The Albanian Administrative Court System and its importance in resolving administrative disputes

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Abstract

The purpose of this paper is to analyze importance of the Albanian Law 49/2012 on the Administrative Court System, increasing the efficiency of resolving disputes of an administrative nature. The activity carried out by the Administrative Courts constitutes an extremely valuable activity in the judicial system by providing justice in various administrative disputes that require a quick and efficient solution. The methodology that will mainly be used in this paper is the qualitative one, bringing to attention some court decisions and theorical debates on the innovation of the Administrative Court System in Albania. The hypothesis and research question will show us the novelties brought about by the creation of this Courts as well as the actuality of its activity nowadays.

The paper will also focus on the obstacles, difficulties, shortcomings as well as criticism during the beginnings of the activity of the Administrative Courts, by taking into consideration their performance ,efficiency ,pros and cons since its creation.

Key words: *Administrative Courts (AC), Administrative Court of Appeal (AAC), Albanian Law nr. 49/2012, administrative law, administrative procedure code, administrative disputes.*

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Introduction

The Albanian Administrative Court System constitutes a complete innovation and reconfiguration of the traditional Judiciary system. For today's generation in the Republic of Albania, the Administrative Courts were a new concept and perhaps for many people its established would not be a surprise or it would seem excessive or even unnecessary, but the importance that these Courts hold in relation to gives special attention to the handling of disputes of an administrative nature. Nowadays the interaction between public and private actors is very great because of the free market and private initiatives. All this initiative of the individual who creates or opens a private profit-making company, for every day and for all the time is in constant and uninterrupted interaction with the State administration.

The creation and operation of the Administrative Court System in itself would bring an innovation. It would create opportunities for cases to be judged more quickly in time, as well as the judiciary itself would be professionalized over time by developing professional judicial investigations, as well as creating consolidated practices. A more efficient and fast justice would be developed, without hindering the progress of the state's activity but on the contrary by correcting it and giving the most fair and fast solutions.

The purpose of the study is to highlight the concrete innovations brought about by the creation of the Administrative Courts, their importance, their determining role, the administration of justice with a high efficiency, the protection that they carry out for the actors that face the administration, as well as some of the main difficulties that the Administrative Court System faces.

Historical evolution of the Administrative Court System in Albania

The administration constitutes the exercise of the executive power of the government. Administrative law was recognized early in Albania during the government of the national hero Gjergj Kastriot Skënderbeu, where they created administrative structures that performed functions of administrative regulation, then we also see in the time after the declaration of independence, where there was a development in the political direction, economic, educational, the government led by Ismail Qemali in 1913, established the "Appropriate Canon of the Civil Administration of Albania", even at the time of Fan Noli. From the point of view of the protection and respect of administrative law, a special Commission was created to monitor the state administration in 1924 Ministry of Internal Affairs (Çani, E. 2012).

On time Albania was rule by Ahmet Zog, there was a legislative development. In the years 1925-1928, the contemporary model of the division of powers into three was established for the first time: the Legislative Power, the Executive Power and the Judicial Power. In 1928, the law "On Civil Administration" was adopted. In 1929 was the first year when the law related to administrative law regarding the "Organization of Justice" was approved (i*bidem*)".

Administrative law during the communist regime

The period of 1944 - 1990 remains a dark period because basic human rights and freedoms were violated and a dictatorial state was installed. The Republic of Albania apparently had a legal framework that apparently stated that the Courts were independent in the exercise of their functions. In the Constitutional Assembly[2] it is stated that citizens have the right to complain, but another conclusion is drawn by the Constitutional Court decision (04/1994)[3]. During the communist regime the interactivity of individuals with the state administration was not at very high levels because the economic-financial system itself at that time was of a different type.

Administrative law after the 1990s

A new administrative-territorial division was established and the organization of local government was recomposed from the beginning. The Code of Administrative Procedures[4] weas adopted in order to define the activity of the administration bodies as the set of acts and actions through which the will of public administration is formed and manifested.

The adoption of the Code of Civil Procedure[5] defined the rules for judicial review of administrative disputes, there were only 10 provisions (Article 324 to Article 333) that dealt with administrative disputes mainly: *Subject Competences, Territorial Competencies, Term, Suspension of the implementation of the administrative act, Consolidation of lawsuits, Court Decision, Appeal.*

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[2] "Citizens have the right to complain against all illegal or irregular decisions given by state administration bodies, as well as when subordinates act badly (...)".

[3] Decision of the Constitutional Court no. 04/1994 "(…) the result of the injustices committed by the totalitarian communist state for about 50 years in a row against private owners. The latter have been stripped of their legal properties with completely arbitrary actions without any legal basis, and through nationalizations, expropriations, confiscations and other measures, based on laws, by-laws and court decisions, that contradicted the spirit of justice and human dignity, with the inalienable universal rights universally accepted in the western democratic world (…)".

[4] Law no. 8485 dated 12.5.1999 *"Code of Administrative Procedures"*

[5] Civil Procedure Code 1996 (*as amended*)

In May 2012, the *Law for the organization and operation of administrative courts*[6] was approved, for the first time in Albania specialized administrative courts were established, the approval of this law also marks the beginning of guaranteeing the effective protection of the rights of subjects, individuals, natural and legal persons and their legitimate interests through a regular, effective, independent judicial process.

The provisions that determined the handling of administrative disputes could not guarantee an efficient and quick solution. The limited number of provisions (only 10 provisions) did not deal with the issues in a concrete and coherent manner with the times. It was evident that there was a legal vacuum and a real impossibility to increase the efficiency of these types of judgments, while the time had come, after many consultations, a completely new law was needed to include, if possible, the entire field of disputes of an administrative nature.

Novelties brought by Law 49/2012

Law 49/2012 clearly defines its field of activity, subject and territorial competences, avoiding any confusion that may arise during the examination of cases, it also defines disputes for which the Administrative Courts (AC) are not competent, such as disputes related to legal provisions referring to the Constitution are under the jurisdiction of the Constitutional Court; or any other court. Below we will list the innovations brought by this law and the power it gave to the AC to resolve disputes of an administrative nature.

Exhaustion of internal appeal (Article 16)

The legislator, through this provision, has established a criterion for the parties to once again open the internal avenues of appeal, then they can go to the Court, giving an additional opportunity to the administrative body to correct its actions, which may have been the result of mistakes, human, technical or impossibilities of a different nature and which may be objective. Since a higher body (Dobjani, E. 2016: 11) within the same structure is legitimized to correct the error of the subordinate structure, then the case gets a quick solution and it is no longer necessary to become the subject of a trial, thereby reducing an artificial burden on the court. Also, this provision creates an opportunity for the administrative body itself to have the opportunity to reflect and react by correcting the actions of its subordinate body.

[6] Law no. 49/2012 "*On the organization and operation of administrative courts and adjudication of administrative disputes*" published in the Official Journal No. 53 dated 16.05.2012.

Broad powers (Article 7)
The law has given a wide range of powers to AC to widely handle conflicts and disputes that arise from individual administrative acts, normative by-laws and public administrative contracts, issued during the exercise of administrative activity by the public body, disputes that arise due to the intervention of illegal or inaction of the public body; disputes of competences between different administrative bodies in the cases provided for by the Code of Administrative Procedures; disputes in the field of labor relations, when the employer is a public administration body; requests submitted by administrative bodies for the review of administrative offenses, for which the law provides for deprivation of liberty for up to 30 days, as a type of administrative punishment for the offender; requests submitted by offenders to replace the administrative penalty with deprivation of liberty for up to 30 days with the penalty of a fine.

Designation of the Object of the Lawsuit (Article 17)
In the law no. 49/2012, the legislator has given an active role to the Court, but always respecting the essence of the prerogatives that the party enjoys. The law allows the Court of Appeals to "*make an accurate determination of the facts and actions related to the dispute, without being bound by the determination that the parties may propose*" in this way, based also on other provisions. The Court of Appeal is not passive but is involved in discussions between the parties without being limited by their determinations. The AC can carry out an accurate definition of the facts and actions related to the dispute with the sole purpose and aim of defining the facts and actions. In this way, the law has given a more active role to the Court of Justice compared to the Civil Courts, which are more limited in involving disputes between the parties and have a more passive role between the parties.

Communication of the parties (Article 22)
Another facility that this law presents is the means or way in which the Court will communicate with the parties, giving you the opportunity to communicate electronically as a contemporary and legal facility at the same time. All these facilities contribute to the development of a fast judicial process where the parties will be able to be notified immediately of the date and time of the hearings and have the opportunity to receive answers to their claims in full compliance with the law.

The provision in question also brings a judicial economy, saving the state budget because there will be no postal costs, where for the court, due to the high number of cases, this cost occupies a special item in the annual expenses. The duration of receiving notification is shortened by litigants who live in different cities or for suburban areas where there is a difficulty in identifying postal addresses.

Preparatory actions (Article 25)
The law has allowed the Judge to be active even when he *"takes a decision to conduct the expertise when he considers that special knowledge is needed to solve the case*", so it is the Judge, who, on his own initiative, without asking the parties, decides on the conduct of expertise, and it is the Judge who *determines the field of expertise*, the relevant tasks that the expert must follow, and the deadline for conducting the expertise. In this way, the Judge has complete freedom from the appointment of the expert to the determination of his duties, allowing a very professional and impartial judicial investigation.

Non suspension of the Trial in case of parties' absence (Article 25/3; Article 34/2/6)
Another valuable innovation is the continuation of the trial session when the parties have not appeared even though they have been informed "*The parties' absence in preparatory actions does not constitute a reason for suspending the trial of the case, even when they have been summoned and notified regularly. Parties' absence in the session does not cause the postponement or dismissal of the trial*". This legal innovation would have a direct impact on the duration of court cases, where in many cases the procrastination of the trials had become an obstacle for the parties to initiate a lawsuit because the long ordeal of the sessions was too discouraging. In this way, it gave you a legal solution once and for all to avoid delays or postponement of court hearings due to the non-appearance of the parties in the hearing, where quite often the parties themselves became an obstacle to the continuation of the court hearings.

Completing the documents (Article 26/1/2)
By means of this legal provision, the Court places the parties before the responsibility to present the evidence as soon as possible (after notifying them when they have not brought it), in case of non-submission of the evidence, the law has sanctioned the continuation of the Trial stating that "*the examination of the case continues only on the documents presented*", and the failure to present the evidence before the first court session causes their non-acceptance (Article 27/3). The legislator obliges the judge of the session to notify the parties in advance of the consequences they will have if they do not present the evidence.

The other very important innovation that is noticed is that this provision gives the right to the AC to punish the heads of institutions *at the request of the party or even "ex officio",* who do not bring evidence in the judicial process even though the court has informed in advance that they must bring the evidence. By means of this provision, the law requires a responsibility on the part of the head of the institution that is a party to the litigation and has left it to the other party to initiate the request to the Court to impose a fine on the holder, in this way the law has empowered

the subject or the individual who requests a judicial review of the decision taken by the public body. All these mechanisms established by law 49/2012 will force the parties not to drag out the judicial process by not allowing the presentation of evidence/facts to be used or served by them to postpone court hearings - which has happened quite a few times this action by the litigants. Also, the presentation of evidence would help the judge from the beginning to create a preliminary opinion about the object of the dispute.

Burden of Proof (Article 35)
It is another innovation that this law has brought, reflecting the change in the approach of the legislator, who forced the party representing the Administrative Body to prove that its actions are based on legality. Through this provision, the Administrative Body must be responsible and aware of the actions it performs because it will have an obligation that every action it will perform with other parties (private entities, individuals, etc.) must verify the legality of its actions. The legislator accepts that the public body can also abuse the power it has, therefore it has allowed the AC that at its discretion: "*it can decide to transfer the burden of proof to the public body, when there are reasonable doubts, based on evidence in writing, proving that the public body hides or intentionally does not present important facts and evidence for the resolution of the dispute*". Now it is no longer the plaintiff who will have to bear the burden of proof to the AC, but the burden of proof already lies with the Administrative Body. The legislator has given this discretion in order to implement the law (Pakuscher, Ernst K. 1976: 108).

Non-"mechanical" court (Article 40/4)
This provision once again reinforces the active role of the Court of Justice by not allowing it to turn into a "mechanical" court (Sadushi, S. 2014: 170). The establishment of this provision allows the judge to reason with a sound and very dynamic logic if the non-compliance with a simple procedure really affects the essence of the dispute resolution or not. Because in not a few cases, the parties charged the judge of the session who "*misused his discretion, or violated the law*" because for the parties, non-compliance with a simple procedural action constituted a reason for the annulment/cancellation of the administrative act. In this provision, we see that the lawmaker has been clear and accurate by turning it into a law without leaving room for further discussion, that not always non-compliance with the procedure is a reason for annulment/cancellation of the administrative act.

Decision of the Administrative Court (Article 40/ç/dh/e)
Among other things, the decision of the AC in its enacting clause is allowed to express and ask the Administrative Body for "*forcing the public body to perform*

an administrative action, which has been refused, or for which the public body has remained silent, even though there was a request" ; or "*correcting the rights and obligations between the plaintiff and the public body*"; other action that charges the Public Body "*the obligation of the public body to perform or to stop performing another administrative action (...)*". We are familiar with terms which are mainly "*rejection, partial acceptance, leave in force, acceptance*", but we see that the law has tasked the AC to order the Administrative Body to perform the administrative action, so the Court also takes on an "administrative" role . According to doctrine (Pakuscher , Ernst K. 1976: 108), this action of the AC looks at first sight as if it has taken powers from the Executive and violates the general "*check and balance*" principle, in the interpretation we can see that the law aims to correct the action (Dokushi, A. 2021: 209) of the Public Body which has violated the law. It has the obligation to repair this violation of the law by carrying out the administrative action. Thus, the AC in accordance with the law, asks the Administrative Body to correct its actions that were in violation of the law.

Announcement of the Decision (Article 42/1; 55/1; 64/1)
In order to speed up the judicial process, the legislator has determined and forced the AC that on the date of the announcement of the decision, it must declare it justified, thus speeding up the cycle of closing the judicial process of the case. By means of this provision, the legislator has imposed an obligation on the judge of the session, who must declare the decision definitely justified, this action of the law-maker places the judge in a preparatory work position, but in the same way shortens the time to continue with the phase final execution. From the statistical data, there have been dozens of cases where the decisions of the Courts were not clarified for weeks and weeks.

Deadlines for Appeal Judgment (Articles 48/2, 60/2)
This provision obliges AC of Appeal that: "*The Administrative Court of Appeal examines the case within 30 days from the date of receipt of the appeal from the court where the appeal was filed*". As well as compels the Supreme Court to review the issues: "*The Supreme Court reviews the case within 90 days from the date of receipt of the appeal and related acts from the court where the appeal was filed*". This is a very important provision, since it guarantees a very efficient trial and in a very reasonable time giving final and definitive solutions.

Mandatory Execution (Article 66/2)
In this provision, the legislation has facilitated the creditor from the financial side: "*The fee for the execution of the court decision is not prepaid by the creditor...*", this is another innovation where the legislator has shown caution. In many cases the

creditors had to face additional costs in order to regain or re-enjoy their right, and in other cases financial barriers have made it impossible or delayed subcontracting with executors.

Pursuing the Execution of the Decision (Article 67; 68)
Law 49/2012 in its final provisions charges the AC to continue to be active until the end in terms of fulfilling the court decision (whatever type it may be). The legislator has given the right to the AC to order the executor against the Administrative Body, when the latter has not yet fulfilled the Court's Decision. If the Administrative Body hesitates to fulfill the obligation that the Court has assigned, the Judge can even proceed with *criminal prosecution.* This provision, as well as other provisions, places the head of the administrative body in a position to fulfill the tasks left by the AC as soon as possible by correcting his actions, not allowing the work of the administrative body to be delayed or blocked on the one hand and in the meantime to complete the process and the exhaustion of the provision of justice to the party that the AC has given the right to.

Shortcomings of the law 49/2012

It is important to analyze the shortcomings that this law showed since its establishment. In principle we must accept that this law really brought an innovation at the time it was approved and for the future as well, but there are still flaws and gaps that are being listed below.

Supplementing with additional provisions
The legislator in Article 14 of Law 49/2012 has allowed the AC to refer to the Civil Court as a legal basis, as it may be - the request for the dismissal of the judge, the counterclaim, etc. Nevertheless, the legislator at the time of drafting this law could add the relevant provisions by fully codifying the legislation for the AC, the dependence still on the CCP will occasionally create confusion or even misunderstandings regarding the legal basis, etc.

Insufficient number of judges in the Administrative Court of Appeal
The established of Administrative Court of Appeal[7] with 7 judges to adjudicate appeals would result in a super-burden for the Administrative Court of Appeal and a poor result in terms of quick, efficient and effective resolution. The legislator should have taken into consideration the high number of administrative disputes that were also under consideration by the Civil Courts, this would help to calculate

[7] Presidential Decree No. 7818, dated 16.11.2012, point 8 of article 4, published in the Official Journal No. 146 dated 16.11.2012 p. 8089.

the minimum required body that would have to resolve the disputes. The legislator had the possibilities to perform these calculations, but we see that it has not been deeply analyzed and not all the necessary resources have been used to calculate the load that AAC would have.

Review in the Counseling Room

The Law has given the right to the Administrative Court of Appeal to resolve cases in the consultation room without the presence of the parties, creating a similarity with the actions carried out in the Supreme Court (counseling room). Would it make sense for the AAC to judge the dispute as a Court of first instance while the parties are not present? This provision infringes the right to be heard, the right to conduct a transparent public session, where justice is not only heard but also seen[8], where the parties can submit new evidence , or to express their claims, as well as to see and verify the impartiality of the judging panel.

Not appealing certain decisions

The purpose of the legislator has been to speed up and resolve administrative disputes as soon as possible, but this should not mean the denial of an appeal for a Court decision. Not appealing a court decision avoids the verification and control of the legality of the AC either on the procedural side or on the substantive law side. The legal mechanism to verify the legality and validity of the decision in the law is the "*complaint*" mechanism, which if not allowed, then the legality of the decisions of the Supreme Court remains in the dark and completely impossible to verify, as well as the opportunity to repaired. This provision does not allow the Court's own control over the legality of decision-making, which raises questions about the reliability of the judicial system, the accountability of the judicial body, as well as allowing the discretion of the judicial body without any controlling limits, giving it a meaning not of unusual right to the term "*Legal Security*".

Transitional provisions

Failure to accurately predict the transitional provisions would create a gap and impasse for the Court because it would encounter difficulties in finding the legal basis for resolving disputes. That would result in an artificial increase in the number of cases that would be re-judged by the Supreme Court, which would bring incredible delays and in complete contrast to the purpose of creating this law.

[8] Paragraph 16 of the decision of the Constitutional Court no. 3/2015: "(…) it also includes the right to have a reasoned judicial decision. The function of a reasoned decision is to show the parties that they have been heard, and to give them the opportunity to challenge it. In addition, by giving a reasoned decision, public observation of the administration of justice can be realized (…)".

Unifying Decision of the High Court[9]

It is one of the decisions that completely changed the flow of cases after the issuance of the Presidential Decree[10] which announced the functioning of the Administrative Court on 04.11.2013. The High Court in this decision argues in a deep and exhaustive way, deciding that all the cases that were in the process of trial by the Civil Courts, would go for re-trial to the Administrative Courts. Joint Chambers of the Supreme Court (JCSC) based their decision on the jurisprudence of the Constitutional[11] Court, where the concept of a court appointed by law is explained exhaustively, which is considered as an element of the regular legal process and as such an integral part of Article 42/1 of the Constitution and Article 6/1 of the ECHR .

JCSC rightly argues that after 04.11.2013 disputes of an administrative nature, the law has designated only AC, and the same law has forbidden the Civil Court (of Appeal or even the Civil College of the Supreme Court) to examine these types disagreement.

The JCSC explains the meaning of material law and procedural law where law 49/2012 is not only an organic law but also a procedural law. In accordance with the jurisprudence of the Supreme Court of Justice, which has repeatedly expressed itself about the constitutionality of a process, emphasizing that, *in procedural law unlike in material law*, the new law also applies to matters that are under trial, with the exception of those that are regulated differently by providing transitional procedural provisions.

In the same decision, the Joint Chambers highlighted that it was precisely the legislator *who did not express* through the transitional provisions how he would act until the law 49/2012 came into force - "*the new law itself must have clearly defined in relation to what problems and until what time limit the old procedural law will continue to be applied and not the one that is in force*".

The lack of transitional provisions brought for the Albanian citizens a retrial for the claims or complaints they had submitted and which were being tried by the Civil Courts, burdening in this way a fundamental right that the individual has and which is protected by Article 6 of the ECHR where textually states: "*.every person has the right to have his case heard fairly, publicly and within a reasonable time by an independent and impartial court, established on the basis of the law*". This deficiency

[9] The Unifying Decision of the United Colleges of the Supreme Court no. 3/2013.

[10] Presidential Decree No.8349, dated 14.10.2013, published in the Official Journal no. 172 dated 29.10.2013 p. 7553.

[11] Decisions no. 106/2002, no. 23/2009, no. 7/2009, 11/2009 and no. 31/2005 and no. 16/2012 of the Constitutional Court.

of the legislator later brought an enormous burden to the AC, where its domino effect is felt even today.

The law has designated the Supreme Court as a court of law and it is precisely the primary duty of this Court to verify the rigorous implementation of the law by the lower courts, *facing the absence of transitional provisions*. The Supreme Court correctly decided to implement the new law 49/ 2012 that the cases would have to be judged only by the Supreme Court and no longer by the Civil Court.

The role of the legislator and the executive in solving AC obstacles

In this part we will see the active interaction of the other two powers, the spirit of cooperation, the coherence of this cooperation, the Constitutional loyalty between the powers which expresses, in essence, *the mutual respect from each subject* to the competences of the other where the Constitutional[12] Court (02/2005) requires that the institutions constitutionally behave with constitutional loyalty, as well as implying the creation of a cooperation relationship between them.

The role of the legislator (in solving AC obstacles)

It is to be appreciated the role that the legislator had for the approval of the law 49/2012, which brought about the fulfillment of a number of expectations from internal actors but also from the international factor. The initial shortcomings in the law 49/2012, the failure to properly foresee the transitional provisions brought a stalemate in the judicial system by artificially overloading the Administrative Courts. Inaccurate calculations regarding the number of judges in the Administrative Court of Appeal, or even the Administrative Courts of the First Instance, which were geographically located far from the litigants.

The frequent interventions in the new law that has just been approved show once again the poor cooperation of the powers between them as well as the lack of coherence in the cooperation between the country's institutions for the drafting of laws that produce effective and real solutions for the citizens. The Judiciary, through conferences, raised its concern on the obstacles, the shortages that the judicial system faces asking to the two other powers to provide a solution as quickly as possible. The Judicial Conference[13] requested through the Resolution

[12] Decision of the Constitutional Court no. 02/2005 "(…) it places the subjects that are included in it, before the requirement to respect the principle of constitutional loyalty, which expresses, in essence, the mutual respect from each subject to the competences of the other, as well as the creation of a cooperation relationship between them (…)".

[13] Resolution of the National Judicial Conference (10.10.2014) "(…) The judges, evaluating the support so far, request from the relevant state institutions, the taking of further measures aimed at improving

for improving the infrastructure, at another National Judicial Conference[14], the support of the actors was again requested, on the next year of the Judicial Conference[15] of Albania was discussed the reform initiated in the justice system with changes to the Constitution and other restructurings. During the speech that the Presidents[16] of the courts held, they identified problems and recommending, as appropriate, solutions that can be implemented both from the perspective of changing the legislation and improving judicial practice.

The role of the Executive (in solving AC obstacles)

The Executive Power is the most coveted and "*petted*" power because of the role that the law and the Constitution have given it, as the only power that administers the funds of all Albanian taxpayers as well as the State budget as a whole. The way the Executive Power has handled the progress of the AC shows that there has been a weak cooperation to fulfill the purpose of the law itself 49/2012. As we have emphasized above, one of the goals of the creation of the AC is that disputes of an administrative nature where one of the parties would be the state should be resolved as soon as possible. In addition, the judicial bodies that will resolve these disputes should be as more professionalized, as well as the AC would serve as a protection for the subjects and individuals in front of the state by restraining the revenge of the public administration against the subjects and individuals.

In all the reports[17] listed by the AAC, among others, a continuous and permanent call and effort by the AAC to the Ministry of Justice to be equipped with the necessary tools, material basis, especially with human resources, in order to fulfill the tasks that the law had determined for the AC. On the other hand, the Ministry of Justice has carried out assessments[18] of the workload of the Administrative

the infrastructure and guaranteeing suitable working conditions (…)". http://www.gjykataelarte.gov.al/web/Rezoluta_e_Konferences_Gjyqesore_Kombetare_2226_1.php

[14] National Judicial Conference (14.12.2015) "(…)The conference reiterates its position addressed to the actors involved in the reform, international partners and public opinion, and also wants to assure them that the judges will firmly support the legal initiatives which have as their objective the strengthening of the rule of law, the protection of independence" http://www.gjykataelarte.gov.al/web/Konferenca_Gjyqesore_Kombetare_K_GJ_K_zhvilloi_ne_daten_14_Dhjetor_2015_mbledhjen_e_saj_te_radhes_me_natyre_zgjedhore_3253_1.php

[15] National Judicial Conference 21.03.2016 it was re-emphasized that the Courts are overloaded with thousands of processes and do not have the capacity to deal with them https://www.linkedin.com/pulse/konferenca-gjyq%C3%ABsore-komb%C3%ABtare-21032016-florjan-kalaja

[16] The National Conference entitled: "*The efficiency of judicial procedures in the Administrative Courts of Albania and the evaluation of the effects of the Reform in Justice*" dated 15.12.2017 http://www.gjykataelarte.gov.al/web/Kryetari_i_Gjykates_se_Larte_Z_Xhezair_Zaganjori_mori_pjese_Konferencen_Kombetare_me_titull_Efikasiteti_i_procedurave_gjyqesore_ne_Gjykat_4855_1.php

[17] Analysis of the administrative court of appeals (2014) https://www.publeaks.al/wp-content/uploads/2016/12/Analiza-Gj-adm-apelit-tr-2014-9.2.pdf, p. 5.

[18] Ministry of Justice (2015) Evaluation Study on the workload in the Administrative Court of Appeal

Court and has not acted effectively and immediately. The AAC has filed its requests with the Ministry of Justice (as part of the Executive power), but its immediate requests have not been met, which has directly affected the performance of the AAC institution.

A low number of Judges in the Administrative Court of Appeal would seriously raise questions about the quality of decision-making, the depth of the investigation in the judicial fascicle. The deficiencies in the quality or the depth of the judicial investigation, means that unfair decisions may have been made due to of the impossibility of the detailed verification of judicial documents. This contradicts the purpose of the Court in essence, which is "*giving justice*". Not allocating the necessary funds for legal fulfillment is a responsibility mainly of the Executive who is the one who administers public funds and allocates them where it is most needed, as well as verifying the requests that the various institutions submit to him. The creation of a law for AC and then the lacking of technical and financial support is a contradictory action even against the wishes of the legislator who wants AC to be functional as soon as possible. It is unacceptable that the AAC asks for support and the Executive Power does not provide it, which shows a disregard for the requests coming from the Court, as well as a lack of will on the part of the Executive. The Constitutional[19] Court (19/2007) in some of its other decisions[20](11/2010) has

Tirana https://www.drejtesia.gov.al/wp-content/uploads/2017/10/Studimi_mbi_ngarkesen_ne_Gjykaten_Administrative_te_Apelit-1.pdf

[19] Decision of the Constitutional Court no. 19/2007 "(…) financial independence should be understood as such financing of constitutional bodies and institutions, which should enable them to normally exercise their activity to fulfill the functions assigned to them by the Constitution, without the intervention or influence of the government, politics or other external factors with this activity, which could seriously affect the exercise of their powers (…) in terms of reviewing and approving the budget items of the constitutional bodies and institutions, as the case may be and through consultations, it is necessary to take into account the requirements and their needs for the normal exercise of the constitutional functions for which they were created (…)".

[20] Decision of the Constitutional Court no. 11/2010 "(…) In this way, the principle of separation and balance between powers can really be implemented. By providing the bodies that administer justice with adequate guarantees related to financial independence, on the one hand, the risk of bringing the judiciary under the influence of other powers is minimized and, on the other hand, judges are given a necessary sense of dignity and pride in the profession. that exercise. Even in cases where the State is faced with financial crises, or with major budget constraints, the budget should not affect the budgets of the Judicial system. respecting the constitutional standard of self-administration of their own budget, the intervention of the legislator or the executive to reduce the judicial budget, even as an attempt to avoid the budget deficit, would be considered unjustified, without a consultation with the judiciary itself (…). The role of the judicial administration cannot be separated from the function of delivering justice and constitutes an important element of the organizational independence of the judicial power. In the assessment that the Constitutional Court makes of the independence of the judiciary, it is understood as a substantial independence, which means "the freedom of the courts to give decisions, which are not based on the interests of any other branch of government"; structural independence related to the provision in the Constitution or in the law of the existence of the institution, of the way of formation of its composition; organizational independence that includes the internal administrative structuring of the courts; financial independence, which means autonomy in the drafting of the budget by the institution itself and approval by the legislature, as a separate item of the state budget, adequate

extensively explained the concept of independence. Taking into consideration the obligation of state bodies to implement the decisions of the Constitutional[21] Court (80/2017), the international[22] norms for the independence of the institutions that administer justice, the independence of the judiciary, among others, is understood as free independent administration from an organizational and financial point of view[23].

According to the *Progress Reports[24] of the European Union for 2013-2016[25]*, the functioning of the judicial system continues to be affected by insufficient resources, the current budget of the Albanian State is not sufficient at all, the time has come to emphasize the importance of sufficient and necessary expenses for the judicial system, *since there can be no justice at a price free*. These costs are related to retaining good employees, not only for wages, but also for working conditions, qualification and offering programs that serve to maintain the values of independence, transparency and accountability. Many Court premises need to be renovated, some Courts do not have rooms in which to hold sessions and these sessions are held in the judges' rooms. The Audio system does not work in all rooms. The efficiency of the judicial system remained a concern, due to insufficient financial and human resources. The absorption of the necessary funds for the regular and necessary fulfillment of Law 49/2012 has been a right of the Court as a whole and an obligation for the Executive Power to allocate the necessary funds to fulfill the needs of the AC. The non-realization of this task mainly by the Executive Power constitutes a violation of "*check and balance*", even based on the analysis of the decisions of the Constitutional Court, we understand that the Executive

and sufficient funds to realize the purpose and tasks of the institution, and sovereignty in relation to the administration of funds tuned; as well as personal independence, which requires appointment based on objective criteria, immunity, economic guarantees, career guarantees, a transfer system and a disciplinary system (…) Financial independence should be understood as such financing of constitutional bodies and institutions, which should enable them to normally exercise their activity to fulfill the functions assigned to them by the Constitution, without the intervention or influence of the government, politics or other external factors in this activity, which would seriously affect the exercise of their powers (…)".

[21] Decision of the Constitutional Court no. 80/2017: "32 (…) The Court underlines that Articles 124 and 132 of the Constitution clearly state the binding force of the decisions of the Constitutional Court for all constitutional bodies, public authorities, including courts. Implementation of the decisions of the Constitutional Court is a constitutional obligation. They have general binding force and are final (…)".

[22] European charter "*On the status of judges*" (DAJ/DOC (98) 23).

[23] Analytical document of the Ministry of Justice: "(…) organizational independence, which includes the internal administrative structure of the courts; - financial independence, which means autonomy in the drafting of the budget by the institution itself and approval by the legislature, as a separate item of the state budget, adequate and sufficient funds to realize the purpose and tasks of the institution, and sovereignty in relation to the administration of allocated funds (…)" https://www.drejtesia.gov.al/wp-content/uploads/2017/10/Analiza_e_sistemit_te_drejtesise_FINAL-1.pdf page 52

[24] https://integrimi-ne-be.punetejashtme.gov.al/anetaresimi-ne-be/dokumente/dokumente-te-be/

[25] The Progress Reports of the years 2017-2019 are not included, cause in these years the creation of other constitutional institutions began within the renewal of the new justice system.

Power has had a weak cooperation in supporting the fulfillment of the needs of the AC. Allowing the AC to resolve disputes without having the necessary means that the law has defined, constitutes an extremely irresponsible and unprofessional behavior, which is against the purpose of the Executive's activity.

Conclusions

Law 49/2012 brought a much more dignified treatment of the parties in the judicial process of an administrative nature. It expanded much more the meaning of the terms administrative/public body, restated and remodeled the meaning of "*administrative act*" as well as materialized the importance and gave a high priority to the relationship "*administrative body - parties interacting with the administrative body*". The law reduced the confusion of the choice of the legal basis for the resolution of non-agreements of an administrative nature, redirecting the parties to a set of updated provisions with broad and complete competence. The methods and ways of communicating electronically with the AC and with the parties brought ease and avoidance of the obstacles that existed technically. The *Burden of Proof* is a new approach to be welcomed because it eases the plaintiff by creating a favorable and encouraging environment in front of the Public Body that represents the State. Taking disciplinary measures and even criminal prosecution against the leaders of administrative bodies is to be appreciated. It increases the accountability towards the implementation of the law, discourages impunity, reduces the revenge of the leaders. The preliminary submission of evidence is an additional procedure to compel the parties to submit evidence in advance, which encourages the parties to prepare in time, influencing a quick and efficient trial.

The continuation of the court sessions even when the parties were not present is to be welcomed because it excludes once and for all the possibility that the parties will intentionally damage the court process, as well as the seriousness they should have when starting a court process. The judge feels the process of implementing the decision and puts the head of the public body in front of the responsibility, directly encouraging the realization of justice even in the last stage, which is the stage of the bailiff's activity. Law 49/2012 made the Court of Justice a "*smart*" court to judge and resolve disputes by persuasively reasoning and with a very strong legal logic, also with a single reasoning, accepting that if the violation of the procedure is of a level that does not affect the essence of the matters, then this violation does not need to be taken into account. The lack of financial resources has made the efficiency of the Court difficult to operate and has not helped to fulfill the purpose of creating these Courts.

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