

EFFICIENCY INDICATORS OF ADMINISTRATIVE COURTS IN THE REPUBLIC OF MACEDONIA

NATASA PELIVANOVA

PHD

ASSOCIATE PROFESSOR AT THE FACULTY OF SECURITY– SKOPJE,
UNIVERSITY ST. KLIMENTOHRIDSKI-BITOLA.

CANE MOJANSKI

PHD

FULL PROFESSOR AT THE FACULTY OF SECURITY– SKOPJE,
UNIVERSITY ST. KLIMENT OHRIDSKI-BITOLA.

ABSTRACT

Since 2006 Republic of Macedonia has practiced the Continental European Model of organization of administrative courts. The change of the organizational model of administrative courts so far has not provided significant changes in the efficiency plan, in particular in administrative courts of first instance.

Subject of this study is efficiency of administrative courts (first and second instance) in the Republic of Macedonia in the period 2011-2015, and forecast of its further efficiency by 2020.

This is an attempt to perceive the causes of its inefficiency, to provide suggestions how to overcome them and indicate the tendency of administrative courts inefficiency.

To realize this objective we use normative, data analysis and trends methods.

KEY WORDS: administrative courts, efficiency, Republic of Macedonia, forecast.

Introduction

Republic of Macedonia has practiced Continental European Model¹ of judicial control for already few years. The change of the organizational model of administrative courts so far has not

¹ Theoreticians advocating Anglo-Saxon Model of organization of administrative courts in Republic of Macedonia indicate the following arguments “for” maintaining this model of organization: securing autonomous administration control by independent judiciary; special administrative judicial procedure; rationality and specialization of judges resolving this type of disputes; authority and position of the Supreme Court of the Republic of Macedonia – **Hristova A., Administrative Law, Skopje, 1981, p. 449; Gelevski S., Administrative Procedural Law, Skopje, 1993, p. 252, Gelevski Simeon, Judicial Control and Legality of Administrative Acts, Collection of the Faculty of Law in Skopje, 1997;**

provided significant changes in the efficiency plan, in particular in administrative courts of first instance (find more information²).

In 2006 Administrative Court of first instance³ was constituted in the judicial system of the Republic of Macedonia (find more information⁴), and Higher Administrative⁵ Court in 2011.

The Administrative Court decides on disputes in first instance in civil actions against administrative acts. The Higher Administrative Court decides on appeals against decisions made by the Administrative Courts in first instance⁶.

The Supreme Court has jurisdiction in extraordinary legal remedies against the decisions of the Higher Administrative Court⁷ as well as in conflict of jurisdiction between the Higher Administrative Court and another court.⁸

I. Normative Setup of Administrative Courts in the Republic of Macedonia

Amendment XXV of the Constitution⁹ of the Republic of Macedonia declares that judicial authority is in jurisdiction of courts, which are independent and autonomous and administer justice under the Constitution, laws and international agreements ratified in compliance with the Constitution. The above amendment also provides for that the types, jurisdiction, establishment, abolishment, organization and composition of the courts as well as the proceedings to be administered and regulated by law adopted by two third of majority votes of the total number of the members of parliaments.

Article 50(2) of the Constitution of the Republic of Macedonia provides for judicial control of lawfulness of particular acts adopted by the state administration and other institutions with public competences.

Article 22 of the Law on Courts laid down that judiciary authority in the Republic of Macedonia is in jurisdiction of the basic courts, appellate courts, **Administrative Court, Higher Administrative Court and Supreme Court of the Republic of Macedonia.**

²**Pelivanova, Natasa, Cane Mojanoski. Mirjana Ristovska** Model of organization of administrative courts and their efficiency, case of the Republic of Macedonia, . ZENITH International Journal of Multidisciplinary Research ISSN 2231-5780 Vol.5 (10), October (2015), pp. 91-103 Online available at zenithresearch.org.in 91

³Commenced administering justice on 1.12.2007;

⁴**Davitkovski, Borche PhD, Pavlovska Daneva Ana PhD**, Administrative Dispute in the Republic of Macedonia, in compliance with the new Law on Administrative Disputes, Collection of Studies, Legal Framework of Judicial Reform in R. Macedonia, Faculty of Law, Skopje, 2006;

Pelivanova Natasha, MA, Administrative Dispute as an Instrument for Protection of Human Rights and Freedoms through the Practice of the Supreme Court of the Republic of Macedonia, Collection of the Faculty of Law Iustinianus Primus, Skopje, 2007;

⁵Articles 22 and 25-a of the Law on Courts (Official Gazette of RM No 58/06, 35/08 and 150/10) and Article 4 of the Law on Administrative Procedures(Official Gazette of RM No 62/06 and 150/10);

⁶Article 16 of the Law on Administrative Procedures(Official Gazette of RM No 62/06 and 150/10);

⁷Article 16 of the Law on Administrative Procedures(Official Gazette of RM No 62/06 and 150/10);

⁸Article 35 of the Law on Courts (Official Gazette of RM No 58/06, 35/08 and 150/10) ;

⁹Constitution of the Republic of Macedonia, (Official Gazette of RM No 52/91, 1/92, 31/98, 91/01, 84/03,107/05, and 3/09);

Jurisdictions of the Administrative Court, Higher Administrative Court and Supreme Court are defined by the Law on Courts and the Law on Administrative Disputes.

The Administrative Court decides on disputes in civil actions against administrative acts. The Administrative Court decides on actions against acts adopted by funds, public enterprises, institutions, organizations, civic associations and other organizations and associations when they decide on administrative issues and conclude administrative contracts when performing their public authorizations.

The Administrative Court also decides in first instance related to actions against a mayor's decisions when deciding on administrative issues and concluding administrative contracts (**Articles 16(1) and 17 of the Law on Administrative Disputes**).

The Administrative Court is competent for lawfulness of individual acts adopted in electoral procedure and individual acts pertaining to selections, appointments and dismissals of public office holders, if determined by law, as well as legality of the acts related to election, appointment and dismissal of executive civil servants, unless otherwise determined by law, for a dispute arising from implementation and enforcement of concession agreements, public procurement contracts of public interest and for each agreement where a state authority, organization with public authorizations, public enterprise, municipalities and City of Skopje are signatories, concluded for public interest or performing public office – against particular acts of state administrative bodies, Government and other state authorities, municipalities and City of Skopje, organizations determined by law and legal and other persons with public competences (public office holders), in case where in second instance no other legal protection has been ensured and decides on conflict of competences between the state authorities, municipalities and City of Skopje, between the municipalities of Skopje City and upon disputes arising from conflict of competences between the municipalities and City of Skopje and public office holders, if provided for in law, save the Constitution or laws do not envisage another judicial protection (**Article 34 of the Law on Courts and Article 2 of the Law on Administrative Disputes**).

As a rule, the Administrative Court pursuant to the Law on Administrative Disputes¹⁰ decides on a session not open for the public.

Related to administrative disputes, the Court decides unlawfulness of acts and administrative issue.

In a dispute related to lawfulness of acts adopted by authorities, the Administrative Court makes decision without hearings.

The Court will hold oral hearing and decide on the administrative if:

required by complexity of the administrative case; necessary for better understanding of the administrative issue or defining states of fact; the Court produces proofs and in cases determined by Articles 22, 36(3) and 40 of the Law on Administrative Disputes¹¹.

The Higher Administrative Court has jurisdiction throughout the territory of Republic of Macedonia in second instance, and it is competent for: deciding on appeals against the decisions of the Administrative Court; conflict of jurisdiction between the state authorities, between the municipalities and City of Skopje, between the municipalities of Skopje City and on disputes arising from conflict of competence between the municipalities and City of Skopje and public

¹⁰Article 30 of the Law on Administrative Disputes;

¹¹Article 30-a – Law Amending the Law on Administrative Disputes, Official Gazette of RM No150/10.

officials, if laid down in law, provided that the Constitution or laws fail to envisage another judicial protection and performance of other activities determined by law (**Article 34-a of the Law on Courts (Official Gazette of RM No 58/06, 35/08 and 150/10)**).

As a rule, the Higher Administrative Court decides on appeals without hearings¹². If the Higher Administrative Court council establishes that it is required to reiterate already produced proofs to properly define states of fact it shall schedule hearing.

In case where the council at its session establishes that the appealed decision is based on essential violation of the provisions of this or another law or on faulty and partially defined states of fact, and the decision has already been annulled, the Higher Administrative Court will schedule hearing and judge on its merits.

The Supreme Court has jurisdiction in extraordinary legal remedies against the decisions of the Higher Administrative Court “as well as in conflict of jurisdiction between the Higher Administrative Court and another court”.

II. Efficiency Indicators of Administrative Courts in the Republic of Macedonia

Subject to analysis are the data maintained in the Administrative and Higher Administrative Courts in the period between 2011 and 2015 (Table 1). The data are found in the reports provided by those institutions monitored through solved and unsolved cases, and backlog of pending cases in the Higher Administrative Court. Furthermore, the overviews provide for the total number of cases, when perceived through the prism of solved and unsolved cases, certain deviations may be noticed as a result of grouping method and forms of rejected cases as well as backlogs. The analysis has been made in line with the reports data.

The elementary data analysis indicates that the scope of cases in this five-year period is from 25681 in 2015 to 30591 in 2012. General conclusion is that absolute data increase is up to a difference of 4100 cases or 27062 cases have been recorded in average per year ($\bar{x}=27062$).

Table 1. Overview of total number of solved, unsolved and backlog of pending cases in the Administrative and Higher Administrative Courts with data presented in official reports

Year	Administrative Court			Higher Administrative Court			
	Total	Unsolved	Solved	Total	Solved	Unsolved	Backlogs
2011	25726	15980	9746	55	50	5	0
2012	30591	14228	16363	1750	1715	40	0
2013	27005	12461	14544	1982	1932	40	87
2014	26129	10734	15395	3948	3953	87	82
2015	25681	10734	15895	4349	3336	82	1095

¹²Article 42 –g – Law Amending the Law on Administrative Disputes, Official Gazette of RM No 150/10.

To perceive case inflow intensity Analytical Procedure-Accession Tempo will apply, or presentation of change of rates from year to year by applying the model¹³ $\left(\frac{b-a}{a}\right) * 100$,¹⁴ or $\left(\frac{30591-25726}{25726}\right) \cdot 100 = 18,91\%$ ¹⁵.

Table 2 Case progress rate in the Administrative and Higher Administrative Courts in Macedonia in the period 2011-2015

Year	Administrative Court			Higher Administrative Court			
	Total	Unsolved	Solved	Total	Solved	Unsolved	Backlogs
2011	-	-	-	-	-	-	-
2012	18,91	-10,96	67,89	3081,82	3330,00	700,00	-100,00
2013	-11,72	-12,42	-11,12	13,26	12,65	0,00	-100,00
2014	-3,24	-13,86	5,85	99,19	104,61	117,50	-5,75
2015	-1,71	0,00	3,25	10,16	-15,61	-5,75	1235,37

The data indicate that the number of unsolved cases since 2011 in the Administrative Court has recorded continuous decrease each year compared to the previous. What is specific is that the number of unsolved cases in 2014 and 2015 is on equal level and no increase has been perceived. The rate of resolved cases increased in this Court in 2012 compared to 2011 as well as in 2014 and 2015. What is specific is that the rate is negative or records a fall of 11.12% in 2013 compared to 2012.

Indicators offered for efficiency of the Administrative Court¹⁶ indicate that solved-unsolved cases ratio records negative trend. What is specific is that the trend of unsolved cases records different dynamics and indicates that there is not any dynamics and indicators pointing to increased efficiency. It might be concluded that dynamics of increased cases from year to year records fall, and the rate of unsolved cases is still important. This dynamics indicates that the backlog or unsolved cases have constant development line¹⁷. Where the causes should be detected? There are undoubtedly numerous reasons. But in its essence, the reasons for inefficiency defined in administrative courts of first instance in the Republic of Macedonia should be sought mainly in the insufficient number of judges and associates engaged for solving the cases and their specialization.

In the period 2011-2015, the number of judges administering this matter in the Administrative Court varied between 22 and 30, which indicates that this capacity cannot reach efficient performance in administrative courts of first instance.

¹³ **Cane Mojanoski:** Methodology of Security Sciences – Analytical Procedures, Book III, Kosta Abras, Ohrid, Skopje 2015, p. 84.

¹⁴ Ibidem..., p. 84;

¹⁵ Ibidem..., p. 84;

¹⁶ Annual reports on the Administrative Court performance for 2011, 2012, 2013, 2014, www.uskopje.mk;

Annual Report on the Administrative Court performance for 2015

http://www.sud.mk/wps/portal/central/sud!/ut/p/z1/04_Sj9CPykyssy0xPLMnMz0vMAfIjo8zizdxNTAwsvA183ANCzQ0cfV0

¹⁷ **Cane Mojanoski:** Methodology of Security Sciences – Analytical Procedures, Book II, Faculty of Security, Skopje, 2012, p. 401-415;

Considering efficiency of the Higher Administrative Court empiria¹⁸ indicates that in the initial three years and a half (30.06.2011-2014) of its functioning, the Higher Administrative Court demonstrates efficient performance between 90 and 100% per 100 cases, and already in 2015 it recorded fall of the high efficiency to 76;71% per 100 cases, or the volume of backlog case increased - 1095 or 25.18% (33) cases per 100 received cases, which among other is due to increased inflow of cases in the Higher Administrative Court from year to year.

III. Efficiency Tendencies of Administrative Courts in the Republic of Macedonia in the Period 2011-2020

To obtain better picture in the possible development of this phenomenon we will apply the Analytical Procedure-Trend Analysis¹⁹. Theoretically, the trend may apply in any case where any time series data has been provided, irrelevant of the time unit data²⁰. Practice instructs that the Trends Method is most suitable for dynamic analysis of these time series provided in one-year period. The Trends Method might have real meaning if the phenomenon under perception moved and developed mainly as a long-term and usually endless phenomenon while emphasizing characteristic movements that can be perceived and roughly defined by simple observation. To that end, application of the Trends Method is meaningful if its extrapolation or forecast is based on real presumption and cognition that the phenomenon observed by its nature will further exist as entirety of the material and spiritual world, i.e. its existence will not be essentially change in positive or negative sense.

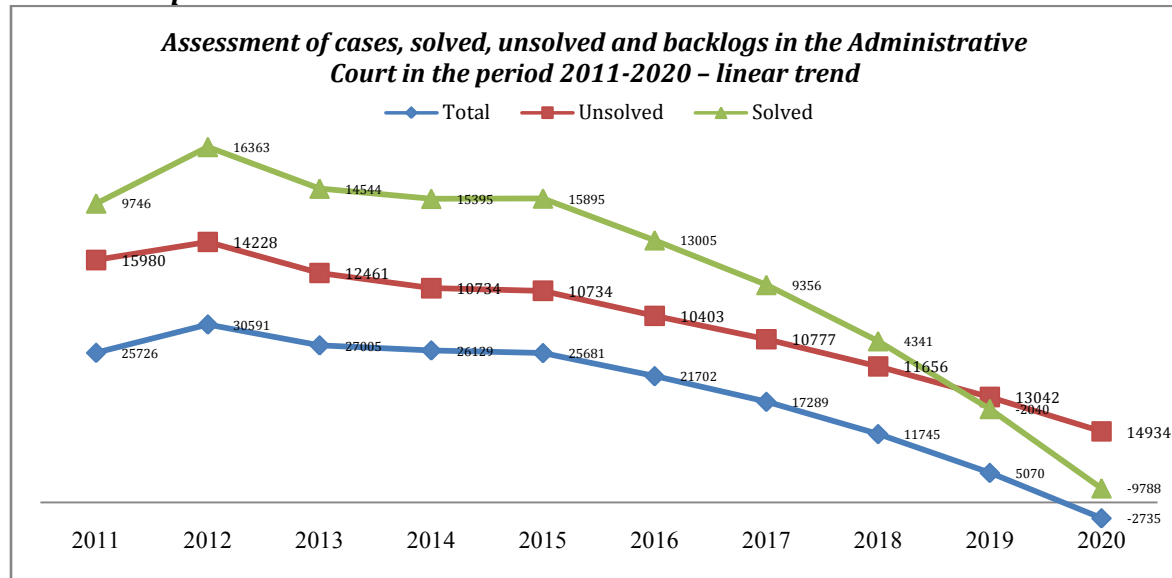
The forecast period of future movements of the phenomenon observed mainly depends on regularity of the movement type and shape manifested in the phenomenon development so far. The longer the phenomenon period, in equal or similar course, the longer the forecast period.

Linear trend expresses central tendency of movement and development. It is manifested with the phenomenon observed in arectilinear movement. Basic course of the phenomenon movement in a longer (secular) time period is **trend** or development phenomenon tendency. **Dispersion diagram** is used to perceive the phenomenon dynamics (X-axis presents the time, and Y-axis presents the phenomenon size). Point disposition assists in the selection of type of function that can best express basic course. It is calculated by the basic formula $Y_t = \beta_0 + \beta_1 x$.

¹⁸Annual reports on the Administrative Court performance for 2011,2012, 2013, 2014, 2015, www. www.vusskopje.mk;

¹⁹Cane Mojanoski: Methodology of Security Sciences – Analytical Procedures, Book I, Faculty of Security, Skopje, 2012, p. 401.

²⁰Cane Mojanoski: Methodology of Security Sciences – Analytical Procedures, Book III, Kosta Abras, Ohrid, Skopje 2015, p. 497.

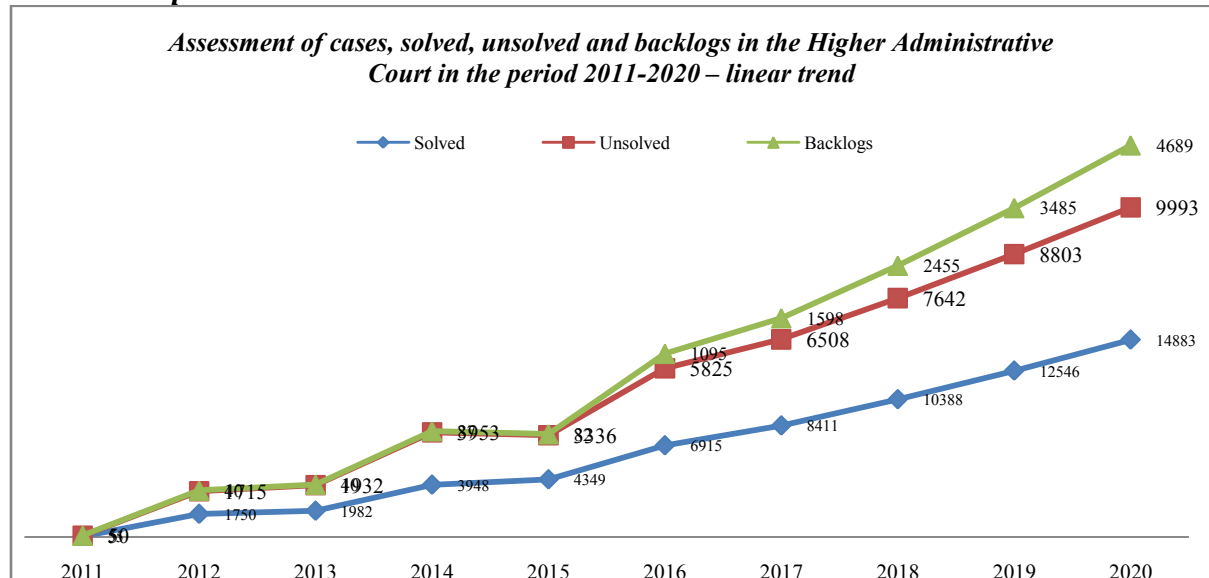
Diagram 1 Assessment of cases, solved, unsolved and backlogs in the Administrative Court in the period 2011-2020 – linear trend

Linear trend movement shows certain results with reference that dynamics, and in particular expectations of solved cases intensity in the Administrative Court by 2020 will show decline tendency, except for the trend of backlogs which will increase. This means that we should further expect that diligence will remain commitment without any significant changes. Although changes in the part of dynamics of solved and unsolved case, it should be taken into consideration that backlogs show dynamics of increase.

Application of the Analytical Procedure-Trend Analysis for assessment of possible dynamics of solved cases should be perceived in context of maintained characteristics and dynamics of cases received and solved in the Court in the next five years.

A need, therefore, imposes to increase the number of judges administering administrative cases of first instance in line with the current annual inflow of cases in the Court and assessment of the time required for a judge to solve a case of a certain administrative and legal matter.

Attention must be certainly paid to engagement of optimum number of professional judicial associates included in the current work on cases in the administrative and legal area. In the period 2011-2015 this judicial personnel in the Administrative Court varied up to 25 employees with tendency to increase.

Diagram 2 Assessment of cases, solved, unsolved and backlogs in the Higher Administrative Court in the period 2011-2020 – linear trend

Development dynamics of solved, unsolved and backlog cases in the Higher Administrative Court will record an increase.

This dynamics is mostly expressed with backlog and unsolved cases, and somehow mild is the progress of solved cases.

Despite all weaknesses and criticisms upon publishing the dynamics of solved or unsolved or backlog cases it may be generally conclude that ratios will not significantly change and a question arises on what is the number of subjects dedicated to the issue of solving cases, their productivity, i.e. what dynamic is necessary to be realized and how many new executors have to be engaged.

With reference to human resources in the Higher Administrative Court it should be highlighted that judicial staff in the Higher Administrative Court since its foundation, other than in the first year when 12 of thirteen elected judges administered their function, have continuously appointed 11 judges and 12 judicial officers.

Conclusion

On the basis of analysis made so far it can be concluded that Macedonian administrative courts diligence and efficiency will further be an area under assessment related to engagement of professional and other staff and evaluation of the results. In that light, it is important to affirm the commitment for more apparent social response in the internal organization of courts, qualification of judicial and other professional staff, increased efficiency and performance engagement.

REFERENCE

- Davitkovski Borce, PhD, Pavlovska Daneva Ana, PhD, Administrative Dispute in the Republic of Macedonia under the new Law on Administrative Disputes, Collection of Studies, Legal Frame of Judicial Reform in R. Macedonia, Faculty of Law, Skopje, 2006;
- Draft Law Amending the Law on Administrative disputes of July 2010;
- Draft Law on Administrative Disputes of April 2006;
- Gelevski S., Administrative Procedural Law, Prosvetno delo, Skopje, 1993, p. 252;
- Gelevski Simeon, Judicial Control and Legality of Administrative Acts, Collection of the Faculty of Law in Skopje, Skopje, 1997;
- Grizo Naum, Gelevski Simeon, Davitkovski Borce, Pavlovska-Daneva Ana, Administrative Law, Skopje, 2008;
- Hristov Aleksandar: Administrative Law, Skopje, 1981;
- Law on Administrative Disputes (Official Gazette of RM No 62/06, 150/10);
- Law on Courts (Official Gazette of RM No 58/06, 35/08, 150/10);
- Mojanoski T. Cane, Sazdovska, Malish, M., Nikolovski, M., & Krstevska, K.: *Citizens of the Republic of Macedonia on corruption – Analytical Report*, Skopje, Faculty of Security, 2014;
- Mojanoski T. Cane: *Methodology of Security Sciences – Analytical Procedures*, Book II, Faculty of Security, Skopje;
- Mojanoski T. Cane: *Methodology of Security Sciences – Analytical Procedures*, Book III. Skopje, 2015;
- Mojanoski T. Cane: *Methodology of Security Sciences – Analytical Procedures*, Book I (Edition 2, Vol. I). Skopje; Faculty of Security, 2015;
- Pelivanova Natasa, Cane Mojanoski, Mirjana Ristovska: Model of organization of administrative courts and their efficiency, case of the Republic of Macedonia, ZENITH International Journal of Multidisciplinary Research ISSN 2231-5780 Vol.5 (10), October (2015), p. 91-103 Online available at zenithresearch.org.in 91;
- Pelivanova Natasa, MA: Administrative Dispute as an Instrument for Protection of Human Rights and Freedoms through the Practice of the Supreme Court of the Republic of Macedonia, Collection of the Faculty of Law Iustinianus Primus, Skopje, 2007;
- Annual Report on the Work of the Administrative Court for 2011, 2012, 2013, 2014 www.uskopje.mk;
- Annual Report on the Work of the Administrative Court for 2015 http://www.sud.mk/wps/portal/central/sud!/ut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfljo8zizdxNTAawsvA183ANCzQ0cfV0;
- Annual Report on the Work of the Higher Administrative Court for 2011, 2012, 2013, 2014, 2015, www.uskopje.mk.
- Constitution of the Republic of Macedonia (Official Gazette of RM No 52/91, 1/92, 31/98, 91/01, 84/03, 107/05, 3/09);