ON THE ORGANIZATION AND FUNCTIONING OF ADMINISTRATIVE COURTS AND ADMINISTRATIVE DISPUTE

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Abstract:
Law no. 49/2012 "On the organization and functioning of administrative courts and administrative disputes" represents a novelty in the justice system in the Republic of Albania. This paper will present the procedures and lawsuit time limits trial from Administrative courts through the three levels, the advantages of this judgment by the Administrative Court compared to the ordinary court judgment, the burden of proof in the trial process, by this law. Unlike the previous practice courts, the public body has to prove the lawfulness of the administrative act, administrative contract and any other administrative action issued, not at the request of the plaintiff, and the facts that it has submitted and has been at the core of the activity brought in court and in other cases, the parties have the obligation to prove the facts, which their claim is based on. Differently by the current court practices in execution of a court decision, ordinatory courts do not have an active role in the execution of the decision. While the law no. 49/2012 has provided a new way to control the execution of a final judicial decisions and the judge or the chair of the panel are charged with an active role which rendered the judgment, as set in motion at the request of the parties or bailiff, at counseling room, without the presence of the parties, orders to conduct special operations and other measures necessary, determining the terms and time schedules of the proceeding.
Keywords: administrative court, enforcement, evidence, trial schedule.

Study on the law Nr. 49/2012"On the organization and functioning of administrative courts and administrative disputes" for the novelties in the trial procedures compared to the ordinary court judgment.

Law Nr. 49/2012 "On the organization and functioning of administrative courts and administrative disputes" hase more advantadges compared to the civil code procedures and ordinary courts judgments e.g trial time schedules, burden of proof in the process, execution of the court decision.

I – Introduction

In the Republic of Albania the judicial system consists in three levels: High Court, Apeal Court and District Court. Currently there is one High Court, 6 Apeal Courts and 22 District Courts in the country.

The District Court is devided in civil and penal chambers. Civil chamber is divided in three sections: family, administrative and civil-commercial. According to the Proccedurial Code, trials of administrative disputes is done by the administrative section of the related local district court where the the defendant is registered. The Appellate Court review the administrative trial court judgements by speciliased judges.

The disputes are hearing by civil panel in the high court.

Actually the trial of administrative dispute is regulated by provisions of Chapter II "Trial of administrative dispute articles 324 -333 of Civil Procedure Code, by administrative section at the first instance court according to the article 327 of Civil Procedure Code, and the judicial counsel of Appellate Court, which review the administrative dispute, are contended by specilised judges as set forth at article 333 of Civil Procedure Code.

Organization and function of the administrative courts are regulated by a specific law.[1] The right to create courts for separate fields is based on the 135/2 article of the Consituion of the Republic of Albania and article 7 of the law Nr. 9877, date 18.02.2008, "For organization of the Judicial System in the Republic of Albania".

Law Nr. 49/2012 "On the organization and functioning of administrative courts and administrative disputes" provides the creation of the Administrative Courts in the Republic of Albania.

This law regulates:

- Organization and functionin of the administrative courts and the status of the judges serving in these courts;
- Jurisdiction and competences of the administrative courts;
- Principals and procedures of the trial, parties in the process and other persons involved;
- Administrative court decisions and their execution.[2]

According to this law the competent courts for the administrative disputes are Administrative Courts of the district couts, which are equal in number and territory with the civil appeal courts at the time of the law enter into force.

Appealate Administrative Court and the Administrative College of Hight Court [3].

In the administrative trials the court must apply these four base principals foressen in the law:

- To ensure through a regular judicial process and within fast and reasonable time schedule, the protection of judicial protection of the rights, freedom and constitutional interests of the parties involved, that can be affected by public administration (lack of) public services.
- Protecion of public interest and the rights and legal interest of private subjects (persons).

1 Article 7 of the law No. 9877, date 18.02.2008, ""For organization of the Judicial System in the Republic of Albania".

2 Law No. 49/2012 "On the organization and functioning of administrative courts and judgement of administrative disputes" article 1, page 1, Official Journal No.53,

3 Law No. 49/2012 "On the organization and functioning of administrative courts and judgement of administrative disputes" article 4 pag 3 Official Journal No.53,

- Public administration, as regulated, is obliged to proof that its activity and actions are based in the law and facts.
- By the nature of the case, the dispute is trialed verbally or bazed in documents in counseling room. Failure to attend does not cause the dismissal of the case.[4]

Judicial review of the public administration activity originates for the state phylosophy to be regulated and governed by law above all. Nowdays, rule of law can not be imagined without acess to a independent judicial system for all citizens, based on the law and capable to fullifll the demands of fair trial process. As such, the role of the administrative court overview is to protect the citizen's rights and to protect public interest and rule of law. Beside the protective role, the court control is considered as an important tool increasing the quality of public service and govering.[5]

II- Procedures and timeschedules of the trials from the district, appellate, high court administrative panel

According to actual articles of Civil Procedural Code for the process of the administrative disputes, the trial should end within 30 days from the case registration date in the court[6]. In practice, this time limit has been difficult to be met as shown by statistics of the years 2009, 2010, 2011, 2012 of Tirana district Court:

Trial times for administrative cases during year 2009

Time (months)	0-2	2-6	>6
Nr. of cases	6	60	1552

Trial times for administrative cases during year 2010

Time (months)	0-2	2-6	>6
Nr. of cases	10	71	1299

Trial times for administrative cases during year 2011

Time (months)	0-2	2-6	>6
Nr. of cases	38	113	1783

Trial times for administrative cases during year 2012

Time (months)	0-2	2-6	>6
Nr. of cases	10	141	2470

Aiming at the improvement of efficiency and the trial time limits, law Nr. 49/2012 provides time limits within wich the court and parties in the process should operate as by procedures and case reviews.

Subject compentency from the administrative sections in forseen from article 324 of the Code of Civil Procedures expanded with law Nr. 49/2012

Accoding to the law Nr. 49/2012 "On the organization and functioning of administrative courts and administrative disputes" administrative courts have subject competency for:

- Disputes derived from individual administrative acts, normative acts and public contracts, from the public administration;
- disputes cause from illegal intervention or failure to act of the public administration;
- competency disputes between difreent public institutions in the previewed cases from Code of Administrative Procedures;
- disputes in the employement relatations, when employer is public administraton;
- request form public administration of cases for which law foresses up to 30 days of imprisonment as administrative penallty for the offender;
- requests from offenders replace the sentence of 30 days of imprisonment with the fine penalty .

Administrative Court does not trial disputes:

- Related to normative acts that by Constitution are compentency of Consitutional Court;
- cases that, by current legislations, are compentency of another court.[7]

Administrative Court of the district review cases with panels of 1 up to 3 judges, depending from the case. the disputes related to public contracts and request form public administration of cases for which law foresses up to 30 days of imprisonment as administrative penallty for the offense are reviewed by a panel of 3 judges. All other disuptes are reviewed by one judge only.

Appellate Administrative Cout judges with a panel of 3 judges, appeal of administrative court district decisions and with 5 judges appeals against normative acts.

High Court judges at the administrative panel with 5 judges and with 3 judges exceptionally when foreseen in the law Nr. 49/2012, as it's the case of competency wich is judged from 3 judges.

Tis law has provided for the first time, that the Judge of the administrative court of district and appellate administrative court, in its activity is assisted by legal advicer. In the Albanian legal system only at the high court judges are helped from assistants performing their duties.

Legal assistant has the duty to assist and counsel the judge preparing the cases for judgment, and to prepare draft and procedures for the trial.

4 Law No. 49/2012 "On the organization and functioning of administrative courts and judgement of administrative disputes" article 3 pag 2 Official Journal No.53, http://80.78.70.231/pls/kuv/f?p=201:Ligj:49/2012:03.05.2012

5 http://www.justice.gov.al/UserFiles/File/Projektakte/Relacion%20_2_.pdf

6 Article 327 , pag 121 Civil Procedure Code April 2009

7 Law No. 49/2012 "On the organization and functioning of administrative courts and judgement of administrative disputes" Official Journal No.53, Article 7 , Article 8

Also, requested by the judge, the assistant makes legal researches and prepares the opinons in writing on legal issues about procedures and subjects related to the trial. [8]
In the district and appellate courts there is not such practice. This is provided in function to the law Nr.49/2012 its self and quick procedures of judgment wich will be analized bellow in this work.
This law for the first time as well, has provided the obligation that the lawsuit to be brought in the court, should be attached, with the contact means of the plaintiff or his representative as telephone number, e-mail address, if he has one, through which the court can make notifications, and declaration of receipt notices by phone or electronic mail. Plaintif for any later change of the address, telephone number or e-mail address must notify the court. Failure of notification makes unacceptable claims for uvalidity of notice.
In the Code of Civil Procedures there is not such an explicit and obligatory request, this novelty is excpected to increase the efficiency in the activity of the administrative court regarding the notice to parties in trials, as being quick and with short notice times as normally makes it difficult to proceed and drags the trials.
Notices to parties or their repressentatives can be done by legal clerk, by the court phone as established by Court chancellor. This notice should be recorded, where telephone number, date and time of the communication, the person contacted and the reason of the notice. The record is written by legal secretary and signed by him and designated legal clerk. This record is part of the trial folder.
Notifications of parties or their representatives can be done by legal clerk by electronic mail system, according to the legislation on electronic communications. This way documents can be sent as well, to the parties.[9]
Differently from the preparatoryë process carried by the judge in the normal court cases base on article 158/a të Civil Procedure Code, by the law 49/2012 for the trial process, by the princip for a fair trial within quick and reasonable time limits, in the adiministrative court, the leading judge get the folder in process withing 7 dasy from the lawswit registration and take following actions as foreseen in the article 158/a të Civil Procedure Code:

- Ask the plaintiff to complete the lawsuit with any missing item, leaving up to 10 days time.
- Notifies the accused for the lawswit and related acts, giving it time up to 10 days for the noting, to deposit in the secretary office of the written dissagreemnts, list of people to be called in the trial to testify or as experts, as other documents where administrative acts are based and reviewed the administrative appeal.
- Decides for the expertise when evaluates that specific knowledges are required for the judgment. In this decision he determines the field of expertise, the expert from the court list, specific duties, as the time limit for the expertise, which, as a rule, can not be more then 20 days.

Differently from the current Civil Procedure Code where the expert is called and put under oath in court trial and then assigned the duties[10] in the law Nr. 49/2012 the court after taking the decision for the expertise, ask the expert to fill and sign a personnal declaration for his knowledge and his penal responsibility in case of fake expertise, and invites him to swear that will fulfill the duties trusted to him good and with honor and sole aim to tell the court only the truth. This declaration is given to the court with the expertise act. The form and the content of the declaration are approved by the Minister of Justice. The expert can be appointed from parties, within 3 days for the notice of the decision, when conditions from article 72 of Civil Procedure Code are met.
Acts of the leading judge are based in the article 25 of the law 49/2012 are intermediate decisions and are loged in the preparation registry, which is kept by the legal secretary and signed by the leading judge.
An novelty in the law 49/2012 is the consequence of the failre to participate in the court. Failure to attend in the preparation activities does not make a cause to close the case, even when paties are notified normally[11], by Civil Procedure Code if plaintif fails to attend without andy reason causes the case dismissal, when the defendand does not attend in the first 2 courts and the plaintiff does want the trial to continue in defendand absence, the judge decided to dismiss the case[12].
After all preparation activities, the judge, immediately issue the order with the court date, which can not be longer than 15 days.
In the court can be brought a request for lawsuit security, in this case the court when accept it, set a time limit of no more than 20 days to deliver the lawswit[13], this is shorter than 15 days provided by Civil Procedure Code[14].
Implementation of this time limits speeds up the trial procedures and it is expected to increase the efficiency in the administrative disputes judgments.
A ammendment of the law Nr. 49/2012 consist on the time of the trial in the Apeal and High Courts. Law forecast that the appellate court to judge the case within 30 days from the date the appeal[15], while the High Court judges the case within 90 days[16].

8 Article 6 page 4
http://80.78.70.231/pls/kuv/f?p=201:Ligj:49/2012:03.05.2012
9 Same, articles 22, 23 pages 9, 10
http://80.78.70.231/pls/kuv/f?p=201:Ligj:49/2012:03.05.2012

10 Civil Procedure Code article 224,225,226 page 87, 88 , publication i Center of Official Publiciation April 2009
11 article 25 page 11
http://80.78.70.231/pls/kuv/f?p=201:Ligj:49/2012:03.05.2012
12 Civil Procedure Code article 179 page 70 , publication of Center of Official Publiciation April 2009
13Law No. 49/2012 "On the organization and functioning of administrative courts and judgement of administrative disputes" Official Journal No.53, Article 28
14 Civil Procedure Code publication i Center of Official Publiciation April 2009 Article 204 page 79
15Law No. 49/2012 "On the organization and functioning of administrative courts and judgement of administrative disputes" Official Journal No.53, Article 48
16 Law No. 49/2012 "On the organization and functioning of administrative courts and judgement of administrative disputes" Official Journal No.53,Article 60

Actually the Civil Procedure Code does not provide time limits for the Apeal and High Courts.
Another novelty in the law 49/2012 is the procedure of the review of the appeal and recourse for the decisions of the district and appeal courts. The appeal or recourse is reviewe in a counseling room from one judge at the district administrative court, which decides if the appeal or recourse is according the article 46 point 1 and article 75 point 1 of law Nr. 49/2012. If the appeal or recourse is not completed as required by article 46/1, the judge notifies the party to amend accordingly within 5 days for the appeal in the Appellate Administrative Court or within 7 days for the recours at the Administrative Panel of Hgh Court.
When the party fails to complete the request within the time limit as set forth above, the appeal or recourse is dismissed and returned back with a decision. This decision can be specially appealed at the appellate administrative court.[17]

III- Burden of proof at the administrative juridicial process.
Proofs are information that certifies or dismiss the claims or recourse of the parties in the process. Modality and collection is foreseen in the Civil Procedure Code and in the law Nr 49/2012.
According to the Civil Procedure Code the party claiming a right, it's obliged by the law to prove the facts where claim is based[18].
While in the law 49/2012, differently for the genear principal foreseen in the Civil Procedure Code, based in the 2 main principals of administrative judgment:

- The court, during the administrative review, through a ruled judicial process, and within close reasonable time limits, ensure the legal protection of the constitutional rights, liberties and interests of the legal subjects, whose might be bridged due to missuse of their official qualities and public functions by the public administration offices.
- The administrative court applies the principle of protection of public interes and the legal rights and interests of the private entities. Any default of bringing the proofes by the public offices, is sactioning the third principle that, the public administration offices, by law, have the obligation to prove the legacity of their actions.

This principle brings the burden of proof on public administration, as such subject of court judgment.
Proofs or evidence are submitted from parties, in any case before the first trial[19]. Failure to bring proof upfront makes them unacceptable[20] with an written motivated request from te public administration, as by letter "b" point 1 of article 25 of this law, the court determines a second time, not later than 5 days before the first trial. A second failure, the case continue with only represented documents.
Unjustified failure to bring the proof from public administration within the second scheduled time limit, causes, with written request from the party but not limited to, a penalty to the office holder from the court. The penalty is equal to 20% of minimal national pay rate for eache delaid day.
If public administration does not represent the proofs until the trial, then the court, considering other proofs and circumstances, can accept the prentendings of the other party, for which these proofs were requested.
In administrative trials, differently from ordinary judgments from the district according to the Civil Procedure Code, the plaintiff does not need to add other acts to the one complained for.
In the administrative process, burden of proof is required from public administration in 2 cases:
First: when public administration has made the administrative act, collective contract or any other administrative activity without request of the plaintiff, then is must show that is based in law for the issues and cases brought to court.
Secondly: employment issiues, public administration must justify the law enbasement or the employment activity from which case is arised.
In the rest of the cases, boorden or proof is on the plaintiff, to proof the facts on which bases the prententions.
Esclusion from the general rule, even when the burdon of proof is on the plaintiff, the court, even ex officio, by an interlocutory ruling, can decide to assign the public administration, when has reasonable doubts, based in documents, that show that the public administration is hiding important proof for the case judgment. This descision can be appealed with final decision.[21]

IV- Administrative Court Decision Exectution Procedure.
Mandatory exectution can be done only by a executice tittle. Final judicial decision form the court and the decision to lawsuit security are executive titles.
Therefore public administration must execute the desicion when

- Final decision from the court is became a final form desicion,
- Decision for lawsuit security,
- executed from court bailiff requestef from the creditor.[22]

Public administration must, after that the administrative court desicon is became executable , not act of take any decision that are contrary to the court descions, but even

17Law No. 49/2012 "On the organization and functioning of administrative courts and judgement of administrative disputes" Official Journal No.53, Article 46 dhe 57
18 Civil Procedure Code publication of the Center of Official Publiciation April 2009 Article 12 pag 14
19 Law No. 49/2012 "On the organization and functioning of administrative courts and judgement of administrative disputes" Official Journal No.53,Article 26
20 Law No. 49/2012 "On the organization and functioning of administrative courts and judgement of administrative disputes" Official Journal No.53,Article 27
21Law No. 49/2012 "On the organization and functioning of administrative courts and judgement of administrative disputes" Official Journal No.53,Article 35
22Law No. 49/2012 "On the organization and functioning of administrative courts and judgement of administrative disputes" Official Journal No.53, Article 65

they are taken before the desicon they became unvalid and do not stop the execution of the descision[23].

Procedure of the mandatory exectution is forcasted in the forth part of të Civil Procedure Code from article 510 to article 617. This procedure are executable as foressen in the law 49/2012, when the objection of bailiff exectuito of the deciscion, contrary to the court orders, and can be appealed as provided by the article 610 of Civil Procedure Code.

An novelty in the law Nr.49/2012 is the role of the judge in the exectution process. So during the procedures of manadatory exectution, the judge or the leading judge of the court panel, that has made the descicion, by parties or bailiff request, in counseling form, without the presence of the parties, orders special instructions and nesesary steps in time scale and modalities.[24]

Differently as foreseen from Civil Procedure Code relating to the court decision exectutions and became as executive title, where the role of the court is passive as only reacts when requested by interested parties, which can be the creditor, debtor or a third person, in the new law Nr. /2012 Administrative Court has an active role in the execution of the court decisions.

This role of the administrative court is depended by the object being executed and when

- the court decision for an admninistratvie act or change of an existing adminstrive act, is not executed after the time limit of voluntary exectution, disregard the measurement taken, by this law, the court, in counseling form, without the presence of the parties, if during the trial has verified all the facts for the administrative act, take a decision to replace it, this desicin decision produces all the nesecary juridical consecuenses.
- the decision from the court to public administration to make another act or to stp another administrative act, is not completed within the voluntary execution time limit, requested by the plaintiff regardless from the measurements taken, by this law, the court orders the bailiff, as by the its decision, to act or the dismiss the action.[25]

The bailiff, at the end of the mandatory exectution determined by the judge, notifies in writing the judge for the debtor public administration.

Novelties in the law Nr 49/2012 are the sanctions for non exectuiont of court descisons or orders. Failure to fullifill the duties, as by court decisions or orders, wihout justified reasons, will be sanctioned by penalties from the judge to the debtor public administration party. The penalty is equal to 20% of minimal national rate of salary for each day delay payment in execution. While if any case of default execution of decisions due to justified grounds, the judge requests disciplinary charges, and when the case, decides penal charges to the responsable persons.[26]

The Civil Procedure Code provides that the bailiff defines the sanctions for non acting from the debtor, which goes as a fine no more than 50000 Lek, decision that can be appealed in the court.[27]

Another novelty from the law Nr 49/2012 is that, the fees for the court execution decision is not prepaid from the creditor. The expenses of the execution procedures are considerated as part of trial expenses, for which the court expresses in the final decision. The expenses are calculated from the bailiff and paid by the debtor.

While in the Civil Procedure Code is forecasted the tariff of exectution to be prepaid represented with the request for execution and related douments from the creditor[28] and then allocated to the debtor at the end of exectution process[29].

Conclusions

Law Nr. 49/2012 with the novelties and new specific to the administrative disputes judgments are expected to meet the aim of establishment of Administrative Court which is the guarantee of the effective protection of the subjects rights and legal interests through a regular judicial process and within limited and reasonable time limits, creating appropriate conditions for an effective judgment by protecting violated rights from administrative acts/activity from public administration, necceessity of equality of the public interest from one side and the subject rights and legitime interest of persons from the other side. In the domain of administrative relations between persons and public administrative, it is aimed to enforce the active role of public administration in regard of subjects and persons rights. This law guarantees the protection of freedom of individuals by ensuring that the public administration will prove the legimiticy in the modality and contents of actions and descision and to make simplier the relative procedures of judgments and exectution of court decisions on administrative disputes cases between public administration and individuals and public.

23 Law No. 49/2012 "On the organization and functioning of administrative courts and judgement of administrative disputes" Official Journal No.53,Article 65

24 Law No. 49/2012 "On the organization and functioning of administrative courts and judgement of administrative disputes" Official Journal No.53 article 66,

25 Law No. 49/2012 "On the organization and functioning of administrative courts and judgement of administrative disputes" Official Journal No.53,article 67

26 Law No. 49/2012 "On the organization and functioning of administrative courts and judgement of administrative disputes" Official Journal No.53,article 68

27 Civil Procedure Code publication of Center of Official Publiciation April 2009 article 606 K.Pr.Civile page 224

28 Civil Procedure Code publication of Center of Official Publiciation April 2009 article 515 page 188

29 . Civil Procedure Code publication of Center of Official Publiciation April 2009 article 525 page 194

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