

The open Hearing in Administrative Court of Tribunal

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ABSTRACT

Today, the administrative courts in Iran resolve important part of the disputes of the government and citizens and their qualification includes the significant items and affect the fundamental rights of people. The administrative court of tribunal is one of the most important courts resolving the litigations between the government and citizens as the public court of the complaints against the government and governmental employees. The present study evaluated the tribunal hearing and studied the open hearing as one of the important principles of fair hearing in this court. The present study found that the hearing of administrative court of tribunal is not enjoying high quality based on the principles of hearing transparency and it is better that the law maker by revising the rules on the tribunal and ratification of a comprehensive law on administrative hearing in Iran eliminates the problems.

KEYWORDS: Open; Hearing; Administrative; Justice; court

INTRODUCTION

Open hearing is one of the important principles of fair hearing. Transparency is one of the elements of good ruling and it is of great importance that public trust to the judiciary system is not possible without it. Indeed, transparency is one of the required conditions to achieve the public trust to the judiciary system. The open hearing, the documented verdicts, access to the court, the existing deeds and documents and the related votes are the most important examples of hearing transparency and their investigation is necessary to achieve this concept. The present study discussed each of the principles and observing or not observing it in administrative court of tribunal.

First discussion-Open court

The open court aims to acquire the public trust, avoiding the formation of series courts, public supervision on the court performance and avoiding court corruption and increasing the position of the verdict*. The open court is one of the issues that are emphasized in most of the international documents of fair hearing. Article 10 of universal declaration of human rights, section 1(article 14) civil and political law treaty, section 1, article 6 of European convention of human rights and section 5 of article 8 of American convention of human rights referred to this principle.

1- Open investigation concept

The open hearing is investigated from the following aspects:

a. The presence of the claim parties in the court

The presence of the claim parties in the court is considered in relation with another issue, the oral or written hearing. The oral hearing in the court means that the two parties can present their claims face to face or by a representative. † Another issue is presence in the court is inviting the two parties or their presence in the hearing session. If one of the parties can attend the court due to the performance of the judiciary institution and another one can not attend, it can not be said the court is open. If the court verdict is issued without the presence, it can be revised again.

b. The presence of people and media in the courts

The presence of people and media is of great importance and it is one of the barriers of judicial corruption. The people and mass media in the court investigate the supervision on the court performance and can determine the weaknesses and strengths of the court and by presenting their criticism of the court prevent the mentioned institution of weak judgment. In some cases, the people presence and suitable performance of the court in judgment can be considered as an important support for the court verdict. Because the public opinion by supporting the verdict can help its implementation and oblige the offenders to implement it.‡

* Akhundi, Mahmood. 2008. The code of criminal hearing (thoughts), 4th Vol. Tehran, Islamic guidance and cultural ministry, First edition, P:204-206.

† Hadavand, Mehdi, Administrative special courts along with the fair hearing codes (Iran law and comparative study), ibid, p. 225.

‡ Ibid

c. Presenting suitable facilities for presence in the court

Holding the court or a place for resolving litigation is not enough and suitable facilities should be provided for the presence of beneficiaries. For example, the open court in Iran legal system is accepted but the required facilities are not provided. For example, based on the small court branches in most of the cities, the claim parties hardly can attend the court and it can not be expected that all people attend the court.

In case of full facilities, there should be no barrier for people presence in the court. Any safeguard in the court is responsible to restore order not preventing people from entering the court.[§] Also attending the court shouldn't be costly.

2- The main exceptions of the open hearing

Like other principles, open court is having some exceptions and the court can prevent the open court in case of the following items:

- Depending upon the justice, supporting the children, witnesses or the identity of the victims of sexual harassment.
- Due to morality issues or the national security in an open and democratic society respecting the human rights and rule sovereignty.
- Supporting the privacy of people^{**}

3- The open principle of administrative justice court

Regarding the open hearing in administrative justice court, article 23 of administrative justice court code was used and hearing in administrative justice court is not open but the courts branches can invite each of the parties to acquire the explanation, if appropriate. As it is shown in the article e, the presence of the claim parties in the administrative justice court requires that the court branches consider it necessary. Based on the term "can", it can be said that the court branches have no obligation to invite the two parties to attend the court.

In addition, the people and media can not attend the court and it seems that this type of hearing is not appropriate in administrative justice court as the general court of resolving the administrative claims with the aim of resolving the complaints, grievance and objections of people to governmental officials with the governmental codes and fulfilling their rights (in accordance with principle 173). It is better that for more consistency of the hearing of this court with the open hearing as one of the fair hearing principles, the hearing should be open in order that two parties can openly attend the court and be sure of the exact execution of the law and impartial law makers and real legal justice. But in some cases as the exceptions of the lack of open court (as it was said about the open court), the court sessions will not be held open. Thus, the hearing code of the court should be revised.

Unfortunately, the new bill of court procedure considered the presence of two parties depending upon the view of the court branches and is indifferent to the presence of people and media. It is expected that by ratification of such procedure, this principle is considered fair.

Regarding the hearing costs in administrative justice court, in article 13 of the court ratified in 1981, the law maker said: "The court hearing is free and those who present the biased and false claim, in case of proving the bias nature of the claim, they will be prosecuted". Despite the solution raised in article 13, the court was faced with the problem of meaningless frequent claims or wasting the time of the judge and public costs. At first, in section 8, note 17 of the first plan of economical, social and cultural development ratified on 11/11/68, it was assigned that: "Petitions presented to the administrative justice court require the annulations of 2000 Rls stamp for hearing charge". Later, similarly in section 11, article 3, the payment of some of the government revenues was approved on 28/12/1373 and it was assigned that "presenting the petition to the administrative justice court required attaching and annulations of stamp costing 2000 Rls". After many years in revised law, some articles of administrative justice court approved in 1999, the law maker changed the price and assigned that "the petition charge to the court was at initially 10000 Rl s and in revision as 20000 Rls. Finally, based on the new structure of the court and in accordance with note 2, article 21 of administrative justice court, the hearing charge in the court branch was 50000 Rls and in the branch was 100000Rls.

It seems that this type of administrative justice court in hearing charge didn't have any contradiction with the fair hearing principles because at first paying this money compared to the income of people is not as they can not go to the court. Second, based on the reasons mentioned, the baseless claim in the court is decreased and it facilitates the right fulfillment process in the court and it is considered in a fair hearing.

Second discussion- The reasonable votes issued

1- The reasonability and documented nature

[§] Rostami, Vali et al., Ibid, p. 36.

^{**} Akhundi, Mahmood, ibid, p. 207.

Section 1, article 6 of European convention of human rights and section 5, article 8 of American convention of human rights referred to the reasonability of the votes and considered obstinacy as one of the important factors making all the structural factors considered for holding fair hearing as failed.

Reference and reasoning are two main elements to avoid court obstinacy being emphasized in various documents. The reference is finding the law and reasoning as the analysis presented by the judge about the reason of applying the law order on the definite issue. Thus, the law ruling principle obliges that the court votes and other law bodies are issued in accordance with the rules. As each of the courts can define the result of the claim based on their will and benefits. In case of any violation of this order, the vote is considered as favorite. It is obvious that only referring to the rules can not be adequate. Because the judge should define exactly why and how the action or omission in the order have the same features being avoided by the law maker.^{††} Thus, the mentioned principle is in the obligatory domain of the judges in legal procedure and any negligence in observing the requirements of this principle from the legal authorities is in contradiction with the fair hearing.

If the judge vote is documented, two benefits are guaranteed: Private benefit and society and judge benefit. For the benefit of the claim parties, they are aware that they are judged well and from the society, this issue is proved that the judge is not presented his judgment based on bias and this led to the trust and judge legitimacy.

2- The concept of reasonability in administrative law

In administrative law, reasonable principle is considered as the undertaking principle by presenting the reasons.^{‡‡} This principle prevented the managers and judges of autonomous decision making and obliged to observe the reasoning and legal principles.

The undertaking principle presented the reasons of reflecting the law ruling and fair behavior. This principle has two aspects:

- a. The behaviors of political, legal and execution authorities should be equal for people. They should consider in their decision making special social, economical and political privilege to hurt the other people.
- b. Promotion of the culture of not raising the false claims and prevention of the frequent objections of claimants to the vote^{§§}.

3- The reasonability and documented votes issued in administrative justice court

It was mentioned that in administrative law, reasonability principle was considered as undertaking principle. This principle is considered to avoid the autonomous decision making of the managers and judges and oblige to observing the legal and reasoning principles. Reasonability of the decisions in administrative law is such that:

- 1- The reasoning of the claims of two parties are expressed and evaluated.
- 2- The legal basis of the legal decision and norms are mentioned clearly.
- 3- The conditions on which the decision is taken and related information of the decision is taken.

Unfortunately, in administrative justice court law, the reasonability of the votes is not mentioned and it is problematic and the public court neglects the administrative claims of this obvious fair hearing principle. This principle is not mentioned in the court law and nothing can be said about the reasonable votes and it can not be neglected due to the clarification of this principle in court law. As in accordance with principle 166, 167 of the constitution, the votes of the court should be reasonable based on the constitution and obvious legal principles and this principle is used in the court votes.

Some mechanisms are predicted in the court and it seems that indirectly are ineffective in the votes issued from the courts and the mechanisms are:

- In article 3 of court law by prediction of at least 15 years of legal experience for the court judges and 10 years for BA or PhD or equivalent religious studies increased the accuracy and experience. Based on the technical nature of the administrative cases, it was better to consider the minimum score for the specialists of administrative law and public law at judges or court counselors level.

- The law maker considered some solutions in prediction of the specific conditions and more benefits to the experts. In accordance with article 9 of administrative court, some experts in the required fields of the court with 10 years of administrative experience, MA or above were appointed as court counselor with the order of the chief of judiciary system as full or temporary employment and are referred to them in case of needing any counseling with the requirement of the branch and this center issues the vote after considering their view. Based on note 1, of the same article, the counselors besides the condition and scientific experience in this article should have the conditions of sections 1 to 4 of the law of conditions by which the judges are appointed that was approved on 61/12/14.

^{††} Rostami, Vali et al., Ibid, p. 102.

^{‡‡} Mohseni, Morteza, 2003, Generalities of public criminal law, first volume, Tehran, Ganj Danesh publications, Third edition, P. 232.

^{§§} Salehirad, Mohammad, Some issues about the reasonability of the court verdict, justice administration journal, 42, Spring 2003, p. 20-22.

- The experts in various fields, due to the lack of mastery of the judges to all the issues is logical and the attempt to employ the experts namely the prediction of the equal benefits of the judges predicted in the bill made the administrative justice court efficient. Article 9 of the law approved in 2006 to predict the serious conditions and giving more benefits to the experts is preferred to the note of article 1 and 3 of law in 1981. In the court law of 1981, there was no requirement except the general regulations in determining the experts while the current law of the court by predicting this issue took a big step to do the specialized duties of the organization well.

- Asking for the required cases and documents of the governmental units and public municipalities and institutions and their officials from the court branches and the guarantee of violating to send them from the officials as predicted in article 32 of administrative justice court and it can be another mechanism to promote the reasonability of the votes issued from the court branches.

It can be said that prediction of the specialization in the court and referring the existing documents in other courts can lead to the promotion of the reasonable aspect of the vote.

In the legal procedure of administrative justice court, the reasonability of the votes is emphasized and the following votes can be considered:

Vote No. 101 on 1368/10/28 stated:” The necessity principle is considering the reasons and documents and observing their validity in the decisions issued by the various legal and administrative courts are the obvious principles of hearing and various legal issues in each of the aspects emphasized on this point,....”^{***}

Vote No. 119 on 1368/12/24 stated that:” The votes issued from the administrative offense boards should be based on valid reasons and legal regulations and issuing the vote without the mentioned rule as the obvious principles of judgment is not in accordance with the legal rules”.^{†††}

But the votes of court branches regarding the observing of the reasoning aspect of the votes were weak and regarding the reference aspect, some of the special and repetitive issues are referred showing the weakness of the analysis and reasoning of the court judges and relying on routine and empirical issues in the fixed cases. These similar cases with more consideration had different nature or different votes.

Third issue- Having access to the legal institution

Having access to the court means that the claimant without any abnormal suffering can use the services of the court or attend the court. The legal concentration is one of the important issues making the claimant in the court encountering with many problems. The legal system should be designed as a person by taking the minimum charge can acquire his rights. There are other factors beside the distance making the access to the court problematic^{†††}. To observe this principle, observing the following items is necessary:

- The legal institutions should be available for all people. Any country should attempt to achieve this ideal aim based on its economical ability and facilities.

- Some solutions should be taken that illiterate people can easily register their complaint.

- No discrimination of color, gender, education, etc can be considered in referring to the legal institution.

The court should be available and the documents and votes issued from the court should be available also. These two titles are investigated:

1- Having access to the existing documents in the court

Public access to the documents the court issued its verdict based on it is one of the important methods of public supervision on the performance of the courts. Today, in the modern societies, most of the reasons on which the vote is issued are written and the judges write the verdict based on studying them. In the current legal system activating based on the written documents, attending the court can not clarify y some views of hearing. In such condition, having access to the documents as the basis of the court verdict can be considered as replacement and in other cases as complementary for attending in the court ^{§§§}

It is obvious that access to the documents is one of the examples of legal transparency. Colman J said in channel Islands v Lexington Insurance:” The essential purpose of the granting access to such documents is to provide open justice, that is to say to facilitate maintenance of the quality of the judicial process in all its dimensions, so that the public may be satisfied that that courts are acting justly and fairly and the judges in accordance with their judicial oath”.^{****}

It is obvious that this principle is not revealing all the documents given to the court and only the documents should be given to the applicants affecting the decision of the court. Having access to such information and documents not

^{***} Based on administrative justice court site (www.divan-edalat.ir), public board votes of administrative justice court, date: 1390/3/9.

^{†††} Ibid

^{†††} Hadavand, Mehdi, The special administrative courts along with the fair hearing code (Iran law and comparative study), ibid, p. 226.

^{§§§} Ibid, p.228

^{****} Jacob j.M(2007) Civil Justice in the Age of Human Rights, Hampshire: Ashgate, p.80.

Cited in Hadavand, Mehdi, specific administrative courts along with the fair hearing principles (Iran law and comparative study), ibid, p.228.

only improved the clarity of the legal system and public opinion supervision, it is a practical need. The one condemned in the court by identification of the documents and information the court issue the vote based on them or affected the opinion of the court of the documents, in the court of appeal, he can defend himself and ask for re-decision.

2- Having access to the court votes

Having access to the votes issued by the courts is of great importance as it can be used as a supervision method on performance of the courts. Having access to the court votes can have various effects as:

- With the possibility of public supervision on the court votes obliges himself to issue the votes with better quality.

- By the possibility to have access to the votes, the votes are distributed in the society and the legal awareness of the society is increased.

- By the possibility of having access to the votes, most of the legal researchers can study the weaknesses and strengths of the legal institution and the rules of Iran and propose some corrective solutions for the items without good quality.

3- Having access to the legal institution in administrative justice court

Having access to the administrative hearing is considered as a tool to achieve the rights of a citizen. In other words, having access to the courts is the necessary introduction of hearing^{†††}. In article 1 of administrative justice court approved in 1981, it was predicted that according to the high legal council, the court branches are increased in some places except Tehran but by approving the revision of administrative justice court law in 1999, the court branches were established only in Tehran. Now, article 2 of the court stated:” The administrative justice court that is called “court” in this law is established in Tehran. Determining the number of court branches is done by the proposal of the chief of the court and approving of the chief of judiciary system”. The court branches are only established in Tehran and the court provincial branches and initial courts and the court of appeals are not considered in the town and provinces^{††††}. This characteristic of the court made the access to the rights and complaint of the state institutions problematic and due to the various cases from other parts in the county created many problems in the court.

Regarding the reason of the lack of formation of court branches outside Tehran, it is stated that:” The problem of providing legal staffs considering all the rules based on the variety of the various forms of the claims and the difficulty of having access to the discussion sessions and balanced routine procedure of the court in case of the distribution of the court judges in various parts on one hand and the necessity of formation of appeal board and public board of the court in one place made the establishment of the branches of the court in other parts as impossible^{§§§§}. It seems that the various claims in the courts and the problems of its legal system is not the reason for violating the right and depriving people of it.

In the new bill of administrative justice court procedure to solve this problem and it is done for facilitation of having access to the services of court, the administrative office of the court in judiciary administration or inspection office are established in each of the centers in the provinces.

These offices are responsible for guidance of the clients, accepting the petition of the claimants, notification of the second copy of the complaints or votes issued from the court in the office being received via E-mail or any other method from the court and it is responsible for doing the orders of the court orders in the office.

It seems that by approving this bill, the concentration problem of the branches of the court in Tehran is eliminated and this is in conformity with the fair hearing principles.

Regarding to the principle of having access to the existing documents in the court as one of the sub-groups of the hearing transparency, it can be said that this goal is observed in administrative justice court well and the votes of administrative justice court is available. Various books are published on the votes of public board of the court and even having access to the initial and appeal court branches are facilitated by launching internet sites and IT in administrative justice court.

Regarding the availability to the existing documents in administrative justice court, there is no explicit nature in the court hearing code and the legal procedure is indifferent to this issue. As the court is the public legal body of complaint in administration disputes, this mechanism should be designed to have access to the documents by which the vote is issued. It is important to say that based on article 24 of the court law and articles 23, 25 of administrative justice court, the court investigation is of research type by which the court can research to discover the reality or ask for the required researches from the judiciary officials or refer to the other legal officials.

^{††††} Malmiri center, Ahmad, Raji, Seyed Mohammad. 2008. The expert view about the administrative justice court procedure bill (report 1), legal studies office (public and international law group), the studies center of Islamic council parliament, Published 1387/11/20, 9513, p.5.

^{††††} Gorji, Ali Akbar. 2008. The law ruling and limitations of claim law in administrative justice court, constitution law, 9, p.172-173.

^{§§§§} Sadrolhefazi, Seyed Nasrollah, Pishin, p.66

Thus, the mentioned officials are obliged to do the researches determined by the court branch and violation of this issue leads to the administrative or safety punishment. Thus, the court branch can ask for the documents and cases in state units and related institutions and municipality. The unit in which the file is held, send the case within one month and if it is not possible to send the documents, the reasons are said to the court, otherwise the person responsible for not sending the document is imprisoned from one month to one year and is suspended from the state and revolutionary institutions by the order of the court branch. This punishment is necessary for the case the court branch requires the explanation from the agent of the mentioned units in section a) article 13 and the appointed agent refrain to attend the court and present the explanations without any excuse.

Based on the mentioned explanations, it can be said that it is required to have access to the documents in the file by which the vote is issued that the claim parties and publish opinion have access to it and this promotes the public supervision on administrative justice court and the claim parties are sure about the issued vote.

Conclusion

Fair hearing is considered as the concept being appeared in the second half of 20th century in human rights issues and took the attention of all the law makers and human rights activists. It seems that observing the concepts of fair hearing and hearing transparency in administrative courts is one of the unavoidable necessary issues that the administrative hearing of Iran and administrative justice court is encountered as the public center of complaint claim. As it was said, the hearing transparency and the constituents in administrative justice court are not considered as qualified. It is required the law maker attempts more to modify the condition of administrative courts in Iran and to achieve this aim, some changes are made in selection method of the members of administrative courts, investigation of the cases, interaction method with the accused or a person the case is used against his rights, having access to the cases. It is proposed that the law maker by suitable modeling and based on the reasonable issues of the human rights systems on administrative law took positive steps in this field and by new concepts in legal system of Iran improved the responsiveness of administrative courts namely the administrative justice court and administrative justice was used as strategic aim. As it was said, the first and the most important principle in the conclusion is the unavoidable importance of the administrative hearing law of the independent unit and is including all the principles of administrative fair hearing rules besides other hearing rules including the criminal procedure code and civil procedure code, because the administrative claims are more valuable than the civil and criminal claims in terms of the numerous number of administrative claims and its administrative nature. Despite the private issues related to the relations of definite people, the public affairs have many examples and the adverse effect of an offense or weak verdict in public issues were more than the violation of an ordinary person of the other person rights or false court verdict in a special item. Thus, modification of the administrative courts in Iran required the attempts of the law maker as the selection and job security of the members of the administrative courts, investigation of the cases, and interaction with the accused person or the person against whom the case is claimed and other cases are arranged as it seems unacceptable.

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REFERENCES

- 1- Akhundi, Mahmood. 2008. The code of criminal hearing (thoughts), 4th Vol. Tehran, Islamic guidance and cultural ministry, First edition, P:204-206.
- 2- Rostami, Vali; Aghayi Tugh, Moslem, Lotfi, Hassan. 2009. Fair hearing in specialized administrative courts of Iran, Gerayesh edition, First edition, Tehran.
- 3- Salehirad, Mohammad, Some issues about the reasonability of the court verdict, justice administration journal, 42.
- 4- Sadrolhefazi, Seyed Nasrollah, 1993. The legal supervision on government actions in administrative justice court, Shahriar edition, First edition, Tehran.

- 5- Gorji, Ali Akbar. 2008. The law ruling and limitations of claim law in administrative justice court, constitution law, 9.
- 6- Mohseni, Morteza, 2003, Generalities of public criminal law, first volume, Ganj Danesh publications, Third edition. Tehran.
- 7- Malmiri center, Ahmad, Raji, Seyed Mohammad. 2008. The expert view about the administrative justice court procedure bill (report 1), legal studies office (public and international law group), the studies center of Islamic council parliament, Published 1387/11/20, 9513.
- 8- Hadavand, Mehdi and Aghayi Tugh, Moselm. 2010. The special administrative courts along with the fair hearing code (Iran law and comparative study), Khorsandi publications, First edition, Tehran.
- 9- Available in administrative justice court site (www.divan-edalat.ir), public board votes of administrative justice court, date: 1390/3/9.