CENTER FOR CHANGE MANAGEMENT

MONITORING ADMINISTRATIVE JUSTICE

ADMINISTRATIVE AND LEGAL PROTECTION OF CITIZENS AND PUBLIC ADMINISTRATION EMPLOYEES

REPORT ON THE WORK OF THE COMMISSIONS OF SECOND INSTANCE AND ADMINISTRATIVE COURTS

ADMINISTRATIVE AND LEGAL PROTECTION OF CITIZENS AND PUBLIC ADMINISTRATION EMPLOYEES

REPORT ON THE WORK OF THE COMMISSIONS OF SECOND INSTANCE AND ADMINISTRATIVE COURTS

Center for Change Management (CCM)

November, 2017

Publisher: Center for Change Management

For the publisher:
Neda Maleska-Sachmaroska, Center for Change Management

Author: Dragan Gocevski

Team of associates: Neda Maleska-Sachmaroska,
Tereza Lazovska, Nikolina Toshanova

Editor: Gordana Stefanovska-Veljanovska

Proofreading: AD Verbum

Design and Print: Brigada Design

Circulation: 50 copies
(Free-of-charge/non-commercial circulation)

CIP - Каталогизација во публикација
Национална и универзитетска библиотека "Св. Климент Охридски", Скопје

35.08:34.037(497.7)(047)

GOCEVSKI, Dragan
Administrative and legal protection of citizens and public administration employees : report on the work of the commissions of second instance and administrative courts / [Dragan Gocevski]. - Skopje : Center for change management, 2017. - 82 стр. : табели, граф. прикази ; 25 см
Фусноти кон текстот

ISBN 978-608-4818-28-1

а) Јавна администрација - Вработени - Управно-правна заштита - Македонија - Извештаи

COBISS.MK-ID 105380362

Funded by
UK Government

This product is prepared within the Monitoring Administrative Justice Project funded by the Government of the United Kingdom, and supported by the British Embassy in Skopje. The opinions and standpoints in this paper does not necessary always reflect the opinions and standpoints of the British Government.

CONTENT

1. Summary

In terms of the number of citizens and legal entities that submitted some kind of administrative request to a specific institution, it is evaluated that there are around 100,000[1] cases in the country on annual level. These are the so-called administrative procedure cases which are decided by the public bodies on annual basis and which a decision or resolution is adopted for.

In view of how many of them the citizens complained for, it is evaluated that legal protection was requested in at least 15% of these 100,000 cases or that is around 12-13,000 lodged appeals of any kind. These 15% may indicate a relatively high degree of trust or satisfaction from the work of the institutions but it does not correspond with the popular public opinion that majority of the citizens are not satisfied with the decisions and resolutions in terms of their requests in the administrative procedure. We can derive one possible conclusion from this research, that the negative perceptions towards the quality of work of the public administration is more due to noise by the disgruntled parties than the real assumed incompetence. Large number of cases is probably about inappropriate or impolite behaviour, long queues of waiting or several returns for the same things than about incompetence or illegality of the administrative decisions or resolutions. If we want the administration to grow into true service for the citizens, these issues should, of course, be addressed.

Our conclusions are supported by numbers. Namely, a bit more than 12,000 decisions on all basis are appealed in first instance from the assumed 100,000, i.e. around 12% of cases. For example, in 2015, which is the year with highest number of lodged appeals to the commissions in ques-

It is evaluated that legal protection was requested in at least 15%

[1] Estimated number by the author to serve as starting point for number of issued decisions; The number is estimates as a cumulative of the total number of decision from the annual reports of several key institutions such as the Pension and Disability Fund, Public Procurement Bureau, Real-Estate Cadaster Agency etc.;

In terms of the initiated procedures, along with the cases which an appeal is not allowed against but a lawsuit before the Administrative Court, between 13,000 and 15,000 lawsuits are lodged annually.

tion, around 6,064 citizens and/or legal entities lodged appeals in an administrative procedure and/or labour relations procedure. Then, about 1963 appeals were lodged to the Pension and Disability Insurance Fund, 3938 appeals were lodged before the Commission in the Area of Misdemeanor Cases and 626 appeals to the Public Procurement Commission. There are 12,591 cases all together. However, if there are more disgruntled parties than those who appealed, we cannot provide an evaluation in this report having in mind that it refers to the already lodged appeals and not those that could have been lodged. This will be subject of a public opinion research – whether large part of the citizens were disgruntled from certain decisions but did not lodged an appeal or, even worse, lawsuit to the competent authority. There could be several reasons and in this occasion we will state a few – ignorance about the procedures and rights, distrust in the institutions, unavailability of legal aid and protection, financial and administrative barriers etc. Yet, the argument that large number of these administrative decisions and resolutions are appropriately based and grounded on legal procedures is not any less valuable.

In terms of the initiated procedures, along with the cases which an appeal is not allowed against but a lawsuit before the Administrative Court, between 13,000 and 15,000 lawsuits are lodged annually. Although this is not a small number, we have to take into consideration that the largest part of the cases or around 76% is duly decided upon, i.e. the decision is not appealed or there is no administrative dispute against it.

Regarding the outcome of the appealed or lawsuit processes, about half of them or even 60-70% of these appeals and lawsuits are rejected. About the same number is confirmed with the decisions of the Administrative Court, i.e. it is confirmed that half of 60% of the appellants were disgruntled with the decision of the public authority but they were wrong. And vice-versa, half of them managed to prove their right in a further instance of justice.[2]

What can be concluded about the cases where the appeals

[2] Without additional qualitative research, from individual cases where people were rejected in all stages of the administrative and legal protection we cannot derive different conclusions from those expressed in this report;

of the citizens were accepted by the bodies (commissions) of second instance? Those are the smaller half of the total number of lodged appeals on all grounds encompassed in the research. This indicates that around 5000 decisions by the public bodies (rounded average, see the individual indicators for every commission in this report for more details) were reached against the parties. If we accept that certain number of lawsuits is accepted in an administrative dispute we can round up that 5000-8000 decisions are against the parties annually but they are remedied by using the available legal means (appeal in an administrative procedure and/or lawsuit and appeal in administrative dispute). In the remaining cases where they were rejected, we can conclude that the clients may possible appealed or sued because they felt damaged although, according to the evaluation of the competent authorities, they did not have grounds for such thing. This especially refers to that part of the cases related to misdemeanor procedures where the volume of appeals is large but they are rejected even up to 80% of the cases due to the evidence, which can hardly be denied, characteristic for this type of misdemeanors. For example, it is unlikely that the appeal of a driver who requests some mitigating circumstances to be taken into consideration to be accepted when the driver is charged with driving above the speed limit duly recorded on radar.

In terms of the rights arising from labour relations in the public sector, from the available data, we can conclude that they also are not chronically endangered because there are no large numbers of appellants. However, the public opinion is on the standpoint that the largest part of the employees in the public administration does not dare to appeal or to sue certain decision made by their supervisors. Sometimes that can be a result of eventual fear from consequences on the personal and professional level, and sometimes the reason for avoiding this kind of disputes is the cost for the necessary expertise that the employee should pay during the evidence procedure. Nonetheless, the current trends show that the highest number of appeals refer to the selection procedures of administrative officers submitted by the candidates who are not selected. They are followed by disciplinary measures, allocations and termination of the employment. The data show that less than half or around 40% of these appeals or lawsuits are accepted.

However, the public opinion is on the standpoint that the largest part of the employees in the public administration does not dare to appeal or to sue certain decision made by their supervisors.

In the municipality administrations, the number of lodged appeals and court procedures in terms of the total number of municipalities is insignificant. Actually, on the basis of the requests for access to public information, an average of 1 appeal per 2 municipalities is recorded, or less than 1% from the employees requested legal protection regarding violation of the employment right. The condition is similar in other institutions covered by the research. The number of lodged appeals and initiated court procedures is very small, but in case when there is certain court ruling or decision adopted by the commission in question, there is high degree of execution of the decisions by the second instance authority. Yet, there is still an open dilemma that from around several hundred initiated disciplinary procedures, less than 15% of the employees decide to appeal the disciplinary measures. It is possible the employees either feel that the pronounced disciplinary measures were justified or that they have difficult access to justice, especially in the case of appeal or lawsuit against a decision made by direct manager.

All in all, for a small country with population of around 2.000.000 people, the system for administrative and legal protection in Republic of Macedonia is quite complex as a system and divided between more institutions of different degree.

All in all, for a small country with population of around 2.000.000 people, the system for administrative and legal protection in Republic of Macedonia is quite complex as a system and divided between more institutions of different degree. There are several legal remedies in different institutions available to the citizens and legal entities against the decisions made by the public authorities of first instances: three independent bodies (commissions covered with the report), ministers, and some can immediately initiate administrative dispute with a lawsuit. A new legal remedy "complaint" was introduced in 2015 whose application was subject of future researches and analyses in the next years.

Administrative dispute with lawsuit is allowed against the decisions of the second instance authorities before the Administrative Court – Skopje, and an appeal can be lodged to the Higher Administrative Court against the decisions of the Administrative Court. The system is complex on horizontal level; there are many parallel bodies of second instance with competence over certain matters, as well as vertically because there are many degrees of administrative and legal protection.

We can conclude from the research that this complexity is a problem for the ordinary citizen who thinks that the entire system is fairly divided and unclear. There is neither information nor assistance where the people can turn to for advice and protection except to find their way in the labyrinth of the administrative and legal protection. This is not an issue for part of the parties and legal entities. Namely, majority of legal entities and more informed people do not have issue with this because the decisions of the public authorities included legal remedy which states what the disgruntled party should do, before who and within which deadline. Part of them work with lawyers and attorneys who are specifically hired for this purpose. But for the category of citizens who cannot afford legal advisors or attorneys, this often is administrative barrier.

There is exemption of taxes or minimal fees for many grounds in terms of the necessary financial means. Yet one part of the procedures request certain expertise for obtaining evidence and this cost is something that turns the people away from the appeal procedure. The procedure also envisages that the appeal itself, or even a lawsuit, should not be perfectly formulated and it does not request from the parties to be educated attorneys. This also assumes that, for example, the department in the Administrative court that will take over the case, it will formulate appropriately. However, certain issues appear for this people, such as incomplete documents, unclear ground for lodging the appeal or lawsuit or unclear request. The bodies and courts of second instance still act within their competences even in these cases, but now the completion of the documentation takes longer and the establishment of the actual condition is more complex.

In terms of the vertical complexity, the existence of several degrees of legal protection is not problematic from the aspect of the citizens because using the legal remedy is related to appropriate referral in the decision. If they are willing, it is stated where and before whom they can appeal or sue and appeal again. Yet this kind of protection may be expensive for the people and resources put into action by different institutions for administrative and legal protection instead of, for example, to be united under one body with departments specialized in different areas. The large

There is exemption of taxes or minimal fees for many grounds in terms of the necessary financial means.

In terms of the administrative procedures, one public body decided in first instance and again public body decided in second instance after which the party was still disgruntled and initiated a procedure before the Administrative court

number of instances and institutions for administrative and legal protection lead to too long duration of the procedure, which may even lead to situations of fourth instance, i.e. their appeal is accepted in last instance but this can take up to several years when the decision itself becomes redundant and the justice is not satisfied.

The right of public body to lodge appeal against a verdict reached by the Administrative Court through the state ombudsman is another evidence for the complexity and it is highly controversial. That is opposite of the fact that the essence of the administrative dispute is to evaluate the legality of the administrative act on one hand and to represent the public interest in final instance on the other. So in terms of the administrative procedures, one public body decided in first instance and again public body decided in second instance after which the party was still disgruntled and initiated a procedure before the Administrative court, i.e. the party sued. Then a judge decided upon the administrative dispute in third instance. Additionally, this possibility introduces certain degree of legal uncertainty for the parties because they have no other choice regarding the duration of the procedure and it has to reach the forth instance for them. According to that rule, if the party is not satisfied with the decision of the Administrative Court, the party will appeal that decision before the Higher Administrative Court of fourth instance. There are many comments in the public about the need of existence of the Higher Administrative Court and also in relation to the published draft strategy for reform in the justice system. However, we will not invest too much time in this question but we will offer measures for advancing the condition within the existing frames. As a result of this research we can indicate that the Higher Administrative Court may remain to exist with reduced staff if the option for the state ombudsman to lodge appeal in administrative dispute is cancelled. But if the Higher Administrative Court ceases to exist as an institution, the impact on the entire administrative and legal protection system would not be large because the system will return to its previous already known state from 2011.

In view of the human and asset resources and capacities, the increase of the number of judges and court officers may influence the reducing the burden of the administra-

tive judges and increasing the rate of reaching decisions. Certain economy of this kind may be carried out with higher mobility within these intuitions. Another problem which must be resolved is the mutual communication between the institutions included in the administrative and legal protection system and the public bodies. Namely, the unnecessary loss of time, and sometimes a reason for violation of the rights of citizens and legal entities is the inability to collect documents in timely manner, to complete the cases and to determine the actual condition as a precondition for quality deciding. The institutions act like "rivals", and in certain cases they ignore each other. That is not always intentional but there are cases when it is intentional with purpose to avoid the responsibility in the procedure as well as due to incompetence of individuals and entities. Sometimes it is result of lack of resources that will respond to all needs within the institutions. However, the strengthening of the mutual communication and cooperation between the institutions is necessary as well as of the awareness that they all work together for the same purpose and that is to protect the rights of citizens and to protect the public interest through consistent and impartial application of the laws. In that direction, there is a need for mutual meetings, effective coordination but also development, implementation of single solutions for electronic communication which would enable working on cases and provide continuous transfer of all documents and evidence that the public body used in the decision procedure of first instance.

In terms of certain specific conclusions as well as recommendations and proposed measures for more efficient management of the administrative and legal protection system, we recommend to look the conclusions and the proposed recommendations and measures. Here we will provide short summary of the proposed measures. They refer, for example, to creation of single system for keeping records of the administrative cases which will be applied by all relevant institutions and which will provide good monitoring system of the administrative procedures and cases. We also recommend measure which refers to good interinstitutional coordination in terms of the learning system and implementation of the newest practices of court protection. This is proposed in order achieving high equality of the decisions in view of administrative appeals and lawsuits.

Another problem which must be resolved is the mutual communication between the institutions included in the administrative and legal protection system and the public bodies.

Separate motivation and awarding system for those judges who will decide on their own merits in their cases is envisaged.

Furthermore, in relation to speeding-up the procedures, one possible manner, which is explained as separate proposed measure, refers to electronic system for interoperability and communication between institutions in order unnecessary delays in the communication and provision of necessary documentation and evidence to be avoided. Finally, one of the measures refers to strengthened decision on merits system within the commissions which will work towards final solution of the case instead of returning it to the body of first instance. In that context, separate motivation and awarding system for those judges who will decide on their own merits in their cases is envisaged. The same measure refers to court proceedings and reaching decisions and rulings with full jurisdiction, where possible, for the Administrative and Higher Administrative Court in favour of the people, legal entities and other parties in the administrative and court protection.

2. Introduction

Ask yourself a question: Have I initiated administrative procedure in my life? If you are not certain that you can answer this question or you think that the answer is "no" or "rarely", then this publication will surely awake your interest!

"From birth until death, the first and last thing every human encounters is the public administration." This is a well-known phrase passed to all law students at the Faculty of Law in Skopje. During their life and career, people are in constant contact with the state through the institutions which perform public authorizations, i.e. services (monetary welfare, pensions, health insurance, student scholarships, construction licenses, driving licenses, issuing identification documents etc.) or towards which they have certain obligations (to pay taxes, duties, customs duties etc.).

The institutions decide on the rights of citizens in administrative procedure which ends with reaching a decision (or other specific act). In order all citizens and legal entities to have equal treatment in the face of laws, institutions must follow strict rules and procedures according to which they act upon and, within established deadline, they decide upon the requests of the citizens and legal entities. This procedure is called administrative procedure and it purpose is to generate legal acts in envisaged legal procedure.

Often, in this procedure the institutions reach a decision which the citizen or legal entity feels that does not realizes their full rights or it denies their right prescribed by law. Sometimes the error consists of overseeing some aspect from the procedure that must be followed. Often there are also cases where people request something without fulfilling certain conditions, so the institutions deny these requests as ungrounded. In these cases, the people and legal entities are guaranteed with legal protection.

In order all citizens and legal entities to have equal treatment in the face of laws, institutions must follow strict rules and procedures according to which they act upon.

The purpose of this research is to get insight in the condition of the administrative and legal protection system in Republic of Macedonia individually, on institutional level, and completely, as a single system.

This research provided review of different forms of legal protection available for the people and legal entities in Republic of Macedonia, procedures for its implementation, legal remedies for its implementation and competent institutions that implements it. In order to teach the reader how to differentiate administrative procedure from other forms of legal protection, this report includes review of all forms of legal protection as well as the procedures for its implementation and competent institutions. We provide review of the work of the state commissions which decide as second instance in certain administrative procedures as well as of the work of the Administrative Court and Higher Administrative Court.

The purpose of this research is to get insight in the condition of the administrative and legal protection system in Republic of Macedonia individually, on institutional level, and completely, as a single system. The idea is to get insight in the trends in terms of what the people are appealing about at most as well as in the lawsuits, i.e. initiated administrative disputes which request legal protection. The end goal is to establish the pros of the administrative and legal protection system, its speed and efficiency, but also the problems and challenges which the people are facing with as well as the institutions themselves in the area of provision of administrative and legal protection and its implementation in practice. We hope that we are going to awake your interest about the debate with the wider public and people but also with part of the expert public and institutions responsible for promotion of work in this area.

Just briefly and as a kind of introduction in this area, the analyses showed that more than 100,000[3] cases are opened and resolved with an administrative procedure annually. If we take into consideration that from 2,000,000 people and more than 70,000 legal entities in this country, there are around 100,000 administrative procedures initiated, or around 5% of the total population. Furthermore, around 10,000 are appealed, and 13,000-15,000 lawsuits are submitted to the Administrative Court annually. That is

[3] Estimated number by the author to serve as starting point for the number of issued decisions; The number is estimated as a cumulative of the total number of decision from the annual reports of several key institutions such as the Pension and Disability Insurance Fund, Public Procurement Bureau, Real-Estate Cadaster Agency etc.;

15%, more or less, from the initially assumed cases. Large part of the appeals and lawsuits are rejected as ungrounded. The areas where the people, i.e. legal entities request administrative and legal protection are mostly misdemeanors (more specifically in the area of MoI, traffic, transport and communication), applicants for insurance rights (health, social, pension), and lately the number of appeals increases for cases in the area of education (for example, scholarships).

At the end, this publication offers review of the detected problems and challenges which the institutions are facing with, the institutions that implement the administrative protection of the rights of people and legal entities. Also we provided recommendations for their overcoming: deciding on merits, strengthening the capacity of administrative courts so they can monitor the execution of the verdicts, aligning the manner of keeping records of the work between all bodies of second instance and administrative courts.

If we take into consideration that from 2,000,000 people and more than 70,000 legal entities in this country, there are around 100,000 administrative procedures initiated, or around 5% of the total population.

3. Methodology

The data for the needs of this research are collected using several techniques for data collection. One part of the data refers to review of the annual operation reports of the institutions published on their websites for the period of the previous 5 or more years. Multiannual reviews and tables were made from these reports.

Certain data are collected by submitting requests for free access to information of public character. They are submitted in order for certain data that are missing to be specified or to obtain source information about the conditions in certain type of institutions on national or local level.

That data that are collected and processed refer to:

1. Annual reports on the work of several key institutions where the people, legal entities and public administration employees may seek administrative and legal protection as follows: the State Public Procurement Appeals Commission, State Commission for Decisions in the Second Instance in the Area of the Inspection Supervision and Misdemeanor Procedures, State Commission for Decisions in Administrative Procedures and Procedures of Employment in Second Instance, Administrative Court and Higher Administrative Court;
2. Requests for information of public character submitted to the local self-government units (LGU) as well as certain number of institutions on local level, where we requested information for the period from 2012 to 2016 in terms of initiated employment procedures as well as their outcomes: Number of lodged appeals to competent body of second instance in the area of employment disputes (Commission established within the Administration Agency), number of accepted appeals by the Agency, number of decisions where it is acted according the decision of the Administration Agency, number of filed lawsuits by employees for violation of the employment right before competent court, received court

orders as well as number of duly implemented decisions which implemented the court decisions;

3. Therefore, we submitted requests to 81 local self-government units, i.e. to all municipalities; further, we submitted requests to all social work centers – total od 30; additional requests were delivered to 57 public health institutions and 100 public enterprises; from the total submitted requests, we received responses from 50 municipalities (61.73%), 24 social work centers (80%), 45 public health institutions (79%) and 69 public enterprises (69%).
4. Request for access to information of public character was also submitted to the Administrative Court Skopje: Review of the largest number of cases by individual, i.e. specific grounds, according to years for the period from 2012 to 2016;
5. An review and analyses of certain legal sources was carried out: Law on General Administrative Procedure, Law on Administrative Taxes, Law on Court Taxes, Law on Establishing State Commission for Decisions in Administrative Procedures and Procedures of Employment in Second Instance, Law on Public Procurements, Law on Denationalization;
6. Stenographic notes from a session of Parliament's commission held on June 19, 2017 which refer to a statement on the scope and work of the State Commission for Decisions in Administrative Procedures and Procedures of Employment in Second Instance;
7. Interviews with judges from the Administrative Court – Skopje and Higher Administrative Court held on 17.8.2017, 25.8.2017 and 30.8.2017 where we discussed about certain personal impressions about the type and flow of the administrative disputes initiated by people and legal entities as well as certain ideas about the promotion of this activity.

The data presented in all tables and charts are compiled by the authors and certain trends and conclusions about the presented conditions are presented.

An additional analysis was carried out in terms of specific indicators about the efficiency of the institutions encompassed with this research. They are taken over from the

EU Justice Score Board[4] as synthetic indicators which are adapted to be applied in different justice systems throughout EU. The indicators are not absolute values but only rates which should serve for obtaining comparative results and which enable comparison between certain institutions or different systems. The goal of the system is not to present preferences towards one or other justice model.

The following indicators were adapted and used for the needs of this research:

1. *Length of proceedings and disposition time*. The length of proceedings expresses the time (in days) necessary for resolution of a case in court, i.e. the time necessary for the court to reach a decision of first instance. The disposition time is indicator which expresses the number of unsolved cases divided by the number of solved cases at the end of the year multiplied by 365 days.
2. *Clearance rate*. The clearance rate is the ratio between the number of solved cases divided with the number of new cases.[5] When the clearance rate is low and the length of proceedings is long, excess of cases remains and the system starts to create stocks of cases.
3. The number of pending cases expresses the number of cases per 100 people which should be solved in future (in first instance) until the end of an established deadline (for example, one year). The number of pending cases influences the disposition time as an indicator. In order the disposition length to be improved, it is necessary measures for decreasing the number of pending cases to be undertaken – excess per 100 people.[6]

The disposition time is indicator which expresses the number of unsolved cases divided by the number of solved cases at the end of the year multiplied by 365 days.

[4] In the communication to the Council and the European Parliament, the European Commission established new framework on EU level in order to strengthen the rule of law in the member-states. This measure is an institutional respond of the Commission which aims to enable the commission, in cooperation with the member-states in question, to find preventive solution for the emergence of systemic threat to the rule of law. On the basis of the equality principle, the frame is applied in all member-states on the same manner and it is a benchmark in the definition of the systematic threats to the rule of law: http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_communication_en.pdf; Last report: http://ec.europa.eu/newsroom/document.cfm?doc_id=43918;

[5] New cases shall mean newly opened cases in the given year, i.e. cases which the institution shall work on;

[6] The EU Justice Score board, 2017, pp. 7-13 available at: http://ec.europa.eu/newsroom/document.cfm?doc_id=43918;

In order the disposition length to be improved, it is necessary measures for decreasing the number of pending cases to be undertaken – excess per 100 people

The goal of the research is to provide simple review of the types of legal protection in Republic of Macedonian through information review in order to isolate the specificities of labour disputes – specific focus of the employees in the public sector and administrative and legal protection system.

An analysis on efficiency of the institutions which implement the administrative and legal protection was made by researching secondary and quantitative data. The most common issues and challenges of the administrative and legal protection system were determined by making combination of quantitative indicators and qualitative research, which serve as a basis for the authors to derive draft measures for their overcoming and promotion of the system.

4. Types of procedures for realization of legal protection in Republic of Macedonia

Having in mind the complexity of the legal system in Republic of Macedonia, and the enormous respect and regard to finesses requested by the research on this matter, in this chapter we offer simplified review of the forms of legal protection, i.e. the procedures which it implements through. We will scratch the surface of each and every procedure and our goal is to be informative, so in the following chapters we can focus in more detail on the types of the administrative and legal protection and specificities of labour disputes initiated by the public administration employees in Republic of Macedonia.

When the fundamental rights and obligations of the people are endangered in disputes between people as individuals, i.e. natural persons, or between legal entities during their life and work, the legal protection is implemented in a civil procedure. That procedure is initiated in case of disputes which arise from personal and family relations of the people such as the labour, trade, property and other civil and legal disputes. It is conducted before the basic courts with basic jurisdiction and before the basic courts with expanded jurisdiction. The litigation is initiated by a lawsuit filed by the citizen, and it starts to be conducted by delivering of the lawsuit to the accused. The parties may lodge an appeal against the verdict of first instance within 15 days from the day of delivering transcript of the verdict, except in otherwise established deadline by law, where the decision is delivered to the court of second instance (Court of Appeals).

Criminal procedure is conducted for acts described as criminal acts by law. The criminal procedure is cumulative of actions undertaken for the purpose of finding the perpetrator of the criminal act, gathering evidence, their accusation and defense actions until the reaching of the final verdict and execution of the sanction. The criminal procedure in Republic of Macedonia is conducted in 5 phases

(stages): preparatory stage (investigation), accusation, main hearing, legal remedy procedure and execution of the verdict. The procedure is conducted before the basic courts with basic jurisdiction and before the basic courts with expanded jurisdiction. The criminal procedure may be regular, shortened and punitive against minors but only the regular procedure has all 5 stages. The criminal procedure is initiated and conducted by state institutions against individuals or legal entities with reasonable doubt for criminal act. An appeal can be lodged against a verdict reached by a court of first instance. After the completion of the appeal procedure, the verdict becomes effective. Only extraordinary legal remedies can be applied to it: repetition of the criminal procedure, extraordinary alleviation of the punishment, request for protection of the legality, and/or request for extraordinary reexamination of the effective verdict.

Administrative procedure is initiated for realization of protection of rights and legal interests of natural persons, legal entities and other parties as well as protection of the public interest and the state bodies and local self-government are obliged to act on it.

The relations between the bodies of administration and people occur when the citizens request realization of certain rights and interests of these bodies or when the administration requests realization of specific obligations by the people. The administrative procedure is initiated by the competent authority ex-officio or upon a request by the party.

For rights, obligations and legal interests of the legal entities in the administrative procedure is decided with specific administrative act (decision, permit, license, order etc.). One of the basic principles of the administrative procedure is the principle of legal protection. This means that the party in the administrative procedure has right to legal protection against each and every administrative[7] and real act[8].

[7] Administrative act shall mean any individual act of a public body which decides on the rights, obligation and legal interests of the parties in the administrative procedure (decision, resolution, order, license, permit, ban, approval etc.);

[8] Real act shall mean any act or activity of public body, which is not an administrative act, which might have legal influence on the rights, obligation and legal interests of the parties (public information, keeping records, issuing certificates, execution activities etc.);

Regular legal remedies in the administrative procedure are: appeal, complaint and repetition of the procedure.

If the party is disgruntled with the administrative act of first instance adopted by the public body according to their request, i.e. act which the public body imposed some obligation to the party, the party has right to lodge an appeal, *but only if the appeal is guaranteed with law.* The party has *right to appeal in case of silence by the administration*, i.e. because the public body did not act upon the request submitted by the party with the legally established deadline.

The appeal is lodged to the body of second instance competent to decide in the administrative procedure in question. The legal system in Republic of Macedonia has vast variety of bodies of second instance which decide upon appeals in administrative procedure. Just as in the right to appeal, the realization of the right to complaint is a precondition for initiating dispute before the Administrative Court.[9] The right to complaint is guaranteed against: real acts (or their lack of) and actions of the service providers of general interest. Special organizational unit or collegiate body of the public authority which issued the real act decides upon complaints against the real acts of the public authorities, or their lack of.

The repetition of the procedure is also regular legal protection in the administrative procedure. The repetition is implemented on a request by the party when the deadline for appeal against the administrative act expired but under a condition that one of the presumptions, established by law, is met.[10]

One of the tasks of the administrative law is to provide organizational, systematic judicial control over the legality of the administrative acts. This is realized through administrative dispute. Natural persons or legal entities have right to initiate administrative dispute if they feel that the administrative act violates some of their rights or interests established by law. Administrative dispute is initiated by filing a lawsuit within 30 days from the day of delivering the administrative

[9] The complaint is a new regular legal remedy in the general administrative procedure introduced with the Law on General Administrative Procedure in 2015, which became effective in August 2016; Due to the insufficient empirical base, the application of this legal remedy is not subject of analyses of this publication;

[10] Article 114 of the Law on General Administrative Procedure;

act to the party before the Administrative Court which carries out the judicial power on the entire territory of Republic of Macedonia. The seat of the Administrative Court is in Skopje. The court resolves the dispute, by default, on the basis of the facts established in the administrative procedure or on the basis of the facts established by the court itself. The court resolves the dispute with a verdict which an appeal to the Higher Administrative Court is allowed against.

The institutions which implement the administrative and legal protection in Republic of Macedonia as well as the institutions which implement the protection of employment rights for the employees in the public sector shall be analyzed in the following chapters of this publication. In that context, the following chapters will offer comments about the current conditions will determine issues and challenges and will propose measures which we think that might advance the efficiency and quality of the administrative and legal protection system in Republic of Macedonia.

5. Analyses of the efficiency of the administrative and legal protection and detected trends

5.1. State Public Procurement Appeals Commission

The State Public Procurement Appeals Commission was established in 2007 and started operation in 2008 and has the same status as the two remaining state commissions. The commission is comprised of chairman and four members appointed by the Parliament of Republic of Macedonia with a mandate of 5 years. The commission is competent for deciding upon appeals in the procedures for awarding public procurements, concessions and public-private partnership. The legal protection is available in all stages of the procedure, from publishing the notice to awarding the public procurement contract.[11]

The State Public Procurement Appeals Commission decided within 15 days from the completion of the case by reaching a "decision".[12] Administrative dispute may be initiated against the decision of the Commission before the Administrative Court. The procedure costs are covered by the parties, and in addition to the administrative tax they have to pay a fee for conducting the procedure which is determined depending on the amount of the bid.[13]

The State Public Procurement Appeals Commission decided within 15 days from the completion of the case by reaching a "decision".

[11] Until the establishment of the commission, the disgruntled parties in the public procurement procedures, i.e. the economic operators disgruntled with the decision on selection of most advantageous operator exercised their legal protect before the Public Procurement Appeals Commission within the Government of Republic of Macedonia;

[12] Art. 224 paragraph 6 of the Law on Public Procurements (Official Gazette of Republic of Macedonia №. 136/2007, 130/2008, 97/2010, 53/2011, 185/2011);

[13] Art. 229, Ibid: 100 euros fee in denar equivalent for offers up to 20,000 euros in denar equivalent; 200 euros fee in denar equivalent for offers from 20,000 euros to 100,000 euros in denar equivalent; 300 euros fee in denar equivalent for offers from 100,000 to 200,000 euros in denar equivalent; or for offers above 200,000 euros in denar equivalent 400 euros fee in denar equivalent;

Table 1. Review of the work of the State Public Procurement Appeals Commission for the period 2008-2015[14]

Public Procurement Appeals Commission	2008	2009	2010	2011	2012	2013	2014	2015
Commission members	5	5	5	5	5	5	5	5
Officers	5	5	6	8	9	9	10	15
From the previous year	0	48	48	48	24	24	28	16
Received	530	1044	820	642	561	509	563	610
Total active	530	1092	868	690	585	533	591	626
Resolved	482	996	820	666	561	505	575	610
Unresolved	48	48	48	24	24	28	16	16
Disposition time in days	36,3	17,6	21,4	13,2	15,6	20,2	10,2	9,6
Clearance rate	0,9	1,0	1,00	1,04	1,00	0,99	1,02	1,00
Rate of unresolved cases per 100 citizens	0,0	0,0	0,00	0,00	0,00	0,00	0,00	0,00

Also a decrease of the unresolved cases is noted from 2010 to 2015, and rate of unresolved cases per 100 citizens is zero several years in a row.

Since its establishment, the State Public Procurement Appeals Commission notes high degree in the efficiency of its work. If we apply the synthetic indicators, we will find that, except in 2008 which cannot be considered as full year because that is the year when the commission started operating, in 2009, 2010 and 2013 the Commission had shorter disposition time of 15 days which is the legal disposition deadline of the Commission. Also a decrease of the unresolved cases is noted from 2010 to 2015, and rate of unresolved cases per 100 citizens is zero several years in a row. According the reports of the Commission, the Commission could not decide in the majority of unresolved cases because the appellants did not submit complete documentation.[14]

It may be noticed that in parallel with the high disposition rate of the Commission, there is certain increase of the officer personnel. There is increase in the number of employees with a status of state/administrative officer from its es-

[14] The Annual Report on the Work of the State Public Procurement Appeals Commission for 2016 was prepared and delivered to the Parliament of Republic of Macedonia for adoption but having in mind that it was not adopted by the Parliament as of October 2017, it is not publicly available;

tablishment to 2015. Yet the disposition rate as well as the number of resolved cases varies from year to year. Namely, there is highest number of resolved cases in 2009 and 2010, when there is lowest number of employed officers. The increase of the officers does not necessarily mean bigger efficiency or higher disposition rate. On the other hand, it may be concluded that taking into consideration the current number of commission members (including the chairman) and employed officers, the Commission may handle larger work volume.[15]

Table 2. Ratio between resolved cases of the Public Procurement Appeals Commission, filed lawsuits against decisions of the Commission and accepted lawsuits[15]

Years	2008*	2009*	2010	2011	2012	2013	2014	2015
Resolved cases	482	996	820	666	561	505	575	610
Lawsuits filed against acts of the Commission	60	105	94	94	64	70	66	91
Accepted lawsuits	2	13		3**	17	13	13	
Lawsuits filed against acts of the Commission as % of resolved cases	12,4	10,5	11,4	14,1	11,4	13,8	11,4	14,9

From the total number of resolved cases per years, the number of filed lawsuits against decisions of the Commission before the Administrative Court is between 10.5% and 14.9% from the total number of resolved cases. This might indicate high degree of trust in the correctness of the decisions that the parties (people and legal entities) have in the commissions or maybe it is a case of certain assumed risk of the companies that if they lodge an appeal to the commission, they will have unfavourable treatment in the public procurement procedures in future. However, the

[15] Data collected from reports on the work of the Administrative Court; ** The data refers to number of verdicts of the Higher Administrative Court that overruled the appeals against verdict of the Administrative Court and confirmed the verdict of the Administrative Court, thus accepting the appeal lodged against a decision of the State Public Procurement Appeals Commission; The data about the remaining years are collected from reports on the work of the commission;

One internal factor, which we assume that contributes towards the efficiency of the commission, is the similarity of the cases.

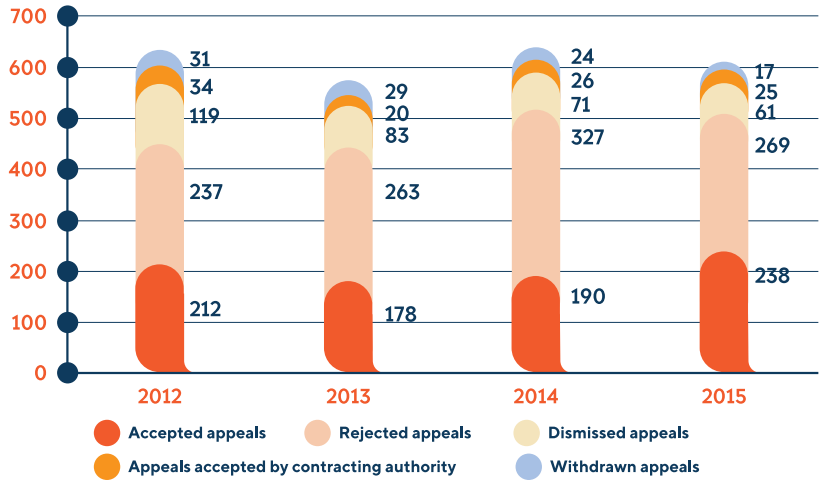
number of cases where the Administrative Court (or Higher Administrative Court) decided that the filed lawsuit is grounded, i.e. that the Commission reached illegal decision is exceptionally low. This number, from year to year, is between 2 and 17 cases annually, which can be evidenced in table 2 and it is between 0.4% and 3% from the total number of resolved cases. This ration is evidenced from total of 13 accepted lawsuits from 575 resolved cases in 2014 (all in all 3%) and 66 filed lawsuits against acts of the commission (or around 11.48%). It is an interesting fact that more than half of the cases decided by the Commission refer to public procurement procedures implemented in an open procedure[16] where the human factor or error is certainly larger in the implementation of the procedures.

One internal factor, which we assume that contributes towards the efficiency of the commission, is the similarity of the cases. This enables high degree of specialization by the commission members and employed officers as well as the preclusive disposition deadline which stimulates the commission to finalize the cases in 15 days before the conditions for silence of the administration to occur.

One external factor which is not expressed in numbers is how much the parties are informed. Namely, economic operators respond to public procurement calls as interested parties. These are mainly entities familiar with the work as well as the public procurement procedure, and in cases of big public procurements, such as the procedures for awarding concession agreements and public-private partnerships, the parties have experienced lawyers or they hire attorneys for this purpose. In turn the documentation related with the appealed cases is more complete and clearer. All this facilitates the establishment of the actual condition.

[16] Taken from the annual reports on the work of the State Public Procurement Appeals Commission, from the reviews of the number of procedures appealed for every year listed in the table;

Chart 1. Structure of cases according to decisions by the Public Procurement Appeals Commission[17]



From the structure of the cases, according to the type of decision, you find that in the majority of cases the commission rejected the appeal of the appellant and confirmed the selection of the public contracting body for the period from 2012 to 2015. In terms of these decisions, we can assume that the commission reviewed all available documents and it did not establish any irregularity in the work of the public authorities in implementation of the public procurement procedures.[18]

Table 2a. Review of the rejected appeals as a percentage from the total resolved cases for the period 2012-2015

	2012	2013	2014	2015
Rejected appeals as % of the resolved	42,2 %	52 %	56,8 %	44 %

[17] Source: Annual reports on the work of the State Public Procurement Commission;

[18] Any eventual weaknesses of the "public procurement system" that appeared in the public were not subject to this analyses and as a result other assumption about the high degree of rejected appeals are not commented; they should be examined with other methods and analytic techniques;

In terms of the ratio of rejected appeals from the total resolved, for the period from 2012 to 2015, the percentage of rejected appeals is between 42.2% and 56.8%. This means that half of those who appealed were accepted.

5.2. State Commission for Decisions in Administrative Procedures and Procedures of Employment in Second Instance

The State Commission for Decisions in Administrative Procedures and Procedures of Employment in Second Instance was established in 2011 as an independent state body with a capacity of legal entity which is responsible before the Parliament of Republic of Macedonia. The commission is comprised of chairman and ten members appointed by the Parliament of Republic of Macedonia with a mandate of 5 years. The competence of the state commission is divided to two areas: administrative procedure and employment procedure.

In terms of the employment procedures, this commission is competent to decide on the protection of the employment rights of the employees in the public sector who do not have status of administrative officers, such as the employees in the Ministry of Interior, Army of Republic of Macedonia, prison police, public healthcare institutions etc. as well as the protection of rights of the employees in the Administration Agency. The competence of the state commission to decide in second instance in administrative procedure is established with over 150 individual laws from various areas (pension and disability insurance, education and culture, transport and communications, legalization of illegal buildings, privatization of construction land etc.).[19] Other commissions established within the Government of Republic of Macedonia had this role before establishment of the commission.

[19] It was competent to decide also as commission of second instance in procedures from the area of inspection supervision from 2014 to 2015;

Table 3. Work of the State Commission for Decisions in Administrative Procedures and Procedures of Employment in Second Instance[20]

Years	2012	2013	2014	2015	2016
Commission members	7	7	11	11	11
Officers	22	25	49	53	48
From the previous year		3539	4261	1893	1425
Received	11472	7147	5427	4667	4883
Total active	11472	7264	8365	6064	5517
Resolved[21]	8619	3725	4104	4171	4092
Unresolved	2853	3422	1323	496	791
Disposition period/length of proceedings in days	120,8	335,3	117,7	43,4	70,6
Clearance rate	0,75	0,52	0,76	0,89	0,89
Rate of unresolved cases per 100 citizens	0,14	0,17	0,07	0,02	0,02

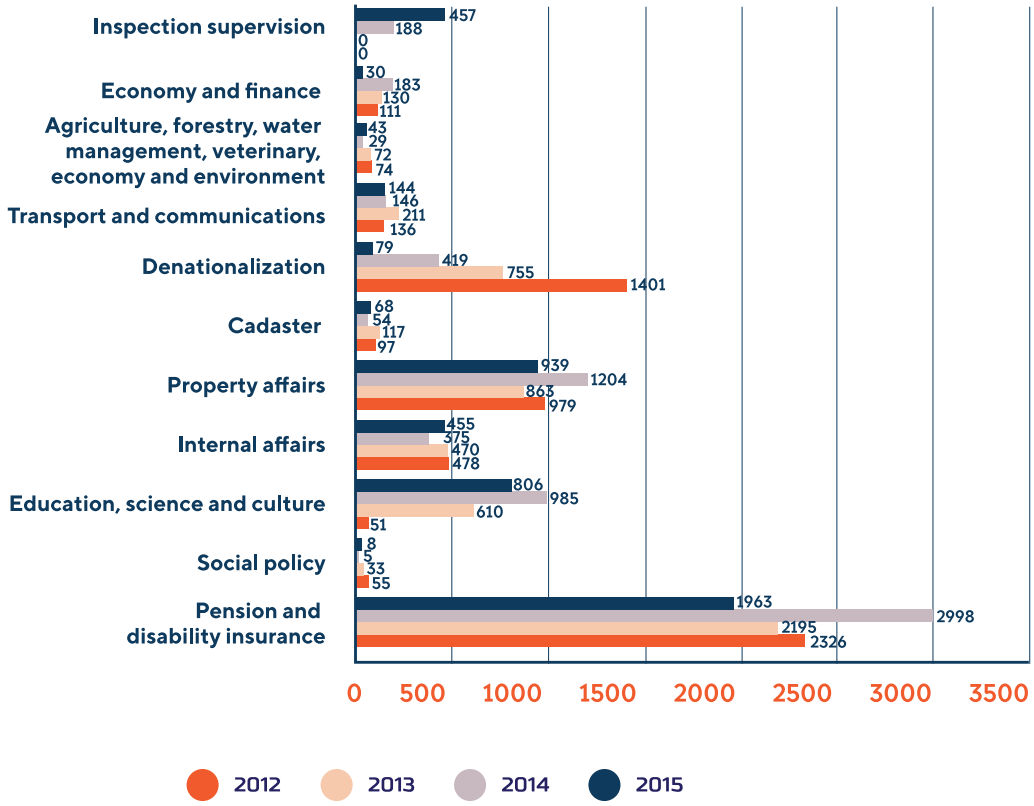
The indicator that refers to the disposition period shows that the commission was fully staffed up to 2014 and increased the number of members and employees. It, at the same time, managed to decrease the number of days for working on a case by 3 times. Towards the end of the monitoring period, or in 2015, the disposition time falls under the general legal disposition deadline of 60 days[22]. We cannot see the work of the commission only as a whole because it works on a variety of cases. One general framework that holds them together is the Law on General Administrative Procedure (2005 to 2015 and the new LGAP from 2015) but actually this commission applies variety of different material regulations in its work.

[20] 20Source: Annual reports on the work of the State Commission for Decisions in Administrative Procedures and Procedures of Employment in Second Instance:
for 2012: http://www.dkz.mk/sites/default/files/izvestaj_2012.pdf,
for 2013: http://www.dkz.mk/sites/default/files/izvestaj_2013.pdf,
for 2014: http://www.dkz.mk/sites/default/files/izvestaj_2014.pdf,
for 2015: http://www.dkz.mk/sites/default/files/izvestaj_2015.pdf, and

[21] Only for this indicator, the number of resolved cases does not reflect the number of accept and rejected appeals but all cases where the commission carried out activities, i.e. worked on. Other indicators are adjusted according to the data available in Commission reports;

[22] General deadline established with the Law on General Administrative Procedure and the Law on Establishing the State Commission for Decisions in Administrative Procedures and Procedures of Employment in Second Instance;

Chart 2. Structure of resolved appeals against decisions reached in administrative procedure by area



According to the number of resolved cases, there is the highest volume of work in the area of pension and disability insurance where in 2014 the commission resolved even 2,998 cases. There is smallest volume of work in the areas of social policy where in 2015 it resolved 8 cases. There is the biggest drop in the volume of work in the area of denationalization where from 1,401 resolved cases in 2012, the commission only resolved 79 cases in 2015. This may be due to the decreased number of received appeals from this area because the number of denationalization decisions also decreased in this period.[23]

[23] With the amendments of the Law on Denationalization (Official Gazette of Republic of Macedonia number 72/2010) adopted on 27.05.2010, the right to appeal was erased and it was envisaged that administrative dispute may be initiated against the decision of the denationalization

There is the highest increase in the volume of work in the area of education, science and culture where from 51 resolved cases in 2012, the number of resolved cases continuously increased and in 2014 amounted 985 resolved cases, but it decreased in 2015 to 820 cases. Yet the increase is significant and it is more than 15 times for the period of 4 years. However, the commission did not provide detailed description to exactly what these cases refer to and whether they are appeals about awarding scholarships, selection of textbooks, competitions in the field of culture, etc.

The number of lodged appeals by areas reflects the areas where the people are most often disgruntled about the decisions of the administration bodies. That, at the same time, reflects the areas under jurisdiction of the commission because often as the competence changes the ratio of certain type of cases also changes. The competence of the commission is regulated exclusively by law. For example, by adopting legal amendments under which the people could have previously lodged appeals about certain rights and obligations before other body, and the new legal amendment they are transferred to this commission, space for increased volume of work of the commission is actually created. That means that the inflow of work as well as the volume of work of the commission may drastically change from year to year, but that will not be a result of the dissatisfaction of the people or the internal organization of and efficiency in the work. Also the commission does not influence the quality of work of the state administrative bodies whose decisions the people and legal entities are appealing. This is also valid for other institutions with competence to decide in (separate) administrative procedure of second instance.

On the other hand, there is large number of internal factors which influence the efficiency of the work such as the number of employees, expert and technical personnel etc. The volume of work is also influenced by the so-called administrative barriers, or barriers from the type of access to information and financial costs related to the appeal procedure. Namely, the number of appeals is higher in those cases with

body. As a result, the state commission decides only on appeals in procedures initiated until the stated date (the initiated appeal procedures should be completed according to the provision before the amendments of the law);

The number of lodged appeals by areas reflects the areas where the people are most often disgruntled about the decisions of the administration bodies.

In the monitoring period from 2012 to 2015, between 6 and 10% of the total number of beneficiaries of rights from the area of pension and disability insurance requested legal protection

lower costs related to the appeal procedure, such as the case with education (low administrative taxes). The commission with its personnel, success in the internal organization and competence of the personnel, influences the quality and dynamics of resolving the cases received by the commission.

In terms of the administrative taxes, the situation with the scope of cases from the area of labour and social protection, that is the pension and disability insurance, is very interesting. Having in mind that the people are exempted from administrative taxes[24] for all documents from the area of healthcare, pension and disability insurance, the number of appeals is the highest in these areas. The large number of cases from the area of PDI is due to the accumulation of three factors: 1) under the assumption that all insured people are rational in their requests and honestly are feeling damaged by the Pension and Disability Insurance Fund are motivated enough to lodge an appeal; 2) PDI has enormous work volume by itself (external factor table 3a); and 3) the insured people are exempted from taxes during the appeal procedure which facilitates the access to justice for this type of cases (internal factor). In the monitoring period from 2012 to 2015, between 6 and 10% of the total number of beneficiaries of rights from the area of pension and disability insurance requested legal protection, i.e. they felt that their rights and violated or shortened by the Pension and Disability Insurance Fund.

[24] According to Article 18 paragraph 12 item 12 of the Law on Administrative Taxes, tax is not paid for: all documents and actions for realization of the rights from healthcare, pension and disability insurance. On this ground, the appellant in the procedures from the area of pension and disability insurance are exempted from paying administrative tax for lodging an appeal.

Table 3a. Realization of PDI rights through the Pension and Disability Insurance Fund[25]

First requests for realization of the right to pension	2012	2013	2014	2015
Age pension	12.500	12.743	12.424	12.273
Disability pension	2.886	2.912	3.072	3.162
Family pension	5.520	5.413	5.368	5.697
Requests for realization of disability insurance rights[26]	3.422	2.825	2.678	2.574
Repeated requests	8.233	7.335	6.319	6.624
Total submitted requests for realization of PDI right	32.561	31.228	29.861	31.330
Total resolved requests	32.340	31.775	29.891	31.432
Number of resolved appeals lodged against PDI decisions	2.326	2.195	2.998	1.963
Number of resolved appeals as % of the total PDI resolved	7,19	6,91	10,03	6,25

The complexity of work of every body of second instance, even of the State Commission for Decisions in Administrative Procedures and Procedures of Employment in Second Instance can be found in the variety of cases it is working on after an lodged appeal (chart 3). The presence of variety in the areas of decision-making of the Commission and legally established deadlines for deciding pressure the employees and the members to be efficient. But the efficiency cannot be defined only as following the decision-making deadlines but as a overall application of the material regulations. In some cases, it is possible the employees to be overwhelmed with certain type of cases which is not consistent throughout the year. On the other side, there is continuous flow of cases in the same volume. Therefore, we face with eternally opened

[25] The data are collected from the Annual Operational Reports of the Pension and Disability Insurance Fund
for 2012: (http://piom.com.mk/wp-content/uploads/2016/01/godisen-izvestaj-201-1.pdf),
2013: (http://piom.com.mk/wp-content/uploads/2016/01/godisen-izvestaj-lek-1.pdf),
2014: (http://piom.com.mk/wp-content/uploads/2016/01/godisen-izvestaj-kon-3.pdf) and
2015: (http://www.piom.com.mk/wp-content/uploads/2016/11/IZVESTAJ-ZA-RABOTATA-NA-FONDOT-NA-PIOM-ZA-2015-god-ilovepdf-compressed-2.pdf);

[26] Physical disability, professional inability to work or general inability to work;

The number of dismissed appeals is also high which indicates that in many cases the parties lodge appeals after the established deadline, the commission decided that appeal is not allowed or it is lodged by unauthorized person.

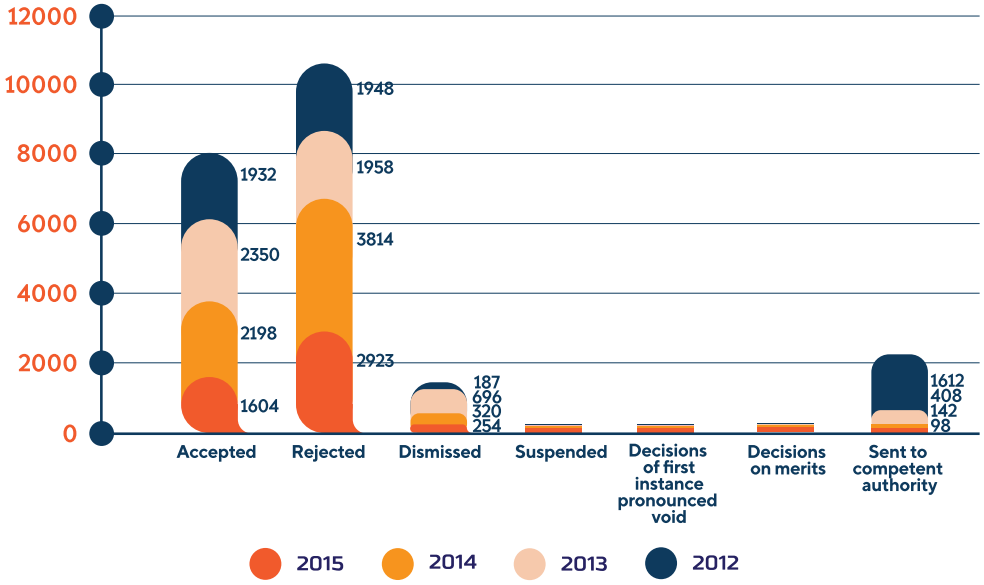
question of how many employees are necessary if we cannot envisage the exact number of cases throughout the year but to avoid overemployment as well as lack of employees which might overwhelm the employees on a manner which will negatively reflect on their work. The Commission until now addressed this issue by noting the need of personnel and towards the end of 2017, by taking-over of capacity, the Commission is strengthened with 16 employees. The effect of this strengthening of the capacities can be objectively measured towards the end of 2018.

From the review of the structure of the resolved appeals, by type of decision, we can conclude that in the largest number of cases the commission rejects the appeals (as ungrounded) and decided that the parties appealed with no ground. The number of dismissed appeals is also high which indicates that in many cases the parties lodge appeals after the established deadline, the commission decided that appeal is not allowed or it is lodged by unauthorized person. The number of decisions on merits is exceptionally low, i.e. cases when the commission completely annulled the decision of the body of first instance and decided on the case by itself. This indicates that in the majority of resolved cases where the commission accepted the appeal, it annulled the decision and returned it for repeated deciding to the body of first instance.

In period from 2012 to 2015 we can notice decrease in the number of cases where the commission established that it is not competent to act and forwarded the case to the competent authority or that it is not obliged to act any further. This can be interpreted in more ways. One interpretation is that from its establishment until 2015 the public needed time to get familiar with the new commission and to understand its competence due to which the number of this kind of decisions was high. In 2012, 1612 cases were forwarded to competent authority. Other interpretation is the wide scope of cases that enter this category of cases "forwarded to competent authority"[27].

[27] The group of cases "send to competent authority" encompasses the appeals where the state commission decided that other authority is competent to act on the lodged appeal and it sent the case to that competent authority. But this group (according to the reports on works of the state commission) also encompasses the cases opened according to verdicts by the Administrative Court which reject, dismiss or suspend

Chart 3. Structure of resolved appeals against decision reached in administrative procedure by the type of reached decision of the state commission



You can notice from the chart that the number of decisions on merits was very small and almost unnoticable. Those are decision where the commission annulled the decision of the body of first instance and decided to decide the entire matter by itself. That number amounts to 85 decision which appear in 2015 for the first time. According to the operational report of the commission for 2015, 67 of these decisions refer to pension and disability insurance cases, and the remaining 18 cases refer to cases from the property area. Previously they were not recorded or there was not such-cases at all. This practice, to a smaller extent, continued in 2016 when 36 decisions of merit were adopted. We can notice differences in keeping records for different period but the emergence of this kind of decisions is welcoming and it should be furthered encouraged.

the procedures with lawsuit filed against the decisions of the former commission of the Government of Republic of Macedonia as well as the decisions of the state commission, i.e. verdict that do not oblige the state commission to act. In these cases, a case in opened after receiving the verdicts, then they learn the content of the verdict and send the case to the competent authority;

Table 4. Ratio between resolved cases of the Commission, filed lawsuits against decisions of the Commission and appeals on verdict before the Administrative Court[28]

Years	2012	2013	2014	2015	2016
Resolved cases	8.619	7.264	8.365	6.064	5.517
Rejected appeals	2.412	2.784	4.377	3.447	3.094
Lawsuits filed against acts of the Commission, initiated administrative dispute	352	264	437	527	459
Lawsuits filed against acts of the Commission, initiated administrative dispute as % of the rejected appeals	14,6	9,4	9,9	15,2	14,8

The number of filed lawsuits against decisions of the commission from 2012 to 2015 was increased from 352 to 527, and with the decrease of the total number of resolved cases in the same period, the number of initiated administrative disputes from 4.1% (352 lawsuits against acts of the commission versus 8,619 resolved cases in 2012) incresed to 8.7% (527 lawsuits against acts of the commission versus 6.064) of the total number of resolved cases in 2015.

Compared to the number of rejected appeals by the Commission, the number of initiated administrative disputes from 14,6% in 2012 decreased to 9.9% in 2014 but then once again increased to 15.2% (Table 4) in 2015 and in 2016 decreased to 14.8%. This indicates to moderately increased rate of distrust in the Commission's decisions in 2015 only to return to the level of 2012 in 2016.[29] As of 2016, the total number of rejected appeals for the period from 2012-2016 is 16114. 2039 lawsuits were filed against Commission's decisions which means that only 12.65% of the citizens who were rejected decided to sue before the Administrative

[28] We cannot determine the manner which the Administrative Court and the Higher Administrative Court use in deciding upon their decision from the review of the reports of the State Commission for Decisions in Administrative Procedures and Procedures of Employment in Second Instance, which means that we cannot use these data as indicators for the quality of work. However, we can consider them as indicators of trust in the decisions of the commission by the parties;

[29] The reports of the state commission does not contain data on the how the Administrative Court decided on the filed lawsuits against its decisions but only data on the number of initiated administrative disputes, which the state commission was notified about, as of December 31;

Court for the entire period of time. This might indicate to either high degree of trust in the decisions of the Commission or difficult approach to the administrative and judicial protection.[30] Namely, in 2016, the Administrative Court delivered larger number of verdicts reached against decisions of the commission but not all of them refer to decisions reached in that year. Although the volume of work is increased in that year, it is a result of the lengthy decision-making process of the Administrative Court for cases from the previous years, so this increase of cases is not direct indicators about the "quality" of decisions in 2016 but for the entire period until that year.

In the following period it should be monitored whether this percentage will increase or stay the same.

It is important to be emphasized that if we compare the numer of initiated administrative disputes against the decisions of the previous governmental commissions which decided in the administrative procedure of second instance with the number of initiated administrative disputes against the decisions of the commission in 2011 we can conclude that the parties have high trust in the decisions of the new commission. Namely, with 1249 administrative disputes against decisions of the previous governmental commission in 2012 in terms of 352 initiated administrative disputes against decision of the new commission, we can assume higher quality of work by the new commission.

During the monitoring period we notice drop in the number of appeals to verdicts reached by the Administrative Court from 95 in 2012 to 14 in 2014, while this kind of appeals are not recorded in 2015.

[30] The reasons for the difficult approach may be: feeling that the Administrative Court will not decide otherwise, ignorance, fear of repercussions or feeling that the Commission has right.

5.3. State Commission for Decisions in Second Instance in the Area of Inspection Supervision and Misdemeanour Procedure

The Commission is consisted of a Chairman and six members that are elected by the Assembly of the Republic of Macedonia, for a period of 5 years.

The State Commission for Decisions in Second Instance in the area of Inspection Supervision and Misdemeanour Procedure was formed in 2015. The same was established as an autonomous state body in the capacity of legal entity which is responsible in front to the Assembly of the Republic of Macedonia concerning its working.

The Commission is consisted of a Chairman and six members that are elected by the Assembly of the Republic of Macedonia, for a period of 5 years. It is competent for deciding upon appeals against decisions adopted of first degree in an inspection procedure (decisions adopted by an inspector), as well as upon appeals against the decisions for done misdemeanour, which are adopted by a misdemeanour body.

Table 5. The work of the State Commission for Decisions in Second Instance in the Area of Inspection Supervision and Misdemeanour Procedure[31]

Year	2016
Commission members	7
Civil servants	27
From the previous year	349
Received	3.589
Total in progress	3.938
Solved	3.037
Unsolved	901
Disposition time	108,29
Clearance rate	0,85
Rate of unsolved cases	0,04

[31] Source: Annual operating report of the State Commission for Decisions in Second Instance in the Area of Inspection Supervision and Misdemeanour Procedure, available at: (http://www.sobranie.mk/downloaddocument.aspx?id=ef573f93-5be3-435c-85e1-091b2199e47b&t=doc);

Table 6. Total number of solved cases by the State Commission in 2016 in the area of inspection supervision and misdemeanour procedure[32]

Year	2016
Accepted appeals	845
Rejected appeals	1.809
Dismissed appeals	325
Suspended procedures upon appeals	5
Cases upon lodged appeal sent to further acting by a competent body or solved by the first degree body	53
Total	**3.037**

The data given in Table 5 and 6 show that the second degree commission in the area of misdemeanours and inspection supervision is facing a relatively large number of cases or total of 3,938 cases in 2016. This scope of work is almost 60 % from the scope of work of the State Commission for deciding in administrative procedure and the procedure of employment in the second degree. The difference is that this Commission works with twice less civil servants, from which 6 were engaged with an employment contract for definite period until December 2016.

The data in the table show that most of the received appeals have been rejected. It is assumed that in the area of misdemeanours, the defining of the actual situation, based on which the measures, or sanctions, has been sentenced, is done in a manner that is harder to dispute. For example, a photographed driver when driving at red light, or turning in not-allowed direction, etc.

The structure of the submitted appeals against the decisions of the misdemeanour bodies of first degree, in 2016 is the following: 220 in the misdemeanour procedure in the area of labour, social policy and health care, 178 in the area of economy and finances, 191 in the area of transport and communications, environment and spatial planning and agriculture[33], and the largest number of appeals have been submitted against decisions of misdemeanour bodies (adopted in a misdemeanour procedure) 2,088 in the area of internal matters and other areas[34].

[32] Ibid. p. 13;

[33] It refers to appeals submitted against the decisions for misdemeanour adopted by a misdemeanour body, when prescribed by law to decide in a misdemeanour procedure;

[34] Ibid;

In 2016, total of 141 cases have been received for appeals against decisions adopted in the first degree in inspection procedure in the area of labour, social policy, education and culture; 42 in the area of agriculture, food and veterinary care and health care and 30 in the area of economy, finances and information society. Most appeals, total of 699, were submitted by subjects to inspection supervision in the area of transport and communications, environment and spatial planning, as well as the local self-government and defence.

5.4. Adequate line minister

Besides the given three state commissions in the second degree, an adequate line minister can decide upon the appeals in an administrative procedure.

The competence of the ministries to decide in second degree is also regulated with the special laws that define the certain matter. For example:

- for appeals against the decisions of the regional services of the Health Insurance Fund, which decide regarding the rights to mandatory health insurance of the insured persons, the Minister of Health makes the decisions;
- for the appeals against the decisions of the social work centres, adopted in a procedure for fulfilling the rights to social protection, the Minister of Labour and Social Policy makes the decisions;
- for the appeals against the decisions of the mayors, adopted in a procedure for determining the legal status of an illegal facility, the Minister of Transport and Communications makes the decisions;

In relation to the number of the initiated appeals from an administrative procedure to a line minister, there is no available information on the websites of none of the abovementioned ministries.

6. Analysis of administrative and judicial protection (administrative disputes)

6.1. Administrative Court Skopje

The Administrative court began its work on 05.12.2007. The purpose of establishing the Court was to provide higher instance of protection of the citizens. Previously the judicial protection in the administrative area was carried out within special department in the Supreme Court of the Republic of Macedonia.

Important dates:

2010 A Public Procurement Appeals Commission was formed (decides within 15 days from opening the case)

2011 December – The State Commission for Decisions in Administrative Procedures and Procedures of Employment in Second Instance began its work (decides within 60 days). Until then, the appeals in administrative procedures were decided by the government commissions, for some of the cases, certain number of administrative bodies reached a decision in the first instance, and no complaint was expected after it.

2015 The State Commission for Decisions in the Second Instance in the Area of the Inspection Supervision and Misdemeanour Procedures began its work (decides within 2 months of the admission of the appeal).

Until then, the decisions of the misdemeanour bodies were final and an administrative dispute was directly initiated against them.

The expected outcome of the establishment of all these commissions is the reduce of the number of new cases in the Administrative Court on the basis of public procurement, general administrative procedure, inspection supervision and misdemeanours.

The expected outcome of the establishment of all these commissions is the reduce of the number of new cases in the Administrative Court on the basis of public procurement, general administrative procedure, inspection supervision and misdemeanours.

The initiation of administrative procedure by the party follows after certain legal or natural person submits a request for the exercise of a certain right.

The proceedings before the Administrative Court are not burdened with high costs. Pursuant to the Law on Court Fees[35], many of the grounds for filing a lawsuit before the Administrative Court are free of charge. And for the cases for which an administrative fee is paid, it amounts to 480 denars per a lawsuit, and 800 denars for a verdict[36]. If the party, i.e. the plaintiff willingly wants, at its own expense, it can carry out an expert examination and then submit it to the Administrative Court.

The lawsuit can be followed by a dictionary which is not too difficult, i.e. professional, and makes it easier for the citizens belonging to vulnerable categories (especially those at risk of poverty or those at social risk). On the other hand, just because of the inaccuracy and vagueness of the lawsuit filed by citizens belonging to these vulnerable categories, the judges have increased difficulties in understanding the lawsuit, i.e. what the plaintiff exactly wants to achieve with the lawsuit.

The initiation of administrative procedure by the party follows after certain legal or natural person submits a request for the exercise of a certain right. The party is affected and that is the reason to requests it. In the event of negative decision, i.e. if the request is rejected or partially adopted, the party shall resort to using a legal remedy "complaint", "appeal" or "lawsuit", and shall keep on using the available legal remedies until he/she fully exhausts them all, or until his/her right is enabled.

[35] Art. 10, Art. 11 par. 1 indent, 3, Art. 13 of the Law on Court Fees (Official Gazette of the Republic of Macedonia No. 114/2009, 148/2011, 106/2013, 166/2014)

[36] Tax fee - procedure for administrative disputes, administrative and accounting disputes and cases of administrative and judicial protection, items 1 and 2, Ibid;

Table 7. Review of the work of Administrative Court Skopje[37]

Administrative Court	2008	2009	2010	2011	2012	2013	2014	2015	2016
Number of judges	22	25	25	30	30	32	29	29	29
Number of judicial officers	33	50	47	44	45	55	58	58	58
Others	5.804	9.154	10.340	13.866	15.980	14.228	12.461	9.786	9.090
Newly formed	8.497	9.043	9.792	11.768	14.675	12.754	13.585	15.011	13.240
Total active	14.301	18.197	20.132	25.726	30.591	26.907	26.138	25.681	22.978
Resolved	5.147	7.857	6.322	9.746	16.363	14.544	15.395	15.895	13.888
Unresolved	9.154	10.340	13.810	15.980	14.228	12.461	10.743	10.734	9.786
Disposition time in days	649,2	480,3	797,3	598,5	317,4	312,7	254,7	246,5	257,2
Clearance rate	0,61	0,87	0,65	0,83	1,12	1,14	1,13	1,06	1,05
Rate of pending cases/100 citizens	0,45	0,51	0,68	0,79	0,70	0,62	0,53	0,53	0,48

Given that all the commissions act in separate administrative procedure within set time for decision-making (from 15 days to 2 months), the effects of their work on the inflow of cases in the Administrative Court is to be expected in the same year of their formimg. The judges in the Administrative Court are not time-bounded with deadlines for all cases, such as the administrative bodies, but they do have established norms.

The Judicial Council determines, with a decision, how many cases per month every judge shall decide on. In the Administrative Court this norm ranges between 30 and 43 cases per month[38], while in the Higher Administrative Court, the norm is set to 22 cases per month[39]. The majority of the judges say that the norms in the Administrative Court are high and reflect negatively on the quality of the

[37] Source, Annual reports on the work of the Administrative Court: 2008 to 2016; Data from 2008 to 2014 have already been published in "Capacity building of the administrative judiciary in the Republic of Macedonia in the face of the challenges for achieving European standards", by Davitkovski B., Pavlovska-Daneva A., Shumanovska-Spasovska I., Davitkovska E., Gocevski D., Ss. Cyril and Methodius University, The Faculty of Law "Iustinianus Primus", Skopje, p. 29;

[38] Interview with a judge at the Administrative Court (17.8.2017);

[39] Interview with the President of the Higher Administrative Court (30.8.2017);

decisions, and the current efficiency is due to the really big efforts that the judges invest. For example, in the period of 2011 to 2012, the judges from the Council of Customs and Other Rights in charge of custom debt cases, customs offenses, foreign exchange offenses, excise offenses, asylum, citizenship, keeping records and other, (32 grounds in total) had almost 1000 cases per judge per year. That exceeds the norm by more than double, and is certainly done to achieve quantity at the expense of quality of the cases and decisions made. Today the number of cases per judge is reduced due to internal redistribution, as well as due to the increased systematization in 2011. The opinion of the court is that for the Administrative Court the norm should not be more than 30 cases per judge per month[40]. In the overall review of the efficiency of the work of the Administrative Court, there is an increase in efficiency since the establishment of the court to 2015. In addition, a certain constant can be seen in the period of 2014 to 2015, where, in spite of the decrease of newly formed cases in 2016, the Administrative Court notices small decline in efficiency from 1.06 to 1.05 in relation to the item of resolving cases. This is more evident in relation to the increase of the disposition time in days. It increased from 246.5 days in 2015 to 257.2 days in 2016. It represents an increase of 10 days and more regarding one case. This does not mean that the Administrative Court suddenly became very inefficient, but it is due to the drop in the number of cases in the area of misdemeanours because of the establishment of second instance commission for misdemeanours (Table 8). For the misdemeanours, the Court had previously decided in an urgent procedure that directly influenced the increased efficiency, while after their transfer to the competence of another body, this type of cases is no longer in the practice of 2016.

Sometimes communication with other bodies has greater influence on the court's efficiency, than the complexity of the cases themselves. The complexity and time required for the resolution of one case also depends on completeness of the records and the evidence submitted with the lawsuit, and much time is lost in communication between the Court, the second instance body (the competent com-

[40] Ibid;

mission) and/or with the parties themselves[41]. Sometimes, from the moment the Court submits a request, for example, to a second instance body, few months can pass until the body respons and submits records in relation to a particular case. This request is usually submitted in writing and by mail, so sometimes a considerable time is lost on the delivery of the request, as well as the required documents, especially in cases when certain documents need to be drafted and returned. One of the ways to speed up this interaction is consistent respect of the obligation for public authorities to communicate electronically, as well as strengthening the responsibility of the public authorities themselves to act quickly and efficiently in these cases.

Sometimes, from the moment the Court submits a request, few months can pass until the body respons and submits records in relation to a particular case.

Table 8. Dynamics of the work of the Administrative Court in cases in the area of misdemeanours

Administrative Court - misdemeanours	2014	2015	2016
Other	2.147	2.383	1.221
Newly formed	5.634	4.534	2.287
Total active	8.467	6.672	4.667
Resolved	6.320	4.289	3.446
Unresolved	2.841	2.147	2.383
Disposition time in days	164,1	182,7	252,4
Clearance rate	1,12	0,95	1,51
Rate of pending cases/100 citizens	0,14	0,11	0,12

Regarding the type of the cases that were acted upon, a comparison has been made for the period 2009-2011 with the period 2012-2016.

[41] Conclusion of several judges from the Administrative Court and the President of the Higher Administrative Court (Interviews done on 17.8.2017, 25.8.2017, 30.8.2017);

Chart 4. Structure of the resolved cases in the Administrative Court, by areas, in the period of 2009-2011

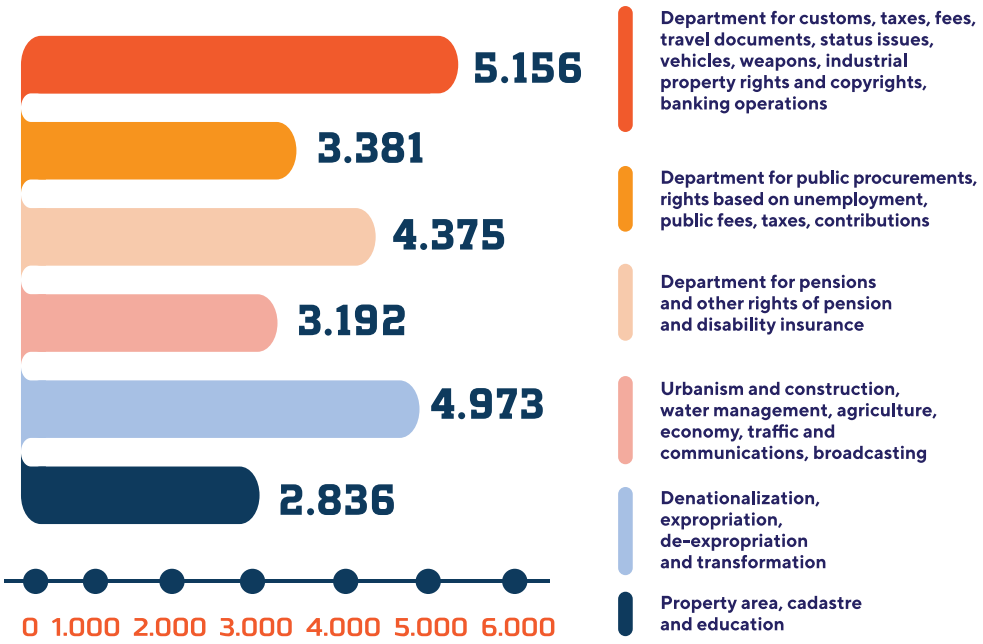
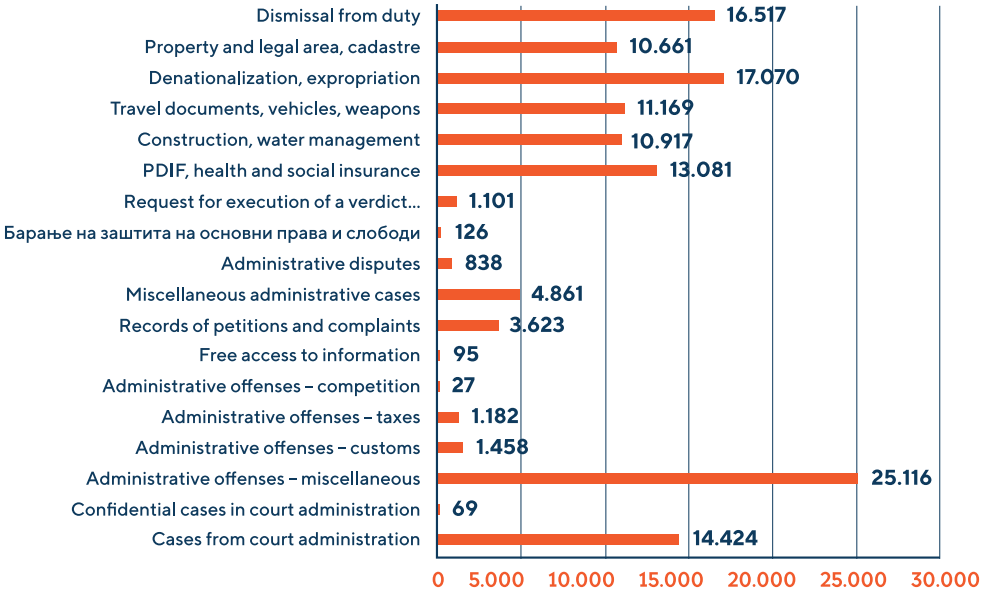


Chart 4 shows that the biggest number of cases in this period is in the area of customs, taxes, fees, travel documents, status issues (of citizens), vehicles, weapons, etc. and represent 5,156 cases in 3 years, or 21.56 from the total number of resolved cases for this period. After them, the largest number is cases in the area of denationalization, expropriation, etc. or 4,973 cases for this period. It is around 20.8% of the total number of resolved cases.

In the next period, the structure of the resolved cases changes (visible in Chart 5). For the period from 2012 to 2016, most of the resolved cases go to cases in the area of misdemeanors. There were 25,116 cases for a 5-year period, or a total of 20.26% for the specified period.

Chart 5. Structure of resolved cases in the Administrative Court, by areas, in the period of 2012-2016



From all of the above, it can be concluded that the number of the cases by individual areas is not something that the court itself can influence. For certain sectors, the inflow of cases is almost constant, such as lawsuits against customs decisions. On the other hand, in the field of taxes, the number of lawsuits depends on the activity of the inspection services. Thus, when the regular or extraordinary supervision of the inspectorate responsible for the field of taxes will impose more sanctions, then the number of lawsuits increases. The biggest number of cases from this council comes from the area of small fees.

There is a similar external factor for the number of cases in the area of social protection, where the number of the lawsuits literally depends on the number of cases that the Centers for Social Work acted upon, such as new measures intended for the citizens or changing certain conditions for obtaining social welfare. A second instance commission in the Ministry of Labor and Social Policy decided against their decisions in an appeal procedure. Furthermore, the

The total number of administrative disputes of this type, which includes pension, health and social disputes is 13,081 for the period from 2012 to 2016.

citizens that were disgruntled continued by filling a lawsuit to the Administrative Court, especially because it was provided to them free of charge. Thus, the total number of administrative disputes of this type, which includes pension, health and social disputes is 13,081 for the period from 2012 to 2016. That is about 10% from the total number of cases in the Administrative Court.

There are many reasons for seeking legal protection, some of them are justified and the parties are really injured, but sometimes that is not the case. For example, in cases concerning old-age pensions, the plaintiffs usually consider that the percentage, i.e. the amount of the pension is not correctly calculated or several years of service were not properly recognized. However, the body, i.e. the employer has no evidence that it has paid the appropriate contributions for the service of that period. At one time, the PDI Fund considered that the rate of pay of some employees was unjustifiably increased and it made corrections, for which the Administrative Court considered that it was illegal because employers paid contributions.[42]

[42] Interview with a judge from the Administrative Court (25.8.2017);

6.2. Higher Administrative Court

Table 9. Review of the work of the Higher Administrative Court[43]

Higher Administrative Court	2011	2012	2013	2014	2015	2016
Judges	14	12	11	11	11	13[44]
Judicial officers	10	11	13	14	13	13
From previous year	/	5	40	87	82	1095
Received	55	1.750	1.982	3.948	4.349	4.388
Total active	55	1.755	2.022	4.035	4.431	5.483
Resolved	50	1.715	1.935	3.953	3.336	4.492
Unresolved	5	40	87	82	82	990
Disposition time in days	36,5	8,5	16,4	7,6	9,0	80,4
Clearance rate	0,91	0,98	0,98	1,00	0,77	1,02
Rate of pending cases/100 citizens	0,00	0,00	0,00	0,00	0,00	0,05

In 2016, the Higher Administrative Court exceeded its optimum working capacity. It began to create excess of cases despite increasing the clearance rate somewhere between 3,948 and 4,349 cases per year. This number is some optimal capacity of the Higher Administrative Court to decide effectively with the existing number of judges and the complexity of cases. This is reflected in the increase of backlog cases from the previous year, as well as the total number of active cases in 2016.

The norm at the Higher Administrative Court at the moment is 22 cases per month, with the possibility to increase up to 25 cases without affecting the quality of decision-making.

The real ability of the Higher Administrative Court to make effective decisions shall be followed in the following period.[44] Regarding the outcome of the final decisions, al-

[43] Source: Annual reports on the work of the Higher Administrative Court 2011-2016; Data from 2011 to 2014 have already been published in "Capacity building of the administrative judiciary in the Republic of Macedonia in the face of the challenges for achieving European standards", by Davitkovski B., Pavlovska-Daneva A., Shumanovska-Spasovska I., Davitkovska E., Gocevski D. Ss. Cyril and Methodius University, The Faculty of Law "Iustinianus Primus", Skopje, p. 30;

[44] Since the creation of the portal http://sud.mk, no detailed statistical

though varying from 39% in 2013 to 72% of the decisions of the Higher Administrative Court in 2014, these are mainly verdicts that confirm the previous decision made by the Administrative Court. That indicates a high level of quality of work, or, at the very least, coordination or corcondance regarding the decision-making and creation, or standardization of judicial practice that has increased over the years.

reports on the Administrative Court, nor on the Higher Administrative Court for 2015 and 2016, are available;

7. Protection of employment rights for employees in the public sector

Within the research period from 2005 to 2015, the scope of people who can exercise protection of employment rights, can do that by an appeal procedure before the Civil Servants Agency (until 2011), i.e. Administration Agency (from 2011 onwards). The number of these cases for the indicated period ranges between 12,000 and 20,000 people, including civil servants, public servants, and only in 2015 - public service providers (not all, but only those to whom legal protection is provided by a special law before the the Agency).

Regarding the stated number over the years, the rights to employment in the state administration bodies seem to have not been significantly violated, since the average number of persons who have filed an appeal procedure is around 2,000 per year. That is about 1.5% of the total number of employees in public administration, and this number is quite low, but the reasons still remain only within certain assumptions. Also, the largest number of appeals refers to decisions in procedures for selection of a civil/public servant through a public announcement, i.e. they were lodged by dissatisfied candidates who were not selected (Table 11). The three following grounds for which the civil and public servants appealed most, are against the decisions for deployment, against disciplinary measures or sanctions imposed in disciplinary proceedings, and against decisions on termination of employment. Appeals against decisions on termination of employment were extremely high regarding the whole period, in 2005, 2006 and 2008. 2005, 2006, 2007, and 2010 were also exceptional according to the number of appeals lodged against the deployment decisions, and 2011 and 2015 against salary and salary allowances decisions.

It can also be noted that, on average, for the whole period, 51% to 82% of the lodged appeals were rejected, indicating that a number of appeals were assessed as unfounded.

Below is a review of appeals lodged against the decisions of the administrative bodies, before the Administration Agency.

The number of these cases for the indicated period ranges between 12,000 and 20,000 people, including civil servants, public servants, and only in 2015 - public service providers.

Table 10. Structure of the resolved appeals according to the type of decision made by the Commissions of the Administration Agency/Civil Servants Agency[45]

Type of Decision	Year when the appeal is settled									
	2015				2014			2013		
	CS	PS	PSP*	Tot.	CS	PS	Tot.	CS	PS	Tot.
Rejected	255	142		397	306	120	426	190	65	255
Accepted	71	41		112	123	88	211	167	21	188
Decisions on merit	5	0		5	0	0	0	0	0	0
Dismissed/transferred to another competent authority/no jurisdiction	59	20		79	48	19	67	25	22	47
Withdrawn appeals	25	3	3	31	20	13	33	6	1	7
Total	**415**	**206**	**3**	**624**	**497**	**240**	**737**	**388**	**109**	**497**

Table 11. Structure of appeals according to the grounds for lodging to the Commissions of the Administration Agency/Civil Servants Agency[46]

Lodging grounds	Year when the appeal is lodged									
	2015				2014			2013		
	CS	PS	PSP*	Tot.	CS	PS	Tot.	CS	PS	Tot.
Public announcement for employment	166	35		201	210	51	261	115	34	149
Termination of employment	26	33		59	68	29	97	62	13	75
Allocation	48	62		110	25	41	66	47	17	64
Disciplinary proceeding	63	46		109	96	45	141	87	40	127
Salary and salary allowances	79	9		88	14	42	56	17	2	19
Evaluation	21	7		28	44	15	59	52	1	53
Suspension	4	6		10	6	5	11	6	3	9
Annual leave miscellaneous	3	1		4	5	0	5	2	0	2
Other	7	8	3	18	29	12	41	0	0	0
Total	**417**	**207**	**3**	**627**	**497**	**240**	**737**	**388**	**110**	**498**

[45] In 2005, the CSA decided only in an appeal procedure for persons with a civil servant status and made a total of 619 decisions. The structure of the adopted decisions is as follows: 428 rejected or dismissed, 125 accepted, 66 transferred to another competent authority or withdrawn;

[46] The 2005 Annual Activity Report of the Civil Servants Agency only contains data on the total number of appeals lodged and the number of complaints on the grounds of a public announcement, termination of employment and deployment of a civil servant. Hence, this review does not contain data on appeals lodged on the remaining individual grounds other than those stated. The difference to the total number is shown as the number of complaints in the "other" item;

Legend:
CS – appeals lodged by civil servants
PS – appeals lodged by public servants
PSP – appeals lodged by public service providers

Year when the appeal is settled											
2012			2011			2010	2009	2008	2007	2006	Total for the period
CS	PS	Tot.	CS	PS	Tot.	CS	CS	CS	CS	CS	
184	127	311	485	22	507	409	461	442	674	541	**4.423**
89	27	116	73	4	77	126	124	98	104	176	**1.332**
0	0	0	0	0	0	0	0	0	0	0	**5**
56	14	70	27	2	29	18	53	31	57	26	**477**
6	2	8	3	0	3	9	5	23	24	4	**147**
335	**170**	**505**	**588**	**28**	**616**	**562**	**643**	**594**	**859**	**747**	**6.384**

*The competence of the Agency's Commission to decide on appeals by public service providers does not arise from the Law on Administrative Servants, but from special laws, therefor the Commission decides upon appeals from public service providers only by exception. Hence the small number of appeals from public service providers. The report on the work of the Administration Agency for 2015 does not contain data on the grounds for the lodging of these appeals.

Year when the appeal is lodged												
2012			2011			2010	2009	2008	2007	2006	2005*	Total for the period
CS	PS	Tot.	CS	PS	Tot.	CS	CS	CS	CS	CS	CS	
108	15	123	144	2	146	159	373	288	402	338	193	**2.633**
24	12	36	27	13	40	101	38	168	30	129	189	**962**
82	20	102	152	1	153	171	97	33	320	191	156	**1.463**
68	31	99	67	1	68	70	56	49	55	34		**808**
26	13	39	160	3	163	21	54	36	34	25		**535**
32	8	40	43	0	43	38	24	10	13	13		**321**
3	35	38	10	6	16	5	10	8	3	9		**119**
2	2	4	2	0	2	15	2	2	2	8		**46**
0	34	34	0	2	2	0	0	0	0	0	73	**168**
345	**170**	**515**	**605**	**28**	**633**	**580**	**654**	**594**	**859**	**747**	**611**	**7.055**

*In the period from 2005-2010, the Agency was in charge of deciding upon civil servants' complaints. In June 2011, besides the State Commission for Resolution in the Second Instance on Appeals and Complaints of Civil Servants, a Commission for Resolution in the Second Instance on Appeals and Complaints of Public Servants was established within the Agency. Starting from 13.02.2015, the competence is exercised through one Commission, i.e. the Commission for Deciding on Appeals and Complaints of Administrative Officials, which decides on the grounds of these complaints;

Table 12. Structure of the resolved appeals in the area of employment according to the type of decision made by the State Commission

Type of Decision	Year when the appeal is settled				
	2015	2014	2013	2012	Total for the period
Accepted	69	87	139	121	**416**
Rejected	524	563	826	464	**2.377**
Dismissed	122	132	56	74	**384**
Transferred to another competent authority	15	16	27	79	**137**
Suspended	6	4	2	1	**13**
Total	**736**	**802**	**1.050**	**739**	**3.327**

The other employees in the public sector, as well as the administrative officials employed at the Administration Agency, exercise the rights to employment in second instance through an appeal to the State Commission for decision-making in administrative procedure and procedure of employment in second instance. The situation is not much different from the protection before the Administration Agency. Namely, most of the decisions were rejected, i.e., the appeal requests of the employees were not accepted. In some years the ratio varies, from 62% in 2012, as a lowest ratio (464 rejected appeals from a total of 739 employment appeals), and even up to 78% in 2013 (826 rejected from a total of 1,050 appeals), while mainly ranges around 71% in the following years. That is not a small number of rejected appeals to procedures of employment.

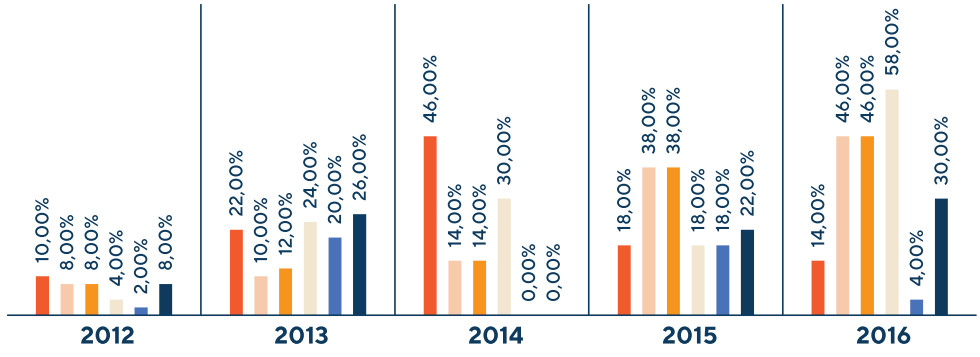
In some years the ratio varies, from 62% in 2012, as a lowest ratio (464 rejected appeals from a total of 739 employment. appeals), and even up to 78% in 2013.

Table 12a. Structure of the formed cases before the State Commission upon appeals made in the area of employment, in areas

Area	Year of forming the cases				
	2015	2014	2013	2012	Total for the period
Persons with special authorizations (MoI, Customs Administration, ARM)	546	509	721	525	**2.301**
Employees subject to the general labour legislation and employees at the Administration Agency	278	347	315	341	**1.281**
Total	**824**	**856**	**1036**	**866**	**3.582**

Of the total number of appeals received to the Commission for which cases were formed, most cases were formed in the area of employment for employees with special authorizations, employees of the MoI, the Customs Administration and the ARM.

Chart 6.[47] Review of legal remedies used by the employees in the municipal administration, as well as the appropriate measures taken to implement the decisions



- Number of second instance procedures initiated due to violation of the employment right
- Number of decisions of the second instance body on the basis of accepted appeal due to violation of the employment right
- Number of decisions on the grounds of which you have acted in accordance with the decision stated in the decision
- Number of procedures against which employees have filed a lawsuit due to violation of the employment right before the competent court
- Number of orders for acting upon received by a competent court on the basis of accepted lawsuit due to violation of the employment right

[47] Source: Requests for access to public information sent to 81 municipalities, 53 responded; Competent second instance body for the protection of employment rights in the sample is the Commission established by the Administration Agency;

Of the 50 municipalities that provided data, we found that most of the appeal procedures were lodged in 2014 (23), and most court procedures were initiated in 2016 (29).

The number of appeals against disciplinary measures or other decisions regarding the employment of the employees in the municipal administrations shows a wavering uptrend until 2014 and a decline to 2016. Unlike the appeals, the number of initiated court procedures of employment dispute increased by 2014, dropped to 2015 and increased again to 2016.

The number of initiated court procedures is followed by the majority of decisions made by a second instance body (Commission within the Administration Agency), against which the employees decided to file a lawsuit in court. Regarding the respect of the decisions of the Commission, the municipalities fully adhere to the guidelines, i.e. the decisions of the Commission, which is reflected in the identical number of decisions of the second instance body on the grounds of accepted appeal, and the number of decision on the grounds of which the municipalities acted upon in accordance with the decision of the Commission.

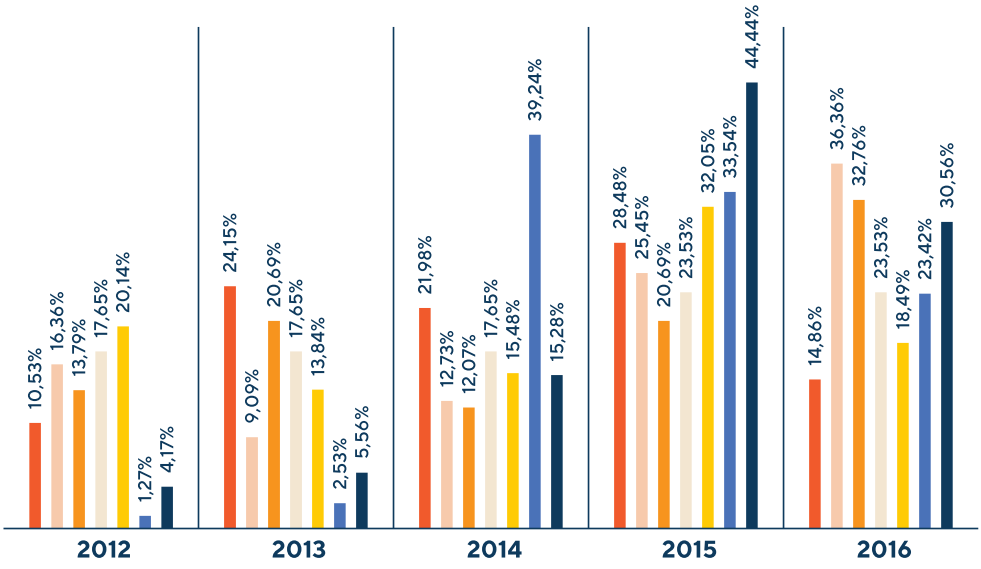
The situation with the court protection is different, and the number of initiated court procedures differs from the number of court decisions made, and the two differ from the number of court rulings that the municipalities acted upon – in a given year. This is explained by the fact that court proceedings last significantly longer than the appeal procedure (usually 15 days). The number of court proceedings initiated in one year differs from the number of court decisions made in the given year because in that calendar year the court decided and delivered verdicts to the municipalities/parties for cases initiated in previous years.

The general conclusion is that the employment rights of municipal officials are not threatened (or at least that cannot be derived from the statistics). Of the 50 municipalities that provided data, we found that most of the appeal procedures were lodged in 2014 (23), and most court procedures were initiated in 2016 (29). The simplified conclusion is that one employee complained about a violation of employment rights in every second municipality. And compared to the total number employees on indefinite period of time in this period, it turns out that in 2014 only 0.72%[48] of the employees lodged an appeal for violation of employment rights, and in 2016, 0.9%[49] of the employees initiated court procedure.

[48] In 50 municipal administrations from the municipalities that responded to the request for access to public information, in 2014, 3,185 persons were employed for an indefinite period of time;

[49] Ibid: in 2016, 3,266 persons were employed for an indefinite period of time;

Chart 7. Review of legal remedies used by the employees in the Centres for Social Work, Public Health Institutions, and public enterprises in the period 2012-2016, as well as the appropriate measures taken to implement the decisions[50]



From Chart 7 we can draw a few conclusions that differ from the experience of employees in municipal administrations. In the first place, the majority of appeal procedures lodged and the much lower number of accepted appeals can be seen, indicating that, according to the second instance commission, in the largest number of cases the employees complained unreasonably. The practice with the court procedures is similar.

Namely, it is obvious that the employees were dissatisfied

[50] Public services: SWC, PHI and PE (total replied requests 130 as follows: SWC – 24, PHI – 45 and PE – 69);

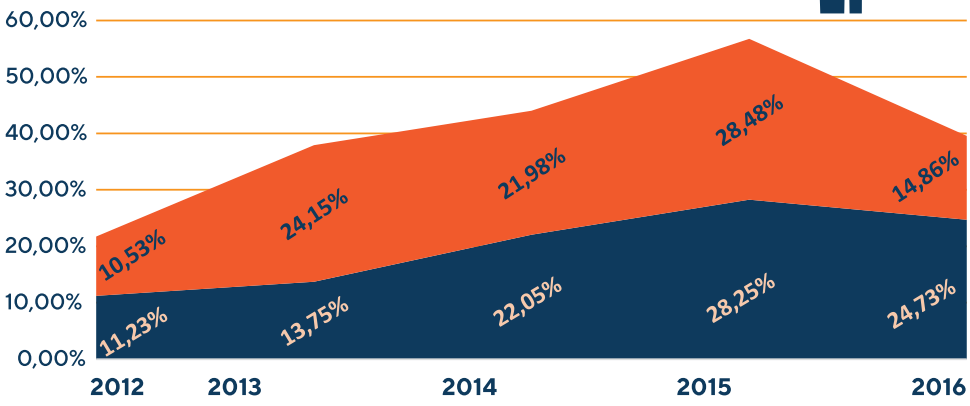
In the year when most appeals were lodged, 80 in 2015, 15,778 employees were employed for an indefinite period of time.

and initiated court procedures, but in this case, in 2012 and 2013, the court(s) accepted negligible number of lawsuits, and in 2015, less than a third of the initiated court procedures ended with an accepted appeal. Interpreting only the side of the second instance commission and the competent courts, in a number of cases, the employees unfoundedly considered that their rights were violated.[51] Or perhaps it is more likely an interpretation that is widespread among the citizens that the commissions or courts had a tendency to protect the institution, and not the employees. Or it is possible that it is a failure to collect all evidence in the procedure for exercising the right to employment.

Regarding the adherence to the decisions of the second instance commission, it is evident that the relevant institutions respect the guidelines (although there are negligible differences in the number of accepted appeals and the number of decisions by the second instance body they have acted upon). From the public institutions that responded to the request for access to public information, we can conclude that the number of appeals and lawsuits is not an indicator of serious violation of employment rights in public services. Of course, another assumption that we can neither confirm nor exclude in its entirety at the moment is that the small number of appeal procedures is due to: distrust of the effectiveness of the system of protection, or other repressive causes or barriers, but for them currently there is not enough empirical information. Namely, in the year when most appeals were lodged, 80 in 2015, 15,778 employees were employed for an indefinite period of time. In regards to this, the number of appeals is negligible statistics. What does not allow us to fully exclude that employees may have a problem of protecting their employment rights is the difference between the number of appeals lodged and the number of disciplinary procedures conducted. Chart 8 shows that a negligible number of employees have decided to complain about the total number of (self) disciplinary measures. It is difficult to assume that most of the disciplinary proceedings end only with public warnings or with the conclusion that there is no ground for disciplinary responsibility of the employee against whom the disciplinary procedure was initiated - otherwise why do they initiate them?! This issue shall be subject to future research and analysis.

[51] Ibid

Chart 8. Comparison of the appeals lodged to second instance body of the total disciplinary procedures initiated against the employees in the public services (PHI, PE, and CSW)



Lodged appeals as % of the total appeals lodged to the Commission

Dispicplinary procedures as % of the total disciplinary procedures initiated

8. Concluding Considerations

The efficiency, but also the effectiveness of the system of administrative and legal protection is seen through several aspects: through the prism of access to justice, i.e. how simple and how much costs do the party face when it considers that some of its right is violated by an act or action of an institution with a public authorization.

Efficiency is monitored through the prism of the internal organization and the capacities of the institutions themselves before which the legal protection is achieved, and through the prism of the entire system as a whole, that is, interinstitutional – i.e., whether in the current circumstance, its complexity enables all institutions to work smoothly, to coordinate in their approach and decide in the name of protecting the rights of the citizen. In this context, the time for realization of the legal rights of the citizen, i.e. harmonization of the deadlines within which the institutions will be able to complete their legal tasks in a timely manner, is also monitored.

The efficiency, but also the effectiveness of the system of administrative and legal protection is seen through several aspects: through the prism of access to justice, i.e. how simple and how much costs do the party face.

8.1. Access to legal protection

Factors that affect the access to legal protection are as follows:

1) The complexity of the procedure for exercising the right

According to the majority of lawyers from the expert public, the lodging of an appeal in an administrative procedure, and the lodging of an administrative dispute, does not require engaging lawyers. The citizens (and legal persons through their agents) can do that themselves, and the competent authorities and administrative courts, as a rule, do not reject the appeals or lawsuits, if there are some obvious deficiencies that can be easily removed. However, the fact remains that informed parties, such as legally educated citizens and legal persons who engage experts to appeal to a second instance body in an administrative procedure or to initiate an administrative dispute with a lawsuit on their behalf, exercise their rights more easily because they

know more precisely what they are looking for and what they are violated for. Also, this category of parties, by rule, takes more care in exercising the rights and obligations before the public institutions themselves, which decide in the first instance on their rights and obligations, so they usually have more complete documentation.

Sometimes the officials themselves have a problem in determining the right of the applicants, after which both the second instance bodies and the administrative courts face a similar problem.

Administrative barriers can also be of a financial nature. Although for many rights, the administrative fees are either low or completely free of charge - especially for citizens belonging to vulnerable categories, these citizens are faced with a semantic problem, i.e. understanding of the procedure for exercising their rights and orderly filling out the forms/exemplars for exercising these rights. Sometimes the officials themselves have a problem in determining the right of the applicants, after which both the second instance bodies and the administrative courts face a similar problem. Therefore, we must reaffirm the need for affirmative measures to work with this category of citizens. This practically means that citizens should be additionally informed about their awareness of their rights. It would also be good if they are offered free legal assistance in completing the case and the procedure.

On the other hand, the category of citizens who are beneficiaries of social welfare or have lower income, do not engage legal representatives, and, unfortunately, often have incomplete documentation (which, to a certain extent, is a responsibility and fault of the bodies themselves).

Although each administrative act provides a guide for legal remedies, the exercise of legal protection is difficult due to the great number of institutions before which it is exercised, and only the well-informed parties know in advance in which institution and with what means to turn for legal help.

2) Procedure associated costs

By themselves, the administrative procedures and administrative and court protection do not expose the parties to high costs for conducting the procedure.

For a large number of cases in a separate administrative procedure (for example PDI, part of education, for persons exposed to social risk), filing an appeal in an administrative procedure and the introduction of an administrative dispute does not require high expenses (and is often completely exempt from payment), the parties in the administrative procedure and the plaintiffs before the Administrative Court do not have to be (legal) experts and do not have to hire lawyers. Hence, it cannot be said that the parties are exposed to high costs for lodging an appeal, nor for filing a lawsuit. But in relation to proving, it must be emphasized that the Administrative Court and the Higher Administrative Court have so far not carried out expert examinations, nor have the means to carry them out, so if the parties can afford to pay for their expert examinations, they can enclosed them as a proof in their cases.

In the public procurement appeals procedures, the costs of conducting the procedure are increasing, depending on the amount of the public procurement offer.

However, the exercise of rights remains the biggest challenge for citizens belonging to vulnerable categories. In that context, any assistance regarding free of charge expert examinations for limited categories of citizens, through various projects, can be of great help for the citizens who attempt to prove their right.

In relation to proving, it must be emphasized that the Administrative Court and the Higher Administrative Court have so far not carried out expert examinations, nor have the means to carry them out.

We can conclude that for less than 15% of the total number of cases in which citizens and legal persons sought to exercise their right, the citizens decided to seek legal protection.

3) Familiarization of the public with the manner of conducting the procedure and whom to conduct the procedure before

The relatively high number of cases before the commissions covered by the survey and the Administrative Court point to the fact that citizens and legal persons are nevertheless familiar with access to justice, i.e., they know when and where to lodge an appeal or a lawsuit. This is due to the fact that every act that decides on the right or obligation of the party in administrative procedure or administrative dispute (decision or other specific act) must contain a legal notice (guide for a legal remedy). With this legal notice, the party is precisely indicated in which deadline and to which authority it can seek and obtain legal protection.

If we accept that at least 100,000 cases in administrative procedure are resolved annually by the public institutions, against which less than 10,000 appeals were lodged (in total before the State Public Procurement Appeals Commissions, the State Commission for Decisions in Administrative Procedures and Procedures of Employment in Second Instance and the State Commission for Decisions in the Second Instance in the Area of the Inspection Supervision and Misdemeanour Procedures), as well as the fact that most of the lawsuits filed before the Administrative Court were filed in 2015 when 15,011 administrative disputes were initiated, we can conclude that for less than 15% of the total number of cases in which citizens and legal persons sought to exercise their right, the citizens decided to seek legal protection. These numbers should not be overlooked.

However, it cannot be overlooked that many citizens do not have information about where they can exercise their right of an appeal against a certain decision made by a public administration body, or where to file a lawsuit when they are not satisfied even after lodging the appeal, or when they have no right to a prior appeal. A large number of citizens are not even informed about the existence of different commissions and bodies that can protect their rights, nor do they believe in the existence of administrative justice in the service of citizens.

8.2. Efficacy of the Institutions Delivering Legal Protection

The efficacy of each organization is represented by the ratio between the entry of cases to be resolved and the number of resolved cases per given unit of time. It depends on a number of factors, the most important of which are: the internal organization and internal procedures by which the available human, material and spatial resources are handled.

Other factors affecting the efficacy of the institutions that provide legal protection: **presence of deadlines** (for the commissions) or **presence of norms** (for the courts) that contribute to a quick resolution of cases, but often are reflected in decline in the quality of the resolution.

Reviewing the work of the Public Procurement Appeals Commission and the Commission for Decisions in Administrative Procedures and Procedures of Labour Disputes in the Second Instance, it can be concluded that they represent a better and more efficient solution in relation to the previous solution, when this work had been performed by government commissions. This may also be due to the composition and manner of operation of government commissions.

Regarding the influence of these commissions on the scope of work of the Administrative Court, the establishment of the State Commission for Decisions in the Second Instance in the Area of Inspection Supervision and Misdemeanour Procedures is most influential.

Having in mind the legal basis and the expected outcome for the Commission for Decisions in Administrative Procedures and Procedures of Employment in Second Instance to be quality protector of the rights of the parties in the administrative procedure at the same time but also a filter (conditionally said to decrease the volume of cases) in the path to the Administrative Court, the real challenges that it faces with must be taken into account. Since its establishment the Commission invested in increase of the human capacities for addressing different volume of work. Although we believe that there is still space for improvement of both human capacities and material and spatial capacities for work of the this Commission, we still take into con-

sideration the 14,075 cases solved by the Commission are not disputed which indicates that the citizens, businesses and public interest were protected in far shorter period of time and lower costs than they were initiated through an administrative dispute before the Administrative Court.

It is necessary to think about strengthening the capacities of this Commission, not only from the aspect of human, but also from material nature. The members of the commission currently rely on employees from the administrative service who are in a small number and thus are not always able to equally devote to all cases. Another inevitable consequence, given the wide range of areas over which the Commission has authority, is that there are more different areas than there are Commission staff members who could properly specialize in one to two areas. Even though it is most inappropriate to give a simple recommendation that more people should be employed, in this case the assessment is precisely in that direction. It is a fact that the scope of the cases is quite high and the high degree of efficiency is due, in large part, to the existence of legal deadlines in which the case must be resolved, but it can also adversely affect the quality of the resolution. This, however, does not necessarily mean that new people should always be employed. Often, this can be done with a certain reorganization, taking staff from other institutions and a more loose mobility between institutions of an administrative nature depending on the needs and dynamics of work. At times in the Administrative Court, when all cases are handled by 6 judges, only one employee is working in the archives. Another problem faced by the judges is the inadequate competence from the associates who are supposed to help in the preparation of materials and the processing of the cases. Ideal conditions would be for each judge to have one expert associate, or at least one associate for two judges, which is not the case. In this sense, the Administrative Court is not only in need of qualified professional administrative staff, but also personnel with secondary education who would be engaged in the forwarding, registration and delivery of cases.

At times in the Administrative Court, when all cases are handled by 6 judges, only one employee is working in the archives.

Regarding the Administrative Court, similarly to the second instance commissions, there is a decline in the scope of work in the last reporting year covered by the monitoring. This is a result of some external factors, that is, the reduced activity of the executive authorities (assuming that due to the political circumstances in the country in the course of 2015 and 2016, the authorities had less resolved cases and the citizens and legal entities submitted fewer requests).

At the level of the local authorities, there has not been a reduction in the amount of cases. For example, since the introduction of new methodologies, through which the property tax is calculated, the amount of property tax has increased, and as a result the amount of cases or lawsuits before the Administrative Court has increased. For the cases on which the municipality gave a precise ground and manner in which the tax was calculated, the lawsuits are rejected as unfounded. Another problem is that municipal appraisers do not go on field, but they calculate the amount of tax according to "schemes" from the office. All the citizens' wish is a quicker resolution to their issue. They say, "tell me if I have a certain right or not". The Law on General Administrative Procedure (LGAP), both the previous and the current one, has certain advantages, but their implementation in reality still records a multitude of anomalies. From the view of the practitioners, it is necessary to adopt a new Law on Administrative Disputes, with a more detailed procedure and manner of operation of the judges, with which there will be no need for the administrative judges to call upon an unclear and imprecise manner to the Law on Litigation Procedure.[52]

From the view of the practitioners, it is necessary to adopt a new Law on Administrative Disputes, with a more detailed procedure and manner of operation of the judges

[52] Interview with a judge in the Constitutional Court (17.8.2017)

8.3. Efficacy of the Administrative-Legal Protection System

Regarding the system of administrative-legal protection, that is, all the institutions before which administrative and legal protection is exercised, both in an administrative procedure and in an administrative dispute, several conclusions can be made which we find to be problematic:

If we accept that the Supreme Court has jurisdiction (in extraordinary legal remedies) to decide upon certain administrative-legal cases, then the procedure becomes a five-stage procedure.

1) Complexity. The administrative-legal protection system is complex, encompassing hundreds of institutions that decide on rights and obligations in the first instance, protection in the second instance conducted in accordance with the Law on General Administrative Procedure (LGAP) and separate sectoral laws that enforce the right to different institutions: three independent commissions, in front of the responsible ministers, and for some, an administrative dispute is immediately initiated. In addition, administrative-judicial protection is exercised before the Administrative Court and for the same cases against the decisions of the Administrative Court, an appeal can be lodged before the Higher Administrative Court.

At present, for various cases, administrative and legal protection has different stages of legal protection, so for tax cases (especially municipal taxes) the procedure consists of three stages, because an administrative dispute is immediately initiated against the tax decisions, after which an appeal can be submitted to the Higher Administrative Court. While for a student scholarship, for example, the procedure is performed in four stages. If we accept that the Supreme Court has jurisdiction (in extraordinary legal remedies) to decide upon certain administrative-legal cases, then the procedure becomes a five-stage procedure.

From the interviews conducted with judges from the Administrative Court and the Higher Administrative Court, through their communication with the parties, the assumption that citizens want justice as soon as possible was confirmed. Delayed justice is not fair. From that point of view, the presence of multiple stages of legal protection for the same subject does not favor the parties. On the other hand, several stages provide less probability of error since several institutions (Second Instance Commission, Administrative

Court, Higher Administrative Court) control the legality of administrative authorities' decisions.

Regarding the speed of decision-making, although the resolution rates do not differ much between the Second Instance Commissions and the Administrative Court, still, in the absolute time from the reception of the case until the action is taken and the decision is made, the second instance commissions are much faster than the courts. Thus, although they contribute to complexity, their existence can be justified - especially from the aspect of the parties whose rights are protected before a second instance body, or whose appeals were accepted. In the wake of the announcement of the Draft Strategy for Reform of the Judiciary Sector for the period 2017-2022, there are certain intentions for abolition of the Higher Administrative Court.[53] We personally believe that this systemic reform would have a smaller impact on the entire administrative and legal protection system and will not be detrimental to the parties. Especially because it is yet again envisaged that the administrative-judicial protection will remain in second instance with the right to appeal to the Supreme Court against the merits of the Administrative Court.

On the other hand, the existence of multiple stages of legal protection does not mean that each party must by all means use all available remedies (and lodge an appeal in an administrative procedure which by all means will lead to an administrative dispute before the Administrative Court, and whose verdict will appeal to the Higher Administrative Court at all costs). Legal remedies are available to the injured parties. Those who still consider the decisions of the administrative bodies as unlawful can appeal again, but if they accept the decision as lawful, they don't have to proceed. From this point of view, only the possibility of the public authority, whose decision has been subject to an administrative dispute, to appeal through the State Attorney against the ruling of the Administrative Court adopted in favor of the party (when a party is a citizen or a private legal

Legal remedies are available to the injured parties. Those who still consider the decisions of the administrative bodies as unlawful can appeal again, but if they accept the decision as lawful, they don't have to proceed.

[53] Draft Strategy for Reform of the Judiciary Sector for the period 2017-2022 and Action Plan, p. 51 available at: http://www.pravda.gov.mk/documents/%CD%E0%F6%F0%F2%D1%F2%F0%E0%F2%E5%E3%E8%BC%E0%20%E7%E0%20%F0%E5%F4%EE%F0%EC%E0%20%ED%E0%20%EF%F0%E0%E2%EE%F1%F3%E4%ED%E8%EE%F2%20%F1%E5%EA%F2%EE%F0.pdf;

Delivery of files is often a problem for the second instance commissions in administrative procedure which, after they receive an appeal, should receive the complete files by the public authorities.

entity), is controversial. It introduces a state of lower legal security of the citizens, neglecting the fact that the public interest was preserved with the very act when a public authority decided in the first instance, but also that the second degree protection is again exercised by a public authority, and that the Administrative Court is a manifest of the judicial power - again in the role of a protector of the public interest. This view can, of course, be subject to public debate, in the interest of protecting citizens, but not at the cost of mixed competences or excessive complexity of procedures.

2) Ineffectiveness of communication channels. Mutual communication between public institutions providing services to citizens and legal entities and second instance commissions, as well as communication between second instance commissions and the Administrative Court - and further with the Higher Administrative Court - the delivery of files sometimes lasts for months.

Due to inefficiency and lack of human capacities, the institutions for legal protection cannot manage the expediting of the cases. There have been instances when lawsuits for which the Administrative Court had not been competent were expedited too late to the competent court, for the case in which a legal deadline of 60 days for filing a lawsuit was envisaged. Delivery of files is often a problem for the second instance commissions in administrative procedure which, after they receive an appeal, should receive the complete files by the public authorities. Often they receive them late or incomplete. These communication channels can be improved in many ways, both with full and consistent application of electronic communication, and with greater control of the responsible persons obliged to deliver the relevant files within the legally prescribed deadline. Otherwise, they should be held liable and should bear consequences.

3) Frequent legal amendments. Frequent amendments in systemic and sectoral laws, which supplement, amend or revoke the competence of institutions, as well as intervening in deadlines, in terms of acquiring or losing rights, introduce uncertainty in the system of administrative-legal and administrative-judicial protection.

They give rise to situations where the first instance authorities adopt certain decisions to the detriment of the parties who were not familiar with the latest amendments. Thus, the

second instance bodies and courts are sometimes going to have related cases on which they will decide differently. This is simply because one party submits a request while a certain legal solution is in force, while the other party submits a request a month later for which another legal solution is in force. Even if the amendments in the laws are in the interest of the parties, sometimes they may lead them into to thinking that they are being deprived at the expense of others, compared with past times, etc. Thus they may feel that the authoritative body conceals something that is lawful to them, so they lodge a complaint/lawsuit. Determining the legal basis that the commissions and courts decide upon in circumstances when laws change frequently, makes the decision-making process difficult. In this case, the members of commissions and judges literally make clean versions by themselves of the laws upon which they decide. In such cases it would be good to have one coordinated action at the level of several institutions from the governed area that would be able to familiarize with the new amendments and who would be able to make common interpretations, rulebooks or a guide to common administrative-judicial practice.

All of these factors cause the administrative-legal protection system to be non-responsive. And if a certain coordination is not made, some cases will reappear through the administrative-legal and administrative-judicial systems as inadequately solved or delayed in the execution of rights, etc.

The inability of the Administrative Court to ensure the enforcement of court verdicts may be pointed out as the biggest problem, because these cases last very long, and in some instances there have also been cases (for example, in the area of denationalization) that come for the fourth time before the Administrative Court for decision-making.[54] The second instance commissions as well as the Administrative Court very rarely decide upon a dispute in full jurisdiction, that is, they rarely adopt decisions/verdicts that fully resolve the administrative work. Most often in cases when the complaint/lawsuit is accepted, the decision is annulled and returned for re-decision before the first instance body or the body against whose act the administrative dispute has been initiated. This is a rather controversial issue for which the opinions in the court vary. On the one hand, some of

The inability of the Administrative Court to ensure the enforcement of court verdicts may be pointed out as the biggest problem, because these cases last very long, and in some instances there have also been cases.

[54] Interview with a judge from the Administrative Court (17.8.2017).

the judges confirm that the number of verdicts rendered in full jurisdiction must be increased, and on the other hand, some judges consider that the purpose of the Court is not to secure the rights of citizens at all costs because it thus substitutes public service providers themselves. Still there is a high level of consensus among the fellowship that the current number of verdicts passed in full jurisdiction is small. It needs to be further stimulated, and judges must be motivated to make more decisions of this type.

In order to improve the quality of services and improve the protection of citizens and legal entities we must increase the quality of work of the institutions that decide in the first instance on the rights of citizens and legal entities. The solution to all problems must first be sought in the root, or the reason of the problem. Only then should justice be sought in the ways to correct the damage or to eliminate the consequences of the problem – which in this case are the numerous secondary commissions and administrative courts.

The justice should sought in the ways to correct the damage or to eliminate the consequences of the problem – which in this case are the numerous secondary commissions and administrative courts

Not all reforms are done with legal amendments. Sometimes conditions can be improved with soft measures. For example, a coordination mechanism should be established between all public service providers, or institutions with public authorizations that decide in an administrative procedure, and the institutions through which legal protection is exercised against their decisions. It is not enough for their communication to be carried out ex officio within the appeal administrative procedure or within the framework of the administrative dispute. On the contrary, once or twice a year, the responsible persons and management officials of these institutions should have work coordination meetings on which they will jointly exchange experiences from their work. Thus they will jointly propose ways to improve the quality of work of all institutions, whose ultimate goal will be more satisfied citizens and legal entities.

All institutions covered by this research note that the most problematic cases are cases in which documentation cannot be properly completed. In large part for these cases, that is due to insufficient cooperation between public institutions. This means that sometimes the first instance bodies do not submit their records to the second instance commissions and/or administrative courts. In this regard, the electronic communication between public institutions, which is a le-

gal obligation from 2015, must be promoted, and a unified practice for delivering records and written documents has to be established. The challenge would be to fully equip all institutions with public authorizations or providers of public services (in the broadest sense of the word) with appropriate software and ICT equipment for interoperability in cases of administrative matters and training of staff for their use. In that way, they would be properly connected to an information environment through which electronic communication would be carried out easily and quickly, by exchange of documents ex officio or at the request of another public institution. In this context, it does not always have to be expensive software and applications for interoperability to which all institutions will join, but simply, the judicial practice will begin to use electronic communication as officially recognized in the exchange of documents and writings. This means that the failure to respond to the official email and failure to act in relation to a particular request by the commission or the court by email will be considered as evidence that a particular institution has not acted legally and will be held liable.

The electronic communication between public institutions, which is a legal obligation from 2015, must be promoted, and a unified practice for delivering records and written documents has to be established.

9. Proposal – Policies and Measures

MEASURE TITLE	1. Creating conditions for consistent application of the legal mechanisms for enforcement of the verdicts of the Administrative Court (for example: through forming special organizational unit within the Administrative Court with the authority to monitor the enforcement of the verdicts).
What type of problem does it solve and how?	Regardless of the legally established compulsory nature of the Administrative Court's decisions, in practice it often happens that the administrative bodies do not comply with the guidelines of the Administrative Court and adopt identical acts with the already annulled acts of the Administrative Court.
What is the reason or the root of the problem?	Pursuant to Article 52 of the Law on Administrative Disputes, each time the Administrative Court annuls an act, subject to an administrative dispute, the case is returned in the state in which it was before the annulled act had been adopted. If, according the nature of the dispute's subject matter, in the place of the annulled act, another act should be adopted, the competent body is obligated to adopt the said act without any delay, 30 days from the day of submission of the verdict. The competent body is than obligated to comply with the guidelines provided by the Administrative Court. Pursuant to Article 40, paragraph 3, if the Court annulled the act with a verdict, and the competent body does not comply with the guidelines stated in the verdict, the Court shall inform the body which monitors the work of the body which has adopted the act, subject to an administrative dispute. The monitoring body is obligated to suspend the authorized official person who did not comply with the Court's decision and initiate a liability procedure. Despite the existence of a legal possibility for sanctioning authorized official persons who do not comply with the Court's decisions, the stated Article 40, paragraph 3 from the Law on Administrative Disputes is not exercised in practice. (possible reason is the lack of capacities).
What are the expected results?	Shortening the length of administrative procedures and effective exercise of the citizens' rights. This case is about the effective enforcement of the decisions in practice.

MEASURE TITLE	**2. Changes to the Law on Administrative Disputes, which shall provide compulsory decision-making for the administrative matter itself, without returning the cases for repeated processing before the administrative bodies.** **Alternative: Changes to the Law on Judicial Councils, through which additional criteria shall be determined for assessment of the efficacy of the work of the administrative judges: number of adopted decisions on merits on initial decision.**
What type of problem does it solve and how?	Pursuant to the Law on Judicial Council, the assessment of the work of the judges shall be performed on the basis of quantitative, qualitative and other criteria. Quantitative criteria are data and information received for the judge's work through the automatic judicial and information system for case management (ACMIS) on the number, type and resolved cases compared to the average number of cases which the judge is expected to decide upon on monthly basis. The qualitative criteria cover the compliance with the legal deadlines for initiating procedural actions, as well as the relation between the number of confirmed, dismissed or modified decisions in terms of the total number of resolved cases. According present criteria, the number of decisions made does not affect the assessment of the administrative judges' work. Introducing an additional criterion shall encourage/motivate administrative judges to make decisions on merits.
What is the reason or the root of the problem?	Acting upon the lawsuit against an administrative act, the Administrative Court shall decide upon the legality of the disputed administrative act and for the administrative matter itself. If the Court decides that the disputed act is illegal and therefore accepts the lawsuit, it may annul the administrative act and, in that case, the case shall be returned in the state in which it was before the annulled act had been adopted. If the Court annuls only the act of the second instance body, the case shall be returned to be processed before the second instance body which is obligated to decide again upon the complaint, bearing in mind the Court's attitudes within 30 days since the day of receiving the effective verdict by the Administrative Court. Despite the fact that it may annul the disputed act, the Court may decide the administrative matter itself and finish the procedure, without returning the case for repeated processing before the second instance and first instance body. However, this is not the case in practice and the Court almost never adopts such decisions (decisions on merits), not even in cases when the Court is bound by the law (for example: if the Court has already annulled the administrative act with a verdict, and the body did not comply with the guidelines and attitudes stated in the verdict, Article 40 of the Law on Administrative Disputes obliges the Court to resolve the administrative matter). Contrary to the legal obligation, the Court shall annul only the administrative acts, significantly delaying the procedures, thus impairing the citizens to exercise their right effectively.
What are the expected results?	Shortening the length of administrative procedures and effective exercise of the citizens' rights. In this case, it is an increase of the number of decisions on merits of the Court, with which the decisions shall not return to repeated processing before the first instance body, but the justice shall be raised to a higher degree with a new decision, implemented by the First Instance Court.

MEASURE TITLE	**3. Creating a single data records system of great importance for tracking administrative procedures/administrative disputes, integrated in several relevant institutions (interinstitutional linking)** - through law changes on the mandatory content of the Annual reports of relevant institutions (establishing mandatory record keeping of data important for tracking this matter);
What type of problem does it solve and how?	The single data records system shall ensure transparency and full accountability of all relevant institutions, and in the direction of the existence of records of the types of disputes or areas in which the citizens, that is the interested parties, most often i.e. at least initiate administrative procedures, which would create opportunity for intervening in the appropriate area in order to improve the citizens' satisfaction. The application of one of the most prominent principle of the administrative procedure shall be ensured – The principle of equity, impartiality and objectivity which binds the bodies in the administrative procedure to provide equal, impartial and objective application of laws and other provisions throughout the deciding of administrative matters. This guarantees the parties that the bodies responsible for resolving administrative matters shall provide equal, impartial and objective application of laws and other provisions in resolving the administrative matters , regardless the party's status and social position.
What is the reason or the root of the problem?	There are no harmonized data on meaningful issues for the administrative procedures in Republic of Macedonia. For instance, the Report of the State Commission for Decisions in Administrative Procedure and Procedure for Employment in Second Instance does not contain information on the Administrative Court's decision, whenever a decision should be made upon lawsuits against their decisions. In their reports, the State Commission shall provide information on how many processed cases have been accepted or rejected (pursuant to report's content specified in the law), but does not provide information on the type of decision of the court after their decisions. On the other hand, the courts keep records of how many cases have been resolved by a judge, but they do not have or a record is not available of how many of the cases are resolved for a second time, and from this data, the consistency in decision-making, and possibly the possible impacts on decision-making, should be considered. In addition is given a comparison of the reports' contents of some relevant institutions:

<table>
<tr><th colspan="2">REPORTS' CONTENT OF RELEVANT INSTITUTIONS SPECIFIED BY LAW
State Public Procurement Appeals Commissions (SPPAC)
Judicial Council
State Commission for Decisions in Administrative Procedures and Procedures for Employment in Second Instance</th></tr>
<tr><td>- number of received cases,
- number of resolved cases (dismissed, rejected and accepted appeals),
- number of annulled procedures,
- number of unresolved cases,
- number of cases for which an administrative dispute has been initiated (rejected and accepted cases),
- statistical analysis on the legal protection processes, and
- assessment of the legal protection status and the public procurement as a whole;
-on the number of elected and dismissed judges and jurors, as well as the personnel situation in the judiciary,
- on the number of initiated and completed disciplinary procedures,
- on the material and financial situation in the judiciary,
- assessment of the collaboration and court relations with other juridical bodies and legislation and executive bodies,</td><td>- assessment of the judiciary situation regarding elemental human right and freedoms protection, and
- data on deciding upon petitions and proposals of citizens regarding the work of judges and courts.
The Report contains assessment of the judges' work in Republic of Macedonia in terms of the quality and diligence of their work, as well as other issues regarding the attainment of judiciary independence and autonomy.
The records system of courts does not contain
-number of received cases,
- number of resolved cases (dismissed, rejected and accepted appeals),
- number of unresolved cases,
- number of cases for which an administrative dispute has been initiated (rejected and accepted cases), and
-statistical analysis on the legal protection processes.</td></tr>
<tr><td colspan="2">Contains data on the number of accepted, rejected and dismissed lawsuits
Contains no data on cases returned for repeated processing
Contains total number of initiated administrative disputes</td></tr>
<tr><td>What are the expected results?</td><td>Through establishing a single records system, the following shall be provided:
Data regarding the areas in which the number of initiated procedures is the highest and data regarding the areas in which the level of initiation of the procedure is very low. This shall initiate a discussion on the reason of the high i.e., low level of procedure initiation; These data exist in the reports of some of the relevant institutions, but they do not correlate to the courts' reports;
Data regarding the harmonization of the operation of the commissions which decide upon in an administrative procedure and the operation of the courts (the percentage of equal approach in the application of laws); These data shall enable analysis of potential impacts of any kind on decisions at all instances of the procedure;
Through these data and in correlation to the estimated procedure initiation administrative fees, there shall be a greater possibility for analysing the impact of the administrative fees on the interest and opportunity of individuals to continue the procedures;</td></tr>
</table>

MEASURE TITLE	**4. An expansion of possibilities of "electronic mailbox" or development of a unique information environment for submitting legal remedies (protests, complaints) in the administrative procedure connected with ACMIS;** - it does not require legislation modifications, however, it does have high budget implications; High degree of complexity for production and distribution to all public authorities;
What type of problem does it solve and how?	In the direction of compliance with and operationalization of the Law on General Administrative Procedure (Official Gazette of Republic of Macedonia no. 124/2015) Article 17, paragraph 2, Article 37 "The communication between the public authorities and the parties can be performed electronically, and the communication of the public authorities shall be performed "exclusively" in an electronic form"; Article 28 "Conducting the procedure through one public authority"; Article 29 "electronic legal assistance", as well as total compliance with the Law on Electronic Management (Official Gazette of Republic of Macedonia no. 105/2009) and pursuant measure 2) of this document, the creation of an unique information environment through which all parties of the administrative procedure shall exercise their rights in the electronic communication with a public authority – and in cases when the communication is carried out in writing, the public authority would record the request in the information environment, Aims to provide harmonized and comprehensive information system through which all public authorities would communicate with the parties. The records system shall track the whole procedure of each case and for each case there shall be electronic data bank containing records that is evidence used in determining the actual situation and the decision-making. This information environment shall provide quick transfer of a whole case to competent second instance body in case of a submitted complaint against specific act, and in cases of final acts, the information environment shall be connected to ACMIS and the concept of "electronic mailbox" in the Administrative Courts, and it shall ensure quick transfer of all records to the competent court in case of an initiated administrative dispute.
What is the reason or the root of the problem?	The record delivery problem is not recent, the State Commission for Decisions in Administrative Procedures and Procedures for Employment in Second Instance and the State Public Procurement Appeals Commission, as well as other second instance bodies which decide upon in separate administrative procedure in second instance, are all faced with this problem. This problem is more severe for the Administrative Courts which sometimes lose more time waiting the second instance or the first instance bodies to submit the necessary records of a certain issue than they do on actually deciding the case.
What are the expected results?	The development of a such unique information environment for submitting requests, protests and complaints, which will be connected to ACMIS and shall provide access of the Administrative Courts to whole records for each case, shall shorten the delivery time and shall provide higher degree of quality and content assurance of materials because once attached to the system, the possibility of their corruption would be reduced or altogether prevented.

MEASURE TITLE	**5. Strengthening the human capacities in the administrative/juridical service in the Commissions and the Administrative Court through mobility (taking over)** - complementary measure of the unique records system development; - no budget implications – since it can be realized through mobility (taking over) of administrative officials from the state and public administration in the juridical service of the Administrative Court/Higher Administrative Court;
What type of problem does it solve and how?	The review of the operation of the second instance commissions and the Administrative Courts revealed positive influence clearance rate on the number of employees (members of commissions, judges), and administrative/juridical officials. Namely, the commission members and the administrative judges rely on the expert service in their work. By strengthening the capacities, the efficacy and the quality of the decision shall be improved in all above stated institutions. In second instance commissions, in accordance with the specialization principle, the more bases, that is, areas, the better the presence of expert assistants or counsellors, specifically hired for the task. The specialization shall contribute for a higher quality of the work since there is enough time for these officials to be introduced in detail with the provisions of the departments, so they can provide more expert assistance to the members of the commissions. One disadvantage of the specialization is that it limits the horizontal mobility, that is, when changing an area, a certain time shall be required for the official to familiarize with the new matter. Regarding the Administrative Court, following the example of the civil, i.e., criminal courts, each judge is entitled to one juridical official who shall assist in the case processing.
What is the reason or the root of the problem?	The commissions of second instance rely on the administrative service at the moment. The internal systematization is designed to respond to the objective inflow of cases with the human capacities available. This creates challenges because the employees may be overwhelmed with certain type of cases which is not consistent throughout the year. On the other side, there is continuous flow of cases in the same volume. The skilfulness of the organization itself and the goodwill of the competent authorities (the Assembly) in determining the necessary number of employees if the exact number of cases cannot be envisaged throughout the year. The goal is to avoid overemployment as well as to avoid lack of employees which will overwhelm the current employees on a manner that might negatively reflect on the quality of their work. For that purpose, the Commission indicated the need for increase of the number of employees in the past period.. In the Administrative Court, a number of councils have one juridical official who shall assist 3 or more judges. In such conditions, the judges are pressured to completely process a case by themselves – form checking the orderliness to typing of the verdicts, and often even the dispatch of the cases. The Administrative Court has found serious lack of personnel both in the archive and in the juridical service. Some cases have been noted, where due to lack of personnel, the officials and the judges have worked during weekends and overtime.
What are the expected results?	Higher quality of work of the second instance commissions and Administrative Courts reduced workload of administrative work for judges and increased efficacy. The increased number of administrative officials may be with higher education degree, but also with a high school degree for logistics activities. The larger number of employees shall leave room for commissions and courts to have at their disposal personnel that would provide more time to legally ignorant parties to specify the appeals or lawsuits, as well as in removing unintentional, and apparent omissions in complaints or lawsuits. If the required personnel are obtained by mobility through taking over employees from other public institutions, this measure might be realized without budget implications.

MEASURE TITLE	**6. Quarterly, semi-annual and annual conference of public institutions - providers of administrative and legal protection** - complementary measure of 1), 2) and 3), but may provide positive effect without 3)
What type of problem does it solve and how?	A large portion of the issues noted in this report, as well future issues can be determined and potentially surpassed if the institutions, providing administrative and legal protection, establish active and regular collaboration. The improvement of their mutual communication may contribute to the early detection of administrative barriers, communication obstacles, improving the trust between the institutions, acceleration of procedures, such as forming a great number of communication proposal-measures in the future which the "profession" would jointly propose in order to surpass all the established omissions. It is necessary for the representatives of all institutions to be involved in the administrative and legal protection and to be actively engaged in the preparation of all strategic acts and action plans regarding the administrative and legal protection. Throughout these activities, it is crucial for the relevant institutions to build and have common points of view.
What is the reason or the root of the problem?	From the conducted interviews, within the scope of this research, an impression is obtained that the institutions have very little or no communication at all. This situation contributes to the feeling of distrust – that is, a wrongful impression that the second instance commission and the Administrative Court are "opposite" institutions, which is certainly not the case. Although formally and legally, these are institutions with different status, one institution consists of managing bodies, whereas the other institution consists of courts, which means completely independent bodies, however, the two types of institutions share a common aim to provide assessment of the legality of the acts of public authorities which decide in administrative procedure, and, by doing so, provide protection of the rights of the citizen and legal entities.
What are the expected results?	The strengthening of the mutual collaboration may simultaneously speed up the record delivery procedures (especially until measure 3 does not revive or until it is developed and implemented). The active collaboration of institutions shall establish a platform for early detection of administrative barriers, legal obstacles which individually or systematically concerns all institutions, for the need of professional training of employees for specific topics, and which simultaneously shall be forum for exchanging experiences and good practices. This type of active collaboration offers an opportunity for the "professionals" to consensually act as a policy maker for the future improvement of the administrative and legal protection system.