

ORGANIZATION OF ADMINISTRATIVE-LEGAL PROTECTION OF THE CITIZENS OF THE REPUBLIC OF MACEDONIA

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Abstract

The Republic of Macedonia has a state history which recognizes protection of the rights and legal interests of its citizens where they enter into administrative-legal relations which, it must be admitted, have never been sincere and failed to have mutual understanding. The reform process in terms of the administrative approach to citizens has not limited numerous administration competences as a part of executive power, which affects citizens' rights and freedoms, and the private and public interest. Exactly these competences as imperatives entailed the need for permanent control of administration, in particular relating to legitimacy of its particular acts which for the citizens and other legal entities create certain legal situations. The control of legitimacy of particular administration's acts in the Republic of Macedonia is realized within the administration itself (by way of instance control, or right to supervision) as well as by courts. The subject of this Study is organization of the said control, since in this respect in the past certain changes that will be explained below have occurred.

Key words: Administrative Court, administrative-judicial proceedings, administrative procedures, State Commission.

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Administrative-legal Protection of the Citizens of the Republic of Macedonia in Administrative Proceedings

Processing and decision-making in general administrative proceedings in the Republic of Macedonia are key components in the interaction between the administration and citizens. Their correlation is proportional: the more these processes are functional, substantial, efficient, transparent and coherent, the more the objective of any modern state is realized – efficient and effective public administration in securing protection and public services to the citizens and legal entities.

Administrative-legal protection of the citizens of the Republic of Macedonia is ensured by the Law on General Administrative Procedures.¹ The Republic of Macedonia has had a long tradition in these terms dating from the Law on General Administrative Procedures of the Kingdom of Yugoslavia of 1930 (adopted immediately after the adoption of one of the first laws on administrative procedures in the world – the Austrian Law on General Administrative Procedures in 1925) as well as the later adopted Law on General Administrative Procedures of ex SFRY of 1956 with its amendments of 1965 and 1977.

Administrative-legal protection in the Republic of Macedonia is realized in first-instance and second-instance administrative proceedings. According to legal provisions, competent authorities dealing with first-instance proceedings are the following: ministries, other state administrative bodies, organizations determined by law and other state authorities, legal and other persons with public competences entrusted by law, municipal authorities, City of Skopje authorities and of the municipalities in the City of Skopje when deciding on the rights, obligations and legal interests of natural persons, legal entities or other parties.²

Once the first-instance authority has considered a filed appeal and determines that no legal base exists to adopt a new decision, it is bound to communicate the appeal, accompanied by all case files to the second-instance authority. To date, competent second-instance authorities in the Republic of Macedonia deciding upon appeals against first-instance decision were commissions for resolution of second-instance administrative proceedings within the Government of the Republic of Macedonia.³ However, practice indicated that this organizational solution in the general administrative proceedings is inappropriate⁴ for many reasons such as, in particular: second-instance commissions for resolution of administrative proceedings within the Government of the Republic of Macedonia fail to process appeals within the time limit determined by law; proposed decisions upon appeals are drafted by officials employed within the sectoral ministries, instead of commission members; commission

1 Official Gazette of Republic of Macedonia No 38/05, 110/08, 51/11.

2 Article 1 of the Law on General Administrative Procedures.

3 Commissions for deciding on second-instance administrative proceedings for particular administrative areas; Commission for deciding on second-instance administrative proceedings in the area of defense; Commission for deciding on second-instance administrative proceedings in the area of internal affairs, judiciary, state administration, local self-government and religious issues; Commission for deciding on second-instance administrative proceedings in the area of economy (economy, trade, statistics, games of chance and securities); Commission for deciding on second-instance administrative proceedings in the area of transport and communications and environment (transport and communications and environment, urbanism and construction and physical planning); Commission for deciding on second-instance administrative proceedings in the area of education, science and culture (education, science, culture, archive activity, sport and information); Commission for deciding on second-instance administrative proceedings in the area of labor, social policy and health; Commission for deciding on second-instance administrative proceedings in the area of agriculture, forestry, water economy and veterinary medicine; Commission for deciding on second-instance administrative proceedings in the area of surveying, cadastre and recording of the right to real estate; Commission for deciding on second-instance administrative proceedings in the area of property-legal issues and construction land; Commission for deciding on second-instance administrative proceedings in the area of pension and disability insurance; Commission for deciding on second-instance administrative proceedings in the area of denationalization; Commission for deciding on second-instance administrative proceedings in the area of employment (that are not in charge of the Civil Servants Agency).

4 Explanation to the Draft Law on Establishing State Commission for Resolution of Second-instance Administrative and Employment Proceedings, summary proceedings.

members are engaged in their regular duties and tasks within the relevant ministries or other state administrative bodies in which they are employed, and thus administrative proceedings are often delayed; there are members in commissions that are office holders such as state secretaries who, due to their engagement in office, are not in a position to participate in the commission work – i.e. to prepare decisions upon appeals, and there are commission members employed in other authorities who have not received cases in competence of the procedural commission; and commission presidents are members of the Government of the Republic of Macedonia – Ministries or their deputies who, due to their engagement, are not in a position to summon and hold regular monthly commission sessions⁵, and what is most important, they never adopt decisions subject to merit.⁶ Consequently, it is necessary to replace them immediately with new experts and independent entities competent for resolution of second-instance proceedings.⁷

As a result, it is envisaged by a legal act of the Assembly of the Republic of Macedonia to establish a special authority that will work solely on resolution of appeals filed against decisions taken in first-instance administrative proceedings – the State Commission for resolution of second-instance administrative and employment proceedings⁸ (hereinafter referred to as: the State Commission). In this term several alternative organizational and institutional solutions have been proposed for replacement of the second-instance commissions' work.⁹

The State Commission constitutes a novelty in the legal system of the Republic of Macedonia having several implications: systematic regulation of processing appeals against acts adopted in first-instance administrative proceedings, strengthening efficiency in exercising the right to appeal in administrative proceedings, and independent and professional decisions in second-instance proceedings.

The State Commission is competent for resolution of appeals against decisions in first-instance administrative proceedings adopted by ministries, other state administrative bodies, organizations established by law and other state authorities.¹⁰



- 5 Information on the work of commissions for resolution of second-instance administrative proceedings within the Government of the Republic of Macedonia for the period from 2006 to May 2007, State Administrative Inspectorate, of January 2008.
- 6 Davitkovski Borce, Pavlovska Daneva Ana, Harmonization of Administrative Law: attempt to create European administrative area, (published in the Collection: Methods for Harmonization of national Legislation with the EU Law), MANU 2 (2008): p. 350.
- 7 Same.
- 8 Law on Establishing State Commission for Resolution of Second-instance Administrative and Employment Proceedings, Official Gazette of the Republic of Macedonia No 51 of 13 April 2011. This Law shall commence to apply within six months from the date of entering into force.
- 9 Ana Pavlovska-Daneva PhD proposed the following concepts: establishment of special sectors within the ministries (where the minister adopted a first-instance administrative act) with exclusive competence of second-instance resolution for appeals, or a second and more expensive alternative is establishment of a special administrative authority to deal only with second-instance administrative proceedings in particular areas. Against the decisions of the bodies within the ministries, to maintain the existing solution, i.e. the ministry they are part of to decide on appeals. For parliamentary authorities (regulatory bodies) separate from the Assembly, to establish second-instance commissions autonomous from the executive power, members of which to be elected by public announcement.
- 10 State Commission competence to extend also for second-instance issues related to employment (that are not in competence of the Civil Servants Agency), for issues related to employment of civil servants of the Civil Servants Agency as well as against decisions of the Ministry of Interior on withdrawal of decisions on granting awards.

The State Commission Statute distinguishes it from that of former second-instance commissions, since in accordance with the legal provisions, the state Commission is a state authority with autonomous function and in a capacity of legal entity, or it is independent administrative body that is to act professionally, free from external influences.



The State Commission constitutes a President and six members nominated by the Assembly of the Republic of Macedonia based on a previously published public announcement, who will execute their function professionally. This provision additionally guarantees the Commission independence, since it will be accountable for its work directly before legislative authorities. This is the essential difference with respect to the personal composition of second-instance commissions in which members were directly nominated by the Government of the Republic of Macedonia as a major holder of legislative authorities. Legal provisions provide that a Bachelor in law may be nominated President of the State Commission with at least six years of experience in administrative matters, and for its members a person citizen of the Republic of Macedonia having completed higher education with at least four years of experience in administrative matters. It is evident that the members of the State Commission are not obliged to have completed studies at a faculty of law, which we consider could further reflect on its professional work. A better solution might be that a member of the State Commission must be a person citizen of the Republic of Macedonia, who possesses a Bachelor in law with at least four years of experience in administrative matters.

The State Commission decides upon appeals at its sessions with a majority of votes of the total number of its members. The obligatory time limit within which decision on appeals shall be made by the Commission is determined by law and it equates to two months from the date of appeal submission, unless a shorter time limit is determined by special regulation. If the State Commission fails to decide within two months or the shorter time limit determined by special regulation, certain measures may be taken provided for in law.¹¹ Such imposed legal provisions relating to the time limits for decision-making are aimed at improving the efficiency of administrative proceedings in the Republic of Macedonia.

Whether the measures proposed for the purpose of enhancing and modernizing general administrative proceedings will achieve their goal is to be indicated by the practice in our country.

Organization of citizens' administrative-legal protection in administrative-judicial control in the Republic of Macedonia

The judicial control system of administrative work in our country through administrative proceedings has been organized since 1952. For almost half a century, exactly until 2006, this type of judicial control was displaced within the regular judiciary, i.e. first-instance proceedings (two councils composed of three judges) and it was under jurisdiction of the Supreme Court of the Republic of Macedonia. Upon appeal, where it was allowed as a remedy, the Supreme Court of the Republic of Macedonia made second-instance decisions in a council structured of five judges.

However, the practice of delay and time-consuming resolution of first-instance administrative-legal cases in the Supreme Court of the Republic of Macedonia, time-consuming, expensive

¹¹ See Article 8 of the Law on Establishing State Commission for Resolution of Second-instance Administrative and Employment Proceedings.

and exhausting administrative-judicial proceedings¹², proceeding intensity and administrative work, requirements for narrow specialization, professionalism and knowledge of particular legal institute specificities of the judges in jurisdiction of resolution of administrative disputes were the reasons for modified organization of administrative-judicial control in the Republic of Macedonia. Therefore, by the end of 2006, the Supreme Court of the Republic of Macedonia had outstanding 3,491 unsolved cases.

Today, the Administrative Court is in jurisdiction of first-instance administrative-judicial control of the legality of particular administrative acts in the Republic of Macedonia according to the Law on Administrative Disputes and the Law on Courts. Pursuant to the Law on Courts (Article 34) it decides on:

- the legality of particular acts adopted in the election procedure and particular election acts, nominations and dismissal of office holders, if determined by law, as well as on the acts of appointment, nomination and dismissal of state officials unless otherwise determined by law;
- disputes that have arisen from the implementation and enforcement of provisions of concession contracts, procurement contracts of public interest, and on each contract of which one of the contracting parties is a state authority, organization with public competences, public enterprise, municipalities and Skopje City, concluded for public interest or for execution of public service (administrative contracts);
- appeals against particular acts of the state administrative bodies, the Government, other state authorities, municipalities and Skopje City, organizations determined by law, legal and other entities in their execution of public competences (holders of public competences), where other legal protection is not ensured by a second-instance decision against such act;
- first-instance decisions on appeals against administrative acts;¹³ appeals against administrative acts adopted by funds, public enterprises, institutions, organizations and societies, associations and other organizations and societies, where in the execution of their public competences they decide on administrative matters and conclude administrative contracts¹⁴;
- first-instance appeals against decisions adopted by a mayor when deciding on administrative matters and concluding administrative contracts.¹⁵
- Still, what change was brought by the new administrative-judicial control organization model of the Republic of Macedonia? Here is an illustration with certain available indicators.

The Administrative Court of the Republic of Macedonia commenced its functioning on 5 December 2007. In 2008, the Court employed 22 judges, including the President of the Court, and election of three more judges was ongoing. During 2008, the Court received and created 8,497 cases on different bases, and 5,804 unsolved cases from the previous year, being a total of 14,301 cases. A total of 5,147 cases were solved in 2008, and 9,154 were left unsolved.¹⁶ During 2009, the Administrative Court created 9,043 new cases on different bases; thus taking into consideration the 9,154 unsolved cases from the previous year, the Court processed a total of 18,197 cases, 7,857 of which were solved, and 10,340 cases were left unsolved. Three more judges were elected, so that the total number of judges increased to 25. During 2010, the Administrative Court received and created 9,792 new cases on different bases: thus taking into consideration the 10,340 unsolved cases from 2009, the Court processed a total of 20,132 cases, 6,322 of which were solved, and 13,810 cases were left unsolved. The cases in this Court were processed by 22 judges, in eight Councils established within six specialized court departments.

12 Explanation to the Draft Law on Administrative Disputes of April 2006.

13 Article 16 of the Law on Administrative Disputes, Official Gazette of the Republic of Macedonia No 62/06; 150/10.

14 Article 17 of the Law on Administrative Disputes.

15 Article 17 of the Law on Administrative Disputes.

16 Report on the work of the Administrative Court for 2008, p. 4.

These indicators of the Administrative Court's work provoke a range of questions and conclusions. Although the indicators refer only to a two-year period of its work, it is apparent that there is a large number of unsolved cases transferred from year to year, while the Court legal competences are higher than those of the previous system. It is, however, a fact that the number of judges in the Administrative Court was enlarged several times, i.e. court councils that decide on administrative-legal cases. The high number of unsolved cases inevitably creates the conclusion that in the Republic of Macedonia the practice of delayed right protections, legal interests and freedoms of the citizens of the Republic of Macedonia, when they are violated by particular acts adopted by the administration of the Republic of Macedonia, is continuing.¹⁷

What are the new legal solutions in terms of organization of administrative judiciary in the Republic of Macedonia? Namely, within the judicial authorities of the Republic of Macedonia, the Higher Administrative Court¹⁸ was constituted having jurisdiction throughout the territory of the Republic of Macedonia. This Court is competent for:

- decisions upon appeals against first-instance decisions of the Administrative Court;¹⁹
- decisions on conflict of competences between the authorities of the Republic of Macedonia, municipalities and Skopje City, municipalities of Skopje City and on disputes arising from conflict of competences between the municipalities and Skopje City and holders of public competences, if provided for by law, unless other judicial protection is provided for in the Constitution or laws; and
- execution of other matters determined by law.²⁰

The Supreme Court shall decide on extraordinary legal matters against the decisions of the Higher Administrative Court²¹, and on conflict of competences between the Higher Administrative Court and another court.²²

The need for constitution of a new Higher Administrative Court in the judiciary system of the Republic of Macedonia, in the legal solution proposed, was not underpinned by appropriate analysis. To be precise, the Ministry of Justice of the Republic of Macedonia, in July 2010, developed and processed amendments to the Law on Administrative Disputes (adopted in the Assembly of the Republic of Macedonia in November 2010), which, among others, relate to the organization of administrative judiciary in the Republic of Macedonia.²³

On the other hand, due to non-observance of the constitutional regulations on the right to appeal against first-instance decisions adopted by the Administrative Court, provided for in the Law on Administrative Disputes as of 2006, the Constitutional Court of the Republic of Macedonia adopted decision U. No: 231/2008-0-1 of 16 September 2009, according to which under the Law on Courts, the Supreme Court of the Republic of Macedonia was proclaimed competent for deciding upon appeals against first-instance decisions adopted by the Administrative Court.

The new proposed solutions in the scope of administrative judiciary organization in the Republic of Macedonia raised reactions in the political, expert and scientific public. However, no debate was organized on the occasion of the Draft-law. Most of the objections related to the new proposed organization of the administrative judiciary, that is the need for constitution of a new Higher Administrative Court in the Republic of Macedonia. The proposer of the amendments failed to give precise explanations or arguments for such amendments, nor presented data of the past work of the

17 Evaluations and conclusions of the Supreme Court of the Republic of Macedonia according to the reports of the work of courts in the Republic of Macedonia, pp. 4-6.

18 Article 22 of the Law Amending the Law on Courts, Official Gazette of the Republic of Macedonia No 150/2010.

19 Article 16 of the Law on Administrative Disputes.

20 Article 34 of the Law on Courts.

21 Article 4 of the Law Amending the Law on Administrative Disputes.

22 The Law Amending the Law on Courts, Official Gazette of the Republic of Macedonia No 150/2010.

23 Draft-law Amending the Law on Administrative Disputes, July 2010.

Administrative Court of the Republic of Macedonia as support for such change of the authorities of the Republic of Macedonia. There is a dilemma as to why the authorities abandoned the possibility that the Supreme Court of the Republic of Macedonia process appeals against decisions of the first-instance Administrative Court, only a year after the establishment of such obligation for the Supreme Court of the Republic of Macedonia under the decision on organization adopted by the Constitutional Court of the Republic of Macedonia, in accordance with the Constitution of the Republic of Macedonia, for establishing second-instance administrative-judicial protection upon the first-instance decisions of the Administrative Court.²⁴

From annually summarized results related to the functioning of the Supreme Court of the Republic of Macedonia for 2010, it is obvious that the total number of cases created in 2010 by the Supreme Court of the Republic of Macedonia on appeals against first-instance decisions adopted by the Administrative Court was only 1, 129, 682 of which were solved in the current year, while 497 were left unsolved.



Conclusion

Citizens of the Republic of Macedonia still face extremely long administrative and administrative-judicial proceedings for protection of their rights, legal interests and freedoms. This certainly has a negative effect on the citizens' confidence in administrative and administrative-judicial protection of their rights, legal interests and freedoms, and has not relieved the citizens' knowledge of the problems arising in public and related to the independence and professionalism of administrative and judicial authorities in the Republic of Macedonia. The question as to what changes will create adequate organization of the administrative-legal control for protection of citizens' rights is left open.

Bibliography

1. Annual Report on the work of the Supreme Court of the Republic of Macedonia for 2010, www.vsrn.mk.
2. Annual Report on the work of the Administrative Court for 2008, www.uskopje.mk.
3. Annual Report of the work of the Administrative Court for 2009, www.uskopje.mk.
4. Annual Report of the work of the Administrative Court for 2010, www.uskopje.mk.
5. Davitkovski, Borce., and Pavlovska Daneva, Ana. "Administrative Disputes in the Republic of Macedonia pursuant to the new Law of Administrative Disputes." Collection of Studies, Legal Framework of Judiciary Reform in the Republic of Macedonia, (2006): 114-119.
6. Davitkovski, Borce., and Pavlovska Daneva, Ana. "Harmonization of Administrative Law: attempt to create European administrative space." Collection: Methods for Harmonization of the National Legislation with the EU Law, MANU 2(2008):357-374.
7. Decision of the Constitutional Court of the Republic of Macedonia U. No 231/2008-0-1 of 16.9.2009.
8. Draft Law Amending the Law on Administrative Disputes of July 2010.
9. Draft Law on Establishing State Commission for Resolution of Second-instance Administrative and Employment Proceedings of April 2011.
10. Evaluations and Conclusions of the Supreme Court of the Republic of Macedonia on the reports for the court work of the Republic of Macedonia, adopted on the General Session of the Court held on 26.5.2009, www.vsrn.mk.

²⁴ Decision of the Constitutional Court of the Republic of Macedonia, pp. 1-6.

11. Gelevski, Simeon. Administrative Procedural Law. Skopje: Prosvetno delo, 1993.
12. Grizo, Naum., Gelevski, Simeon., Davitkovski, Borce., and Pavlovska Daneva, Ana. Administrative Law. Skopje: Faculty of Law, 2008.
13. Gelevski, Simeon., "Judiciary Control and Legality of Administrative Acts." Collection of the Faculty of Law in Skopje (1997):73-85.
14. Hristov, Aleksandar., Administrative Law, Skopje: Faculty of Law, 1981.
15. Information on the work of the commissions for resolution of second-instance administrative proceedings within the Government of the Republic of Macedonia for the period 2006 – May 2007, State Administrative Inspectorate, of January 2008.
16. Law on General Administrative Procedures, Official Gazette of RM No 38/05, 110/08, 51/11.
17. Law on Administrative Disputes, Official Gazette of RM No 62/06; 150/10.
18. Law on Courts, Official Gazette of RM No 58/06, 35/08, 150/10.
19. Law on Establishing State Commission for Resolution of Second-instance Administrative and Employment Proceedings, Official Gazette of RM No 51 of 13.04.2011.