Challenges and perspectives of administrative judiciary in the Republic of North Macedonia

Associate professor **Jeton SHASIVARI**[1]

Abstract

The development of administrative judiciary in the Republic of North Macedonia went through various phases after its independence in 1991. 16 years after its independence, in late 2007 the Administrative Court was established as one of the holders of the judiciary in judicial system. Before the establishment of this court, the administrative dispute was under the jurisdiction of the Supreme Court. The Administrative Court appears as a guarantor for exercising the rights guaranteed by the Constitution and the laws before the administrative bodies, which provide court protection in the event of an unlawful conduct by the administration. For this reason, administrative justice plays a key role in the lives of citizens who seek it when they consider that state authorities are preventing the enjoyment of a constitutional or legal right, or that they are imposing an obligation outside the legal rules. With this paper the author by explaining the process of development of the administrative judiciary using: normative legal method, comparative legal method, systematic and objective interpretative methods, will focus on the specific analysis of ineffectiveness of administrative justice in the practice, which is due, first of all, to the lack of a mechanism for implementing the judgments of the Administrative Court.

Keywords: *administrative bodies, administrative dispute, administrative justice, administrative case law, full dispute, dispute for annulment of administrative act.*

JEL Classification: K23, K41

1. Introduction

Administrative dispute, as a form of direct judicial control over the administration, is one of the most important and most complex institutes of administrative law. It is about the most important form of external legal and judicial control of the legality and the work of the administration. In strait aspect, according to the principle of separation of powers, the administrative dispute is not in accordance with this principle. However, as in other situations in law, real life is superior to the legal logical constructions; therefore, the appearance of the institute of the administrative dispute marks the triumph of life over the law. The administrative dispute is not an legal institute that has roots from the medieval legal opinion and practice, but it's a great legal invention of the contemporary law, because it appears as a result of essential deficiencies of various kinds of administrative control over the administration under the principle of hierarchy, in

[1] Jeton Shasivari – Associate professor of Constitutional and Administrative Law, Faculty of Law, South East European University, Tetova, Republic of North Macedonia**,** j.shasivari@seeu.edu.mk.

which case they do not guarantee sufficiently implementation of the principle of legality in administrative activity and proper protection of legal rights of citizens from the illegal actions and decisions of the administration, seeking and finding proper legal protection elsewhere, i.e. in courts as a separate and independent organs from the administration. Therefore, such circumstances led to the view according to which the courts are really only able to assess the legal side of the administration, and examine and decide on what the administration has acted and decided according to a law or not. In this sense, the control of legality could not be entrusted to parliaments, because they are even more governed by political criteria than the administration itself. Therefore, in the conditions of the separation of powers, this control is entrusted to the courts, since they are independent organs, which are competent to assess the legality of the administrative acts and their very function, gives full guarantee for the objectivity of this control, and on the other hand, the administrative authority is avoided, to be, at the same time as a judge and a party[2].

There are different criteria for determining the concept of administrative dispute. Most authors define the concept of an administrative dispute from the standpoint of their national law, relying mainly on one criterion, while ignoring others, which, however, may be more appropriate to another legal system. In administrative legal theory, there is no a unique point of view to define the concept of administrative dispute, so there are two meanings, including: formal and material meaning on administrative dispute. The formal meaning is based on formal legal features, such as jurisdiction of the body that settles an administrative dispute, thus an administrative dispute is settled by the special courts; the procedure in which an administrative dispute is settled, thus this dispute is settled in judicial administrative procedure; the participants in the administrative dispute, thus as one of the mandatory participants in this dispute always appears the administration; the nature of the legal provisions to be decided in this dispute, etc. The material meaning is based on material legal features, where previously is defined the notion of dispute, in which case, there are two views, the English point of view according to which the dispute exists only when there are two parties with two contrasting requests; and the French point of view according to which such dispute presents the situation where there is opposition to one request. Considering the abovementioned, it should be noted that the full meaning of an administrative dispute is determined by specifying its object and purpose. So, the administrative dispute means the dispute over the legality of the administrative act, which is created between a party and the competent authority after completion of the general administrative procedure, the resolution of which is under the jurisdiction of the

[2] Наум Гризо, Симеон Гелевски, Борче Давитковски, Ана Павловска-Данева, *Административно право,* Правен Факултет “Јустинијан Први”- Скопје (Naum Grizo, Simeon Gelevski, Borce Davitkovski, Ana Pavlovska-Daneva, Administrative Law, Faculty of Law "Iustinianus Primus" – Skopje), 2008, p. 499-500.

court (whether special or regular court) in separate judicial administrative procedure[3].

Regarding the organization of the administrative disputes, in practice there are two main systems, including: the French system which in addition to France, is implemented also, in: Germany, Austria, Italy, Republic of North Macedonia, Croatia, Bosnia, Slovenia, Switzerland, Bulgaria, Serbia, Spain, Turkey, Portugal, Greece, Finland, etc., according to which there is a system of specialized courts (administrative courts) to resolve administrative disputes and Common law system which along with Britain is also applicable in the United States, the Netherlands, Romania, Slovakia, etc., according to which regular courts resolve administrative disputes.

French administrative law served as a model for the organization of administrative courts not only in Europe, but also outside of it. France is the first country in the world to create, develop and maintain until today, the system of special administrative tribunals, as a form of judicial control of the administration and protection of the rights of the citizens. In France, administrative tribunals are first instance administrative courts with general jurisdiction or special courts for certain types of administrative disputes. The State Council is an appellate court for the decisions of the administrative courts of first instance, and may also appear as a court of cassation. French law is probably the most important for understanding the concept and types of administrative dispute in general. The development of French administrative law provides an explanation for the emergence of the appropriate types of administrative dispute, which we would round off with a sentence pronounced by Sabino Cassese, that the organization of the French administrative judiciary "is one of the most original contributions that France has given to legal science"[4].

On the other hand, depending on various criteria there are different types of administrative disputes. So, by its purpose, administrative dispute can be subjective and objective dispute. The main purpose of the objective dispute is to protect the objective law (protection of the principle of legality), while the main purpose of the subjective dispute is the protection of a concrete subjective right. In Administrative Law of the Republic of North Macedonia, the objective dispute is always initiated by a competent state body (e.g. public prosecutor) if it considers that an administrative act violated the law in favor of the party to the detriment of the public interest (for example, someone is granted permission for the construction, although not complying legal requirements), whereas the subjective dispute, is always initiated when party considers that by an administrative act is violated his/her subjective right (for example: the party was denied a permit for construction). According to the object (the type of act of administration against whom it is initiated the administrative dispute), the subjective dispute is initiated

[3] Jeton Shasivari, *E drejta Administrative*, Furkan ISM, Shkup, 2015, p. 288-290.

[4] Morand-Deviller, Jacqueline, *„Le système français de justice administrative"* (29-41), dans *Association Tunisienne de Droit Administratif: La justice administrative dans les pays du Maghreb*, Ben Salah, Hafedh [Ed.], Presses de l'Université des Sciences Sociales, Toulouse, 2008, p. 29.

against concrete administrative legal acts, (for example: administrative act), while the objective dispute is initiated against general administrative legal acts (for example: the legal provision). According to this distinction, the Administrative Law of the Republic of North Macedonia recognizes only the subjective dispute because according to its legislation, an administrative dispute can only be initiated against concrete administrative legal acts, and not against general administrative legal acts (for example, against a regulation or order of the Minister), because, their legality can be challenged only before the Constitutional Court. In this regard, according to the court's authorization in case of resolving administrative disputes, differs administrative dispute for the annulment of the administrative act and the administrative dispute of full jurisdiction (full dispute). The administrative dispute for the annulment of an administrative act aims only the annulment of the administrative act in the case of its illegality and as a rule, returning the case to restoration to the administrative body that issued the administrative act, so here the court is authorized to review and check only the issue of legality of the administrative act. Into the administrative dispute of full jurisdiction (full dispute) after the annulment of the administrative act due to its illegality, the case is not returned to the restoration to the administrative body that issued the administrative act, but, for that administrative issue decides the court which annulled the administrative act, so, here the court besides controlling the legality of the administrative act, also, controls the content of the act, so, in one word, here the court decides also for the administrative case, which otherwise is in the competence of the administrative body[5].

2. Public administration according to European assessment

In the coming year, the Republic of North Macedonia should in particular:

→ ensure full respect of merit-based recruitment for public service positions;

→ avoid the use of excessive temporary, service or other types of recruitments that bypass the merit principle and use instead open competitions for all recruitments;

→ start to implement the public administration reform strategy and the public financial management reform programme, and ensure a coordinated monitoring and reporting system, which systematically engages with external stakeholders;

→ provide extensive training to central and local government administrations and raise public awareness to ensure implementation of the Law on General Administrative Procedures[6].

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[5] Jeton Shasivari, *E drejta Administrative*, Furkan ISM, Shkup, 2015, p. 290-291.

[6] See more at: European Commission, 2018 Communication on EU Enlargement Policy, Strasbourg, 17.4.2018. Available online at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-the-former-yugoslav-republic-of-macedonia-report.pdf [accessed January 4, 2019].

The country is moderately prepared with the reform of its public administration. There was good progress over the reporting period as some of the European Commission's 2016 recommendations were implemented. The public administration reform strategy and the public financial management reform programme were both adopted. Concrete efforts were also made to increase transparency, accountability and the involvement of external stakeholders in policy-making. The capacity of the Ministry of Information Society and Administration to drive and coordinate public administration reform needs to be improved. In summer 2017, the government dismissed or ended the mandates of all public board members and top managers in 85 public institutions on the grounds of obstructing the transfer of power and taking procurement decisions which potentially damaged the budget. The appointment of new managers of those institutions with a full mandate began in January 2018. Strong political commitment to guarantee professionalism of the public administration, especially on senior management appointments, and the respect for the principles of transparency, merit and equitable representation remains essential[7].

Organization of the state administration is fragmented. This is because the Law on the Organization and Operation of State Administrative Bodies does not provide a clear distinction between different types of institutions. The lines of accountability between and within institutions are not clear. Managerial accountability within institutions is not systematically implemented and there is little delegation of responsibility to middle management. Numerous agencies are directly subordinate to the Parliament. Some state institutions continue to report in parallel both to their "line" ministry (the ministry responsible for their activities) and government. At present, 67 state institutions (out of a total of 1 291 institutions) mainly at local level, operate with less than five employees. As part of the new public administration reform strategy, the government should prepare and implement a review to assess the effectiveness of the organization of the domestic public administration. The internal and external oversight mechanisms ensuring citizens' right to good administration are in place, but their quality and impact needs to improve[8].

On the right to administrative justice, the appeals procedure is still complex and lengthy, comprising several appeal layers. There are still delays in enforcing Administrative Court rulings. There is a right to seek compensation and public authorities are liable in cases of wrongdoing. The Law on General Administrative Procedures, which entered into force in August 2016, has aimed to simplify administrative procedures. However, it is not systematically applied by the administration, even though considerable efforts were made to harmonize 169 special laws with the law. The Ministry of Information Society and Administration has so far not provided systematic training or organized public awareness campaigns to inform people of their rights and obligations. A comprehensive 2018-2022 public administration reform strategy and a sequenced action plan to

[7] *Ibid.*
[8] *Ibid.*

implement this strategy were adopted in February 2018 after an inclusive consultation process. The strategy sufficiently addresses all core areas of public administration, including de-politicization and professionalization of the public administration. The government should now focus on implementing the strategy. A key concern is the capacity of the Ministry of Information Society and Administration to efficiently coordinate and monitor implementation of the strategy with other state institutions affected by the strategy. The government established a high-level Public Administration Reform Council in December 2017 to ensure political support and strategic guidance for the reforms. Strong political commitment from the highest political leadership is necessary to ensure full understanding and enforcement of the reform priorities. The reform also needs to be made more financially sustainable, as the costing of the strategy is not reflected in the 2018 annual budget and the medium-term expenditure framework. Implementation of the reform strategy relies heavily on external donor funding[9].

3. Legal and practical aspects of administrative judiciary in the Republic of North Macedonia

On December 5, 2007 the Administrative Court was established as one of the holders of the judiciary in judicial system of the Republic of North Macedonia, which exercise judicial power on the whole territory. As its name suggests, the Administrative Court was established as a specialized first degree court that decides in an administrative dispute lawsuit against administrative acts of an organ of state administration or organization. The purpose of the establishment of the specialized Administrative Court is achieving a greater efficiency in the judicial protection of citizens' rights in administrative legal sphere in Republic of North Macedonia. Until the adoption of the Law on Administrative Disputes in 2006 which was modified in 2010, the administrative disputes resolution was in jurisdiction of Supreme Court of the Republic of North Macedonia. With the establishment of the Administrative Court, started the process of abolition of the second degree bodies that decided upon an appeal against the decisions of the administrative bodies and the direct reference for seeking protection before the Administrative Court, as well as the transfer of the competences, as well as the backlogs on administrative disputes that were in the competence of the Supreme court. In 2009, the Constitutional Court passed a decision[10] on the initiative for constitutional review regarding the lack of the right to appeal the decisions of the Administrative Court, which stipulated the compulsory nature of the appeal. Because of this, the same year, the Law on Administrative Disputes was supplemented and it was envisaged the establishment of the Higher Administrative

[9] See more at: European Commission, 2018 Communication on EU Enlargement Policy, Strasbourg, 17.4.2018. Available online at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-the-former-yugoslav-republic-of-macedonia-report.pdf [accessed January 4, 2019].

[10] Decision of the Constitutional Court of the Republic of Macedonia no. 231/2008 of 16 September 2009. Available online at: http://ustavensud.mk/?p=9974 [accessed January 3, 2019].

Court whose basic competence is to decide on the appeals filed against the decisions of the Administrative Court. After this interventional decision of the Constitutional Court, there were made significant changes, among which introducing the right to appeal as a regular legal remedy in administrative dispute and establishing of the Higher Administrative Court in 2011 as a second degree court. In this way, it comes to the introduction of the three-degree administrative judiciary in Republic of North Macedonia, namely the Administrative Court as the first degree court, the Higher Administrative Court as a second degree court and the Supreme Court as a court which is competent to decide on extraordinary legal remedies.

The Administrative Court is located in Skopje and performs its judicial activities on the whole territory of the Republic of North Macedonia. It was established according the Law on Courts. According to this Law, the Administrative Court shall be competent to decide:

- upon the legality of individual acts adopted in the election procedure and on individual acts referring to elections, appointments and dismissals of holders of public offices, if defined by law, as well as on acts on appointment, designation and dismissal of managerial civil servants, unless otherwise defined by law,
- upon a dispute resulting from the implementation and enforcement of the provisions of concession agreements, contracts for public procurements which are of public interest, and upon each contract to which one of the parties is a state body, an organization with public powers, a public enterprise, municipalities and the City of Skopje, and which is concluded in public interest or for the purpose of providing a public service (hereinafter: administrative contracts),
- against individual acts of state administrative bodies, the Government, other state bodies, municipalities and the City of Skopje, organizations established by law, and legal entities and other entities in the exercise of public powers (holders of public powers), when another legal protection is not provided for resolution in the second degree against such act[11].

The internal organization of the Administrative Court consists of a total of 7 organizational units. They are:

- Professional-legal service;
- Auxiliary-legal service;
- Human resource department;
- Department of informatics;
- Department for financial and material work;
- Office of public relations; and
- Technical service[12].

[11] Article 34 of the Law on Courts (Official Gazette of the RM, No. 58/06). Available online at: https://www.venice.coe.int/ webforms/documents/default.aspx?pdffile=CDL-REF(2018)027-e [accessed January 3, 2019].

[12] Administrative Court, Judicial Portal of the Republic of Macedonia. Available online at: http://www.vsrm.mk/wps/portal/usskopje [accessed January 2, 2019].

The Higher Administrative Court was established in 2011 and mainly, its organization is defined in the Law on Courts and the Law on Administrative Disputes[13]. The establishment of this court was seen as a real necessity by the judicial environment with the purpose of maintaining and achieving greater efficiency and effectiveness of the administrative judiciary. According to Law on Courts, the Higher Administrative Court shall be competent to:

- decide upon appeals against the decisions of the Administrative Court;
- decide in case of conflict of competences between the bodies of the Republic, between the municipalities and the City of Skopje, between the municipalities of the city of Skopje, and in disputes concerning conflict of competences between the municipalities and the City of Skopje and the holders of public powers, if anticipated by law, in case the Constitution or the laws do not anticipate other type of judicial protection, and
- carry out other activities defined by law[14].

The Law on Administrative Disputes regulates the issue of when the administrative dispute may be conducted, and when it cannot be initiated. So, administrative dispute may be conducted against a final administrative act adopted in second degree (final administrative act). Administrative dispute may be as well initiated against an administrative act of the first degree, when legal protection is not anticipated in an administrative procedure of second degree. Administrative dispute may be initiated even when the competent body has not adopted an administrative act upon the request, i.e. appeal of the party, under the conditions anticipated by this Law. The administrative dispute may be as well initiated due to violation of the provisions of the administrative contracts, in accordance with the provisions of this Law.

Administrative dispute cannot be initiated:

- against acts brought in issues wherefore court protection is provided apart from the administrative dispute;
- against issues wherefore the Parliament and the President of the Republic of North Macedonia directly decides on the basis of constitutional authorizations, except decisions on appointments and dismissals[15].

An administrative dispute shall be initiated by a lawsuit against the final administrative act within 30 days from the submission of this act to the party. An administrative dispute may be initiated against administrative act, when it's not provided the right of appeal to an administrative procedure, as in the case of "administrative silence", i.e. when the competent body does not issue an

[13] Law on Administrative Disputes (Official Gazette of the RM, No. 62/06, 150/10).

[14] Article 34-a of the Law on Courts (Official Gazette of the RM, No. 58/06). Available online at: https://www.venice.coe.int/ webforms/documents/default.aspx?pdffile=CDL-REF(2018)027-e [accessed January 3, 2019].

[15] Articles 8 and 9 of the Law on Administrative Disputes (Official Gazette of the RM, No. 62/06, 150/10).

appropriate administrative act on the request-appeal of the party, under the conditions provided by law[16].

Since, in Republic of North Macedonia the administrative dispute for the annulment of the administrative act appears as a rule, while the administrative dispute of full jurisdiction (full dispute) appears as an exception, this distinction is more a principle issue rather than a practical issue, because the Administrative Court with its case law maximally avoids the administrative dispute of full jurisdiction (full dispute), in order not to incorporate the third degree of administrative decision-making, where the burden of decision-making would go massively from the administration bodies to the Administrative Court. So, in this regard, as the main feature appear, the lack of the oral and public hearings before Administrative Court and practical reduction of the administrative dispute to a dispute for the annulment of the administrative act, while the full dispute where the court itself decides on the administrative issue is almost not applicable, except where it is necessary. In this context, pursuant to article 40 of the Law on Administrative Disputes, if the court finds that the contested administrative act should be annulled, it may resolve the administrative issue by pronouncing a judgment, if the nature of the matter and the data in the procedure provide such grounds. The court shall always act in this manner if:

- the law has been improperly applied (wrongly established legal issue);
- the issue concerns administrative contracts;
- the issue concerns acts issued in misdemeanor procedures by organs indicated in Article 1 of this Law;
- the procedure is delayed, and in the case in question the factual situation has been determined in the administrative court procedure;
- the administrative act has been previously annulled by a judgment, yet the issuing authority has failed to act according to the court's guidelines and opinions stated in the judgment;
- the competent authority upon annulment of the administrative act passes an administrative act contrary to the court's legal opinion, or contrary to the court's remarks regarding the procedure, thus the complainant submits another complaint;
- in cases indicated in Article 22 of this Law. (This Article prescribes that, if the second-degree authority, within 60 days or a shorter timeframe defined with a specific regulation, fails to rule on the appeal disputing the first-degree decision, and fails to rule within seven days of receipt of a repeated request, the party may initiate an administrative dispute as if the appeal were denied. The party may also act in this manner, if the first-degree authority failed to rule on its request and where no appeal is available against the act of the first-degree authority. If the first-degree authority whose act may be appealed within 60 days or a shorter timeframe defined by a specific regulation, failed to rule on request, the party may address the request to the second-degree authority. The party may initiate an administrative dispute against the second-degree authority's decision according to those

[16] Articles 8 and 20 of the Law on Administrative Disputes (Official Gazette of the RM, No. 62/06, 150/10).

conditions, even if the authority had not ruled). Such judgment shall replace the act of the competent authority in all respects. In cases as indicated in Paragraph 5 items 4 and 5 of this Article, the court shall inform the supervising authority. The Supervising Authority shall suspend the authorized officer for failure to comply with a court order and shall initiate disciplinary proceedings against said officer[17]. By the judgment that annuls the contested administrative act, the court shall also decide upon complainant's request for return of property. With regard to compensation for damages, the court shall refer the complainant to resolve his/her request in a civil action[18].

Also, it is important to note that, the law stipulates that, judgments of the courts rendered in administrative disputes shall be binding and enforceable, including in particular, the regulation of binding judgments according to law. In this regard, when a court annuls an act subject to administrative dispute, the case shall be restored to the state prior to the issuance of the annulled act. If the nature of the issue requires issuance of a new act to replace the annulled administrative act, the competent organ is required to issue such act without delay, no later than 30 days from the date of delivery of the judgment. In this procedure, the competent organ shall be bound by the legal opinion of the court, as well as the court's remarks regarding the procedure. If, upon annulment of an administrative act, the competent organ fails to issue a new administrative act or an act for enforcement of the judgment pursuant to Article 40 Paragraph 5 of this Law immediately or within 30 days at the latest, the complainant may petition for issuance of such act by special submission. If the competent organ fails to issue such act after seven days of receipt of such petition, the complainant may request issuance of such act by the court that had rendered the judgment. Regarding the requirement from Paragraph 1 of this Article, the court shall demand an explanation from the competent organ on the reasons for the failure to issue the administrative act. The competent organ is required to provide such explanation immediately, or within seven days at the latest. If the organ fails to perform this obligation or if the explanation provided does not justify, in the court's opinion, the non-enforcement of the judgment, the court shall issue a decision that entirely replaces the competent organ's act in every aspect, if the nature of the matter allows it. The court shall forward this decision to the enforcement organ and duly inform the supervisory organ. The enforcement organ is required to enforce this decision without delay[19]. But, as we shall see, in practice, the situation is completely different, namely that the Administrative Court will only continue to annul the decisions of the administration bodies and give directions for recognizing some of the party's rights, regardless of the fact that, they will not be respected, which will say that, the annulment judgments of the court are

[17] According to the judges in RM, the general view is that, this legal provision has not been revived at all. *Како до ефективна административна правда?*-Документ за јавни политики, Фондација за демократија Вестминстер (How to Effective Administrative Justice - Public Policy Document, Westminster Foundation for Democracy), Financed by the EU, Скопје, 2016, p. 17-18.

[18] Article 40 of the Law on Administrative Disputes (Official Gazette of the RM, No. 62/06, 150/10).

[19] Articles 5, 52 and 53 of the Law on Administrative Disputes (Official Gazette of the RM, No. 62/06, 150/10).

often without any effect. So, examples from practice shows that very often the administrative bodies do not act on the judgment, i.e. they act contrary to the instructions of the Administrative Court or do not decide within the deadline determined by law.

On the other hand, regarding practical approach to this issue, in order to evaluate the efficiency, the performance indicators of the Administrative Court are also important, whereby according to the official data of this court, in the table below will be presented its performance (number of cases) for the 10-year time period, 2008-2017, including the total number of administrative disputes.

Table 1: The number of cases before the Administrative Court for the time period 2008-2017[20]

Year	Unsolved cases from the past years	New cases	Wrongly registered	Total cases in work	Solved cases	Unsolved cases
2008	5.804	8.497	0	14.301	5.147 (35.99%)	9.154 (64.01%)
2009	9.154	9.043	0	18.197	7.857 (43.17%)	10.340 (56.83%)
2010	10.340	9.792	0	20.132	6.322 (31.40%)	13.810 (68.60%)
2011	13.866	11.867	7	25.726	9.746 (37.88%)	15.980 (62.12%)
2012	15.970	14.667	64	30.573	16.351 (53.48%)	14.222 (46.52%)
2013	14.222	12.754	69	26.907	14.479 (53.81%)	12.428 (46.19%)
2014	14.575	16.430	68	30.937	20.203 (65.30%)	10.734 (34.70%)
2015	10.734	15.011	64	25.681	15.895 (61.89%)	9.786 (38.11%)
2016	9.786	13.240	48	22.978	13.888 (60.44%)	9.090 (39.56%)
2017	9.090	11.073	52	20.163	12.599 (62.48%)	7.564 (37.52%)

[20] Branko Dimeski, *"A Performance Analysis of the Administrative Court in Public Administration Development in the Republic of Macedonia",* Pravne Teme, Novi Pazar, 5/2017, p. 67. Available online at: http://pt.uninp.edu.rs/wp-content/uploads/2018/09/a-performance-analysis-of-the-administrative-court-in-public-administration-development-in-the-republic-of-macedonia-2008-2017. pdf [accessed January 2, 2019]. See also at: Управен Суд, Годишни Извештаи-Annual Reports of the Administrative Court (2008-2017). Судски Портал на РМ. Available online at: http://www.vsrm.mk/wps/portal/usskopje [accessed January 2, 2019].

As can be seen from the table above, with regard to the unsolved cases from the past years, the Administrative Court has received the largest number of cases in the years 2010-2014, and by 2015 this number begins to decline. As far as new cases are concerned, their number is starting to increase from 2011, and in 2014 their highest number (16.430) is marked. Regarding total cases in work, the largest number of them is recorded in 2012 (30.573 cases) and in 2014 (30.937 cases), while the smallest number is recorded in 2008 (14.301). Regarding solved cases, the smallest number is recorded in 2008 (5.147-35.99%), while the largest number is recorded in 2014 (20.203-65.30%). In general, it should be underlined that these number from 2012-2017 marks a permanent increase. And, finally, regarding unsolved cases, the smallest number is in 2017 (7.564-37.52%), while the largest number is in 2011 (15.980-62.12%). In general, it should be underlined that these number from 2012-2017 is permanently declining.

However, when discussing the efficiency of the Administrative Court, it should be pointed out that, in order to dismantle this court from the increasing influx of cases, the second degree state commissions were reintroduced. First, in 2012, the State Commission for Decision-making in Administrative Procedure and Labor Relations in the second degree was established, while in 2014, the State Commission for Decision-making in the second degree was established in the area of Inspection Supervision and Misdemeanor Procedure. These legal solutions, for the nuance, reduced the number of backlog cases before the Administrative Court, but this did not contribute to reducing the number of cases on the basis of decision-making in full administrative disputes, thus the Administrative Court continued to plays "ping-pong" with the state administration bodies, with the greatest damage to the citizens. But, despite the apparent trend to reduce backlogs, the number of new cases is still increasing. So, there is still no drastic change in the efficiency and effectiveness of the work of the Administrative Court, despite the fact that, the number of judges from the initial 19 has increased to 33 judges. The only visible change is the minor reduction of unsolved cases from the past. However, the reason for this should be sought in the establishment of the State Commission for Decision-making in Administrative Procedure and Labor Relations in 2012. Among other things, it is within its competence to deal with appeals against decisions adopted in administrative procedure in the first degree. But, this State Commission failed in its task to ease the burden of received cases before the Administrative Court. On the contrary, the number of the new cases from 2012 grows again, which points to the fact that, the problem of non-issue of cases from the administrative sphere occurs even in the second degree of the administrative procedure, namely, before the case comes to the Administrative Court[21].

[21] See more at: *Како до ефективна административна правда?*-Документ за јавни политики, Фондација за демократија Вестминстер (How to Effective Administrative Justice? - Public Policy Document, Westminster Foundation for Democracy), Financed by the EU, Скопје, 2016, p. 15-16. Available online at: http://cpia.mk/media/files/-do-efektivna-administrativna-pravda.pdf [accessed January 3, 2019].

On the other hand, regarding the practical realization of the rights of the parties, Ana Pavlovska-Daneva and Ivana Šumanovska-Spasovska emphasize that, the parties look for administrative judiciary protection when it is about attaining their rights in multiple areas such as denationalization, pension rights, the right of retirement and disablement insurance, the rights of customs and tax procedures, property rights (for example privatization of building land, transformation of building land, the right of using a building land) and other rights stipulated by law. From this kind of legal protection for the parties depends whether they will attain a certain right, which they think they are deprived from with the contested act, or it will be confirmed the lawfulness of the made decision by the administration. Starting from the fact that the basic condition for starting an administrative dispute is the existence of a final administrative act, which is made as a result of having an administrative dispute, the road to protection and attaining of a certain right for the party is long and complicated. Namely, according to the new legal decisions in Republic of North Macedonia, the administrative legal protection can be obtained in front of four institutions or specifically: in front of a first degree institution in an administrative procedure, in front of a second degree institution after a motion in the administrative procedure, in front of the Administrative Court and in front of the Higher Administrative Court. However going through these four institutions does not mean a de facto realization of the legal right of the party. By rule, to be more precise, always after finalizing the administrative dispute, the parties' entire "won" case is returned in front of the authorities, and the administrative procedure starts again[22].

In this context, according to findings presented in practical research, in which important stakeholders from this field are interviewed (civil servants, former judges with experience in administrative disputes, former heads of state administration, representatives of the civil sector, etc.), focus groups with judges from administrative courts, lawyers specialized in administrative law as well as citizens (who are parties to administrative disputes), a common conclusion is that the basis of the ineffectiveness of the administrative courts lies in a smaller part in the quality of judicial decisions. Above all, the majority is due to the lack of discipline of the administration bodies in respecting and implementing the decisions of the higher authorities and administrative courts. In order to reduce the long duration of the procedure, which may be several years but also decades[23], it is necessary for the adoption of the acts of the state administration bodies to be in accordance with the guidelines contained in the judgments of the Administrative

[22] See more at: Ana Pavlovska-Daneva, Ivana Šumanovska-Spasovska, *"The Imperative Character of the Ruling of the Administrative Judiciary in the Republic of Macedonia-Real or Fictive Protection of the Rights and Interests of the Citizens"*, Iustinianus Primus Law Review, Vol. 11, Faculty of Law, Skopje, 2015, p. 1. Available online at: https://lawreview.pf.ukim.edu.mk/ [accessed January 4, 2019].

[23] Here it should be emphasized the decision of the European Court of Human Rights in the case "Mitkova v. Macedonia", which refers to the procedures for reimbursement of expenses for medical treatment abroad by the Health Insurance Fund and where the procedure for the dispute lasted for 21 years. European Court of Human Rights [ECtHR]. (2015). *Mitkova v Macedonia*, No. 48386/09.

Court. This would mean practical execution of the decisions of the Administrative Court, so that the citizens would immediately feel the effect of the work of the administrative courts. However, since there is indiscipline in the administrative bodies, a system for executing the decisions of the Administrative Court is needed, which is of primary importance to all participants interviewed within the framework of this research. This research showed that, there are two different approaches to how to implement this system:

▪ the judges consider that the execution of the decisions should be in the hands of one of the supervisory bodies of the state administration, such as the State Administrative Inspectorate.

▪ the second group of actors, lawyers, citizens and the Ministry of Justice are in favor of a model in which the Administrative Court would have the main role in the appointment of a special judge to enforce judgments, while enforcement would be carried out by a supervisory authority within the state administration or an independent body, such as the Council for Inspection Services[24].

According to the above research, is surprising that, two of the interviewed parties have filed three lawsuits against the same administrative body for the same administrative issue:

"I have filed 3 lawsuits for legalization of an illegally built object, which the cadastre initially typed in, and then wiped it out without any legal basis, which was twice ascertained by the Administrative Court. I hope that now the Administrative Court, after 5 years, will issue a judgment in order to register my property in the Cadastre".

"Although they found that there was no check for the payment of the nationalized land, the denationalization body again brought a negative decision, and I had to file a lawsuit for the third time. I myself am asking the court practice for the Administrative Court to decide once and for all on the return of the property taken away 70 years ago, which I see every day from the window of my home".

The lawyers agreed that the Administrative Court acted relatively quickly in their cases, but that besides all the letters and arguments they put in the procedure, they did not get effect from it, sometimes they also question their reputation as lawyers. My client told me: "What if I received all the positive judgments when I can not write down the land that my father left to me", or also one of my clients mentioned that, "she would invite me on her 8th birthday of her son for whom we are still before the Administrative Court for reimbursement for funds paid for childbirth. What to say more"[25].

The practitioners also note that, if yearly evaluation of civil servants would depend on how much they implement the decisions of the Administrative Court,

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[24] See more at: *Како до ефективна административна правда?*-Документ за јавни политики, Фондација за демократија Вестминстер (How to Effective Administrative Justice? - Public Policy Document, Westminster Foundation for Democracy), Financed by the EU, Скопје, 2016, p. 8-9. Available online at: http://cpia.mk/media/files/-do-efektivna-administrativna-pravda.pdf [accessed January 3, 2019].

[25] *Ibid*.

this could contribute to greater respect for the decisions of the Administrative Court, which would reduce the scope of its work. It was pointed out by the lawyers that in their work they met decisions that were adopted in full jurisdiction, but these were only rare cases and they were characteristic in the segment of denationalization. According to judges, this issue must be dealt within institutional level, that is, through the introduction of electronic communications between the state administration and the administrative courts, for example, the Administrative Court should not wait for the case files from the defendant body of the administration, but they should be in an electronic form, to which the judges of the Administrative Court would have free access and would be able to obtain themselves all the necessary documents and evidences[26].

4. Conclusions

Bearing in mind the findings of this paper, it can be concluded that, on the right to administrative justice in Republic of North Macedonia, the appeals procedure is still complex and lengthy, comprising several appeal layers. There are still delays in enforcing Administrative Court rulings. Organization of the state administration is fragmented. This is because the legislation does not provide a clear distinction between different types of institutions. The lines of accountability between and within institutions are not clear. Managerial accountability within institutions is not systematically implemented and there is little delegation of responsibility to middle management. Numerous agencies are directly subordinate to the Parliament. Some state institutions continue to report in parallel both to their "line" ministry and government. At present, 67 state institutions (out of a total of 1.291 institutions) mainly at local level operate with less than five employees. As part of the new public administration reform strategy, the government should prepare and implement a review to assess the effectiveness of the organization of the public administration. The internal and external control mechanisms ensuring citizens' right to good administration are in place, but their quality and impact needs to improve. The Law on General Administrative Procedures, which entered into force in August 2016, has aimed to simplify administrative procedures. However, it is not systematically applied by the administration, even though considerable efforts were made to harmonize 169 special laws with this law.

There is a serious problem with the arbitrariness of the administrative bodies that do not respect the position of the administrative judiciary and do not act in accordance with the directions given by the Administrative Court in its judgments by which it annuls their acts due to unlawfulness as a result of the lack of a system of enforcement and monitoring the execution of those judgments. The key reasons that make administrative justice ineffective are the long duration of the proceedings before the Administrative Court, as well as the non-decision of the Administrative Court in full jurisdiction, namely, the Administrative Court avoids

[26] *Ibid.*

directly determining whether a party may enjoy a certain right based on Constitution and laws, although the law obliges this court to decide in full jurisdiction.

This whole situation of administrative justice in the Republic of North Macedonia imposes the need to intervene in the Law on Administrative Disputes, which will provide for appropriate mechanisms for executing the judgments of the Administrative Court, as well as for strengthening the communication between the Administrative Court and the administrative bodies. According to the regional and European experience, the competent authorities of this country should adopt appropriate legislative, institutional and personnel measures and working conditions for Administrative Court and High Administrative Court. Time will show if and how these courts will manage and respond to the challenge of effective protection of citizens' rights, taking into account the criticism which keeps coming from the European Union concerning the general situation with the judiciary of this country.

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