Court, and this procedure lasted until March 25.During this time there were accepted 1800 cases. Until now this department didn't issue any judgment[78]. Non issued judgment until now can't be justified, even if this lateness is justified by the basic court judges because of its relation with the reform process. They say that the transfer of the cases from Supreme Court has created difficulties.

Two judges working in the Department for administrative issues, in the same office, this creates difficulties in their work, they complain about an inadequate working environment. The biggest problem in this department is the small number of judges, three judges this far; it is a very small number considering the large number of cases that has been transferred from the Supreme Court. The selection of new judges remains a problem, because of the difficult conditions and also because of the lack of staff since there is no specialized candidate for administrative issues.[79]

Administrative Court- pros and cons

The establishment of Administrative Courts has been supported by a large number of UE countries, also some countries in the region, established administrative courts as specialized institutions to judge administrative issues. In the process there were different debates about the advantages and disadvantages of their establishment, there were dilemma and lots of arguments and this issue was addressed in institutional and academic levels.

A general acceptable conclusion would be out of reality, but maybe for one thing that basically all agree is the fact that the establishment or the failure to establish Administrative courts it depends on social context and general progress of each country. Maybe this determines all the contradictions.

The Adjudication of administrative cases by a specialized court provides that issues that are specific in jurisdiction, are judged by specialized judges in this field. This may help the judges to earn experience in a specific field, in this case in administrative

[76] Personal interview with Academic Esat Stavileci. Dated 10 May 2015.

[77] Personal interview with Mr. Krenar Berisha, a judge in the Basic Court in Pristina-department for administrative matters, dated April 2, 2015.

[78] Ibidem.

[79] Personal interview with Mr. Enver Peci, Chairman of the Judicial Council of the Republic of Kosovo, April 4, 2015.

field, this would be so helpful to increase professionalism and efficiency in judgment of administrative cases. The authority of specialized judges may be acceptable from parties, advocates, especially if they themselves are specialized or with experience in relevant field. [80]Specialized judges would be helpful in interpreting and implementation of laws in a specific field.

Administrative judiciary realized by specialized courts has also a creation role, in the development of the Administrative Law, because in many countries that have a developed administrative judiciary, the court control is focused if the decision that was issued was fair. In other countries the concentration of the administrative courts control is done by the truth evidence and in its finding.[81]

Meanwhile in theoretical detailed review we can talk about the advantages or the disadvantages on creation of the new administrative courts. We know that the creation of the administrative courts asks for professional staff in a specific field of judging different cases and the creation of them can be submitted as a problem. Afterwards the fact that we are only going to have one court for administrative cases it means that the citizens from different countries have to come in one institution,and this can submit a problem because as a result of this can bring the lack of readiness from the citizens to react to the violation of their subjective rights.

The administrative court divides the judiciary in two autonomous systems and as a result of this it will weaken the position of the judiciary inside the control system and the balance of the powers.

The foundation of the administrative courts for small fields of the jurisdiction, the neutrality of the courts can be compromised from the development of the close relationships and the personal knowing of the specialized judges and specialized lawyers who normally cover these courts.[82]

European and regional experiences in the judgment of administrative cases

In European Union countries there are two administrative judicial systems. In some places the judicial control of the administrative cases is done in regular courts. Some places that have given the administrative jurisdiction totally to judicial system with three degrees are Denmark, Norway and Slovakia.

[80] Ina Puravelli and Julejda Gerxhi, "The necessity of creating administrative court's based on the current state of the resolution not to take administrative clothing," Albanian Journal of Legal Studies, Volume 2, 2011.

[81] Esat Stavileci, "administrative judiciary, opportunities and priorities", presented at Scientific Conference organized by the University "Marin Barleti" in Tirana with 04.02.2011.

[82] Ina Puravelli and Julejda Gerxhi, "The necessity of creating administrative court's based on the current state of the resolution not to take administrative clothing," Albanian Journal of Legal Studies, Volume 2, 2011.

Autonomous system of the administrative courts exists in Austria, Finland, Sweden and Lithuania, Estonia, Slovenia,Croatia. In Austria the autonomous administrative jurisdiction currently is done by "Verealtungsgerichtshof" (The Supreme Administrative Court) as the first and the last degree of the judiciary.[83]Lithuania as a new country and as e member of BE has a an autonomous administrative judicial system with two degrees, 5 regional administrative courts with 45 judges that usually judge a party with three or 5 judges. [84]In Letonia the autonomous administrative courts judge in the first and the second degree, meanwhile the Supreme Courts of the judiciary system worked as the last degree in administrative cases.

Slovenia has an administrative judicial system that contains two degrees. The administrative court that has the status of a Supreme Court reviews the administrative cases in the first degree. Importantly to mention is the administrative adjudication system of Croatia and Macedonia who are near us with the territory and we have almost the same number of the people.

The foundation of the administrative court in Kosovo

The actual way of solving the administrative cases from the regular courts of Kosovo, makes it to be a part of the Anglo-Saxon system where there doesn't exist special courts for administrative cases.

Most of the places of the region have made these courts as a need time and the processes that they are going through. The state of rights, first has to protect the Human Rights and this protection can be realized in the best way if they make legal decision that affects the individual interests. Therefore, in this aspect Kosovo should think about founding new specialized court just for the administrative cases.[85]

Should be said that in legislation view Kosovo is near the BE and has been through challenges that no other country has been through and this can be a benefit for Kosovo to fulfill the standards of BE and to create a new administrative court.

The reform that has happen in the new law for the courts it seems that has left in the shadow the issues of the administrative justice. The changes in the law for administrative procedure should have been a priority in this aspect.

Academic Esat Stavileci analyzing the advantages of the creation of a administrative court, highlights three main aspects:

[83] The Court has an average load of 7,000 cases each year, which are judged by 61 judges.

[84] Rovena preg, "Should we have a specialized administrative court in Albania?" Magazine, Number XLIII, 2008, "Parliamentary Law and legal policies".

[85] Chairperson of the Judicial Council. Mr. Enver Peci, in a personal interview stated favor of the creation of the Administrative Court.

First, trying to construct a state of rights, a special importance has the administrative court because it can affect on the protection of the rights and the interests of the citizens.

Second, trying to make a general judicial protection, the administrative judiciary can be seen to have a strong impact on the protection and security of legality objective which from the past and until now it's being broken.

Third, the administrative courts can be seen as a strong impact on the reviewing of security that in the same organs should be seen the compliance of administrative acts with the law or with a judicial norm.[86]

Recent development on public administrative field, we can say that Kosovo needed to create a specialized court only for administrative cases.In this stream the reforms in public administrate should be going among the intention to control the legality of the activity of administration, the control which can be done in the best way by a specialized court.

Pro creation of a new court for administrative cases is Professor Sokol Sadushi too who thinks that the autonomous administrative judicial system from the administrative specialized courts fits perfectly for Albania and Kosovo. In this direction he mentions these arguments:

- because of the specializations of the judges for administrative cases
- the increase of the speed of trial procedures
- the liability of administrative organs to be responsible in front of the court and the people for the reason of the burden of proof that goes to them
- the increase of the role of the administrative judge compared to the regular judge
- Efficient execution of the judicial decision etc..[87]

For the academic Esat Stavileci having no administrative court same as Albania, in Kosovo too, leaves these two countries out of the streams of the transformation of the judiciary which is happening in the BE countries.[88]

The judicial control of administrative activities asks for reasonable decisions in time based on the legal provisions which don't bring doubts but just increase the confidence of the citizens. The judicial control of administrative acts in Kosovo until now hasn't been a priority of politic makers in judiciary system, and the judicial acts taken by

[86] Esat Stavileci, "administrative judiciary, opportunities and priorities", presented at Scientific Conference organized by the University "Marin Barleti" in Tirana with 04.02.2011.

[87] Personal interview with Prof.Dr.Sokol Sadushi, Dated April 17, 2015.

[88] Personal interview with Academic Esat Stavileci. Dated 10 May 2015.

the Supreme Court are criticized from the international mechanism for inadequate reasoning and other procedural violations.[89]

Conclusions

The foundation of a efficient and professional judiciary on administrative cases it's not an easy job, because Kosovo has been through a lot of difficulties in the past it was necessary to build a judicial strong base for a normal function,and this should be the base to work and to advance ourselves more in this aspect. From all the reviews in this paper, the conclusions can be summarized in some main aspects:

First, the process of the judicial reform based on the new law for the courts has brought an improvement in the work and the function of the judiciary. Also there were delays at the beginning. The work on reviewing the cases should have started earlier.The fact that the department for the administrative cases of the Basic Court in Pristina since January couldn't decide for even one case.

Second, the laws that correct the administrative field in Kosovo contain a strong base for the function of the judicial control of the administrative work. In this direction it's necessary to make some changed and especially on administrative procedure because the actual situation in this law allows the implementation of the law on Administrative Procedure of Federative Socialist Republic of Yugoslavia saying that: "Replaces all the provisions of the applicative law that is on compliance with ". Since these two laws have the same function and the purpose of the new law is the development of an administrative procedure totally new, logically the new law should replace the RSFJ law. Not mentioning that it supersedes the old law.The new law gives confusion because two instruments that is still operative for every administrative case, the administrative authorities or the court that handles an administrative case should define that which provisions of the old law are still useful.

Third, Republic of Kosovo needs to create a new Administrative Court, basing on the actual condition on solving the administrative cases. The department for administrative cases near to Basic Court in Pristina with a low number of judges and the low capacity that it has can't handle the big number of cases that are going to there, and when we add to this big number the cases from the Supreme court too, it's really hard to think on the operation and the optimal solutions, in the time aspect, of the cases.

Fourth, the number of the judges on the department for the administrative cases should be bigger. Having only three judges that are now it's not enough to handle all

[89] Organization for Security and Cooperation in Europe (OSCE) -Mission in Kosovo, "the first report on the fair's system administrative sis in Kosovo", April 2007.

the cases that come from the Supreme Court and not to think about the cases that are going to come.

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