

Legal time limits vs. discretionary limits of administrative judicial review in Albania

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Abstract

Administrative courts in Albania were established in 2012, as a separate branch of the court system, following enactment of the Law No. 49/2012 "On the Organization and Functioning of the Administrative Courts and Adjudication of Administrative Disputes". One of the main features of the administrative adjudication is the swiftness at which it should be carried out. The law provides carefully for many time limits and procedural deadlines, to achieve such intended effect.

This article focuses specifically on the time limits of concluding (1) the judicial review in administrative courts and 2) on due delivery of the final decision in court secretariat. These two distinct procedural phases constitute 98% of the length of a court case in time terms. The main thesis of this paper is that time limits which are explicitly written and required by the law produce better results in terms of compliance of judges with law and higher efficiency compared to discretionary time limits.

Keywords: legal, time, administrative, judiciary, Albania.

I. On the Administrative Courts in Albania (short historic description)

Administrative courts in Albania were established in 2012, as a separate branch of the court system, following enactment of the Law No. 49/2012 "On the Organization and Functioning of the Administrative Courts and Adjudication of Administrative Disputes". This law is among the most important precursors of the Justice Reform in Albania. The establishment of the Administrative Courts was triggered by the need to ensure effective protection of individual rights and legitimate interests of persons through a fair trial and *within speedy and reasonable time limits*. Time limits are the mean and the purpose for having an optimal guaranteeing of the judicial certainty in the context of this law.

Unlike the Code of Administrative Procedure in the Republic of Albania, the law 49/2012 guarantees the protection of freedoms and rights of individuals by providing for the obligation of the public bodies to prove the lawfulness of administrative actions they issue both in form and substance, (*burden of proof placed on the public bodies*).

The legal review of administrative decisions by independent courts is a democratic principle existing in the main European practices. It is an important contribution to ensure the order, especially for the protection of the rights of the citizens vis-à-vis the public (state) administration.

Administrative justice plays a crucial role in the economic development of a country.

Almost all investment decisions, infrastructure projects etc., must go through a licensing process, which may be subjected to review by an administrative court. An efficient system of administrative courts helps to increase transparency of administrative decisions and can play an important role in the fight against corruption. Judicial control of administrative actions/non-action by a well-functioning system of administrative courts increases citizens' confidence in state institutions. Among the powers of administrative courts is also the judicial control over the acts of the government and the executive secondary legislation in general.

Likewise the ordinary courts, the administrative courts in Albania are organized in three instances; there are 6 administrative court of first instance¹, Meanwhile, only one Administrative Court of Appeal² for the entire country and in the third level there is the Administrative Chamber of the High Court, (added to the pre-existing civil chamber and penal chamber within the High Court after the adoption of the law49/2012).

The territorial jurisdiction, the headquarters, and the number of judges of administrative courts of first instance and of appeal are decided by decree of the President of the Republic, upon proposal of the Minister of Justice. The Minister of Justice proposes, after having received the opinion of the High Council of Justice.

II. Procedural Time Limits for the Administrative Review Process

One of the main features of the administrative adjudication is the swiftness at which it should be carried out. The Albanian law makes clear provisions regarding the time limits of the judicial reviews process of administrative actions/acts, which start to run when the individual/entity concerned is notified on the administrative action and informed on his/her rights regarding the complaint or appeal.

The Albanian law also makes precise specification of the deadlines which should be met by the litigating party for filing a lawsuit (5 days). The law allows no more than 10 days from the submission of the lawsuit for the court to issue the order for the court hearing date.

The law sets clear deadlines for a series of preparatory actions to be carried out by the presiding judge, which shall be recorded in the minutes of the preparatory actions, to be compiled by the court secretary and signed by the presiding judge too.

The law sets a general time limit of 10 days for the execution of court decisions, and only in exceptional and justified cases allows for an extension of this time limit. In the ordering part of the court decision the judge/s should determine both the time and the manner of execution of the respective court decision.

The court decision, regardless of the type of adjudication, shall be compulsorily announced in a reasoned form. Within 7 days following the announcement of the final court decision, the judicial file shall be delivered to the court secretariat (Article 42/2 of Law No. 49/2012). In exceptional cases and only due to absolute impossibility, the announcement of fully reasoned version of the judgment publication can be postponed up to 5 days (Art 42/3).

¹ located respectively in the cities of Durres, Gjirokastra, Korca, Shkodra, Tirana and Vlora.

² Located only in Tirana capital.

For the Administrative Court of Appeal apply the same time limits as for the court of first instance; within 7 days following the publication of the judgment, the completed file with the fully reasoned decisions is to be delivered to the court secretariat (*Article 55*). Even here, in exceptional cases and only due to the absolute inability, the publication of the reasoned version of the judgement can be postponed up to 5 days.

With regard to the High Court³ (*Administrative Chamber*), the decision and the judicial file shall be delivered within 10 days in courts secretariat after the verdict has been reached, which, regardless of the type of adjudication, shall be compulsorily announced / published in a reasoned form too (*Article 64*).

It is obvious the analogy between the administrative courts of the first instance and the Administrative Court of Appeal regarding the delivery time of the court file into the court's secretariat once the adjudication is concluded. The time limit required by the law to complete such procedural action is 7 days. *This is the first premise to be used to argue and prove the thesis of this paper, which is:*

The main thesis of this paper is that time limits which are explicitly written and required by the law produce better results in terms of compliance and efficiency compared to discretionary time limits.

In order to prove this assumption (thesis), a second premise should be identified; in this case we are looking for a legal procedural time limit which is left under the discretion of the judges themselves, differing from one level to another. In addition, this second premise should be a composite part of the administrative court proceedings, in order to imply length and therefore to have a procedural duration, so that it can be measured or contrasted in terms of TIME.

Judicial review in administrative courts is a well-defined organic part of this process. The law 49/2012 has defined (explicitly) strict time limits only for the second and third instance of adjudication but not for the courts of first instance. According to the law, the administrative court of appeal shall consider/review the case within 30 days from the date of arrival of the appeal from the court where it was lodged. Regarding the sending of the recourse to the High Court, Article 60 of the Law 49/2012 makes clear specifications too. The High Court shall review and conclude the judicial examination of the case within 90 days from arrival of the recourse.

On the other hand, the law 49/2012 neither prescribes nor sets any time limits for the administrative judicial review at the first instance courts. This "void" has been commented as a handicap of the new law⁴. As a matter of fact, such an approach not only is an exception to the rule applicable to the other two higher instances of administrative adjudication, but it also fails to adhere to the old standard applied in the past to administrative sections (chambers) within first instance courts of the ordinary court system. Unlike the repealed Article 327 of the Civil Procedures Code, which provided that the review of the dispute was to be completed within 30 days from the registration at court, the law on administrative disputes is silent with regard to timelines for adjudication of disputes in administrative courts of first instance.

³ The High Court will not be part of evaluations in order to prove the main point of this article, therefore further explanatory narrative will be limited in its regard.

⁴ Pg. 17, "Assessment of procedural time limits of the administrative judicial proceedings", published by Center for Public Information Issues, INFOCIP, August 2016, ISBN 978-9928-4372-0-4 Tirane, Albania.

In official interpretations made concerning this handicap, it is argued that “*the lawmaker has opted for no deadlines in order to promote the principle of conducting adjudications within a speedy and reasonable time, implying for a use of time limits which is in accordance with the nature of the action required to be carried out, in order not to damage the quality of justice and especially the right of the parties to defend themselves effectively*”.

Such argument, which can also be found in official documents of the high Council of Justice, does not represent neither in substance nor in form the widely accepted purpose of the lawmakers to guide the administrative adjudication towards short time limits which are defined in the law. If the argument is really based on a principle, the later should be normally reflected to the upper two instances of judgement the same.

In such case, the lawmaker would have been enacted a normative act which would not be coherent, nor reflective to the basic principle at the extend that time limits are applied to both upper instances, namely the Administrative Court of Appeal and the High Court (Administrative Chamber).

As a rule, a higher instance court, due to the volume of cases it accumulates and due to the characteristics of the adjudication with a judicial panel with more than one judge, has generally more cases to solve longer compared to lower courts. During 2015 in Albania the Administrative Court of Appeal alone received 7832 cases, after they were adjudicated by the courts of the first instance. The *principle of “adjudications within a speedy and reasonable time”* should have been applied even more in this case.

As a matter of fact, there is a proportional direct ratio when “jumping” from a lower instance of court to a higher one. If the time limit for concluding the judicial review in the Court of Appeal is already defined 30 days in the Law 49/2012, (from the moment one fills the lawsuit), the same proceedings are prescribed three times longer, meaning 90 days, for judicial examination performed by the High Court (the administrative chamber).

There is a ration 1:3 when jumping from one lower instance to a higher one, as regards the deadline for delivering the judgement. If we would apply the principle of analogy to determine a time limit for concluding the judicial review of a case in the courts of first instance, it would not be un-logical to assume that it should be approximately 10 days. (i.e. three times shorter than the 30 day time limit set for the Administrative Court of Appeal).

This logic is not unknown to the court system in Albania. Specifically, the Civil Procedures Code has not set a time limit for the Courts of Appeal of the ordinary court system as regards the delivery of the final judgements to the secretariat; still the judges estimate this time limit using analogy principle, in other terms by comparing the analogous ratio between the first instance (10 days) court and the High Court (30 days⁵). This time limit, according to them, is not less than 20 days.

However, given the specific premise that the Albanian legislator has set in the Law 49/2012 the same time limit of 7 days for the delivery of the judgement for both the Administrative Court of First Instance and the Administrative Court of Appeal, the author considers that the time limit for the judicial review of the case in the first

⁵ Pg 19, delays on legal reasoning and delivery of final decision, INFOCIP, March 17th, 2014, Published by Alpaper, ISBN 978-9928-05-156-1, Tirane Albania.

instance can also be calculated (by analogy) 30 days. It would make no sense nor would imply any logical coherence to have such a deadline longer than the one foreseen for the higher court, namely the Administrative court of Appeal.

In order to perform the thematic evaluation of the procedural time limits in administrative courts, INFOCIP, a non-governmental independent evaluator in Albania, has fixed the "30 day" time-limit as a baseline to assess the length of judicial review, based on the arguing made on the above paragraph.

Currently, in the inspection of the court activity in Albania, for the purposes of professional and ethical appraisal of the judges and disciplinary proceedings, the HCJ Inspectorate refers to the measuring criteria of the professional and ethical appraisal system of the judges, defined by decision of the HCJ no. 261/2 dated 14.04.2010 "System of Appraisal of Judges"⁶. This system defines as a measuring time standard for administrative cases a period of 1 month (30 days) for first instance and a period of 6 months for the second instance.

The above is an additional reason to set the 30 day time limit for the purpose of this assessment in proving the basic assumption (thesis) of this article.

III. Data Analyses in favour of the theses

According to a recent thematic evaluation, made by INFOCIP in Albania, it has resulted that the administrative courts of the first instance (6 in total) delivered the adjudicated files into courts' secretariats within due legal time (7 days) in 84.5% of the cases. The research analyse 4608 concluded courts files with final decision issued from September 1st, 2015 - December 31st 2015). It results that, accept Vlore Administrative Court (36.39% delivery in due time), all other courts tend to have performed well in terms of compliance with such legal requirement (94.28% delivered in due time). Administrative court of Shkodra⁷ scores the highest with some 98.66% of all concluded adjudications delivered in court secretariat within 7 days form announcing the final court decision. This is a direct proof in favour of the thesis that prescribed time limits by the material or procedural law tend to be "more binding" when it comes to the judicial practice of courts compared to discretional ones.

According to the same thematic evaluation, the administrative courts of the first instance scored low regarding the completion of the judicial review within 30 days. From 4608 adjudicated cases of all 6 administrative courts of the first instance, only in 16% of verdicts were reached within 30 day. As explained earlier, this is not a legal binding time-limit, but a court practice. In this case, the discretional time limits tend to be "less aggressive" in producing efficiency compared to those embodied in the law. Again, this another a direct proof in favour of the thesis that prescribed time limits tend to be "more binding" when it comes to the judicial practice of courts compared to discretional ones.

⁶ Page 6, Assessment study on the workload in the Administrative Court of Appeal (Adopted by Decision no. 23, dated 04.03.2015 of the HCJ), link: http://ww.drejtesia.gov.al/files/userfiles/Dokumenta/Studimi_mbi.

⁷ Biggest city of Northern Albania.

Conclusions

When performing appraisal of judges there are several factors and variables to be taken into account, such as the back-log of cases, clearance rate (ratio of resolved administrative cases versus incoming administrative cases), number of judges available for each courts, as well as the territorial and substantial jurisdiction of courts. This article argues that the explicit legal requirements as opposed to the discretionary ones (or those not regulated directly and explicitly by the law) tend to bring more efficiency in terms of court proceedings, especially in administrative courts.