

Judicial review of administrative normative act. Limits of courts control on political decision making

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Abstract

Legal democracies have been facing with the evolution of a system of administrative activity judicial review. Meanwhile the evolving of the Judicial Control over the Public Administration in different countries of civil law systems has produced even in Albania the possibility of a specific judiciary control over the Public Administration in an extended way. The new Albanian Law on Administrative Courts (Law 49/2012) provides the power of the Administrative Court of Appeal to judge as a Court of First Instance, in the cases regarding controversies on normative administrative acts. It is a new open door to judge political decision makers, with some implicit consequences on the entire system. Those acts are produced as a further explanation and specification of the Law. Meanwhile they also express the Government Political Direction and Political will. The most important issue which may rise in this case is: How can an Administrative Court judge on the Executive Political Decision? May a Court judge the political will of the Executive?

This power, given to the court, if we refer to administrative normative acts produced by public authorities of political nature, is in substance in contrast to the right of exercising political powers. This power to judge the politics should be evaluated case by case, but also some guiding lines should be established. These should be some basic guiding criteria and limits to be followed by the judges in the evaluation of objectives, purposes, aims or proportionality to the situation that has imposed the law.

In most of the judiciary systems, the limits of reciprocal control between powers of the state remain a never ending process of practice. It is usual that the law gives to the administration a wide margin of opportunity. The way how executive would use its discretionarily, should be judged in an appropriate way by courts. The limits of court interference in administrative decision making would produce a fair system of judiciary control but may be even an usurpation of government independence of political decision making or administrative flexibility.

Keywords: judicial review, normative act, political decision making, court limits, separation of powers.

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