

MODEL OF ORGANIZATION OF ADMINISTRATIVE COURTS AND THEIR EFFICIENCY, CASE OF THE REPUBLIC OF MACEDONIA

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ABSTRACT

Organization of the judicial control of relevant administration acts today is mainly differentiated through two models: Continental European and Anglo-Saxon models.

Until 2006, Republic of Macedonia practiced the Anglo-Saxon model of administrative courts, and since then Continental European model of organization has been actual.

The objective of this study is analysis of the efficiency of administrative courts of first instance in the Republic of Macedonia when applying the two models of organization of administrative courts.

This is focused on the answer to the question whether the model of organization is a reason for efficiency or inefficiency of the judicial organization and administration, or whether other factors are involved which are to be adequately reviewed when analyzing the judicial organization and administration efficiency.

To realize the objective above we will make a brief analysis of Macedonian regulation governing/having governed the organization of administrative courts in both periods under analysis, present data on the number of cases processed by the judicial organization and administration, data on the solved and unsolved cases as well as the authors' opinions about the causes of the established work of the judicial organization and administration.

KEYWORDS: administration, courts, judicial control, judicial organization.

INTRODUCTION

Organization of the judicial control of relevant administration acts today is mainly differentiated through two models: Continental European and Anglo-Saxon models. The first, Continental European model is characterized by constitution of special judicial organization and administration for control of administration acts, or a body within the executive authority with a task in a specially regulated procedure and independent from the active administration to solve issues related to the soundness of the relevant administration acts¹, and the other having competence in regular judiciary. Soundness control of the relevant administration acts with Anglo-Saxon system is conducted by general jurisdiction courts by applying general law in a procedure also applicable in civil issues².

In the Republic of Macedonia, judicial control system over administration performance through administrative dispute dated as of 1952. Almost for half a century, exactly until 2006, this type of judicial control was enforced within the regular judiciary; namely, it was the under jurisdiction of the Supreme Court of the Republic of Macedonia for first and second instance enforcement³. Article 1 of 1977 Law on Administrative Disputes⁴ provided for that courts decisions on administrative dispute are focused on legality of acts which assisted the state authorities, joint labor organizations or other self-governing organizations or associations with public competences, deciding on the rights and obligations in particular administrative issues, while administrative dispute could be administered against an administrative act only (Article 6). Theoreticians⁵ in the Republic of Macedonia who advocated this model of judicial control of certain administrative acts indicated the following arguments “pro” this model: ensuring autonomous control of administration by independent judiciary; special administrative judicial proceedings; rationality and specialization of judges solving this type of disputes, power and position of the Supreme Court of the Republic of Macedonia.

However, delayed and slow resolution of administrative law cases in the Supreme Court of the Republic of Macedonia by the Anglo-Saxon model was the reason to adopt a new Law on Administrative Disputes in the Republic of Macedonia in 2006 modifying the model of organization of administrative law control. 2006 Draft Law on Administrative Disputes explained the change of the organization mainly by inefficiency of the Supreme Court of the Republic of Macedonia in the part of resolving administrative law cases in administrative disputes, delayed resolution of administrative cases, slow and expensive administrative judicial proceedings⁶, the need for narrow specialization, thorough expertise and knowledge of specificities of certain legal institutes by judges competent for resolution of administrative disputes⁷.

¹Sagadin Stevan, *Upravnosudstvo*, Beograd, 1940, p. 11, Brown Newiller, Bell S. John, *French Administrative Law*, p. 41-121, Schwarze, *European Administrative Law*, 1992

²Popovic Slavoljub, *Upravnisporuteoriji I praksi*, Beograd, 1968, p. 91-92.

³Law on Courts, Official Gazette of RM No 36/95, 64/03 (Article 34) – the Law is repealed.

⁴Official Gazette of RM No 4/77.

⁵Hristov A., *Administrative Law*, Skopje, 1981, p. 449, Gelevski S., *Administrative Procedural Law*, Skopje, 1993, p. 252.

⁶Draft Law on Administrative Disputes as of April 2006.

⁷Davitkovski, Pavlovska Daneva, *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, p. 114.

Republic of Macedonia has practiced Continental European model in judicial control for several years. In 2006 Administrative Court of first instance⁸ was constituted in the judicial system of the Republic of Macedonia, and Higher Administrative Court in 2011.

The Supreme Court is competent for deciding in extraordinary legal remedies against the decisions of the Higher Administrative Court⁹, as well as in conflict of jurisdiction between the Higher Administrative Court and another court.¹⁰

LEGAL SET-UP OF ADMINISTRATIVE COURTS IN THE REPUBLIC OF MACEDONIA AND ITS COMPETENCES

Amendment XXV of the Constitution¹¹ 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 MPs.

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

Article 22 of the Law on Courts¹² 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.**

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

Jurisdiction of the Administrative Court is as follows: lawfulness of individual acts adopted in electoral procedure and individual acts pertaining to selections, appointment and dismissal 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

the provisions referred to in 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 the 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), where in case of second instance decision, no other legal protection has been ensured and decides on conflict of competences between the state authorities,

⁸ It started functioning on 1.12.2007.

⁹ Article 4 of the Law Amending the Law on Administrative Disputes.

¹⁰ Law Amending the Law on Courts, Official Gazette of RM No 150/2010.

¹¹ Constitution of the Republic of Macedonia, Official Gazette of RM No 52/91, 1/92, 31/98, 91/01, 84/03, 107/05.

¹² Law on Courts, Official Gazette of RM No 58/06, 35/08, 150/10.

between 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).

Unlike previous legislation governing administrative disputes 2006 Law on Administrative Disputes¹³ provided for that administrative disputes are also administered for legality of individual acts adopted in electoral procedure and individual acts pertaining to election, appointment and dismissal of public office holders, if determined by law, and for acts related to election, appointment and dismissal of executive civil servants, unless otherwise determined by law; a dispute arising from implementation and enforcement of the provisions in concession agreements, public procurement contracts of public interest and any other agreements where a state authority, organization with public authorizations, public enterprise, municipalities and City of Skopje are signatories, concluded for public interest or for performing public office; legality of misdemeanor sanctions adopted by the administration authorities, organizations and other authorities with public competences.

The Higher Administrative Court¹⁴ having jurisdiction throughout the territory of the Republic of Macedonia as second instance court is competent for: deciding on appeals against the decisions of the Administrative Court; conflict of competence 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 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 law¹⁵.

The Supreme Court of the Republic of Macedonia decides on extraordinary legal remedies against decisions adopted by **the Higher Administrative Court (Law Amending the Law on Administrative Disputes – Article 4)** as well as on conflict of competence between the **Higher Administrative Court** and another court (**Law Amending the Law on Courts - Official Gazette of RM No 150/2010**).

¹³Pursuant to the **Law on Administrative Disputes of 1997**, an administrative dispute could have been initiated only against administrative acts adopted by state authorities, joint labor organizations or other self-government organizations or communities with public competences, deciding on certain rights or obligations of some individuals or organizations related to some administrative issue, and where administrative acts were adopted in second instance, as well as on administrative acts adopted in first instance against which no appeal could have been filed in administrative procedure. Administrative dispute could have been also initiated where the competent authority, by request or appeal filed by a party failed to adopt a relevant administrative act under requirements provided for by the Law.

The Law provided for that an administrative dispute may not have been initiated:

- 1) against acts on matters for which judicial protection was ensured beyond the administrative dispute.
- 2) against acts related to matters where under explicit provision of the Law, an administrative dispute may have not been initiated.
- 3) on matters which, based on immediate administrative competences of the SFRY Assembly or the Republic President or SFRY President or a relevant authority of the republics and autonomous provinces.

¹⁴**Law Amending the Law on Courts**, Official Gazette of RM No 150/2010 - Article 22,

¹⁵ Law on Courts, Article 34.

ANALYSIS OF EMPIRICAL DATA¹⁶ RELATED TO ADMINISTRATIVE COURTS OF FIRST INSTANCE IN THE REPUBLIC OF MACEDONIA IN THE PERIOD 2000-2014

Analysis of empirical data in the period 2000-2006

Table1 Overview of the total number of solved and unsolved administrative cases, structure and solved-unsolved case ratio per 100 cases in the period 2000-2006

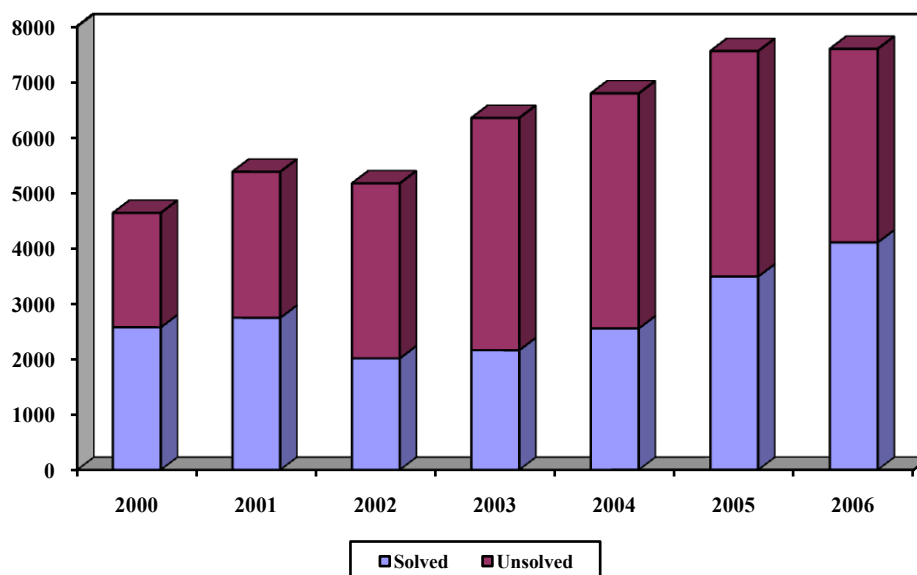
Year	Cases:			Structure:			Ratio per 100 cases:	
	Total	Solved	Unsolved	Solved %	Unsolved %	Total	Unsolved/solved	Solved/unsolved
2000	4636	2573	2063	55,50	44,50	100,00	80	125
2001	5379	2745	2634	51,03	48,97	100,00	96	104
2002	5169	2013	3156	38,94	61,06	100,00	157	64
2003	6350	2160	4190	34,02	65,98	100,00	194	52
2004	6793	2553	4240	37,58	62,42	100,00	166	60
2005	7556	3490	4066	46,19	53,81	100,00	117	86
2006	7596	4105	3491	54,04	45,96	100,00	85	118

It can be concluded from the above that the ratio of solved cases in the total number of cases per years is the highest in 2000 totaling to 55.50%, followed by 2006 with 54.04% and 2001 with higher value than half or 51.03%. Other years from 2002 to 2005 this percentage moves from 34.02% in 2003 to 46.19%.

If we assume the saying “A picture is worth a thousand words”, then the following diagram provides a visual picture of the proportion of solved and unsolved cases. The data above and the following diagram review indicate to a trend of non-characteristic efficiency of the competent judicial authorities in the period from 2000-2006. That was the reason for replacement of Anglo-Saxon organizational model of administrative courts with Continental European model in the Republic of Macedonia.

Diagram1 Solved – unsolved case ratio in the period from 2000-2006

¹⁶ The empirical data related to administrative court of first instance in RM are presented according to Reportson the Work of Courts in the Republic of Macedonia for 2000-2006 and Administrative Court for 2008-2014;



If we review the proportion of solved and unsolved cases per 100 cases it appears that 125 cases were solved in 2000, 118 solved cases in 2006 and 104 solved cases in 2001 per 100 unsolved cases. In the period from 2002 to 2006 those values are particularly low, or in 2003 that proportion is 52 solved per 100 unsolved cases to 86 solved cases in 2005. Such distribution shows that the proportion solved-unsolved cases is an indicator of the efficiency of those authorities.

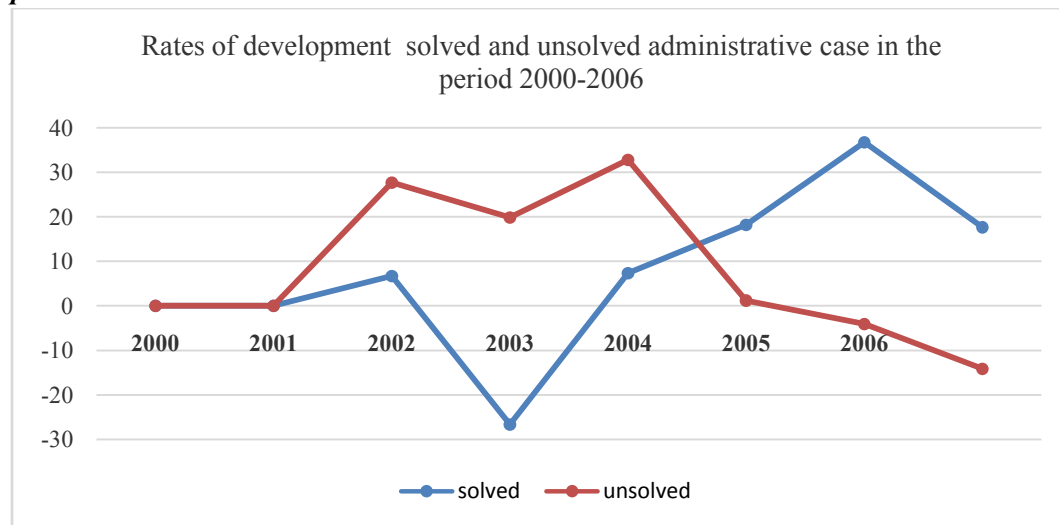
Table2 Overview of administrative cases in the period 2000-2006

Year	Cases:			Development rates	
	Total	Solved	Unsolved	Solved	Unsolved
2000	5636	2573	2063	-	-
2001	5379	2745	2634	6,68	27,68
2002	5109	2013	3156	-26,67	19,82
2003	6299	2160	4190	7,30	32,76
2004	6793	2553	4240	18,19	1,19
2005	7556	3490	4066	36,70	-4,10
2006	7506	4105	3491	17,62	-14,14

The data indicate that the rate of resolution of cases raised by 6.8% in 2001 compared to 2000. And it experienced rapid fall in 2002 by -26.67% compared to the previous year. On account of which the percentage of unsolved cases increased by 19.82%. As regards the percentage of unsolved cases 2000/2001 it decreased from 27.68% to 19.82%. Similar is the situation related to solved cases in 2003 compared to 2004; here, however, the number of unsolved cases significantly increased by 32.76% in 2003 compared to 2002, which as a result of significant number of transferred cases from 2002. As regards this distribution we may conclude that the court was most diligent in 2005, when the number of solved cases was 36.70%, while the

number of unsolved cases recorded a downward trend of -4.40%. Highest decrease rate of unsolved cases was achieved in 2006. Namely, the number of unsolved cases that calendar year fell by 14.14% compared to 2005.

Diagram2 Rates of development of solved and unsolved administrative cases in the period 2000-2006



From the tabular and graphical overview we can conclude that the proportion between solved and unsolved cases in the period from 2000-2006 was realized with intensity of visible differences between solved and unsolved cases.

ANALYSIS OF EMPIRICAL DATA IN THE PERIOD 2008-2014

The data provided in Table 3 for the period from 2008-2014 indicate to existence of periods where the proportion between solved and unsolved cases records changes, i.e. to presence of tendency of decrease of the proportion of solved cases compared to unsolved cases. This leads to a conclusion that this occurrence was more explicit in the second half or in the period from 2012 to 2014.

Consequently, the data indicate that the proportion of unsolved cases of 64.01% in 2008, slight increase is recorded in 2010, while there is a downturn trend in the other years. That proportion in 2006 was 56.82%, 46.51% in 2011, and equivalent percentage was recorded in 2012 and lowest proportion of 41.08%, in 2014. Such structure of solved cases related to the total number of cases is an indicator of (in) efficiency of those institutions.

Table3 Overview of the total number of solved and unsolved administrative cases, structure and solved-unsolved case ratio per 100 cases in the period 2008-2014

Year	Cases			Structure %			Ratio per 100 cases:	
	Total	Unsolved	Solved	Solved	Unsolved	Total	Unsolved/solved	Solved/unsolved
2008	14301	9154	5147	64,01	35,99	100,00	56	178
2009	18197	10340	7857	56,82	43,18	100,00	76	132
2010	20132	13810	6322	68,60	31,40	100,00	46	218
2011	25726	15980	9746	62,12	37,88	100,00	61	164
2012	30591	14228	16363	46,51	53,49	100,00	115	87
2013	27005	12461	14544	46,14	53,86	100,00	117	86
2014	26129	10734	15395	41,08	58,92	100,00	143	70

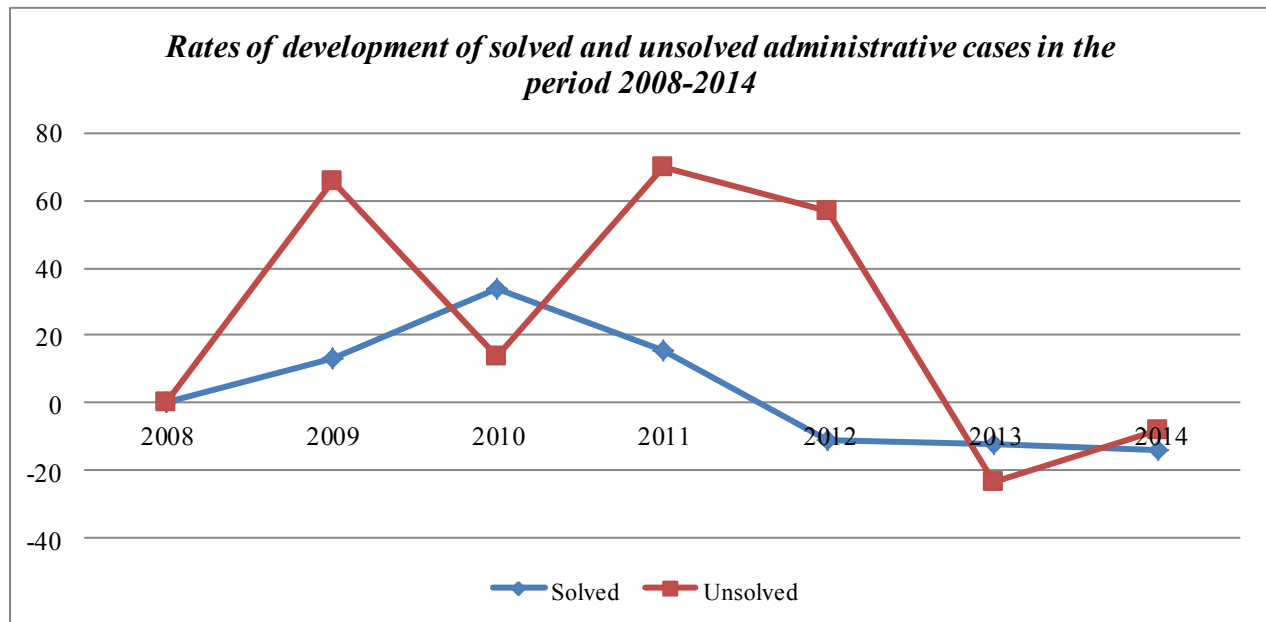
The further analysis is focused on the solved/unsolved case ratio. The efficiency coefficients move from 1.78 in 2008, 1.32 in 2009 and highest coefficient of 2.18 was achieved in 2010. By multiplying this proportion of coefficients by 100, we will obtain indicators implying that there are 100 unsolved cases compared to 178 solved cases or that the number of solved cases is 78% higher than the number of unsolved cases. However there is concern related to the number of unsolved cases in 2012 which is by 15% higher compared to the number of solved cases, or 143:100 proportion that is for 43% higher rate. Offered indicators reveal that the proportion between solved and unsolved cases records negative trend.

Table 4 Rates of development of solved and unsolved administrative cases in the period 2008-2014

Year	Cases			Rates:		
	Total	Solved	Unsolved	Total	Solved	Unsolved
2008	14301	9154	5147	-	-	-
2009	18197	10340	7857	27,24	12,96	52,65
2010	20132	13810	6322	10,63	33,56	-19,54
2011	25726	15980	9746	27,79	15,71	54,16
2012	30591	14228	16363	18,91	-10,96	67,89
2013	27005	12461	14544	-11,72	-12,42	-11,12
2014	26129	10734	15395	-3,24	-13,86	5,85

Development rates of cases also record certain dynamics year by year. Namely, the total number of cases in 2009 increased by 27.24% compared to 2008, and the number of solved cases increased by 12.96%, while the number of unsolved cases by 52.65%. Slightly better result was realized in 2010 compared to 2009. Namely, that year the number of cases increased by 10.63%, as well as the dynamics of resolution of the cases with an increase of 33.56%.

Diagram3 Rates of development of solved and unsolved administrative cases in the period 2008-2014



From the graphical view it can be concluded that tendencies of negative rates of solved and unsolved cases is characteristic in 2013 and 2014. While this is also characteristic for solved cases in 2012. We can conclude that although the trend of flow of cases in courts declined in the last two years, efficiency or the number of solved cases compared to unsolved cases also noticeably declined, while the proportion of unsolved cases in 2013 evidently decreased compared to 2012.

Empiric data of the two periods show that a positive trend of the number of filed cases and solved cases is present in the last 14 years. Diagram 4 shows that upward line of solved cases by years reached its peak in 2012, and next two years shows a downward tendency. Offered analytical tool shows that as of 2000 the number of solved and unsolved cases increased, and that dynamics more or less in absolute figures recorded upward tendency; however in 2013 and 2014 it recorded downward trend. It might be concluded that in the last years there is an upward trend of filed cases, but the resolution dynamics is uneven, which indicates to certain failures or precisely insufficiently expressed efficiency in the resolution of court cases.

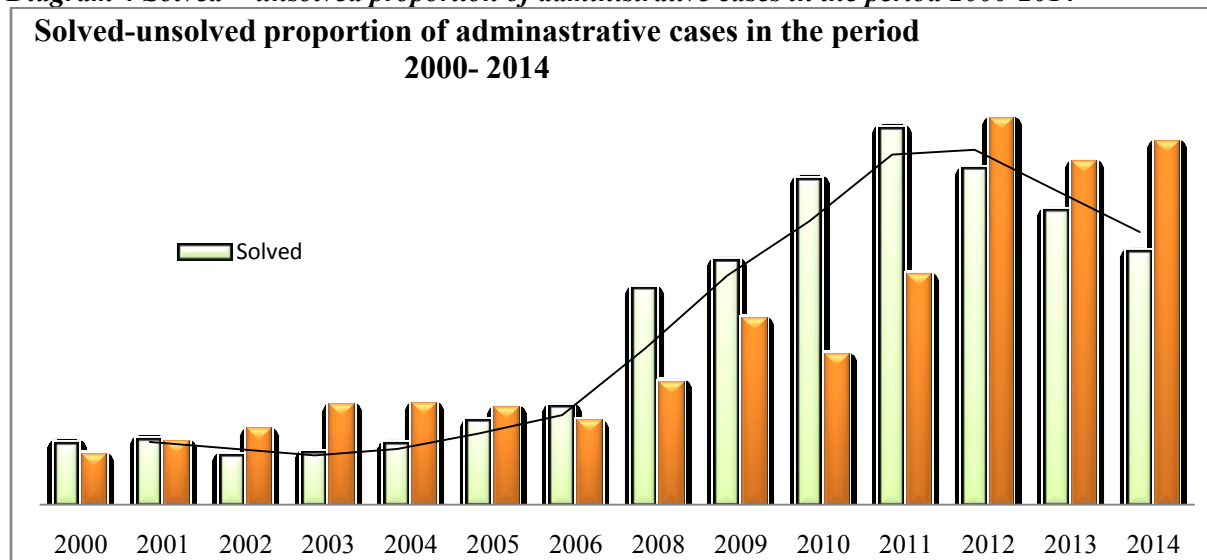
Diagram 4 Solved - unsolved proportion of administrative cases in the period 2000-2014

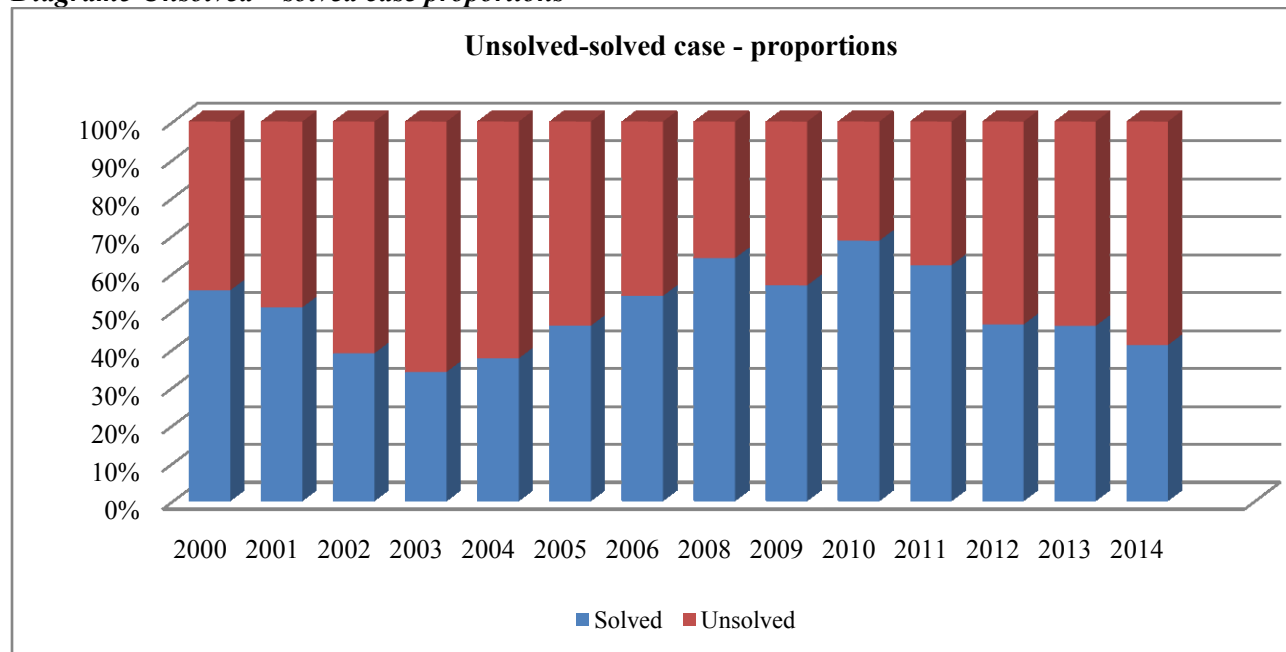
Table 4 shows the proportions and ratio of solved and unsolved cases per 100 cases.

Table 4 Overview of the total number of solved and unsolved administrative cases, structure and solved-unsolved case ratio per 100 cases in the period 2000-2014

Year	Cases			Structure %			Ratio per 100 cases:	
	Total	Solved	Unsolved	Solved	Unsolved	Total	Unsolved/solved	Solved/unsolved
2000	4636	2573	2063	55,50	44,50	100,00	80	125
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2013	27005	12461	14544	46,14	53,86	100,00	117	86
2014	26129	10734	15395	41,08	58,92	100,00	143	70

It can be established that coefficients or the number of solved and unsolved cases year by year records various dynamics and that proportions between the total number of cases and the number of solved and unsolved cases shows detrimental dynamics of solved cases.

Diagram5 Unsolved – solved case proportions



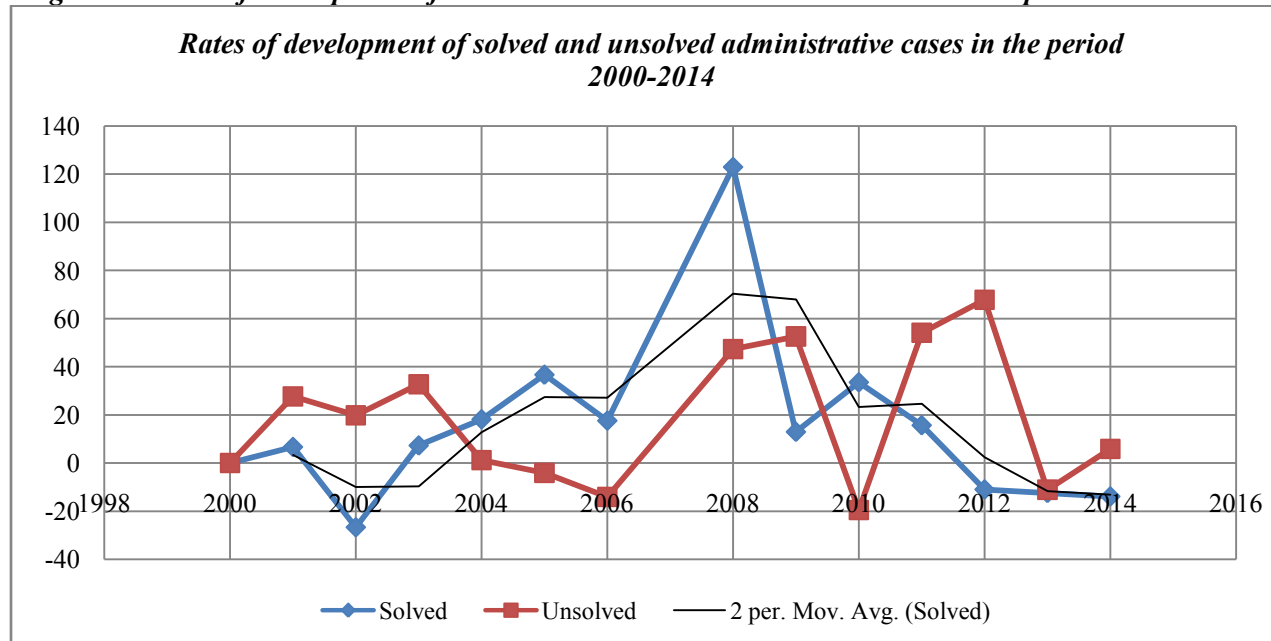
Proportions of solved and unsolved cases show the dynamics indicating that in the period after 2011 the number of unsolved cases increased or that efficiency of resolution of cases decreased.

Table 5 Rates of development of solved and unsolved administrative cases in the period 2000-2014

Year	Total	Solved	Unsolved	Total	Unsolved	Solved
2000	4636	2573	2063	-	-	-
2001	5379	2745	2634	16,03	6,68	27,68
2002	5169	2013	3156	-3,90	-26,67	19,82
2003	6350	2160	4190	22,85	7,30	32,76
2004	6793	2553	4240	6,98	18,19	1,19
2005	7556	3490	4066	11,23	36,70	-4,10
2006	7596	4105	3491	0,53	17,62	-14,14
2008	14301	9154	5147	88,27	123,00	47,44
2009	18197	10340	7857	27,24	12,96	52,65
2010	20132	13810	6322	10,63	33,56	-19,54
2011	25726	15980	9746	27,79	15,71	54,16
2012	30591	14228	16363	18,91	-10,96	67,89
2013	27005	12461	14544	-11,72	-12,42	-11,12
2014	26129	10734	15395	-3,24	-13,86	5,85

Table 5 shows the rates of development of solved and unsolved administrative cases in the period 2000-2014.They present a dynamics that can be best graphically illustrated:

Diagram 5 Rates of development of solved and unsolved administrative cases in the period 2000-2014



Offered analytical procedures indicate to several conclusions. Namely, in the period from 2000-2014 downward dynamics of solved cases records a decreasing tendency, and from 2012 to 2014 it records a negative trend. If, forecast of future conduct of resolution of court cases is provided based on those rates, it might be expected that the negative trend is maintained or continues to further decline.

CONCLUSIONS

Indicators of first instance administrative courts functioning in the Republic of Macedonia for the period from 2000-2014 entail the conclusion that the change of the organization of administrative courts has not had essential impact on their efficient work.

Where we should be seek for the reasons of inefficiency of first instance administrative courts in the Republic of Macedonia.

Above all attention should be paid to the number of judges and assistants engaged in resolution of the cases and their specialization.

Unlike in the period from 2000-2006 when 6 judges handled first instance administrative cases, in the period from 2008 to 2014 the number of judges resolving this matter multiplied between 22 and 30 judges. Although the number of judges handling first instance on administrative cases multiplied, efficiency in functioning of first instance administrative courts was not achieved.

Efficiency indicators in the work of administrative courts of first instance indicate to the need for increase in the number of judges handling first instance administrative cases in line with the current annual inflow of cases in the court and assessment of the time necessary for a judge to solve a case related to a certain administrative matter.

In terms of administrative court staff it is recommended that they are mainly recruited from the tier of experienced, professional and narrowly specialized staff knowledgeable in administrative law matters.

This especially since so far judges in the Administrative Court were elected from staff that formally met legal requirements related to election of judges; most of them, however, did not have any experience in administrative law matters.

Insufficient additional service staff, in charge of resolution of administrative disputes, might also have impact on the efficient functioning of the Court. So that it is necessary to assess the need for engagement of optimum number of professional assistants to help judges in their current work on administrative law cases. In the period from 2006 to 2014 this number varied from 8 to 25 assistants with increasing tendency.

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