EFFICIENCY OF THE SECOND INSTANCE ADMINISTRATIVE COMMISSIONS AND THE ADMINISTRATIVE COURTS IN THE REPUBLIC OF NORTH MACEDONIA

Iskra Akimovska Maletic[1]
Dragan Gocevski[2]

Abstract:

The authors aim is to evaluate the direct and indirect determinants of efficiency of the system for administrative legal protection in the Republic of North Macedonia. For this purpose, the paper will analyze the legal and institutional framework of administrative authorities i.e. the second instance administrative commissions that act on the appeal against the decisions of the first instance administrative bodies, as well as the legal and institutional framework of the Administrative and Higher Administrative Court that provide administrative-judicial protection against administrative acts. The paper assesses internal efficiency determinants for three second instance state commissions that provide legal protection in administrative procedure in the country, independently, as well as the two administrative courts: staff (administrative staff, number of elected members of second instance commissions, number of judges), number of newly formed cases, number of resolved cases and number of unresolved cases at the end of a year.

The analysis is static panel study, in which the authors use a fixed effect model, according to the Housman Specification Test, to test the working hypothesis: institutional efficiency obtained via adequate human resources and internal workload allocation (independent variables) contribute to overall systemic efficiency (all institutions that decide on legal remedies in administrative cases).

Institution specific characteristics, such as: determined deadlines or quotas impact institutional efficiency and quality differently (intervening variables). The potential impact of institutions specific characteristics is tested via independent sample t-tests, looking for significant differences between the two types of institutions.

Research questions give answer how much internal efficiency determinants explain the dependent variables i.e. clearance rates, and what possible factors affect productiveness besides staff, such as: interinstitutional communication, material resources and changes in legislation.

The research uses a mixed method approach. Quantitative data is obtained from official reports by state institutions and desk research. Qualitative data is obtained through interviews with officials, judges and staff. Indicators for efficiency are the dependent variables: length of proceedings (disposition time), clearance rate, and number of pending cases.

Keywords:
Administrative legal protection, clearance rate, efficiency, public sector, second instance administrative commissions, administrative courts, North Macedonia

[1] Iskra Akimovska Maletic, is a Full professor of administrative law at the St. Kliment Ohridski University, Faculty of Security in Skopje, Republic of North Macedonia;
[2] Dragan Gocevski is an Associate Professor of administrative law and public administration at the Iustinianus Primus Faculty of Law, Ss. Cyril and Methodius University in Skopje, Republic of North Macedonia;

1. Introduction

Authorities conducting administrative procedures, decision makers on administrative matters are obligated to secure successful and quality provision of civil rights, legal interests and duties before the state to all parties in i.e. citizens and businesses. Understanding efficiency as a specific reflex of the principle of legality, legal protection against infringement on the former is considered violation of the latter. This means that parties in administrative procedures and administrative dispute are provided right of objection, appeal and law-suit when their rights are violated as a resulted of administrative inefficiency in the same capacity and legal format provided in any other administrative process. Efficiency is considered by many a prime principle of government operation, very much like the principle of effectiveness. Efficiency is a measure of how much each unit of input (every effect, result of any service) costs (expressed in invested time, manpower and other resources), while effectiveness is a measure of quality of such outputs, i.e. how well the desired effect is achieved.

Generally speaking, efficiency may be perceived as a true (real) effect of productiveness achieved by execution of specific tasks, assessed by whether intended goals were met or not, or whether the expected output from an administrative process is the one desired in the moment the process was initiated. In this more generalized context, efficiency may include quality, effectiveness, expediency and speed (economics) of administrative work.[3]

This paper presents the results of observed and measured efficiency indicators for the institutions providing legal protection in administrative proceedings in the Republic of North Macedonia,[4] individually per institution as well as aggregated in a panel, observed and measured as a single system for provision of administrative legal protection. The research' goal was to determine direct and indirect predictors of efficiency in the system for administrative legal protection in North Macedonia.

The population or total number of units of observation comprising the system for administrative legal protection in North Macedonia are seven public institutions, five of which are subject of this research. The time period of observation for selected institutions was the entirety of their existence, since they were established until the end of 2017. Three of these institutions are independent state bodies: State Commission for Decision Making in Second Instance in Administrative Procedures and Labor Disputes, the State Commission for Decision Making in Second Instance Inspection Oversight and State Commission for Appeals in Public Procurements. The other two are courts: Administrative Court Skopje and Higher Administrative Court. This research does not cover the following ministerial commissions: the Commission for Appeals in the Ministry of Labor and Social Policy and the Commission for Appeals in the Ministry of Healthcare.

2. Theoretical Framework

Nashold and Otter argued in 1996 that government policy must take greater account of economic criteria of efficiency and effectiveness. The use of social resources must be continuously subject to the requirement that they be employed efficiently and effectively, implying both a rise in intra-administrative efficiency and also an economic calculation of alternative uses and modes of application.[5]

Finding a common unit of measurement [however] or as Koprich (2011) formulated it a 'common meter' poses a methodological challenge when comparing and determining commonalities in administrative systems of different countries.[6] The same challenges stand when attempting to compare and measure different aspects of

[3] П. Димитријевиќ, *Управно право*, *Општи део*, Ниш, 2017, 325;
[4] Further in the text North Macedonia;
[5] Frieder Nashold, Casten von Otter "*Public Sector transformation, Rethinking Markets and Hierarchies in Government",* Dialogues on Work and Innovation. ed. Hans Van Beinum, Center for Working Life Research and Development, Halmstad University, John Benjamins Publishing Company), 1996, 62;
[6] I. Koprić, „Europski upravni prostor – različiti pristupi, slični ishodi", *Зборник на правниот факултет „Јустинијан Први" Скопје Објавени излагања од Меѓународната научна конференција „Развојни тенденции во управното законодавство" 24-26 јуни 2011*, Скопје, 2011, 10;

operation between institutions within the same country. Though differences between administrative systems indisputably exist, still certain common traits of internal organization and thus factors that affect productiveness i.e. predictors of it can be found and subjected to the same working principles.

Let us take the study by Gomes, Guaimaraes and Akutsu from 2016. when they measured the effect that employees have on productiveness of courts in Brazil. Despite evident variation in the internal workings between courts from country to country stemming from institutional idiosyncrasies, traits of the political systems and contemporary political context in the state, even in very similar judicial systems the authors justified studying the effects of staff on the productiveness of courts. Their research answers how (if at all) one can influence judicial productiveness by employing or dismissing staff.[7] The category 'staff' in their study included the entire labor force involved in judicial proceedings comprising judges and administrative servants. This approach is inclined to the general theory of productiveness assuming that efficient allocation of labor and capital in an organization has positive effects on the organization's productiveness.[8]

Technical solutions for comparison of different judicial systems are present in the practice of the European Commission' EU Judicial Scoreboard, as well the CEPEJ publication by the Council of Europe. Both utilize the same efficiency indicators: clearance rate, disposition time and backlog.[9] All three are accepted as applicable efficiency indicators regardless of specifics and internal organization of judicial system. From this position we established the assumption that as long the nature of productive process isn't significantly different between two or more organizations (any organization), their productiveness i.e. efficiency can be measured using the same set of indicators. In this studies sample, state bodies providing appellative protection in administrative procedures and the administrative courts providing legal protection in administrative disputes essentially perform a similar/near identical task which is overseeing the legality of an individual administrative act being contested before it. The act being contested is one made by an administrative authority deciding on civil rights and duties. Thus, we argue their performance may be measuring utilizing a same set of indicators on the sample as hole as well by status, hence forming two comparable groups. Statistically significant differences in the productivity of each group (if any exist) may be ascribed to the specifics of internal organization, as well as external factors such as the legal framework conditioning each group of institutions to different regime of operating. State bodies are in essence administrative organizations and as such subjected to general administrative procedure, characterized by prescribed (fixed) deadlines. Administrative courts do not have an explicit deadline in which they must process a case and reach a verdict (with exception to cases related to elections, misdemeanor or other urgent cases), however judges are given a monthly quota expressed in a number of minimum cases each judge must resolve in every month. Other external factors of productivity specific to each institution, which are not quantitively described in this study but were noted during interviews by staff working in the observed institutions include: working conditions, the quality of intra-institutional communications, do institutions deliver cases between them-selves quickly and without errors in documentation, ICT and other equipment at their disposal etc.[10]

The working hypothesis (H) is that institutional efficiency (dependent variables Y_1, Y_2, $_Y3$ per individual institution) achieved through adequate allocation of labor and resources affects systemic efficiency (regression coefficient for each Y in a multivariate linear regression, of X1 and X2 explain a larger variance in the value of Y, i.e. is greater than 0.5, and probability that beta coefficients for X1 and X2 are chance results is low enough, i.e. $p<0.05$).

A null Hypothesis would be that institutional efficiency cannot be explained in meaningful and significant way by the independent variables, nor can the systemic efficiency be explained in a meaningful and significant way by X1 and X2 of each institution, per year and placed in a panel regression (expected R^2 for X1 and X2 is below .05, or the probability that beta coefficients for X1 and X2 are chance results is too high, i.e. $p>0.05$).

---

[7] A. O. Gomes, T. A Guaimaraes, L. Akutsu, „Relationship between Judicial Staff and Court Perormance (Brazil)", (*International Journal of Court Administration, Vol 8, No 1) 2016*, 12;

[8] OECD, Defining and Measuring Productivity, available at: https://www.oecd.org/sdd/productivity-stats/40526851.pdf [accessed 22.11.2018]

[9] The 2018 EU Justice Scoreboard, European Commission, 2018 Luxembourg, 10-16; available at: https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2018_en.pdf;

[10] D. Gocevski, *Управно-правна заштита на граѓаните и вработените во јавна администрација*, Извештај за работата на второстепените комисии и управните судови, Центар за управување со промени, published in the frame of the project "Monitoring Administrative Justice", supported by the UK Government, Skopje, 2017, 45, 47, 50, 69, 73 [available at: http://www.cup.org.mk/publications/Zastita-na-gragjanite_MAK_za%20pechat.pdf];

The adequacy of internal allocation of staff and resources is explained by the amount of work per institution, per number of staff, for each observed year (explanatory variables). Other factors such as the level of ICT utilization, quality of inter-institutional communication channels have an intervening effect acting as moderators of systemic efficiency (Intervening variables) and thus explain some of the value (or variance in values) of performance indicators (Y1, Y2, Y3).[11]

Research questions set are:

Rq1: Do the independent variables in this research affect institutional efficiency equally and in a consistent manner regardless of the type of institution?

Rq2: Does the presence of prescribed deadlines or quotas per employee affect institutional efficiency differently?

Independent (X) and explanatory (e) variables:

X1, number of decision makers: judges in courts, members of commissions

X2, number of administrative servants

e1, number of administrative servants per decision maker

e2, number of newly formed cases

e3, backlog (stock of unresolved cases) at the end of the previous year

e4, number of cases solved in the current year

e5, unresolved cases at the end of the current year

e6, total number of cases in the current year

e7, workload per decision maker

e8, workload per administrative servant

Moderator (Int) and dependent (Y) variables

Y1 Clearance rate (e4/e2) [selected variable in testing]

Y2 Disposition time (e5/e4*365) [not tested]

Y3 Backlog (e5/population of RNM *100) [not tested]

Int – qualitatively obtained information, not present in the quantitative analysis: working conditions, quality of interinstitutional communication, regularity of delivered documents from one institution to another) etc.

X1, X2 ➔e ➔ Int ➔ Y

Hypothesis diagram

3. Overview of Observed Population

3.1 State Commission for Appeals in Public Procurements

[11] More on institutional productivity, with similar variables: Gomes at all, 2016, Lindsay and McQuaid 2008; Quist 2016;

State Commission for Appeals in Public Procurements was established 2007 and began operating in 2008 as an independent state body. The same status applies to the two other commissions observed in this study. The Commission is composed of a president and four members elected by the national assembly to a five year mandate. It is competent to decide on appeals in public procurement procedures, against administrative decisions to awarded public procurement contracts, concessions and public private partnership. Public procurement procedures are considered a special-type of administrative procedures. Legal protection is provided in all phases of the process, from publication of the call for bids to the award of contract.[12]

The commission is obligated with a prescribed deadline to decide within 15 days of forming a case, by decision in the form of an 'individual administrative act'.[13] Said decision is considered final but not conclusive, meaning that a dissatisfied party no longer has any legal remedies in administrative procedure but is however permitted to initiate an administrative dispute, before an administrative court of first instance. The courts verdict can then be appealed before the Higher Administrative Court. Administrative disputes are considered judicial proceedings, and when deciding on public procurement cases proceedings are considered urgent.

3.2 State Commission for Decision Making in Second Instance Administrative Procedure and Labor Disputes

The State Commission for Decision Making in Second Instance Administrative Procedure and Labor Disputes[14] is an independent state body. Its composition includes a president and ten members elected and dissolved by the national assembly, upon nomination by the Committee for Elections and Appointments to a five year mandate. The competence of this commission extends to deciding on appeals against first instance administrative decisions made by ministries, other state bodies of administration, organizations with public competencies and other bodies of state; and deciding on appeals against decisions made in labor disputes between public institutions as employers and their employees with the status of public sector employees [except employees with the status of administrative servants, who realize this right before another body of state, the Agency for Administration]; deciding on appeals against reward abolishment acts by the Ministry of Interior; and deciding on appeals against first instance decisions by the Securities Commission.

Regarding labor disputes, the competence of this commission extends to appellative protection of employment rights to public service providers, persons with special authorization and logistical staff in large variety of public institutions: Ministry of Internal Affairs (uniformed and civilian personnel), the Army, prison police, public healthcare institutions etc. The only administrative servants that protect their employment rights before this body are those employed in the Agency for Administration, which is in fact competent to provide appellative protection to all other administrative servants.

The full administrative competencies of this commission are derived from over 150 laws governing special administrative procedures: pension and invalid insurance, education, culture, transport and connections, legalizing infrastructure and buildings [unlawfully constructed], privatizing construction land etc.[15] Before the

---

[12]Before this Commission was established, dissatisfied parties in public procurement procedures known as economic operators, could contest the decision to elect a most favorable by appealing to a second instance commission formed within the Government of the state, see: D. Gocevski, *Управно-правна заштита на граѓаните и вработените во јавна администрација*, Извештај за работата на второстепените комисии и управните судови, Центар за управување со промени, published in the frame of the project "Monitoring Administrative Justice", supported by the UK Government, Skopje, 2017, 25;

[13]Art. 224 para. 6 Law on Public Procurements (Official Gazette of RM no. 136/2007, 130/2008, 97/2010, 53/2011, 185/2011);

[14] State Commission was established with the Law on Establishment of the State Commission for Decision Making in Second Instance Administrative Procedure and Labor Disputes (Official Gazette of RM no. 51/11, 148/13, 41/14, 130/14, 53/2016 and 11/2018), See.: И. А. Малетиќ, П. Димитријевиќ, *Управно право*, Универзитет Св. Климент Охридски – Битола, Факултет за безбедност – Скопје, 2015, 493, 494;

[15]From 2014 to 2015 it was competent to decide in second instance procedures of inspection oversight;

commission was established, this competence was vested in various appellative commission within the Government of the state.[16]

This commission is obligated with a prescribed general deadline, to decide within two months of receiving an appeal, unless otherwise mandated by a special law to decide within a shorter deadline. When deciding upon an appeal against brought against a decision once nullified in a previous proceeding, the commission is obligated to decide in full competence i.e. merit and resolve the case in full. The administrative decisions [considered second instance] by this commission are considered final but not conclusive and may be contested in administrative dispute before an Administrative court of first instance. Decisions the commission makes in labor disputes may be contested before a civil labor court.

3.3 State Commission for Decision Making in Second Instance Inspection Oversight and Misdemeanors

The State Commission for Decision Making in Second Instance Inspection Oversight and Misdemeanors was established in 2015,[17] as an independent state body. Its composition includes a president and six members elected and dissolved by the national assembly for a mandate of five years.

This commissions' competencies extend to deciding on appeals against administrative decisions made in first instance inspection oversight; and on appeals against administrative decisions on misdemeanors made by [first instance] misdemeanor authorities. It has a prescribed deadline to decide within two months of receiving an appeal. Just as the previous commission (see 3.2) when deciding on an appeal brought against a decision, once nullified in a previous proceeding it must resolve the case in full merit. The commissions' decisions are considered [second instance administrative] final but not conclusive and may be contested in administrative dispute before an Administrative court of first instance, followed by the right of appeal before the Higher Administrative Court. The plaintiffs lawsuit does not postpone enforcement of the commissions' decision.[18]

3.4 Administrative Court and Higher Administrative Court

Administrative dispute was introduced in North Macedonia by a constitutional amendment (XXV) in 2005, providing that judicial power in the country be exercised by courts, that are independent and autonomous. The constitution [base text] did not however prescribe the variety of courts, their types, scope of competence, internal organization and procedures for operation. These issues were left to be determined by a organic law. Constitutional guarantees for legal protection were further operationalized by the Law on General Administrative Procedure, several sectoral laws and Law on Administrative Disputes.[19] The latter prescribes that administrative disputes be resolved before the Administrative Court, the Higher Administrative Court and the Supreme Court of [now North] Macedonia[20]. The Administrative Court is a court of first instance, deciding on lawsuits against final (non-conclusive) administrative decisions by state fonds, public enterprises, public institutions, organizations and communities with public competencies that sign administrative contracts, decisions by municipal mayors when deciding on administrative matters and signs administrative contracts.

---

[16] D. Gocevski, Ibid,30;

[17] Law on Establishment of the State Commission for Decision Making in Second Instance Inspection Oversight and Misdemeanors (Official Gazette of RM no. 130/2014, 53/2016 and 11/2018). Decisions of the Constitutional Court of RM: У. бр. 127/2014, September 30th, 2015. published in „Official Gazette of RM no. 183/2015 and У. бр. 63/2017 са 20. June 20th, 2018. published in „Official Gazette of RM no. 122/2018.

[18] Art. 9, point. 6 and point. 7 and Art. 11, Law on Establishment of the State Commission for Decision Making in Second Instance Inspection Oversight and Misdemeanors;

[19] G. S. Davkova and R. T. Deskoska, „Dilemmas and challenges of legal protection against administrative actions in the Republic of Macedonia" in: *Zoltan Szente , Konrad Lachmayer, The principle of effective legal protection in administrative law: a European comparison, Informa Law from Routledge*, Abington, Oxon, 2017, 220;

[20] Law on Administrative Disputes (Official Gazette of RM no. 62/2006 and 150/2010);

The Higher Administrative Court is a second instance or appellative court, deciding upon appeals against verdicts made by the Administrative court in first instance. The Supreme Court has a special competence only for extraordinary legal instruments, against verdicts of the Higher Administrative Court.[21]

The number of judges in the administrative courts is determined by Judicial Council of North Macedonia. In first instance, administrative disputes are carried out by an individual judge or judicial council of three judges. Ordinarily, most cases are adjudicated in council. An individual judge resides over misdemeanor cases, which are sanctioned by fines lower than 5.00 euro, as well as misdemeanors for which do not include confiscation of items, prohibition of professional conduct and ban of working permission. The Higher Administrative Court resides in judicial councils of three judges.[22] Both courts are issued monthly quotas as minimal required number of resolved cases per judge for one month, by the Judicial Council. Between 2008 and 2016 the monthly quota for a judge in the Administrative Court ranged from 30 do 43 case, while the quota for judges in the Higher Administrative Court varied around 22 cases per month.[23]

4. Methodology

This research was performed using a mixed method approach, by accessing to and processing quantitative and qualitative data sources.[24]

The obtained quantitative data was recorded as interval data consisting of both integers and floating points (continuous data)[25] expressed as: number of employees, number of cases and derived efficiency rates. The qualitative data was obtained from: statements recorded during interviews, analyzing documented data by the observed institutions (InDesk).[26]

A unit of observation in the research was the performance of each institution in one year (country-year observation), with the available staff and workload during that year, effectively representing a cross-sectional analysis for several years. All institutions were observed for the entirety of their existence, since they were established/began operation until the end of 2018. All units of observation, were monitored for the same parameters, throughout time thus combining longitudinal data with cross-sectional data into a time series data i.e. also known as a panel study.[27]

The effect of intervening variables, on the amount of influence employees have on institutional performance indicators was tested by grouping the observed institutions by status [courts and state commissions, as each is governed by a different legal regime while both in essence oversee the legality of administrative decisions], and looking for statistically significant differences in the performance indicators of the two groups.

Techniques used for quantitative data processing are fixed-effect panel data estimation (or multivariate linear 'panel' regression) [28] and a means comparison using an independent sample t-test.[29]

5. Results from statistical analysis

5.1 Fixed effects panel estimation results

[21] Art. 16 and Art. 17, Ibid;
[22] Art. 18, 18-а, 188-б, 18-в, 18-г, Ibid;
[23] D. Gocevski, Ibid, 45;
[24] M. Barakso, D. M. Sabet, B. Schaffner, *Understanding Political Science Research Methods The Challenge of Inference*, Routledge Taylor and Francis, New York and London 2014, 190;
[25] Ibid, 110;
[26] Ibid, 112;
[27] Ibid, 87-88;
[28] Maryan B., Sabet B S. Ibid, 171-172;
[29] D. S Moore, *The Basic Practice of Statistics* 2nd Ed., W. H. Freeman and Company,2000, 390, 401, 406;

Our units of analysis are the five institutions. Rather than to look at differences between the 5 institutions at a particular year, the fixed-effects panel data estimation looks at differences within these institutions over time. This way we also attempt to avoid risk of reverse causality in our inferences.[30] The number of observations may seem small for a panel regression analysis, however in this particular study they represent the entire population for a time series, encompassing both longitudinal and cross-sectional data, and not a sample size. Both panel results were tested for robustness to ensure consistent results in the inferred relationship between the independent variables (x1-decisionmakers and x2-servants) and the tested dependent variable (Y1-clearance rate) regardless of other factors or specifics of the model.[31]

A static panel fixed effect model of the clearance rate - presented in Table 6 (see appendix)- demonstrates that staff, both decision makers (x1, β=0.034, p=0.012) and servants (x2 β=0.007, p=0.002) in all five institutions are significant predictors of clearance rates (Y1) and the regression coefficient explain 65% (R^2 = 0.65) of the variance in clearance rates. The remaining 35% of the variance we deduce can be explained by other factors, not directly observable from our study, but confirmed by data obtained via interviews and at premise survey of premises.

We also use a dynamic panel data approach, which takes into account the influence of previous years to the performance and behavior of organizations. As presented in Table 7 (see appendix), the coefficient on the staff has higher statistical significance that decision makers (x1 β= 0.4, p=0.002) and servants (x2 β=0.009, p=0.001) are predictors of clearance rates (Y1). The independent variables in the model explain 72.5% (R^2=0.725) of variance in clearance rates, leaving less than 30% of the variance to be explained by other factors. We assume the remaining variance can be explained by the factors expressed by judges, commission members and administrative servants during interviews such as working conditions, the quality of intra-institutional communications, do institutions deliver cases between them-selves quickly and without errors in documentation, ICT and other equipment at their disposal but we cannot test the individual effect of each aforementioned factor, hence they cumulative represent a deduced value as an intervening variable.

What this means is that more staff will affect positively performance indicators but not by much, and not on long term. Other measures should be taken to improve intra institutional and interinstitutional communication.

When interpreting these results, one must take into account inherent risks every causal inference confronts in a large *N* study using cross-sectional data. We acknowledge two sources of potential endogeneity: possible reverse causality and omitted variable bias.[32] This study attempts to address the problem of the omitted variable bias by including as many possible external factors which may affect productivity, expressed as meaningful by judges, commission members and administrative servants employed in each of the observed institutions in the sample. We also try to avoid stepping into the reversed causal inference trap (as a separate source of endogeneity) by carefully formulating a hypothesis which explains whether the number of employees affects productiveness expressed by Y1-clearance rate, and how much of the variance in clearance rates are explained by the independent variables. Both diagrams show that x1 and x2 do explain a large share of clearance rates – we attribute the remaining share of variance in Y1 to other factors. We also do not reject a possible, and very probable explanation that faced with increasing workloads resulting with a decrease of productivity indicators institutions did in fact increase the number of staff thus acting reactively. But we do strongly support the claim that productivity is not necessarily increased only by employing new staff- but rather a meaningful degree of productivity can be achieved by improving working conditions, inter-institutional communication, digitalization of document management within and between institutions etc. We also support the claim that institutions adapt to their workload over time. In times of excess workloads they can increase working hours, or monthly quotas, while in periods of decreased workloads the decrease the amount of cases per available decision maker/team of civil servants or for judges they lower monthly quotas – thus they may exhibit similar clearance rates regardless of actual workload, even though they are spending more on salaries and (cumulatively) doing less. It is only in significant drops in clearance rates and increase in backlogs that one may support additional staffing.

---

[30] Maryan B., Sabet B S. Ibid, 171-172; Also, David S Moore, (2000) *The Basic Practice of Statistics* 2nd Ed., W. H. Freeman and Company;
[31] Maryan B., Sabet B S. Ibid, 161;
[32] Aleksandar Stojkov, *Current Account Deficits and Economic Growth, Evidence from the South Eeastern European Economices,* Iustinianus Primus Faculty of Law Skopje, Skopje, 2009, 72-75;

5.2 Means Comparison Between State Commissions and Administrative Courts Performance Indicators (independent sample t-tests)

Comparing mean values for select performance indicators for statistically significant differences (*p<.05, **p<.01)[33] between courts and state bodies that provide legal protection in administrative procedures in North Macedonia, we obtained results for six parameters in the observed institutions (Table 8, see appendix).

It is clear that courts have a larger volume of work compared to any one commission. This is a systemic consequence and has little to do with the commissions themselves. There is only one first instance administrative court and one second instance administrative court competent to reside over all administrative disputes. The Higher Administrative Court resides over all appeals against the first instance court' verdicts. Second instance decision making i.e. appellative protection in administrative procedures is functionally decentralized between three state bodies (the observed commissions) and two ministerial commissions (not observed in this study) so it's no wonder said bodies have a smaller volume of work individually. However, the visible differences in volume of work do not significantly affect productiveness, which is deduced from the fact that there is no significant difference in the clearance rates between the two groups of institutions. A proposed explanation for this is that all institutions after a period adapt to their workload and working conditions (in North Macedonia) to achieve a satisfactory [after a while similar between observed institutions] level of efficiency.

An expected discrepancy between disposition times is also evident for the two groups. Understandably, state bodies are subject to prescribed deadlines and they apparently do as the mean value for their disposition is close to the longest prescribed deadline of 60 days, because this deadline applies to a largest number of cases. Administrative courts resolve a case between 8 and 9 months. The volume of work per judge however is not significantly different from the number of cases per member of commission. The mean values for workloads per decision maker are visibly different between the two groups, however due to their large internal variance (the difference from the smallest workload per judge and the smallest workload per member of commission is too wide from their largest values) we derive that this mean number is circumstantial in both cases – a result obtained by chance, which may significantly change if the circumstances change even slightly.

It is evident that judges in administrative courts have fewer administrative servants at their disposal to aid in processing cases, a circumstance we consider meaningful because it inhibits judicial productivity, thus we predict that an increase in administrative staff directly assisting case processing will positively affect productivity more significantly than an increase in the number of judges.

Although administrative servants in commissions are encumbered by a lower workload per servant than court servants, we still deduce a similar conclusion. A higher number of administrative servants involved in case processing will affect the commissions productivity better [if internally allocated rationally] than an increase if the number of commission members. However, the impact increasing administrative staff in commission we expect to be smaller than an increase of court servants will have for judicial performance.

6. Conclusions

The preferred mechanism to tackle increasing workloads in the observed institutions obviously was increasing staff. As more cases were formed and/or residual cases from previous years accumulated, commissions and administrative courts hired more people (respectively). Having and understanding of the dynamics of administrative legal protection, we posit our ourselves that institutions do not have an influence to the amount of newly formed cases per year as they cannot predict how many dissatisfied parties will object to administrative decisions. Nor can the courts precisely anticipate how many law suits will be made against the second instance decisions made by the commissions covered by this study. They can only influence their internal processes and to a limited degree the communication they have with other institutions. Thus they can only find ways to adapt to a rise or drop in workloads, which since 2008 appears to be mostly by employment –

[33] If there is no star, differences are not considered statistically significant;

and to a lesser degree (but difficult to measure accurately) to internal optimizations. We thus infer that the institutions covered by this study employ as a reaction not as anticipatory action.

Employees (decision makers and staff) explain up to 72.5% of the variance in productivity in the observed population. Employing new staff will not necessarily improve productiveness, on the contrary it might bring it down and rise operating costs. Workloads per administrative servant is not proportional to the workload per decision maker. The same disproportion applies to internal allocation of labor in the observed commissions. A single case typically moves through two or more tiers of control meaning that it is processed in varies levels by two or more servants, in other words to ensure quality they allocate more manpower to (re)do the same cases, before finally it is adopted by the commission members.

Administrative courts also show the tendency to increase the number of judges with rising workloads. However, a rise in the number of staff doesn't appear to significantly follow an increase in clearance rates. Disposition times and backlog show a tendency to increase as number of staff increases. Complementing these tendencies to panel results we infer that when faced with higher workloads, courts hired more judges and servants until productiveness appeared to increase to meet the challenge.

All observed institutions exhibited reactive behavior when faced with increasing workloads rather than programmatic and anticipatory.

Administrative courts undisputedly have larger volumes of work than each commission, which is explained by their position and role in the states administrative system. Substantially, administrative courts are competent to provide legal protection for [virtually] all administrative cases, will commissions are functionally decentralized thus are competent provide legal protection in fewer sectors of administrative affairs. Even the commission deciding in second instance administrative procedure, with the broadest specter of competence deriving from over 150 laws still averages to half the workload of the Administrative Court [in first instance], though we must accept that in 2017 the commission also had half the staff compared to the court. Pressure affecting the working process in commissions comes from prescribed deadlines, thus even though faced with lower workloads commission employees are forced to resolve them in determined and significantly shorter time frames (15 to 60 days). Administrative judges on other hand are pressed to meet a monthly quota. Research however showed that regardless organizational format, internal or external factors, after some time (3-4 years) institutions balance out inputs and outputs achieving [with more or less success] efficiency. This is seen in positive productivity indicators which rise following the first few years of the institutions' establishment, and there is no significant difference in the performance indicators between courts and commissions. If we were to comment contemporary staffing conditions, tendencies could justify employing more administrative servants in the administrative court of first instance, however until a 1:1 ratio between judges and servants directly involved in case proceedings i.e. 28 judges and 28 servants, and only then allocating remaining administrative staff to other critical positions we predict administrative judges will rely more on personal capacities rather than on support by their administration to resolve cases. Thus it is difficult to with certainty predict the effect one more administrative servant may have on court productivity.

Improving external factors which explain almost 30% of the variance in clearance rates remain a general recommendation because they are to a large degree beyond the scope of influence by the institutions themselves. Such recommendations include fewer and less frequent changes to the legal framework, improving inter-institutional communication channels thus speeding up response times between them, digitizing document management etc. Possibly, one may recommend physically locating all five institutions within one building sharing a single archive.

In summary, we infer the independent variables affect productivity in the observed institutions regardless of their organizational format and specific legal regime. We cannot support that external factors affect commission productivity differently than they affect courts. Evident differences in operational practices and volume of work are nominal only, resulting from circumstance and are not related to the type of organization. Undisputedly, the number of employees affects productivity but is not the only affecting factor. Internal allocation of labor, internal procedures, quality of internal communication channels [proper management] as well as inter-institutional communications contribute to about a third of the productivity. We firmly claim that the arguments support the working hypothesis [the null hypothesis is unsupported] and adequate allocation of labor and workloads resulting in a degree of productivity of one institution, also affects overall systemic efficiency in the provision of legal protection in administrative affairs in North Macedonia.

Argument also support the assumption, that properly developed inter-institutional channels expediate exchange of documents and their quality, thus minimizing data loss, chance of errors and speeds up overall proceedings, hence enabling courts and commissions to execute their tasks in case resolution quicker and with more accuracy.

References:

1. Aleksandar Stojkov, *Current Account Deficits and Economic Growth, Evidence from the South Eeastern European Economices,* Iustinianus Primus Faculty of Law Skopje, Skopje 2009;
2. Frieder Nashold, Casten von Otter "*Public Sector transformation, Rethinking Markets and Hierarchies in Government",* Dialogues on Work and Innovation. ed. Hans Van Beinum, Center for Working Life Research and Development, Halmstad University, John Benjamins Publishing Company), 1996;
3. Gomes O. Adalmir, Guaimaraes A. Tomas, Akutsu Luis, „Relationship between Judicial Staff and Court Perormance (Brazil)", (*International Journal of Court Administration, Vol 8, No 1*) 2016;
4. Moore S David, (2000) *The Basic Practice of Statistics* 2nd Ed., W. H. Freeman and Company;
5. Lindsay Colin and McQuaid Roland „*InterAgency Cooperation - Experiences in three vanguard Active Welfare States"*, *Social Policy and Society*, 2008;
6. Quist Martin „Activation Reform and InterAgency Cooperation ", *(Social Policy and Administration Vol 50, No 1)* 2016;
7. Barakso Maryann, Sabet Daniel M., Schaffner Brian, *Understanding Political Science Research Methods The Challenge of Inference*, Routledge Taylor and Francis, New York and London, 2016;
8. Dragan Gocevski, *Управно-правна заштита на граѓаните и вработените во јавна администрација*, Извештај за работата на второстепените комисии и управните судови, Центар за управување со промени, published in the frame of the project "Monitoring Administrative Justice", supported by the UK Government, Skopje, 2017 [available at: http://www.cup.org.mk/publications/Zastita-na-gragjanite_MAK_za%20pechat.pdf];
9. Годишен извештај за работа на Државната комисија за жалби по јавни набавки, 2016;
10. Годишен извештај за работа на Државната комисија за жалби по јавни набавки, 20117;
11. Годишен извештај за работа на Државната комисија за одлучување во втор степен во управна постапка и работни спорви, 2017;
12. Годишен извештај за работа на Државната комисија за одлучување во втор степен за предмети од инспекциски надзор и прекршоци, 2017;
13. Годишен извештај за работа на Управниот суд Скопје, 2017;
14. Siljanovska – Davkova Gordana and Treneska – Deskoska Renata, „Dilemmas and challenges of legal protection against administrative actions in the Republic of Macedonia" in: *Zoltan Szente , Konrad Lachmayer, The principle of effective legal protection in administrative law : a European comparison, Informa Law from Routledge*, Abington, Oxon, 2017, 220 (доступно на: https://books.google.mk/books?id=2cvLDAAAQBAJ&pg=PA218&lpg=PA218&dq=administrative+protection+macedonia&source=bl&ots=SXY0gqTMGJ&sig=RcmIf4RxofAIEAhRRdozn1q6UJs&hl=en&sa=X&ved=2ahUKEwiq47zP8IDfAhVvAxAIHcY7Bvs4ChDoATAGegQICBAB#v=onepage&q=administrative%20protection%20macedonia&f=false);
15. Аќимовска Малетиќ Искра, Димитријевиќ Предраг, *Управно право*, Универзитет Св. Климент Охридски – Битола, Факултет за безбедност – Скопје, 2015;
16. Квартални податоци за работата на судовите, Судски совет на Република Македонија, 2017 (sud.mk)
17. The 2018 EU Justice Scoreboard, European Commission, 2018 Luxembourg, доступно на: https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2018_en.pdf ;
18. Van Evera Stephen, *Guide to Methods for Students of Political Science*, 1997;
19. Koprić Ivan, „Europski upravni prostor – različiti pristupi, slični ishodi", *Зборник на правниот факултет „Јустинијан Први" Скопје- Објавени излагања од Меѓународната научна конференција „Развојни тенденции во управното законодавство" 24-26 јуни 2011*,Скопље, 2011;
20. Димитријевиќ Предраг, Управно право, Општи део, Четврто издање, 2017, Ниш;
21. OECD, Defining and Measuring Productivity, available at: https://www.oecd.org/sdd/productivity-stats/40526851.pdf [accessed 22.11.2018]
22. Закон за јавни набавки („Службен весник на Република Македонија" број 136/2007, 130/2008, 97/2010, 53/2011, 185/2011);

23. Законом за основање на Државна комисија за одлучување во управна постапка и работни спорови во втор степен („Службен весник на Република Македонија“ број 51/11, 148/13 и 41/14, 130/14, 53/2016 и 11/2018);
24. Закон за основање на Државна комисије за одлучување во втор степен од областа на инспекцијскиот надзора и прекршочната постапка („Службен весник на Република Македонија“ бр. 130/2014, 53/2016 и 11/2018).
25. Одлука на Уставен суд на Републике Македоније: У. бр. 127/2014 од 30 септември 2015 година, објавена во „Службен весник на Република Македонија“ бр. 183/2015
26. Одлука на Уставен суд на Република Македонија: У. бр. 63/2017 од 20 јуни 2018 година, објавена во „Службен весник на Република Македонија“ бр. 122/2018;
27. Закон за управни споровима („Службен весник на Република Македонија“ бр. 62/2006 и 150/2010).

Appendix: Tables and Diagrams. All tables and diagrams were compiled by the authors.

Table 1. State Commission for Appeals in Public Procurements	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Members of the Commission	5	5	5	5	5	5	5	5	5	5
Administrative Servants	5	5	6	8	9	9	10	15	13	12
Cases from Previous year	0	48	48	48	24	24	28	16	16	17
Newly formed cases	530	1044	820	642	561	509	563	610	607	544
Total workload (total cases being processed)	530	1092	868	690	585	533	591	626	623	561
Solved	482	996	820	666	561	505	575	610	606	548
Unsolved	48	48	48	24	24	28	16	16	17	13
Disposition time	36.3	17.6	21.4	13.2	15.6	20.2	10.2	9.6	10.2	8.7
Clearance rate	0.9	1.0	1.00	1.04	1.00	0.99	1.02	1.00	1.00	1.01
Back log. Rate of unsolved cases per 100 out of the total population	0.0	0.0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Table 2. State Commission for Decision Making in Second Instance Administrative Procedures and Employment Disputes	2012	2013	2014	2015	2016	2017
Members of the Commission	7	7	11	11	11	11
Administrative Servants	22	25	49	53	48	65
Cases from Previous year		3539	3727	1763	1425	791
Newly formed cases	11472	7147	5427	4667	4883	3921
Total workload (total cases being processed)	11472	7264	8365	6064	5517	4756
Solved	8619	3725	4104	4171	4092	4408
Unsolved	2853	3422	1323	496	791	754
Disposition time	120.8	335.3	117.7	43.4	70.6	62.4
Clearance rate	0.75	0.52	0.76	0.89	0.84	1.12
Back log. Rate of unsolved cases per 100 out of the total population	0.14	0.17	0.07	0.02	0.04	0.04

Table 3. State Commission for Decision Making in Second Instance Inspection Oversight and Misdemeanor	2016	2017
Members of the Commission	7	7
Administrative Servants	27	31
Cases from Previous year	349	901
Newly formed cases	3589	3170
Total workload (total cases being processed)	3938	4071
Solved	3037	2903
Unsolved	901	1092
Disposition time	108.29	137.30
Clearance rate	0.85	0.92
Back log. Rate of unsolved cases per 100 out of the total population	0.04	0.05

Table 4. Administrative Court	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Judges	22	25	25	30	30	32	29	29	29	29
Court Servants	33	50	47	44	45	55	58	58	58	58
Cases from Previous year	5804	9154	10340	13866	15980	14228	12461	9786	9090	9156
Newly formed cases	8497	9043	9792	11768	14675	12754	13585	15011	13240	11306
Total workload (total cases being processed)	14301	18197	20132	25726	30591	26907	26138	25681	22978	20462
Solved	5147	7857	6322	9746	16363	14544	15395	15895	13888	12858
Unsolved	9154	10340	13810	15980	14228	12461	10743	10734	9786	7604
Disposition time	649.2	480.3	797.3	598.5	317.4	312.7	254.7	246.5	257.2	215.9
Clearance rate	0.61	0.87	0.65	0.83	1.12	1.14	1.13	1.06	1.05	1.14
Back log. Rate of unsolved cases per 100 out of the total population	0.45	0.51	0.68	0.79	0.70	0.62	0.53	0.53	0.48	0.38

Table 5. Higher Administrative Court	2011	2012	2013	2014	2015	2016	2017
Judges	14	12	11	11	11	13	12
Court Servants	10	11	13	14	13	13	13
Cases from Previous year	/	5	40	87	82	1095	990
Newly formed cases	55	1750	1982	3948	4349	4388	5452
Total workload (total cases being processed)	55	1755	2022	4035	4431	5483	6442
Solved	50	1715	1935	3953	3336	4492	5692
Unsolved	5	40	87	82	82	990	750
Disposition time	36.5	8.5	16.4	7.6	9.0	80.4	48.1
Clearance rate	0.91	0.98	0.98	1.00	0.77	1.02	1.04
Back log. Rate of unsolved cases per 100 out of the total population	0.00	0.00	0.00	0.00	0.00	0.05	0.04

Table 6. Fixed Effect Clearance Rate x1 x2

```
Fixed-effects (within) regression               Number of obs      =        35
Group variable: inst                            Number of groups   =         5

R-sq:  within  = 0.6564                         Obs per group: min =         2
       between = 0.0002                                        avg =       7.0
       overall = 0.0209                                        max =        10

                                                F(2,4)             =     25.73
corr(u_i, Xb)  = -0.9606                        Prob > F           =    0.0052

                                 (Std. Err. adjusted for 5 clusters in inst)
------------------------------------------------------------------------------
             |               Robust
   clearance |      Coef.   Std. Err.      t    P>|t|     [95% Conf. Interval]
-------------+----------------------------------------------------------------
          x1 |   .0342745   .0078256     4.38   0.012     .0125473    .0560018
          x2 |   .0077244   .0011176     6.91   0.002     .0046215    .0108274
       _cons |   .2404355   .1245583     1.93   0.126    -.1053939    .5862649
-------------+----------------------------------------------------------------
     sigma_u |  .42876152
     sigma_e |  .08863203
         rho |   .9590195   (fraction of variance due to u_i)
------------------------------------------------------------------------------
```

Table 7. Fixed effect clearance to x1 x2 clearance Lagged from previous

```
Fixed-effects (within) regression               Number of obs      =        30
Group variable: inst                            Number of groups   =         5

R-sq:  within  = 0.7250                         Obs per group: min =         1
       between = 0.0108                                        avg =       6.0
       overall = 0.0348                                        max =         9

                                                F(3,4)             =   2230.05
corr(u_i, Xb)  = -0.9744                        Prob > F           =    0.0000

                                 (Std. Err. adjusted for 5 clusters in inst)
------------------------------------------------------------------------------
             |               Robust
   clearance |      Coef.   Std. Err.      t    P>|t|     [95% Conf. Interval]
-------------+----------------------------------------------------------------
   clearance |
         L1. |   .1509775   .0710818     2.12   0.101    -.0463773    .3483323
             |
          x1 |   .0405308   .0057107     7.10   0.002     .0246754    .0563862
          x2 |   .0093946   .0010815     8.69   0.001     .0063919    .0123972
       _cons |  -.0457525   .0172508    -2.65   0.057    -.0936483    .0021433
-------------+----------------------------------------------------------------
     sigma_u |  .51683225
     sigma_e |  .07798796
         rho |  .97773729   (fraction of variance due to u_i)
------------------------------------------------------------------------------
```

Table 8: Means Comparison of Performance Indicators

	Courts	Commissions
Clearance Rate	0.96	0.92
Workload per decision maker	597.86	411.45
Disposition time	254.62**	65.37**
Average solved cases in one year	8187.53**	2301.56**
Number of servants per decision maker	1.49**	2,94**
Workload per servant	380.08**	135.42**

Table 9	Clearance Rate	
	Courts	*Commissions*
Mean	0.96	0.92
Variance	0.03	0.02
Observations	17.00	18.00
Hypothesized Mean Difference	0.00	
df	31.00	
t Stat	0.72	
P(T<=t) one-tail	0.24	
t Critical one-tail	1.70	
P(T<=t) two-tail	0.48	
t Critical two-tail	2.04	

Table 10	Disposition Time	
	Courts	*Commissions*
Mean	254.62	64.37
Variance	61958.97	6524.16
Observations	17.00	18.00
Hypothesized Mean Difference	0.00	
df	19.00	
t Stat	3.01	
P(T<=t) one-tail	0.00	
t Critical one-tail	1.73	
P(T<=t) two-tail	0.01	
t Critical two-tail	2.09	

Table 11	Workload per decision maker	
	Judges	*Members of Commissions*
Mean	597.86	411.45
Variance	89487.88	169514.20
Observations	17.00	18.00
Hypothesized Mean Difference	0.00	
df	31.00	
t Stat	1.54	
P(T<=t) one-tail	0.07	
t Critical one-tail	1.70	
P(T<=t) two-tail	0.13	
t Critical two-tail	2.04	

Table 12	Resolved Cases	
	Judges	*Commissions*
Mean	8187.53	2301.56
Variance	31045491.26	5009412.50
Observations	17.00	18.00
Hypothesized Mean Difference	0.00	
df	21.00	
t Stat	4.06	
P(T<=t) one-tail	0.00	
t Critical one-tail	1.72	
P(T<=t) two-tail	0.00	
t Critical two-tail	2.08	

Table 13	Number of servants per decision maker	
	Courts	*Commissions*
Mean	1.49	2.94
Variance	0.20	2.14
Observations	17.00	18.00
Hypothesized Mean Difference	0.00	
df	20.00	
t Stat	-4.01	
P(T<=t) one-tail	0.00	
t Critical one-tail	1.72	
P(T<=t) two-tail	0.00	
t Critical two-tail	2.09	

Table 14	Workload per administrative servant	
	Courts	*Commissions*
Mean	380.08	135.42
Variance	26345.54	13549.28
Observations	17.00	18.00
Hypothesized Mean Difference	0.00	
df	29.00	
t Stat	5.10	
P(T<=t) one-tail	0.00	
t Critical one-tail	1.70	
P(T<=t) two-tail	0.00	
t Critical two-tail	2.05	