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## A legal-historical overview of the judicial review of administrative action in the Republic of North Macedonia

SUMMARY: 1. Some general considerations – 2. Brief theoretical presentation of the comparative models regarding judicial review of administrative action – 3. The historical development of the judicial review of administrative action in the Republic of North Macedonia – 4. Conclusion.

### 1. Some general considerations

In its most basic sense, the rule of law means that all power in a community should be subject to general rules and both government and governed should keep to those rules. The rule of law has been widely proclaimed as a pillar of constitutional thought. Following Aristotle and many times endorsed, the Massachusetts Constitution (1781) refers to “a government of laws and not of men”. Since the days of the Greek philosophers there has been recourse to the notion of law as a primary means of subjecting governmental power to control. Aristotle argued that government by laws was superior to government by men. *The legal basis of the state was developed further by Roman lawyers.* In the middle ages, the theory was held that there was a universal law which ruled the world. Gierke wrote:

Medieval doctrine, while it was truly medieval, never surrendered the thought that law is by its origin of equal rank with the state and does not depend on the state for its existence<sup>1</sup>.

The rule of law was famously invoked by the thirteenth-century jurist Bracton as “a bridle on power”: “the King should be under no man but under God and the Law because the Law makes him King”<sup>2</sup>.

Within a system of government based on law, there are legislative, executive and judicial functions to be performed; and the primary organs for discharging these functions are respectively the legislature, the executive and the judiciary. A legal historian has remarked: *This threefold division of labour, between a legislator, an administrative official, and an independent judge, is a necessary condition for the rule of law in modern society and therefore for democratic government itself*<sup>3</sup>. Namely, in Article 16 of the French Declaration of the Rights of Man and of the Citizen of 1789 states

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<sup>1</sup> A. Bradley, K. Ewing, *Constitutional and Administrative Law*, London 2003, p. 80.

<sup>2</sup> J. Alder, *Constitutional and Administrative Law*, London 2007, p. 153.

<sup>3</sup> A. Bradley, K. Ewing, *Constitutional and Administrative Law*, London 2003, p. 80-81.

that “any society in which the safeguarding of rights is not assured, and the separation of powers is not established, has no constitution”<sup>4</sup>. A widely accepted division is based on the functions of government. Its most well-known version is that of Montesquieu who divided government into three branches, namely the legislature, the executive and the judiciary. The legislature makes the laws, the judiciary settles legal disputes and imposes sanctions for breaking the law, the executive enforces and puts the law into effect. In other words, a lawmaker issues general rules, the executive implements the law and makes government policy, a judge acts as an independent referee by applying rules to a dispute<sup>5</sup>. From this it might be concluded that the doctrine of the separation of powers means that government power should be divided up into legislative, executive and judicial functions, each with its own distinctive personnel and processes, and each branch of government should be checked so that no one body can dominate the others. Hence, separation of powers comprises separation of function, institutions and personnel and includes the notion of check and balances. However, it is efficiency which is at the heart of separation of powers. If the various types of power are allocated sensibly to the right kind of institution, it is more likely to be exercised efficiently<sup>6</sup>.

A divergence in the interpretation of the separation of powers doctrine prompted the appearance of two main approaches to designing administrative courts – the French model and the judicial review model. In the French model, administrative justice belongs to the executive branch, under the logic that the separation of powers requires a more restricted scope of action for the judiciary while the common-law interpretation places the administrative courts within the judicial branch, under the logic that any function of a truly judicial nature must be exercised by the judicial branch alone/only. In other words, French model refused to allow judiciary courts to review administrative decisions, relying on the principle of separation of powers. The main concern was that any judiciary decision regarding the executive’s decisions would be a limitation to the exercise of executive power. On the other hand, the common-law tradition defends the supremacy of the judiciary over any dispute between parties without any distinction between individuals and the State. Government and citizens should be judged by the same rules and in equal conditions. Therefore, any authority can be brought before the common courts and judged by the judiciary<sup>7</sup>.

The state of law is further characterized by the rules of legality as the general principle, which is one of the consequences of the separation of powers, and it means that the administration must be commensurable with the law, with the rule of law, not only in the sense of primacy or superiority of law, but even

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<sup>4</sup> E. Barendt, *An Introduction to Constitutional Law*, London 1998, p. 7.

<sup>5</sup> J. Alder, *Constitutional and Administrative Law*, London 2007, p. 171, 179.

<sup>6</sup> A. L. Sueur et alia, *Public Law*, Oxford 2010, p. 723-725.

<sup>7</sup> See: Tim Koopmans, *Courts and Political Institutions*, Cambridge 2003, p. 130-161.

more in the sense of limitation by the law. The principle of legality, i.e. equitableness, is also connected with the guarantee of legal protection, which means that the citizen is provided with certain legal procedures against any violation through the state executive-administrative power, and this is not limited only to the protection against an administrative act. In this sense, administration is submitted to multiple judicial supervisions. All judicial supervising of administration has been aiming at forcing administration to act highly consistently with the law<sup>8</sup>.

Administrative-judicial review lies at the heart of administrative law. It is a specific legal procedure that is designed to test and ensure the legality of final individual administrative acts of public administration to which parliament has conferred powers for resolving administrative disputes between citizens and the government that arise from decisions of officials and agencies<sup>9</sup>. Indeed, judicial review is control of public administration activities by judiciary. This control is exercised by proper competent national court on the basis of the legality criterion, that is, compliance of the activities of administrative body with generally binding law. The notion that the courts are the ultimate defenders of the individual and the providers of effective legal protection, subsequently judicial review is one of the most important means by which the Government and other public bodies are held legally accountable for the lawfulness of their decisions and actions<sup>10</sup>. Namely, the power of the judiciary to control the legality of final individual administrative acts of public administration by administrative justice is described as administrative-judicial review. It refers to the power of the administrative justice to control compatibility of final individual administrative acts with the terms of the laws, as well as to declare the nullity and void unlawful final individual administrative acts from the legal order<sup>11</sup>. From a constitutional standpoint, administrative-judicial review upholds both the will of parliament and the rule of law by ensuring substantive and formal legality of public administration to which power has been conferred. So, the administrative justice decide in administrative disputes on the legality of final individual administrative acts by which state bodies and organizations vested with public powers decide on rights and obligations in administrative matters. It needs to be underlined that administrative dispute is a form of providing judicial control over the legality of the decisions of public authorities and their officials represents one of the pillars of the democratic state ruled by law, but at the same time can be qualified as “the guardian”, or “the guarantor” of the rule of

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<sup>8</sup> See: I. Borković, *Upravno Pravo*, Zagreb 2002, p. 66-72; I. Krbek, *Pravo Javne Uprave FNRJ*, Zagreb 1969, p. 170-182.

<sup>9</sup> H. Barnett, *Understanding Public Law*, London 2010, p. 187.

<sup>10</sup> Z. Szente, K. Lachmayer, *The Principle of Effective Legal Protection in Administrative Law*, London 2016, p. 317.

<sup>11</sup> A. L. Sueur *et alia*, *Public Law*, Oxford 2010, p. 724-725.

law in relations between citizens and public administration protecting both the certain public subjective rights of citizens in the administrative law field and the legality of decision-making of public administration in administrative matters, which demands that public administration should decide in administrative cases, i.e. passing individual administrative decisions on the basis and within the framework of administrative substantive and procedural laws<sup>12</sup>.

In many aspects, the control performed by the courts is not adversarial to the strength of administrative action. On the contrary, it can help to increase the efficiency of public administration:

- Judicial review strengthens the quality of administrative decisions. The rule of law is not only a guaranty for the citizen; it is also a good guideline for rational, upright, and efficient work of the administrative bodies. The effectiveness of a review by independent courts commits public servants to take decisions based on legal grounds that can be justified before judges. If an illegal decision is set aside, it must not be seen as a defeat for the public authority but as a desirable correction of its action.

- Judicial review improves the legitimacy of public decisions. Courts and administrative bodies are not adversaries. A lawsuit can help public authorities to justify unpopular decisions. Proceedings before the courts may be an opportunity to explain the grounds of a contested decision.

- Judicial review can help to regularize illegal decisions. The sole abolition of an administrative action is often insufficient as it creates a legal void that is then difficult to fill. The judge can help to overcome this void by indicating to the administration the path to follow and the laws to be respected, and then by ordering the actions to be taken. Thus in several countries, the powers of declaration and injunction have been developed for the benefit of administrative courts. These powers permit them to go beyond the annulment of illegal decisions and to re-establish administrative legality by indicating to the administration how to draw the consequences of an abolition<sup>13</sup>. Finally, the efficient functioning of administrative judiciary greatly contributes to the transparency of the state administration's work, represents an important role in the fight against corruption and is the basic lever in the organization of lawful, efficient and modern state administration<sup>14</sup>.

## 2. Brief theoretical presentation of the comparative models regarding judicial

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<sup>12</sup> See: H. Barnett, *Understanding Public Law*, London 2010, p. 210.

<sup>13</sup> J.M. Woehrling, *Judicial Control of Administrative Authorities in Europe: toward a common model*, Hrvatska Javna Uprava, br. 3/2006, p. 36, 53-54.

<sup>14</sup> D. Čerčić: *Neka Rješenja Novog Uređenja Upravnog Spora u Hrvatskoj*, Zbornik radova Pravnog fakulteta u Splitu, god. 47/1, Split 2010, p. 66.

## review of administrative action

Judicial review of administrative action has for long been restricted in most of European countries. This restriction was founded on the idea that, due to the principle of separation of power, judges should not interfere in executive tasks. Moreover, there was a widespread opinion that judges are not well equipped to intervene efficiently in administrative questions. Therefore, until the twentieth century, in most of the European countries, ordinary courts were not allowed to look into administrative decisions and special administrative bodies were established for that duty. This issue was, besides, characterized by national traditions, whereas civil law and civil courts activity were much more harmonized through Europe. This picture has greatly changed in the last 50 years. The idea that administrative action has to be submitted to a judicial control has made huge progress. This evolution has been for a good part brought about by the development of European law, namely the European Convention on Human Rights and Community Law, which both are grounded on the idea that state as well as society have to be founded on law and that the respect of law needs to be guaranteed by courts. Everywhere in Europe, especially in its central and eastern part, the judicial control of public administration has been strengthened. Executive and administrative authorities now generally accept this<sup>15</sup>.

There are several traditions of judicial review of administration action in Europe. In some countries, the historical tradition was to give judicial review to the ordinary courts. In other, special administrative courts have been created. Today, these “organic” differences are decreasing in importance because even in countries with a tradition of unity of court system, there is a need of specialization within civil courts to cope with increase complexity of law. On the other side, in countries where administrative courts exist, the requirement of independence and impartiality are the same for administrative judges as for civil judges. It is possible today to conclude that between specialized administrative chambers within civil courts and autonomous administrative courts there is no more great difference. Sometimes the procedural rules applied in these two modes of organization are still different because civil courts tend to apply an adversarial procedure and administrative court a more “inquisitorial” procedure. But in both cases, procedure has to adapt to the particularities of administrative matters and to respect the principle of fair trial<sup>16</sup>.

### 2.1 Continental-European model

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<sup>15</sup> J. M. Woehrling, *Protecting Legality: Public Administration and Judiciary in EU Countries*, Budva 2009, p. 3.

<sup>16</sup> *Ibidem*.

The Continental-European model provides for the formation of special administrative courts for resolving administrative disputes. The cradle of the formation of the special administrative judiciary is France, in which special administrative tribunals exist. The State Council (*Conseil d'État*) was established in 1801. In fact, the administrative judiciary was created in the second half of the 19th century, because of liberal-individualistic ideas about protecting the rights of the individuals from the state. The administrative courts, magistrates, or administrative tribunals, as they are called in different countries, have no other function apart from the administrative judicial and they are organizationally incorporated within the administration, but their work is completely independent from the latter. With legal control over administrative acts being their main and only task, they dedicate themselves entirely to this issue, exerting a genuine influence on the respect for law within the administration<sup>17</sup>. The states of European-Continental model have special administrative courts. Administrative courts can have general jurisdiction in all administrative matters or specialized jurisdiction in some administrative matters; they can be considered as part of the public administration (French or Roman model) or part of the judiciary (German model)<sup>18</sup>.

## 2.2 Anglo-Saxon Model

Under the Anglo-Saxon model, judicial control over the administration and administrative acts is conducted by the courts of general jurisdiction. This system has been accepted, above all, in England, the United States, and other countries in which solely the common law applies. Under this law, the state, its bodies and public institutions, are subjected to the same legal rules as the individuals. For these reasons, these countries have no separate administrative law as a branch of the legal system, which represents an amalgam of legal norms and which regulates the work of administration. Therefore, the right to rule in administrative disputes is not entrusted to special administrative bodies, but rather to the regular courts of general jurisdiction. Judicial control over administrative acts in the countries of the Anglo-Saxon model is not conducted as part of a special procedure, as is the case in the countries of the Continental European model, but rather the same procedure is applied as in civil matters - common law<sup>19</sup>.

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<sup>17</sup> A. P. Daneva, *Alternatives to Litigation between Administrative Authorities and Citizens*, Strasbourg 2005, p. 5.

<sup>18</sup> I. Koprić, *Administrative Justice on the Territory of Former Yugoslavia*, Budva 2005, p. 2; J. H. Merryman, *The Civil Law Tradition*, Stanford 1985, p. 87-88.

<sup>19</sup> A. P. Daneva, *Alternatives to Litigation between Administrative Authorities and Citizens*, Strasbourg 2005, p.

### 3. The historical development of the judicial review of administrative action in the Republic of North Macedonia

In an old representative textbook on the “Legal-State History of the Yugoslavian Countries of the 19th and 20th century”, the certain author rightly stated that

the contemporary condition of the state cannot be fully understood without an overview of its former development, and that was because - none of the phenomena could be understood separately from what preceded it, and led to it<sup>20</sup>.

Transferred to the ground of the administrative justice, the contemporary state of the administrative justice was not able to be completely understood without a necessary minimum of its legal-historical retrospective in the Republic of North Macedonia.

In the territories that were previously a part of Yugoslavia, administrative justice began to develop during the second half of the 19th century. There were different legal regulations (legal regimes) and organizational solutions of administrative justice due to the state and constitutional arrangements existing at the time. After World War II, general administrative-judicial control of public administration was reinstated in 1952 via the Law on Administrative Disputes of 1952. Prior to that law, the political elite in Yugoslavia had shown strong resistance to submitting administrative acts to the control of relatively independent courts, as it was the case with all the other communist countries. Administrative disputes were mostly decided by the supreme courts of federal units (republics), the Federative Supreme Court of Yugoslavia. Trials were held by specialized court councils. Administrative disputes falling under the federal units' competence and disputes against the decisions of federal bodies were decided in one instance. Disputes against the decisions of non-federal bodies, where federal regulations were applied, were decided in two instances. The Law on Administrative Disputes stipulated the administrative acts liable to judicial review by general clause with negative enumeration, i.e., all decisions of administrative authorities are reviewable by court except for those that are explicitly excluded *ex lege*. The core of the Law on Administrative Disputes was the dispute on the legality of an administrative act, but it also permitted a dispute of full jurisdiction<sup>21</sup>.

The Yugoslav Constitution of 1974 (SFRY) ceded organization of the

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<sup>20</sup> F. Ćulinović, *Državna pravna Historija na Jugoslavenskih Zemalja XIX i XX Vjeka*, Zagreb 1956, p. 8.

<sup>21</sup> I. Koprić, *Upravno Sudovanje na Području Bivše Jugoslavije*, Hrvatska Javna Uprava, god. 6/br. 1, Zagreb 2006, p. 225-227.

judiciary to the federal units. Consequently, three different models of administrative justice systems were developed. Administrative dispute first instances were installed with the Supreme Courts of Montenegro, Macedonia, Slovenia and Kosovo, and with the Administrative Courts of Bosnia and Herzegovina and Croatia. The Administrative Court of Bosnia and Herzegovina was dissolved in 1986, when first-instance jurisdiction in administrative disputes was divided between county courts and the Supreme Court. A similar division of first-instance jurisdiction between county courts (or higher courts) and the Supreme Court was undertaken in Serbia and Vojvodina as well. Disputes in civil servants issues were taken over by the Courts of Associated Labour. The new Law on Administrative Disputes, which came into force in 1977, was an improved version of the previous Law on Administrative Disputes. The list of acts excluded from review in administrative disputes was narrowed down, and court protection was extended beyond administrative dispute (dispute for the protection of constitutional rights violated by an action; court protection of constitutional rights and freedoms violated by an individual final act)<sup>22</sup>.

The North Macedonia's legal system belongs to the continental European civil law tradition, like most continental European countries<sup>23</sup>. It includes the legal heritage of the former Yugoslavia. It has to be underlined that the judicial review of administrative acts and actions through administrative dispute, and therefore the legal protection of subjective rights of citizens has had a long legal tradition in the North Macedonia's legal system. In the former Yugoslavia until 1952 there was no judicial control over administrative acts. It was understandable, because at that time period the status and role of state administration had a significant meaning in the creation of a new socialist system, so it was not opportune for its acts to be subjects of control by independent bodies such as courts. During that time period there were several other forms of control expressed in: control by superior administrative bodies within the administration; control by the representative bodies of state authority; control by the special oversight committees; sporadic control by the courts (administrative dispute as regular and systematic form of judicial control over the legality of administrative acts was not introduced). Furthermore, at the time of the socialism as political regime the public administration was under control of the executive power of the Communist Party and was considered as an instrument for the realization of political-party purposes. After World War II, in Macedonia and generally in Yugoslavia, in which Macedonia was one of the six

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<sup>22</sup> See: I. Koprić, *Upravno Sudovanje na Području Bivše Jugoslavije*, Hrvatska Javna Uprava, god. 6./br. 1, Zagreb 2006, p. 228; M. Čučević, *Upravno Sudovanje u Hrvatskoj*, Zagreb 1978, p. 801-802; V. Ivančević, *Institucije Upravnog Prava*, Zagreb 1983, p. 215; D. Medvedović, *Razvoj Upravnog Sudstva u Jugoslaviji*, Zbornik odluka Upravnog suda Hrvatske 1977-1987, Zagreb 1987.

<sup>23</sup> P. Glenn, *Legal Traditions of the World*, Oxford 2000, p. 116-153; J. H. Merryman, *The Civil Law Tradition*, Stanford 1985, p. 1-18, 142-158.







authority of a government agency, which unilaterally determines in an authoritative manner questions of rights or obligations of a particular individual or legal person<sup>29</sup>. Although, despite the constitutional basis of the administrative-judicial protection of rights, important guarantees for effective legal protection were missing in the practice, like the right to a fair trial, i.e., a fair and public hearing, within a reasonable time, by an independent and impartial court, etc<sup>30</sup>.

In terms of the organization of judicial control over the administrative acts in the Republic of North Macedonia should be borne in mind that the Republic of North Macedonia as an ex-federal unit of the former Socialist Federative Republic of Yugoslavia was subject to a single legal and judicial system of Yugoslavia, and that means starting from 1952 until 1991, and in the time period that followed, until the adoption of the Law on Administrative Disputes in 2006, administrative court proceeding (judicial review proceeding) was established and organized in accordance with the federative Law on Administrative Disputes of 1952, respectively of 1977. The Supreme Court of the Republic of North Macedonia during this time period successfully performed its function as a competent court with jurisdiction for resolving administrative disputes in order to protect the rights of citizens and other entities from a voluntary and arbitrary state and public administration, thereby ensuring respect of the law, as the guarantor and protector of the public-legal field of guaranteed rights and legal interest. In this connotation there is a legal continuity of the institution of administrative dispute as a regular and systematic form of judicial control over administrative acts by the Supreme Court of the Republic of North Macedonia as the sole highest and most important court within the state, in accomplishing the goals and ideals of this ancient, legal benefit of the civil democratic systems. Administrative dispute in the civil democratic societies already has two centuries of history, experience and

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there is no place for *restitutio in integrum*, is not only final but also valid, since no administrative dispute can be started against it. Thus, the subject matter of an administrative dispute most frequently involves review of an administrative act in the second instance. However, an administrative act is final in the first instance and as a such may constitute the subject matter of an administrative dispute in cases where complaint by administrative proceeding in specific matters is expressly precluded by law or where the rules of organization of the agency whose administrative act is in question do not provide for a higher instance in administrative proceedings. - N. Stjepanovič, *Judicial Review of Administrative Acts in Yugoslavia*, The American Journal of Comparative Law, Vol. 6/No. 1, Oxford 1957, p. 97-98.

<sup>29</sup> N. Stjepanovič, *Judicial Review of Administrative Acts in Yugoslavia*, The American Journal of Comparative Law, Vol. 6, No. 1, Oxford 1957, p. 97. Consequently, normative acts (rules) of administration cannot constitute the subject matter of administrative dispute because they are not administrative acts by definition, even though they are acts of public administration.

<sup>30</sup> [Citation in Cyrillic script], [Citation in Cyrillic script] [Citation in Cyrillic script] - [Citation in Cyrillic script] [Citation in Cyrillic script] [Citation in Cyrillic script], [Citation in Cyrillic script] [Citation in Cyrillic script] [Citation in Cyrillic script] “[Citation in Cyrillic script] [Citation in Cyrillic script]”, [Citation in Cyrillic script] 2014, p. 275

tradition. In the Republic of North Macedonia administrative dispute also has a court practice and tradition for almost half a century, and it is exposed mainly through three basic parameters: a) the number of administrative disputes; b) the structure of administrative disputes; and c) the manner of the their settlement. According to the number of administrative disputes in the Republic of North Macedonia at the beginning, in 1952, there were 427 lawsuits, in the meantime from 2004 the caseload has fluctuated approximately 4,000 annually, which means for this time interval the number of lawsuits has increased almost ten times. Each judge has attempted, on average, to act on about 30-40 cases per month. This refers to a conclusion that citizens required ten times more protection in the administrative dispute. According to the structure, subjects were various and would be difficult even to list all the possible types of administrative acts that can be an administrative dispute in various administrative matters<sup>31</sup>. However, usually in some global areas were the following subjects: social security law (for example, health insurance, work accident insurance, state pensions), custom duty, tax law or cases concerning the granting of a status (for example, citizenship, asylum, residence permit for foreigners), public service law, denationalization, electronic communications, intellectual property, concessions, building sites, etc<sup>32</sup>.

The dissolution of the former Yugoslavia as a federative state has contributed in creating more sovereign and independent states including the Republic of North Macedonia. The Constitution of 1991 and the Courts Act of 1995 of the Republic of North Macedonia determined and promptly founded the bases and normative assumptions for the building and development of the judicial system. Courts, as a classical state institutions are bulwarks and bastions of the state system of judicature. The judiciary is the most important legal institution within the state which was established by the Constitution and appropriate laws. Being a third power, beside the legislative and executive power, the judiciary interprets and applies constitution, international treaties and laws in practice, protects human rights, administers justice, develops the law through the rich court practice. Therefore, an independent judiciary and the rule of law are the *alpha* and *omega* for the state of law<sup>33</sup>.

From chronological and legal-logical perspective before the entry into force and implementation in practice of the new Law on Administrative Disputes of the Republic of North Macedonia of 2006 the only competent authority for resolving the administrative disputes was the Supreme Court of the Republic of

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<sup>31</sup> [unclear], [unclear], [unclear], [unclear], [unclear], [unclear] [unclear] [unclear] [unclear], [unclear] 2006, p. 171-186.

<sup>32</sup> *Ibidem*.

<sup>33</sup> See: Alternatives to litigation between administrative authorities and private parties: Conciliation, Mediation and arbitration, Lisbon (Portugal) 1999: S. Gelevski, *The structure of Administrative Justice in the Former Yugoslav Republic of Macedonia*, p. 151-158.

North Macedonia, i.e., the applicative was the hybrid of the Continental-European and Anglo-Saxon model of the judicial review of administrative action in which the elements, or features of Anglo-Saxon and Continental-European model of judicial review are mutually intertwined. Concretely observed, the mix/hybrid model means that in the Republic of North Macedonia judicial control over the administrative acts it was not entrusted to ordinary judiciary such as the case with England, but it was entrusted to a specialized judicial staff or the special councils of judges within the composition of Supreme Court of the Republic of North Macedonia. Specialized council in this court is formed for conducting the administrative disputes gives a guarantee that professionalism and the professional knowledge of administrative matters in this court by engaged staff will not be neglected<sup>34</sup>. In fact, the respective hybrid model of the judicial review of administrative action exists because the judicial review over the legality of administrative acts is conducted by a separate specialized chamber for administrative disputes within the Supreme Court, but simultaneously according to the specific rules of the administrative-court proceedings prescribed in the Law on Administrative Dispute (element of the Continental-European model of administrative-judicial control) as well as before the Supreme Court of the Republic of North Macedonia, as the highest ordinary court of general jurisdiction within the state (element of Anglo-Saxon model with a new variant of the judicial review of administrative action)<sup>35</sup>. In accordance with the Article 5 of Constitutional Law on Implementation of the Constitution of the Republic of North Macedonia of 1991 the Republic of North Macedonia in 1991 took over into its legal system the Law on Administrative Disputes of 1977 from the legal system of the former Yugoslavia as a republic law until the adoption of the new Law on Administrative Disputes<sup>36</sup>. Among the judges of the administrative division/department of the Supreme Court of the Republic of North Macedonia, the law provides an opportunity to elect not only the classical judges who are professional and competent to estimate legal aspect of the administrative activity, but also prominent and eminent jurists from the public and state administration and even science - who know well the pulse and spirit of administrative activity - which provides an opportunity for successful control of the administration by judiciary. This model raised on competency only at the level of the Supreme Court of the Republic of North Macedonia for resolving administrative disputes (not the lower courts) provides reliable guarantee for objective and authoritative implementation of this control, indeed, and proved very successful over the past

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<sup>34</sup> A. Hristov, *Upravno Pravo*, Skopje 1984, p. 449.

<sup>35</sup> [Citation], [Citation] [Citation] [Citation] [Citation] [Citation] [Citation] [Citation] [Citation] [Citation] [Citation], [Citation] 1996, p. 17-18.

<sup>36</sup> [Citation] [Citation], [Citation] [Citation] [Citation] [Citation] [Citation] [Citation] [Citation] [Citation], [Citation] 2006, p. 3-4.

50 years (since it was established in 1952)<sup>37</sup>. So the main conclusion that can be drawn is that in domestic administrative-legal theory, there have been varying opinions on the justifiability of this solution in terms of the efficiency that it offers in attending to the administrative-judicial protection of individual administrative acts. Opinions making a case for maintaining the existing model see it as representing a successful combination of the Anglo-Saxon and Continental-European system, as being rational and economic, while retaining all their advantages (specialization, autonomy, special procedure, authority of the Supreme Court of the Republic of North Macedonia, and so forth). For these reasons, we consider that there is need to amend the North Macedonia's system of judicial control over the concrete acts of public administration with a view to ensuring its adaptation to solutions accepted in most European-Continental countries<sup>38</sup>. So, under jurisdiction of the Supreme Court of the Republic of North Macedonia concerning treatment and adjudication of administrative disputes as first-instance proceedings were two councils composed of three judges. Upon appeal, which was allowed as a remedy, the Supreme Court of the Republic of North 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 North Macedonia, time-consuming, expensive and exhausting administrative-judicial proceedings, 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 North Macedonia. Therefore, by the end of 2006, the Supreme Court of the Republic of North Macedonia had outstanding 3,491 unsolved cases<sup>39</sup>.

The Strategy on the Reform of the Judicial System of the Republic of North Macedonia of 2004 aims at increasing court efficiency and provides for changes in the organizational setup and competence of the courts in the country. It notes that administrative disputes are one of the “bottlenecks” of the judiciary, with an annual inflow of approx. 3000 cases. Previously, they were dealt by the Supreme Court, but with the new Law on Courts of 2006 and the new Law on Administrative Disputes of 2006, they will be part of the Administrative Court<sup>40</sup>.

<sup>37</sup> Милошевиќ, Милошевиќ, 50 години независност на Република Северна Македонија, Скопје, 2003, p. 19-20.

<sup>38</sup> A. P. Daneva, *Alternatives to Litigation between Administrative Authorities and Citizens*, Strasbourg 2005, p. 5-6.

<sup>39</sup> N. Pelivanova, M. Ristovska, *Organization of Administrative-Legal Protection of the Citizens of the Republic of Macedonia*, SEE Law Journal, Vol. 1/No. 1, 2014, p. 68-69.

<sup>40</sup> See: Милошевиќ, Милошевиќ, 50 години независност на Република Северна Македонија, Скопје, 2003, p. 19-20.

In the constitutional system of the Republic of North Macedonia the principle of separation of powers is established. Based on this principle judiciary has the authority to supervise the legality of individual acts and actions of administrative authority. Constitutional foundations for judicial review in the Republic of North Macedonia and reportedly the authority to review the legality of administrative acts derive from Article 50, paragraph 2 of Constitution of the Republic of North Macedonia of 1991. Pursuant to this article a *judicial protection of the legality of individual acts of state administration, as well as of other institutions carrying out public mandates, is guaranteed*. On the other hand, in Article 1 of Law on Administrative Disputes of the Republic of North Macedonia of 2006 is expressed the legislative teleological/intentional dimension of administrative dispute by lawmaker as following:

For the purpose of providing court protection of the rights and legal interests of natural persons and legal entities, and in order to ensure lawfulness, the court shall decide in administrative disputes on the lawfulness of the acts of the state administration bodies, the Government, the other state bodies, the municipalities and the City of Skopje, organizations determined by law and other legal and other entities, in the performance of public authorizations (holders of public authorizations) when deciding on the rights and obligations in individual administrative matters, as well as for the acts of those bodies adopted in the misdemeanor procedure.

The judicial review of administrative acts and actions through administrative dispute in the Republic of North Macedonia therefore serves both purposes – it insures the protection of individual rights that may be violated by administrative act or actions and at the same time it establishes the possibility of judicial control of the legality of administrative acts and actions. But primarily, the function of judicial review is the protection of individual rights and ensuring the rule of law<sup>41</sup>.

The Law on Courts of 2006 and the Law on Administrative Disputes of 2006 as well as the Law on the Amendments and Supplements to the Law of Administrative Disputes of 2010 has significantly reformed the former concept of the administrative judiciary in the Republic of North Macedonia. According to the respective laws administrative justice in North Macedonia is being provided through two court organizations – the Administrative Court (examining suits on decisions of public administration) and the Higher Administrative Court (examining appeals against decisions of the Administrative Court). Hence, the Higher Administrative Court decides as second and last court instance on appeals as regular legal remedies against decisions of the Administrative Court of first instance. In addition, the Higher Administrative Court is established for the territory of North Macedonia and its seat is in

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<sup>41</sup> See: [1]. [2], [3] [4] [5] [6] [7] [8] [9] [10], [11] [12] 2006, p. 16-18.

Skopje. This Court is competent for: to decide on appeals against the first instance decisions of the Administrative Court; to decide on conflict of competencies between the authorities of the Republic, between the municipalities and the city Skopje, between the municipalities of the City of Skopje and on disputes arising from conflict of competences between municipalities and City of Skopje and holders of public authorizations, if this is provided by law, unless other judicial protection is not foreseen with constitution or laws; to exercise other matters determined by law. The Supreme Court shall decide on extraordinary legal remedies against the decisions of the Higher Administrative Court<sup>42</sup>.

Administrative judiciary is a specialized state judicial institution, and is an integral part within the judicial system of the Republic of North Macedonia. Its fundamental intention lies in strengthening efficiency, diligence and frugality of administrative-court procedure over individual administrative acts of public administration as well as the improvement of quality of protection of individual rights. The Administrative Disputes Act of 2006 has introduced the single Administrative Court as a first instance court in administrative disputes seated in Skopje. The Administrative Court of the Republic of North Macedonia commenced its functioning on 2007, by taking over the unresolved administrative cases from the Supreme Court of the Republic of North Macedonia. It is established and performs judicial power over the entire territory of the Republic of North Macedonia. The Administrative Court's work on cases is conducted in eight councils formed as part of six specialized court sectors<sup>43</sup>. As a rule, the current Law on Administrative Disputes grants the Administrative Court only cassatory powers. This means that if the court concludes that an administrative body unlawfully refuses to issue an administrative act in favour of a citizen, it can only repeal the challenged act (cassatory decision) and refer the case back to the administrative body. Apart from a few exceptions, the court is not competent to order an administrative body to render the requested administrative act (reformatory decision). Concretely, Article 40 enumerates all the situations where the Administrative Court is obliged to decide with full jurisdiction. It refers to a wide array of subjects, i.e., it lists the cases of obligatory, competent judicial decisions that as a rule go further than the previous legal solutions (in practice this led to a situation where there are no cases of full jurisdiction)<sup>44</sup>. The administrative disputes are resolved with court judgments by Administrative Court, answering to the question whether the

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<sup>42</sup> See: [1]. [2], [3] [4] [5] [6] [7] [8] [9] [10] [11] [12], [13] [14] 2013, p. 64-65.

<sup>43</sup> *More Efforts for more Efficient Court*, Skopje 2012, p. 13-14.

<sup>44</sup> B. Davitkovski, A.P. Daneva, *Realizing Citizens' Rights through the Administrative Procedure and Administrative Dispute in the Republic of Macedonia*, Hrvatska Javna Uprava, god. 9./br. 1., Zagreb 2009, p. 135.



challenged administrative act is lawful or unlawful. Court judgments in administrative disputes have mandatory character as for parties - *inter partes* as toward all - *erga omnes* including all public bodies. Of course, court judgments in administrative dispute are mandatory and for the Court when they have been taken, so the Court is bound by its earlier court judgment<sup>45</sup>.

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. 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<sup>46</sup>.

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 are 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 North Macedonia the practice of delayed right protections, legal interests and freedoms of the citizens of the Republic of North Macedonia, when they are violated by particular acts adopted by the administration of the Republic of North Macedonia, is continuing<sup>47</sup>.

#### 4. Conclusion

Judicial review of administrative action is part of enforcing the legal

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<sup>46</sup> N. Pelivanova, M. Ristovska, *Organization of Administrative-Legal Protection of the Citizens of the Republic of Macedonia*, SEE Law Journal, Vol. 1/No. 1, 2014, p. 69.

<sup>47</sup> *Ibidem*, p. 70.

discipline over the public administration while exercising its powers, and as such, is the cornerstone of legalism, which implies limited public administration. Objectively observed, judicial review of administrative action is inherent in constitutional scheme of the Republic of North Macedonia which is based on rule of law and separation of powers and it is considered to be one of basic constitutional guarantees for the protection of individual rights. Furthermore, judicial review is the court's way of enforcing the rule of law: ensuring that public authorities functions are undertaken according to law and that they are accountable to law and finally that public bodies are not above the law. It is, therefore, arguable that the constitutional stipulations for the rule of law provide an important foundation of an administrative law remedy of judicial review which is the most effective legal remedy available against the unlawful administrative acts of public administration; historically, the Law on Administrative Dispute of 1952 as well as Law on Administrative Dispute of 1977 of the Socialist Federative Republic of Yugoslavia formed the real and firm bases of common legal tradition in the field of the judicial review of administrative action in the framework of the respective federal units of Yugoslavia; after achieving independence, the Republic of North Macedonia has continued with the control of administrative acts through Supreme Court because such control already existed before during the time when the Republic of North Macedonia was a part of former Yugoslavia. Actually, this control is implementing by the Administrative Court of the Republic of North Macedonia, which was established, realistically and practically, in 2007. Until that year the Supreme Court of the Republic of North Macedonia was in charge of handling administrative disputes; the Law on Courts of 2006 stipulates that the Administrative Court decides lawsuits against final administrative acts (administrative disputes) and performs other tasks stipulated by law. On the other hand, the Law on Administrative Disputes also foresees that administrative disputes are handled by the Administrative Court; the current Law on Administrative Disputes of 2006 is mainly based on the Administrative Dispute Act of 1977 of the former Socialist Federal Republic of Yugoslavia. In accordance with this law and the Law on Courts of 2006, the status quo of the administrative judiciary is described as follows: the Administrative Court of the Republic of North Macedonia which has its seat in Skopje has jurisdiction in administrative matters to decide on cases following internal deliberations without a public oral hearing. As a rule, the court does not establish the facts of a case itself. If the court holds that the administration insufficiently established the relevant facts, the court will repeal the respective administrative act and refer the case back to the administrative body which in turn has to issue a new administrative act which may again be challenged before the court. However, with regard to the European Convention on Human Rights, the existing model of the administrative judiciary will have to change accordingly to Article 6 of the

respective Convention with the aim to achieve an efficient, qualitative and timely protection of the rights of citizens and other subjects.