

Discretion of the administrative body, and the Right of access to the Court

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Abstract

The discretion of the administrative bodies during the stages of the administrative procedure is an issue which has encountered various and debatable problems in the Albanian doctrine, where from practice it has resulted that in many cases it has violated the right of access to court. Our country has faced a series of changes in domestic legislation, where various collegial bodies have exercised their functions with a very important selective and decision-making role in the justice system and beyond. The decision-making of these bodies and the discretion during the stages of the administrative procedure has been different, in terms of the competencies they had and the impact they created in relation to the observance of the principles of the rule of law and the separation and balance of power. The changes that occurred with the adoption of the new Constitution of 2016, provided for the creation of new bodies of the justice system, where we can mention the High Judicial Council, the High Prosecution Council, and the Judicial Appointments Council. The mission of these bodies is the selection according to the criteria of the law of the new judicial body in the justice system in order to realize and reform the justice system. This article will focus on making an in-depth analysis which will highlight the current problems that the new justice bodies have encountered, in the issue of exercising their dissection, during the administrative procedures in order to achieve the mission for which they were created. . In this article, through the cases encountered in the work practice of these bodies, but also in a comparative aspect with the exercise of discretion of other collegial bodies, it is intended to highlight the relationship between the discretion of the bodies, until finalized with a decision of with the aim that the new collegial bodies of justice have, in terms of achieving a universally accepted standard in their decision-making. How is this decision made, and is the right of the interested subject to access the court violated? Have the new bodies really created this standard in their decision-making?

Keywords: discretion, administrative procedures, administrative decision-making, the right of access to court, the principle of legality.

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Academic Journal of Business, Administration, Law and Social Sciences ISSN 2410-3918 (print)

ISSN 2410-8693 (online)

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