

# Review of Administrative Justice in the Republic of Kosovo

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## Abstract

The present paper aims to provide a real view of adjudication of administrative cases in Kosovo. The issue of adjudication of administrative cases in the Republic of Kosovo remains a challenge following justice reforms which began in 2013 and are still on-going.

Kosovo as a new country faces difficulties in professionalization of public administration and this is closely related to large number of case that are subject of judicial review which is not a case with other countries which have longer experience in public administration.

In this context, more attention has been paid to review of administrative acts and issues with special focus on judicial review, following with legal remedies, administration silence as cause of judicial review. The paper also contains information about administrative justice in Kosovo before and 2013, and its current state. New court structure brought with New Law on Courts which entered into force in 2013 affected administrative justice substantially. In the previous system, Kosovo Supreme Court was the only instance handling administrative disputes. In this regard, the issue of effective legal remedies was not in place as required by international standards. However, new court structure brought significant changes regarding legal remedies in administrative justice by setting up three court instances; Administrative departments within Prishtina Basic Court and Appellate Court as well as Supreme Court extraordinary legal remedies review.

**Keywords:** Administrative justice; Administrative review; judicial review; Administrative act; administrative bodies; administrative conflicts

## Introduction

Knowing the fact that Kosovo is a new country and judicial system in general is on transformation process, it is of crucial to provide an academic view of administrative justice as an integral part of Kosovo justice system. Elaboration of justice reforms followed by new court structures brought many changes in administrative justice system.

In order to have a better understanding of the administrative justice and effects brought with with new court system, the paper is divided in two main parts; part one covers general assessment on administrative justice, including administrative and judicial review. Part two deals with reasons of judicial review of administrative acts and legal remedies, including silence of administration as a reason of administrative acts' review. In this part, a general assessment of Administrative justice in Kosovo before 2013 and after has been made including some assessment on challenges of administrative justice in Kosovo and current state.

In the conclusion, there are some arguments regarding the handling of administrative cases in Kosovo which have resulted from research that I have conducted for the present paper. Moreover, in the conclusion, I have tried to provide some arguments which might be seen as instructions related to how administrative justice may function better.

The methodology used in the present paper is based on analysis, interviews and legal reviews of different acts such as: consulting scientist literature on the administrative law field, conducting interviews with judges who handle administrative cases before Prishtina Basic Court.

### **General assessment on administrative justice**

In order to describe the Kosovo legal framework on adjudication of administrative cases, first, it is important to provide shortly an answer on the following question. What is the subject matter of an administrative judicial review? The answer would be simple, administrative disagreements<sup>1</sup> or disputes between natural persons and administrative bodies in all levels. An administrative dispute may exist only when one of the parties belongs to administrative bodies.

Principally, administrative justice is a kind of control over administration, in particular a control over an individual and special administrative act. This is one of the most important forms of functionality of the field of administrative activity. Initially, this was manifested in the beginning of the XIX century, built under the slogan of the need to protect objective legality and subjective rights of citizens.<sup>2</sup> Academic Esat Stavileci addresses three forms or experiences which prescribe administrative justice.

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<sup>1</sup> In our country, the phrase 'administrative disagreement' might be referred as "administrative dispute", too.

<sup>2</sup> Academic Esat Stavileci, Administrative justice – opportunities and advantages, *Paper presented at scientific conference hosted by University "Marin Barlet", Tirana, 04/02/2011. Available at: <http://www.esat.stavileci.com/index.php/artikujt/122-gjyqesia-administrative-mundesite-dhe-perparesite>*

On the ground of said forms, the concept of resolutions of administrative disputes through three different systems has been created, such as:

- Administrative justice through administrative bodies;
- Administrative justice through regular courts; and
- Administrative justice through administrative specialized courts.

Administrative justice through administrative bodies did not show positive results; it appeared that administration controls itself. Again, from the perspective of academic Esat Stavileci, this kind of administrative justice was seen as “judge on his/her case”, thus the issue of impartiality and objectivity came into question. Hereupon, the best ways of organizing administrative justice remain regular courts and special administrative courts.

Because of the United Kingdom the Anglo-Saxon legal system recognizes the second way of organizing administrative justice, the one through regular courts, whereas the French system recognizes administrative justice through specialized courts because of its basis in France and it is closely related to resolution of administrative disputes through special administrative courts.<sup>3</sup>

An administrative dispute has its characteristics, just as other judicial disputes have. In an administrative dispute a party might be: claimant, respondent and interested party. As a principle, the claimant is a party who claims that his/her rights or interests set by law have been violated by a specific act; the respondent party is the body who has rendered the administrative act and has decided on the administrative procedure over the administrative contested issue.<sup>4</sup> Initially, a natural person who submits a claim against a state body has to prove that an act, action or inaction of such body has damaged his or her rights and interests set by law.

### **Adjudication of administrative cases in Kosovo and importance of the control of administration's work**

Judicial control consists of faith in a special body which should be independent from political power and administration, and eventually should solve administrative disputes caused by administrative bodies. This is the Court.<sup>5</sup> Judicial control of the work of administration is especially important, given the fact that, through this form of control, the principle of legality is provided and protected and arbitrary administration is eliminated. Therefore through the judicial (court) control, administration or the

<sup>3</sup> Academic Esat Stavileci, Administrative justice – opportunities and advantages, *Paper presented at scientific conference hosted by University “Marin Barlet”, Tirana, 04/02/2011. Available at: <http://www.esat.stavileci.com/index.php/artikujt/122-gjyqesia-administrative-mundesite-dhe-perparesite>*

<sup>4</sup> Academic Esat Stavileci, *Introduction to administrative science*, Prishtina, 1997, pg.179-180.

<sup>5</sup> Esat Stavileci, Agur Sokoli, Mirlinda Batalli, *Administrative Law, the control of administration's work and its political responsibility, Computerisation of administration* Prishtina, 2010, pg.139

administrative activity is put under the control of justice (court) as a body independent and neutral from the administration and political power. The purpose of this is avoiding arbitrary administration as this is how the principle of legality of public administration acts in general is provided. In the Republic of Kosovo, the legal framework for judicial solution of administrative issues is regulated by the law on administrative conflicts. Nevertheless it is worth mentioning that the ground for judicial solution for administrative issues in our country starts with the Constitution of the Republic of Kosovo.<sup>6</sup> Article 32 of the Constitution of the Republic of Kosovo states that: “each person has the right to legal remedies against the judicial and administrative decisions that violate his/her rights or interests in the way as determined by the law”.<sup>7</sup> From this constitutional provision, administrative and judicial review is regulated by the Law on Administrative Procedure, whereas the judicial review of administrative issues is regulated by the Law for Administrative Conflicts.

The right to an effective remedy is granted in the European Convention on Human Rights and Fundamental Freedoms (ECHR), as stipulated in Article 13 “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity”.<sup>8</sup> In compliance with the International Convention, respectively in compliance with the right to an effective remedy, Constitution of Kosovo, Article 54 on [Judicial Protection of Rights] stipulates “Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated”.<sup>9</sup>

From this constitutional provision, we understand that, if a person has used all regular legal remedies in an administrative review, then he or she may proceed further with judicial review or may open an administrative conflict. Also from this constitutional provision we understand that a citizen of the Republic of Kosovo has the right not to agree with the decisions of first instance issued by an administrative body, and has the right to disagree with the decisions of the first instance of judicial bodies, namely to use legal remedies allowed for appealing administrative and judicial decision at the second instance. Of course, it must first be found that there have been violations of rights during the first instance reviews, either by administrative bodies or during judicial review. The Constitution of the Republic of Kosovo, Article 31 gives additional assurance to the citizens of the country by clarifying the right to a fair and impartial trial: “Everyone shall be guaranteed equal protection of

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<sup>6</sup> Ibid, pg.140

<sup>7</sup> Constitution of the Republic of Kosovo, 15 June 2008, article 32.

<sup>8</sup> European Convention on Human Rights and Fundamental Freedoms (ECHR), amended with its protocol no. 11 associated with annex protocols no. 4, 6 and 7, article 13

<sup>9</sup> Constitution of the Republic of Kosovo, 15 June 2008, article 54.

rights in the proceedings before courts, other state authorities and holders of public powers.<sup>10</sup>

Based on the constitutional provisions, we may conclude that our country is built as a state that protects and promotes human rights and fundamental freedoms. In the meantime, citizens of the Republic of Kosovo enjoy legal certainty with regard to potential violation of abovementioned rights and freedoms by public authorities. Furthermore, the Constitution of the Republic of Kosovo has foreseen the establishment of administrative oversight model by setting broad legal protections over administrative activity.

### **Administrative review**

As in any other “country”, in the Republic of Kosovo, administrative review is regulated by the Law on Administrative Procedure (LAP). The organization and the overall content of LAP in Kosovo has emphasized resemblance with the provisions of laws regulating this issue in several European countries, including “the German codified tradition of *Verwaltungsverfahrensgesetz* (25 May 1976) Portuguese *Código do Procedimento Administrativo* (Decreto-Lei no. 442/91), and *Régimen Jurídico de las Administraciones Públicas y de Procedimiento Administrativo Común* spanjoll (*Ley* 30/1992, 26 November)”.<sup>11</sup> As in most of the European countries, the general administrative procedure foreseen in General Law on Administrative Procedure, consists of five phases, including: initiation (creation of administrative case), preliminary verification of facts (preliminary procedure); investigation (verification of evidence in administrative cases), examination of parties (filing of verbal or written complaints/appeals) and final decision.

Because of the frame of the present paper, I will elaborate section IX of Law on Administrative Procedure only, which deals with administrative legal remedies. Article 126 paragraph one states the following “Natural and legal persons are entitled to request revocation, abolishment or modification of administrative act in compliance with the rules for administrative appeal set out under this Law”.<sup>12</sup> Referring to the same article of the said law, paragraph two, we may say that the entitlement referred to in paragraph 1 of the present article may be exercised through a request for redress or review submitted to the person responsible for the act and through appeal sent to higher bodies.

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<sup>10</sup> *Ibid*, article 31

<sup>11</sup> SIGMA, Good Administration through a Better System of Administrative Procedures, A SIGMA assessment of the current Law on Administrative Procedures and proposals for enhancing the administrative practice in Kosovo by a better regulatory framework for the relationship between citizens and the public administration, October, 2012, pg. 30.

<sup>12</sup> Law No. 02/L-28 on Administrative Procedure (LAP), promulgated with UNMIK no. 2006/33, date 13 May 2006, entered into force on 13 November 2006.

The Law on Administrative Procedure recognises two forms of administrative appeals: request for review and appeal.<sup>13</sup> When an appeal is filed through request for review, it should be submitted to the responsible body which has brought the act, or to the body that has refused to bring the act upon parties' request. Whereas when a request is submitted through appeal, it should be submitted to the higher body.<sup>14</sup> Every interested party may appeal against an administrative act or against an illegal refusal to issue an administrative act.<sup>15</sup> Administrative law theory states that administrative appeal stays the execution of the administrative act, but this is not the case with judicial appeal or review. This is regulated by article 128 paragraph one of the Law on Administrative Procedure. Then, article 128 paragraph 2 regulates cases when an administrative appeal does not stay execution of the administrative act. The enforcement of an administrative act shall not be cancelled in the following cases:

- when the administrative act refers to collection of fees, taxes or other budgetary incomes;
- when the administrative act relates to police action;
- when its cancellation is prohibited by law;
- when the immediate implementation is in the interest of public order, public health or any other public interest.<sup>16</sup> Herewith, the complainant shall have the right to be notified for the reasons for non-cancellation of the act in writing.<sup>17</sup>

The Law on Administrative Procedure provides details about cases when the administrative body may not accept the appeal. Appeals against administrative acts or appeals against non-issuance of such acts may not be accepted by the competent administrative bodies in the following cases: when appeal is not allowed<sup>18</sup>; when legal timeframes have been missed; when appealed administrative act is being considered as legal and regular *prima facie* from the body which reviews it, and when appeal is submitted by unauthorised persons.<sup>19</sup> It is important to mention that the Law on Administrative Procedure prescribes the legal terms that should be met for appeal and administrative review. Administrative appeal may be brought within thirty days from the day when party has learnt about administrative act or refusal of such act. In case when administrative act has not been brought (because of administration's silence)

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<sup>13</sup> Ibid, art. 127.

<sup>14</sup> Ibid, art. 129.1 and 129.2

<sup>15</sup> Ibid, art. 127.2

<sup>16</sup> Ibid, article 128.2

<sup>17</sup> Law No. 02/L-28 on Administrative Procedure (LAP), promulgated with UNMIK no. 2006/33 date 13 May 2006, entered into force on 13 November 2006, article 128.3.

<sup>18</sup> Administrative acts which cannot be subject of an appeal are the following: a) administrative acts of regulatory character; b) administrative acts regulating the internal organization of the public administration bodies; c) administrative acts issued by the public administration bodies within private transactions, to which the public administration is a party.

<sup>19</sup> Law No. 02/L-28 on Administrative Procedure (LAP), promulgated with UNMIK no. 2006/33 date 13 May 2006, entered into force on 13 November 2006, article 134

administrative appeal may be brought within a sixty day period, from the day when party has filed request for initiation administrative procedure.<sup>20</sup> The administration body is obliged to review administrative appeal and bring a decision within thirty days from the day when appeal has been received. If the administration body misses said deadline and fails to bring a decision on appeal or brings a decision which is not in the party's favour, then in such legal situation parties may start administrative dispute or judicial review which will be explained below.

In 2007, the OSCE reported about deficiencies of the Law on Administrative Procedure of the Republic of Kosovo which entered into force in 2005. This law was almost the same as the old law from the former Yugoslavian system. The aim of a new law is to have a new procedure not to substitute the old one.<sup>21</sup> The fact that new law does not provide any provision which states that the old law is no longer in force creates an unclear situation for administrative bodies and courts over which provision should be applied. Also, the Law on Administrative Procedure approved by Kosovo Assembly in 2005, lacks standard provisions that should be used in law, i.e. it has many technical details which principally should be set by sublegal acts. Furthermore, this law does not foresee extraordinary legal remedies in administrative procedure which is in contradiction with European Convention of Human Rights.<sup>22</sup> Citizens' human rights and freedoms should have a principal place in administrative procedure of a democratic country. Such procedures should serve citizens' needs and focus on 'state authority concept', and these should be within current constitutional and legal framework. The right of good governance is one of the citizens' key rights. Herewith, these are key principles of European administrative law.<sup>23</sup>

## Judicial review

Juridical control of administrative actions is one of the main preconditions of democracy and rule of law. The lack of balance that exists between the authorities of public administration and individuals should be controlled in an effective manner in order to restore the rights of the citizens that could have been violated by an administrative authority.

It is exactly the juridical control of administrative actions that guarantees that the state submits to the rule of law. The general rules of procedure are pre-conditions for an effective juridical control. They are comprised of standards based on which the legality of a decision is evaluated.

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<sup>20</sup> Ibid, article 130

<sup>21</sup> The Organization for Security and Cooperation in Europe - OSCE, Mission in Kosovo, "The first report on administrative justice in Kosovo" April 2007 page 8

<sup>22</sup> Regarding regular and extraordinary legal remedies in administrative procedure, see decision of ECtHR dated 18 December 1996, *Aksoy vs. Turkey*.

<sup>23</sup> Paul Craig, *EU Administrative Law*, Volume XVI/1, Oxford University Press, 2006. pg. 496.



The procedural rules play a crucial role in effective juridical control. They comprise of the standards according to which the legality of a decision is appraised. The procedural rules assist the deliberation process by clarifying the legal timeframes, equal treatment and jurisprudential coherence.<sup>24</sup>

According to Academic Esat Stavileci, France is considered to be the cradle of administrative justice. Academic Stavileci says: “the French juridical practice has created the first forms of administrative jurisprudence including the administrative conflict as well (Le contentieux administrative)”. In the beginning of the 19<sup>th</sup> century, resolution of administrative conflicts between public administration and citizens was entrusted to the special councils and to the State Council (Conseil d’Etat). In this way, France served as a “model” and “example” for administrative justice, and later on the same path was followed by other countries in Europe.<sup>25</sup> It is worth mentioning that until year 2013, the system of administrative justice in Kosovo was regulated according to two traditions: one based on traditional law and one based on civil law. Until this year, no court was specialized in administrative cases because cases of administrative conflict were deliberated upon by a special chamber within the Supreme Court of the Republic of Kosovo, which was dedicated to administrative cases. With only the Supreme Court competent to decide on administrative disputes, the possibility of raising an appeal was limited. It was possible to only submit a request for an extraordinary review of the decisions of the Supreme Court in administrative cases, and such a request had to be based upon a possible violation of the law, which would be decided upon by a trial panel of five judges. However, “having these appeal being decided upon by the same court which had rendered the initial decision (even if it were to be through a different collegiums) it raises the issue whether the appeal is effective or impartial”.<sup>26</sup>

### **Reasons for judicial review of administrative acts - judicial appeal**

Judicial appeal of an administrative act becomes the object of juridical jurisdiction when the interested parties have consumed their rights to administrative appeal before administrative bodies out of courts.<sup>27</sup> The Department for Administrative issues within the Basic Court of Prishtina is the first instance court for juridical review of administrative acts. The object of juridical elaboration is the claim through which the interested party requests the removal from power, or the changing of an administrative

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<sup>24</sup> SIGMA, the good administration through a better system of administrative procedures, the evaluation of SIGMA of the actual Law on Administrative Procedure and the proposals for the advancement of the administrative practice in Kosovo through a better regulatory framework in the relations between the citizens and of the public administration, October, 2012 pg. 11

<sup>25</sup> Esat Stavileci “Administrative Justice - possibilities and advantages “ a publication presented in the scientific conference organized by the “Marin Barleti “ University in Tirana on 04.04.2011, available at: <http://www.esat.stavileci.com/index.php/artikujt/122-gjyqesia-administrative-mundesite-dhe-perparesite>.

<sup>26</sup> The Organization for Security and Cooperation in Europe - OSCE, Mission in Kosovo, “The first report on administrative justice in Kosovo” April 2007 page 11.

<sup>27</sup> Esat Stavileci, Mirlinda Bata;ji, Sokol Sadushi “The Administrative Law – organization and Administrative Activities “ Prishtina, 2012, pg. 244.



act that is considered to be invalid or illegal, or the objection to the rendering of an administrative act, or furthermore, when such a request is left unelaborated within the legally foreseen timeframe by the competent administrative body. Therefore, the court deliberates not only on the validity of the act but also on the legality of a non-action of administrative bodies in order to timely respond to the subject for the requests that they represent.

It is a general rule that all individual acts or the organs that carry out administrative work, and the individual acts that smaller enterprises render, as well as the institutions and other organizations in the completion of their public functions, must be based on the law by all means (the principle of legality). This principle is applicable in all of the laws in France, though which the area on procedure is regulated, thereby being also foreseen in the administrative procedure. Therefore, an administrative act rendered in accordance to these principles, regardless of whether it is of a formal or material nature is considered as a legal administrative act. However, stemming from these principles and efforts, it may also happen that the bodies and other subjects for the completion of public authorizations may render administrative acts that are not in accordance with the law, yet through which they decide upon rights, obligations or juridical interests of individuals, juridical bodies and other parties in the administrative process.<sup>28</sup>

Therefore, as mentioned above, a party who, subject to an administrative procedure considers that the final administrative act violates the law whether in a procedural or material aspect, this can be a cause to send the administrative act for juridical review. Therefore, in cases of conflict between an individual or a juridical person from one side and the organ of administration on the other one, this conflict will be heard by the competent court, in our case the competent body for such a deliberation of the Administrative Department of the Basic Court in Prishtina.

### **Administrative silence as a reason of judicial review of administrative acts**

Administrative conflict in the Republic of Kosovo might be initiated in three ways. These forms are also recognised by Law on Administrative Conflicts. *First*, "An administrative conflict can start only against the administrative act issued in the administrative procedure of the court of appeals".<sup>29</sup> *Second*, "An administrative conflict can start also against the administrative act of the first instance, against which in the administrative procedure, complain is not allowed".<sup>30</sup> *Third*, "An administrative conflict can also start

<sup>28</sup> Bajram Pollozhani, Ermir Dobjani, Esat Stavileci, Lazim Salihu, "Comparative aspects of administrative law" Skopje 2010, page 437.

<sup>29</sup> Law on Administrative Conflicts, Official Gazette of the Republic of Kosovo, Year V/No.82/21, October, 2010, article 13.1

<sup>30</sup> Ibid, article 13.2

when a competent body has not issued the relevant administrative act according to the request or complain of the party, under the conditions”.<sup>31</sup>

I will pay more attention to the third part, as this covers the issue of administrative silence which is a cause of judicial review of an administrative act. Article 29 of the Law on Administrative Conflicts provides the conditions and situations under which administrative conflict may be initiated because of administrative silence. Furthermore, the said article provides the following: “If the court of first instance, against which act the appeal can be made, has not issued any decision based on the request within sixty (60) days or a shorter foreseen time-line with special provisions, the party has the right to address by the request to the court of appeals [...]”.<sup>32</sup> But, if the court of appeals has not issued the decision within thirty (30) days or a shorter time-line determined with special provisions concerning the appeal of the party against the decision of the first instance court, or if it does not issue the decision further within seven (7) days with a repeated request, the party may start the administrative conflict as if the appeal has been refused.<sup>33</sup> The same conditions apply when, despite the party’s request, the decision by the court of first instance has not been issued, against which act an appeal cannot be made.<sup>34</sup>

In order to use this form of administrative conflict in our country (initiation of administrative conflict), parties should use all administrative remedies and pay attention to deadlines which are very strict. Administrative conflict stemming from administrative silence may be initiated against both first instance and second instance of administrative bodies. Due to administrative silence, an administrative conflict against the first instance administrative body may be initiated only if the act is not subject to appeal. This conflict may be initiated if a party has filed a request before an administrative body which has not issued any decision upon parties’ request within thirty days. This also includes a repeated request made by the party in order to remind the administrative body of its duty to bring a decision, but again administrative body has failed to render a decision. In such cases, the party has all the same rights as if his/her appeal was refused. Regarding administrative conflict due to administrative silence, the rules elaborated above apply *mutatis mutandis* for bodies of second instance. Again, article 29 of the Law on Administrative Conflicts paragraph one states that “[...] If the court of appeals has not issued the decision within thirty (30) days or a shorter time-line determined with special provisions concerning the appeal of the party against the decision of the first instance court, whereas if it does not issue the

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<sup>31</sup> Ibid, article 14

<sup>32</sup> Ibid, article. 29 point 3

<sup>33</sup> Ibid, article. 29 point 1

<sup>34</sup> Ibid, article. 29 point 2

decision further within seven (7) days with a repetitious request, the party may start the administrative conflict as if the appeal has been refused".<sup>35</sup>

### **Administrative Justice in Kosovo before and after 2008**

Judicial review of administrative cases has been slightly/marginally/somewhat improved with the new Law on Courts which entered into force in the beginning 2013. Until 2013, the Supreme Court of Kosovo used to be the single body dealing with administrative disputes. There were temptations to slightly improve the legal and institutional framework of administrative justice in Kosovo with the coming into force of the new Law on Courts, but again this issue has remained almost the same without any significant improvement. Even after 2013, judicial review of administrative cases is under the competencies of Kosovo regular courts.

Currently, the Administrative Matters Department of the Basic Court of Prishtina is the only body which has competence to handle administrative cases for entire territory of the Republic of Kosovo.<sup>36</sup> The Administrative Matters Department of the Basic Court adjudicates and decides on administrative conflicts according to complaints against final administrative acts and other issues defined by Law.<sup>37</sup> All cases brought before Administrative Matters Department of the Basic Court shall be adjudicated by one (1) professional judge. This acts as a first instance court. According to our court system, the Court of Appeals is a body of second instance which decides on all appeals submitted against decisions or judgments of first instance Basic Courts. As in Basic Courts, the Court of Appeal has an Administrative Matters Department which has the authority to decide on appeals filed against decisions/judgments brought by the Administrative Matters Department of the Basic Court of Prishtina. We have also the Kosovo Supreme Court as the highest instance court which has the authority to decide on extraordinary legal remedies filed against final decisions or judgments of Kosovo courts, as foreseen by Law.

Notwithstanding the new court system in Kosovo, again the establishment of an administrative court has failed. Specialises administrative courts, separate from regular courts, exist in almost all European countries. However, we cannot ignore the fact that new court system has brought positive changes in the judicial system in comparison with the former system in place prior to 2013. As we know, before 2013, the only body responsible to hear administrative disputes was the Supreme Court of Kosovo, while now we have three instance courts levels: Basic Courts, the Court of Appeals, and the Supreme Court as the highest instance to decide on requests for extraordinary legal remedies filed against final decisions.

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<sup>35</sup> Law on Administrative Conflicts of the Republic of Kosovo, No. 03/ L-202, Article 29.1.

<sup>36</sup> Law on Courts of the Republic of Kosovo, No. 03/L-199. Article 14.

<sup>37</sup> Ibid, Article 14.1.

## Challenges of administrative justice in Kosovo – Current situation

Based on the interviews conducted with judges who handle administrative cases within the Administrative Matters Department within the Basic Court of Prishtina, we may conclude that the current state still suffers from deficiencies even after judicial reforms introduced a new court system in the beginning of 2013. Pursuant to the new Law on Courts, the Administrative Matters Department within the Basic Court of Prishtina has competence for the entire territory of Kosovo, but until September 2013, only three judges were appointed to this department. Initially, due to huge backlog of cases, 800 administrative conflict cases were assigned for adjudication, respectively 266 cases for each judge. In addition to this, each judge continues to receive 60 new cases per month. So, based on this, it appears that each judge working in this department has to deal with 800 cases, which is a huge number indeed.

According to the information received through interviews with judges of the Administrative Matters Department at Basic Court of Prishtina it is been found that most of the respondent parties in administrative conflicts are ministries and executive agencies, for example the Regulative Authority on Electronic and Postal Communication (ART), Energy Regulatory Office (ERO), Kosovo Intelligence Agency (KIA), etc. It is worth mentioning that in all administrative conflict cases when judge decides in the claimant's favour, the judge brings the case back to the administrative body for re-examination. This means that practically in Kosovo exists only conflict legality of administrative act but not fully conflict jurisdiction when court may decide over an administrative issue (*in meritis*) without bringing the case back to administrative bodies all. Regarding judgments of first instance courts which are subject of appeals, I have received information that, of around 35 judgments rendered by a single judge, approximately ten of them are subject of an appeal.<sup>38</sup>

Regarding administrative conflict cases brought before the court because of administration silence (when the administrative body fails to decide on party's request), it has been found that cases of such nature are much rarer compared to cases when the administrative body has brought a decision over parties' requests. Out of 60 cases, only one claim was submitted because of administration silence. This demonstrates that the responsibility of public administration in Kosovo is on the right track, as it meets deadlines and procedures set by law, regardless of the fact whether the decision goes in the parties' favour or not.

As a conclusion, we may say that administrative justice in Kosovo is still below the required standards because of the low number of judges and huge backlog cases. There is a huge discrepancy between pending cases, which are around 800, plus those received approximately 60 cases per month, and the number of judges in Administrative

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<sup>38</sup> Interview conducted in September 2013.

Matters Department. Additionally, the number of claims for administrative conflicts is increasing day by day, and this is a challenge in itself.

## Conclusions

From what has been explicated, analysed and compared above, it may be concluded that the current situation is not very satisfactory in terms of judicial solutions to administrative issues in the Republic of Kosovo. This is based on greater expectations regarding the recently made reforms of the judicial system, in terms of solutions to administrative issues and lack of judges working on resolving these issues.

The Department for Administrative Matters within Basic Court of Pristina operates with only three competent judges to resolve in the first instance administrative conflict cases for the entire territory of Kosovo, where a judge of this department has about 800 pending cases, increasing each month by around 60 new cases.

I think all these problems are being faced because, even though the judicial reform started in early 2013, the Republic of Kosovo has failed to establish an Administrative Court as a specialised court, separated from regular courts, which would deal only with administrative matters, as in almost all European countries.

Finally, I can say that Kosovo should have the administrative court because as such, it would be specialized and focused solely on this area of administrative justice'.

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