
Efficiency of the Judicial System in Protecting Citizens against Administrative Judicial Acts: The Case of Macedonia

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Abstract

In 2006, the Republic of Macedonia changed the model for judicial control of specific administrative actions. The government replaced the Anglo-Saxon Model with the European-Continental Model. However, the functioning of this model fails to efficiently protect the rights, legal interests and citizen's freedoms in the Republic of Macedonia.

Key words: citizens, efficiency, administrative judicial system, judicial system organization, Administrative Court

1. Introduction

Currently, there are two basic models that provide for the judicial control over administrative acts: European-continental and Anglo-Saxon. The former is characterized by the creation of special jurisdiction for control of administrative acts; the latter provides for control of administrative acts within the existing general jurisdiction of the judiciary.

Both systems have positive and negative sides. When determining the appropriate model for judicial oversight of administrative actions by the government, a country must take into consideration its own specific characteristics, its needs and the goals that it intends to achieve (Schwarze 1992, p. 6; Breban 2002, p. 24; Brown and Bell 1992, pp. 34-38).

Pending adoption of the new Law on Administrative Disputes, the competent authority for administrative dispute resolution, according to the Macedonian Constitution (as of 1991) and the Law on Courts (as of 1995) was the Supreme Court of the Republic of Macedonia. This is the highest court of general jurisdiction in the country. Within the court, a specialized administrative department or chamber was fully responsible for administrative dispute resolution.

The existing legislation on administrative dispute resolution includes many elements of the Anglo-Saxon and French Models of administrative-judicial control. Judicial review of the legality of administrative acts was implemented in a special administrative-judicial procedure (an element of the French Model of administrative-judicial control) under the jurisdiction of the Supreme Court, highest instance general court in the country. This special jurisdiction can be considered an element of the Anglo-Saxon Model of administrative-judicial control over administrative acts of the state (Pelivanova 2009, p.192).

The literature in the field of administrative justice in the Republic of Macedonia features strong proponents for both: the Anglo-Saxon Model (Gelevski, 1997, pp. 73-4; Gelevski 2003, pp. 242, 252, 254) and the European-continental Model (Davitkovski, Pavlova-Daneva 2006, p. 114; Hristov 1981, p. 449). Both justify their recommendations on the grounds of efficiency, effectiveness, specialization and professionalism of the judges involved to ensure quality administrative judicial review.

The impetus for changing the model of the administrative adjudication in the Republic of Macedonia was systematic delay in the resolution of appeals of state administrative agency decisions by the Macedonian Supreme Court, the consequences of which were expensive, protracted and exhausting administrative-judicial procedures; (Draft Law on Administrative Disputes, April 2006). The delay resulted from (i) inefficient procedural and administrative processing requirements, and (ii) the requirements for specialization, professionalism and knowledge of the judges- appointed as well as elected -in charge of administrative disputes (Davitkovski and Pavlovska-Daneva, 2006, p. 114).

As a result, public confidence in the administrative judicial system began to erode. The time from filing to final resolution and issuance of the judgment in administrative appeals ranged from six months to several years. Current public discussions express increasing concern over the functioning of the judicial system's ability to effectively review

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administrative actions taken by state agencies. There is general agreement that the problems are caused by a lack of professionalism on the part both of the judges and of court administration and management. Other contributing causes are lack of modern information technology solutions and deplorable spatial conditions in the courts. Until today, those problems have remained unaddressed. We have undertaken an empirical analysis of the efficiency of the administrative justice system in Macedonia and report the results in this paper. Our analysis incorporates the following elements:

1. the work indicators of the Administrative Department of the Supreme Court;
2. the Court's efficiency in deciding administrative suits;
3. the duration of court procedures in administrative disputes over a seven-year period (2000-06); and
4. data on the total number of judges and judge assistants.

The quantitative approach used in this research intends to add valuable information to current theoretical and practical knowledge in the field.

We begin the analysis by describing the legal design of the administrative justice system. From there we cite statistical data on the number of cases processed and on the number of appeals to higher courts, followed by an analysis of the efficiency of the administrative justice system. We finish with an explanation of the causes of delay and provide a general conclusion.

2. Organization of the Administrative Jurisdictions in the Republic of Macedonia – Legal Solutions

A couple of years ago, the Republic of Macedonia applied the European Continental Model of the administrative judicial control over administrative acts. Establishment of a new Administrative Court in the judicial system sought to address ongoing and unacceptable delay at the Supreme Court level in resolving administrative appeals and the consequential expense and inefficiencies (Davitkovski 2005, pp.1-3). But, what brought the application of this model of judicial intervention to the Republic of Macedonia?

Amendment 15 of the Constitution of the Republic of Macedonia declares that the judicial power is exercised by independent courts that function according to the Constitution and the laws and international agreements ratified pursuant to Constitutional authority. The same Amendment provides for the types, jurisdiction, establishment, abolition, organization and structure of the courts as well as the procedures to be regulated by law adopted by two-thirds (a qualified) majority of the Parliament (The Constitution of the Republic of Macedonia 1991, Amendment 15). Amendment 101 provides that the Supreme Court of the Republic of Macedonia is the highest court in the country's judicial system. The primary responsibility of this Court is to ensure uniform implementation of laws by all the courts (Klimovski 2005, p. 505).

In addition, Article 50, paragraph 2, provides for court control of the legality of particular acts of the state administration and other institutions that exercise public authority. On the other hand, Amendment 21 provides citizens the right to appeal against first-instance decisions issued by the courts. The Law on Courts (Article 22) states that in the court system, the judicial power is executed by basic courts, intermediate appellate courts, the Administrative Court, the Higher Administrative Court and the Supreme Court of the Republic of Macedonia. The competence of the Administrative Court is defined by the Law on Courts and the Law on Administrative Disputes.

The Law on Courts (Article 34) states that the Administrative Court is competent for the assessment of:

- The legality of particular acts adopted for elections, and for appointments and dismissals of public office holders, if prescribed by law as well as for acts of appointment, nomination and dismissal of public office holders, if not prescribed by law otherwise;
- Disputes accruing from the implementation and enforcement of the provisions of concession agreements, public procurement contracts concluded for any public interest or for performing a public services and for any other agreement in which one of the parties is a state authority, another organization established by public law, public enterprises, municipalities and the City of Skopje; and

- Appeals against particular acts adopted by the state administration bodies, the Government, other state authorities, municipalities and the City of Skopje, organizations instituted by public law and legal entities when executing competences under public law (public office holders), in cases where other kinds of legal protection is not provided.

The Higher Administrative Court has jurisdiction over the total territory of the Republic of Macedonia. It is competent to; 1) decide on appeals against decisions of the Administrative Court; 2) decide on any conflict of interest between the state authorities, between municipalities and the City of Skopje, between the municipalities of the City of Skopje, and in disputes relating to conflicts of interest between municipalities and the City of Skopje and public office holders, if determined by law, in the case where another court protection is not provided by the Constitution and laws; and, 3) perform other activities determined by law.

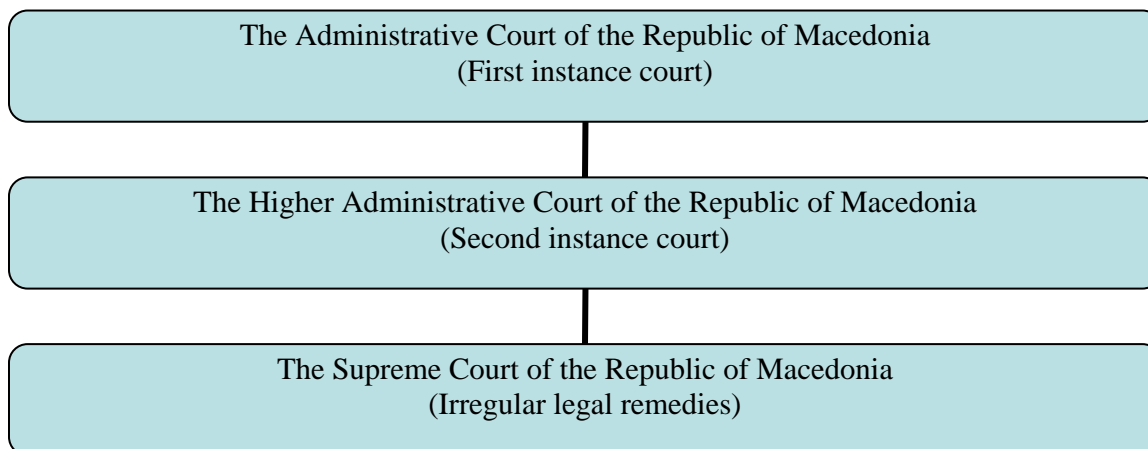
The Law on Administrative Disputes states that the Administrative Court is the first-instance court for suits, challenging certain **decisions** taken by administrative agencies pursuant to the authority set forth in administrative acts. By contrast, the legality of general administrative **acts** is under jurisdiction of the Constitutional Court of the Republic of Macedonia.

The Law on Administrative Disputes, in addition to the jurisdiction prescribed by Article 2, provides in Article 1 for the competence of the Supreme Court to decide disputes on the legality of acts of administration bodies, the Government and other state authorities, municipalities and the City of Skopje, organizations established by law, and legal entities and other persons in exercising public authorities, when they make decisions on the rights and obligations of citizens in specific administrative cases as well as in disputes caused by the acts of those authorities brought in misdemeanour proceedings. The Law Amending the Law on Administrative Disputes of 2010, which takes effect after establishment of the Higher Administrative Court, by 30.06.2011 (Article 4), states: "Administrative disputes in the Republic of Macedonia shall be resolved by:

the Administrative Court, as a first-instance court; the Higher Administrative Court as a second-instance court; and, 3) the Constitutional Court of the Republic of Macedonia that shall decide upon extraordinary legal instruments in the cases where it is stipulated by the Law on Administrative Disputes. In administrative proceedings the Administrative Court reviews appeals challenging administrative actions. The Higher Administrative Court hears appeals of the Administrative Court decisions. Finally, the Supreme Court hears appeals of the decisions of the Higher Administrative Court and on any conflicts of laws between the Higher Administrative Court and any other court (Law Amending the Law on Courts, *Official Gazette of the Republic of Macedonia* No 150 / 2010).

The organizational structure of the administrative judiciary for purposes of appellate review of administrative cases is shown in the Figure 1 below.

Figure 1. The organizational hierarchy of administrative adjudication according appeal procedures



3. Efficiency of administrative adjudication in the Republic of Macedonia when operating in accordance with the Anglo-Saxon Model

The presented data in the Tables 1, 2, and 3 below shows valuable information on the work of the Supreme and Administrative Courts for the available period from 2000 until 2006.

Table 1. Indicators of the work of the Administrative Department of the Supreme Court of RM for the period 2000-2006

Year	2000	2001	2002	2003	2004	2005	2006
Total number of suits to the Administrative Department of the Supreme Court	5636	5379	5169	6299	6793	7556	7506
Not resolved from the previous year	3273	3063	2634	3156	4139	4240	4067
Suits filed in the current year	2363	2316	2535	3143	2654	3316	3439
Resolved	3573	2745	2013	2160	2553	3490	4105
Not resolved	2063	2634	3156	4139	4240	4066	3401

Source: The Supreme Court of the Republic of Macedonia, Annual Reports, 2000 - 2006

Table 2 Indicators of the work of the Supreme Court of RM upon administrative suits

Year	2000	2001	2002	2003	2004	2005	2006
Total number of administrative cases	N/A	N/A	N/A	6167	N/A	N/A	7354
Resolved	2409	2659	1922	2092	2460	2460	3899
Not resolved	N/A	N/A	N/A	4075	N/A	N/A	3455
New filed cases	N/A	N/A	N/A	3086	N/A	N/A	3322
Not resolved cases from the previous year	N/A	N/A	N/A	3081	N/A	N/A	4032

Source: The Supreme Court of the Republic of Macedonia, Annual Reports, 2000 – 2006

Table 3 The duration of court procedure in administrative dispute

Year	2000	2001	2002	2003	2004	2005	2006
Resolved cases in 3 months	124	89	139	125	90	80	744
Resolved case in 3- 6 months	216	226	153	169	70	189	1585
Resolved cases in more than 6 months	2069	2430	1630	1798	2300	2987	1570

Source: The Supreme Court of the Republic of Macedonia, Annual Reports, 2000 – 2006

The data presented in these tables show that each year from 2000 to 2006, the number of unresolved cases transferred to the next year was very high. From the data it can be confirmed that in most cases the overall time of the administrative dispute procedures is more than 6 months (Pelivanova 2007, pp. 844-55). In first-instance administrative disputes, the Supreme Court decided in two administrative chambers each comprising three judges.

The first chamber decided cases involving urban matters, building construction, residential matters, survey and cadastre, legal property, agriculture, forestry, water management, veterinary, economy, customs, taxes, voter-registration lists, internal affairs, defence, jurisdiction and administration and industrial property.

The second chamber decided upon suits involving pension and disability insurance, labour, employment, child protection, social security, health, taxes, education, science, culture, archive activity information and transformation of the social capital.

When an appeal was approved as a remedy, the Supreme Court decided in a chamber comprising five judges, from among which three judges of the first-instance chamber that had not decided upon the case in first instance and two judges of the Criminal and Civil Departments within the Supreme Court.

4. Efficiency of administrative adjudication in the Republic of Macedonia when operating in accordance with the European Continental Model

The practice of the European Continental model of administrative judicial control in the Republic of Macedonia will be presented by using indicators of the work of the Administrative Court published in its annual reports for the period 2008-2009 (Administrative Court Annual Reports for 2008-2009).

Almost a year after the adoption of the new legal solutions on administrative disputes in 2006, the Supreme Court received only legal instruments for the purpose of initiating judicial control of specific administrative acts. It did not decide any cases in this legal area as it had been waiting for the establishment of the new Administrative Court. The new Administrative Court of the Republic of Macedonia commenced functioning on 05.12.2007. In 2008 it employed 22 judges, including the President of the Court and a selection procedure for three additional judges was underway. During 2008, 8.497 legal cases were filed with the Court for decision on different basis. In addition, 5.804 legal cases were pending from the previous year for a total of 14.301 legal cases, 5.147 of which were resolved in 2008 and 9.154 still remained pending as of 31 December 2008 (Administrative Court Annual Reports 2008, p. 4).

During 2009, new 9.043 legal cases were filled with the Administrative Court on different bases; added to the 9.154 unresolved cases from 2008, the 2009 caseload comprised 18.197 administrative cases in total, 7.857 of which were resolved and 10.340 remained unresolved during the course of 2009. During that year, three additional judges were elected bringing the total number of judges to 25.

Processing of the legal cases in this court was organized in eight chambers established within six specialized court departments:

- I. Department for Real-Estate, Cadastre, and Education;
- II. Department for Denationalization, Expropriation, De-expropriation and Transformation;
- III. Department for Urbanism and Construction, Water Management, Agriculture, Economy, Transport and Communications, Lottery and Broadcasting;
- IV. Department for Pensions and other Pension and Disability Insurance Rights, Social Welfare Rights, Health Insurance Rights, Health-Sanitary Supervision and Control Rights, Inspectorate Control and Labour Rights;
- V. Department for Public Procurement, Unemployment Rights, Taxes, Contributions, Employment Relations, Excise Taxes, Dismissal, Lawyers, Economy, Competitiveness, Central Registry, Access to Public Information; and
- VI. Department for Customs, Taxes, Compensations, Statutory Issues, Travel Documents, Vehicles, Weapons, Energy, Concessions, Ownership, Industrial Property Rights and Copy, Seal, Banking activities, Concessions, Defence, Business Entity, Energy and Monument Protection.

Two Councils functioned in the frame of the second Department (Chamber II and VII). Also, within the sixth Department two Councils functioned (the Chamber VI and VIII). Finally, within the remaining four Departments one Chamber functioned respectively (Chamber I, III, IV and V) (Supreme Court Annual Reports 2009, p. 6).

5. Analysis: Causes of delays

Indicators of the work of the Supreme Court pose a number of questions and suggest certain conclusions. Even though the indicators pertain to the two-years (2008 and 2009), the large number of unresolved or pending administrative cases added to the caseload for the succeeding year, notwithstanding this court's administrative jurisdiction and the addition of new judges. In addition the number of judges and the Judge Councils in the Administrative Court was extended several times in legal cases in the administrative legal area. Today, the number is 25 judges. In 2008, the number of unresolved cases of the administrative legal area was 9.154, and in 2009 it was 10.340. The large number of unresolved legal administrative cases inevitably imposes the conclusion that in the Republic of Macedonia the practice of slow protection of the rights, private interests and citizen's freedoms continues in case of a violation when they are violated by specific acts of the administration in the Republic of Macedonia (Supreme Court Evaluations and Recommendations on the Reports on the Work of Courts in 2009, pp. 4-6).

What are the causes for those problems? Are they a result of inappropriate spatial and technical conditions for normal work of the Administrative Court as is indicated in the annual reports of the Court? Is it the insufficient number of the technical personnel and judicial assistants employed in the court in question? Or are elected judges not sufficiently specialized or experienced to deal with these types of cases in a more efficient and effective manner? Or, is it again the model of administrative-judicial protection? Is it an implementation problem or are there other causes?

Certainly, the spatial constraints and outdated technical equipment and software influence the efficiency of the work of the Court: this cannot be ignored when seeking the causes for the numerous unsolved cases. An influential factor concerning the effectiveness of the work of the Court has been the insufficient number of judicial assistants responsible for providing professional help for judges in processing the cases. As an example, in 2008 there was no such type of personnel employed at the Administrative Court (Administrative Court Annual Report 2008, p. 4), while the number of employed personnel was only 18 administrative judicial assistants in 2009. This means less than one administrative judicial assistant per judge (Administrative Court Annual Report 2009, pp. 3-5). One must, however also pose the question: what is the influence of the professional experience of the judges elected in the Administrative Court on the large number of unresolved administrative legal cases in the Republic of Macedonia?

At this point, there is no methodology that can measure that influence, but the indicator of a large number of unresolved administrative legal cases, certainly, is one of them. If we look at the professional biographies of the judges elected in the Administrative Court it can be concluded that, besides the fact that they fulfil all the legal requirements for their election in the Administrative Court (according to the Law on Courts) prior to their appointment to the Administrative Court, most had no practical experience in the administrative legal field. They were involved in resolving private sector disputes, worked as lawyers or as professional judicial assistants whose intention and development, mainly, was directed to the criminal or civil sector. Arguably, experience in the administrative legal area, accrued knowledge and permanent tracking of this large, different and very often variable legal matter in the Republic of Macedonia is a requirement for quality and fast resolution of legal cases in this area.

The French model for a specialized administrative judiciary, which is applied in the Republic of Macedonia, offers certain characteristics that focus on establishing direct multi-directional relations between the Administrative Court and the administration. These are reflected, first of all in the composition of the administrative courts' personnel who have received broad administrative training roughly equivalent to the administrative personnel in the *Ecole Nationale de l'Administration*. Members of administrative courts have the right, if they want to be transferred to another active administrative job position, wherefrom they can return to work in the court. Moreover, it is possible, on higher administrative judiciary levels, to have judges appointed from outside the judiciary. Consequently, high-level administrative officials can be nominated to work as judges in the administrative courts. These direct relations exist even during administrative court proceedings. In other words, the so-called consultative jurisdiction keeps together the judge and court administration in performing particular activities, especially during the process of preparing written documents. It is true that these close relations between the judges and the administration can be very dangerous because of political or corruptive reasons, but without any doubt, the direct link between the judiciary and administration has contributed to higher efficiency of the French administrative judiciary (Brebant 2002, pp. 381-82).

It is certain that the French Model of the administrative judiciary has its specifics that might not be practicable in our administrative judiciary, but it is indisputable that the persons elected for administrative judges must be appropriately educated and have sufficient experience in these matters.

The Ministry of Justice of the Republic of Macedonia in July 2010, drafted and processed amendments to the Law on Administrative Disputes (adopted in the Parliament of the Republic of Macedonia in November 2010), which among others, pertain to the organization of the administrative judiciary in the Republic of Macedonia (Draft Law Amending the Law on Administrative Disputes, July 2010). The proposed amendment (Article 4), in addition to the introduction of an Administrative Court that is to make first- instance decisions, provides for constituting a new Higher Administrative Court, and the Supreme Court shall be competent to use extraordinary legal instruments. The newly proposed solutions on the plan of organizing administrative judiciary in the Republic of Macedonia raised reactions with the politicians, juridical professions and scholars. However, a public debate concerning this issue has not, to date, been organized. Most comments pertained to the proposed organization of the administrative judiciary or the need to establish a new Higher Administrative Court. The initiator of the amendments to the Law neither provided any rationales or any explanatory arguments about the reasons for this nor any data about the work of the Administrative Court up to now to support this proposal. The question remains why the Macedonian government suspended the possibility of the resolution of appeals against the decisions of the first-instance Administrative Court by the Supreme Court. This took place only one year after this competence was created for the Supreme Court as a consequence of the Constitutional Court decision on organizing (according to the Constitution) a second-instance administrative judicial protection for the first-instance decisions brought by the Administrative Court (Constitutional Court Decision of 2009, pp. 1-6).

Unfortunately, the public in the Republic of Macedonia faces the reality of lengthy administrative adjudication proceedings in protection of their rights, legal interests and civil liberties. The average time from filling the suit until releasing the final court decision for a concrete administrative dispute is several years. Generally, this situation undermines public confidence in the justice system which, according the Constitution (Article 50 paragraph 2), exists to protect citizens' rights, legal interest and civil liberties against administrative acts of public institutions. In addition, there is a huge influence coming from the citizen's knowledge about the problems that pertain to the issues of independency and professionalism of the administrative adjudication in the Republic of Macedonia.

Therefore, the following questions still remain open: Does the Republic of Macedonia have a strategy for the effective organization of the administrative judiciary system? What are the plans for the future? Until now, this question remains without response by the political, administrative and judicial authorities in the Republic of Macedonia.

From the public perspective it is a court administration and management issue that entails implementing good management practices in planning, organizing, coordinating and controlling. Without good court management and administration we cannot speak about an efficient, effective and productive administrative court system in the Republic of Macedonia. In order to renew the public confidence in public institutions and administrative court system among them, there still has to be done a lot of work in the field of administrative adjudication.

6. Conclusions

The citizens in the Republic of Macedonia are facing inefficient administrative judicial protection against particular administrative actions by agencies of the state. From a public perspective, the overall administrative adjudication remains poorly organized and somewhat messy. The high rate of appeals of first-instance court decisions is one of the main indicators for the increased level of negative public confidence in the effectiveness and trustworthiness of administrative adjudication. In overcoming those situations, there is an urgent need for further education and training of the elected and appointed judges in the administrative adjudication, employment of a greater number of professional judge assistants, appropriating more financial resources from the government for this types of courts, as well as minimum involvement by the political party authorities during the process of election and appointment of the judges in the administrative adjudication in the Republic of Macedonia.

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