

Assessment of the Administrative Justice System in Macedonia
The World Bank
Legal and Judicial Enforcement Project

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This report serves as an analytical overview of the present administrative justice system in the Republic of Macedonia, together with general recommendations as to how the system might be improved through a variety of legislative, policy, and regulatory changes as well as training and technical assistance initiatives. The report was undertaken at the request of the World Bank in connection with its preparation of a Legal and Judicial Enforcement Project that is scheduled for Board presentation later this year. A separate report will present specific design options for system improvement that may be supported by the Project and are consistent with its overall focus and resource constraints.

The authors' conclusions in this report are based on interviews with some three dozen individuals knowledgeable about the current administrative justice system in Macedonia, an examination of the current legal framework governing the system, and a number of translated background documents and reports on the functioning of the system, including limited statistics from the Supreme Court on administrative disputes and from the Government of Macedonia on administrative appeals. The authors also had the translated text of the recently passed constitutional amendments, two of which have a direct impact on the future operation of the administrative justice system. However, they did not have access to certain kinds of budget information or specific numbers and types of administrative disputes heard by the Supreme Court. They also were unable to meet with any individuals responsible for drafting a new minor offense law or the lead drafter of the proposed revised Administrative Disputes Law. Accordingly, the facts and conclusions contained in this report are necessarily constrained somewhat by these limitations. As more and better information of this kind becomes available, the authors will endeavor to modify their observations if necessary and incorporate new perspectives into the second report on project component design.

The report begins with a short overview of key institutional dimensions of the administrative justice system in Macedonia and background considerations relevant to system reform, and then assesses each of these dimensions separately in greater detail, together with general recommendations for improvement thereof.

I. Introduction

A sound system of administrative justice represents a vital element of democratic governance. It is also a cornerstone of so-called second-generation regulatory reforms

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whose purpose is to better align relationships between the state, market, and civil society in growing economies. The proper control of public administration consists not only of a sound civil service framework and legislative oversight, but empowerment of the public and courts to hold public officials accountable for their decision-making through the application of fair administrative procedural rules and the use of appropriate administrative appeals processes and judicial review. It also may embrace certain ombudsman and inspections institutions that provide another means by which the public can bring complaints of maladministration (e.g., arbitrary and/or delayed bureaucratic decision-making) to the attention of senior government authorities.

Key principles of administrative justice provide that citizens have rights granted by the constitution and specific laws, as well as the right to have decisions made according to certain procedures. These include citizens' right to be heard, to know the issues affecting their rights, to have access to relevant information, to receive reasons pertaining to a decision, and to have the opportunity to appeal a decision. These rights are usually found in administrative procedure and administrative disputes codes, which furnish coherent and consistent rules governing the taking of administrative decisions (especially where bureaucratic discretion is involved) and clear procedures for review and appeal of those decisions.

Given the power and informational advantages that the state possesses relative to the citizen, it is vital that administrative procedure and disputes codes afford the public significant procedural rights and permit decisions and appeals to be dealt with efficiently and swiftly. This rights-based approach to administrative justice requires transition countries to acknowledge that former legal relations should be reversed: whereas in the past, the state functioned as a public master, it must now play the role of an accountable and transparent public servant. Insofar as the administrative justice system affects the daily lives of thousands of citizens (in a way that criminal cases and civil disputes do not), it is often where the state's fidelity to the rule of law is (or is not) is most directly experienced by the average individual or business. A modern administrative justice system thus has an important bearing on citizens' perceptions of a country's ability to make credible commitments, which can significantly affect the overall business and regulatory climate.

Macedonia is currently in a position to reform significantly a number of key aspects of its administrative justice system. A revised Law on Administrative Procedure (LAP) was passed in May, 2005 and while it closely tracks its socialist-era predecessor whose written provisions were generally well-regarded as protective of individual rights, it is receiving significant scrutiny from the legal community during its inaugural year, both in terms of its content and the degree to which it is properly enforced. There may also be an opportunity to review and improve the work of the Ministry of Justice's Administrative Inspectorate, which is charged with monitoring the compliance of government bodies with the provisions of the LAP. Meanwhile, the system of administrative appeals, predominantly carried out through Government-appointed Second-Instance Administrative Procedure (Appeals) Commissions (Law on Government, Art. 23(2)), is widely viewed as inefficient and non-transparent, and is being considered for serious

reform or elimination, thanks in part to a just-passed Constitutional Amendment (XXI) that would permit the Government much greater flexibility to devise diverse appeals avenues and forums (including the possibility of direct court review) tailored to the different types of cases and agencies involved.

Finally, the current system of judicial review of administrative disputes—whereby appeals are sent to the Supreme Court as a single review instance—is due to be scrapped in favor of review by new specialized administrative courts or administrative divisions of the courts of general jurisdiction. At the same time, new laws on Administrative Disputes and Minor Offenses are presently being drafted that will respectively simplify court procedure for review of administrative disputes and dispense with the need for courts (as opposed to administrative agencies) to issue most kinds of minor offense orders. Together, administrative disputes and especially minor offense order applications have utterly swamped the courts.

The development of a far-ranging multi-year Judicial Reform Strategy by the Ministry of Justice in late 2004 designed to improve judicial independence and efficiency based on European legal standards, as well as the preparation by the World Bank of a Legal and Judicial Enforcement Project that envisions supporting a number of reforms to increase judicial effectiveness, together afford an opportunity for the Macedonian Government to advance several of the administrative justice system reform initiatives described above. In contemplating these possible reforms, the Macedonian Government should be guided by a number of important considerations, including the following:

- Conformity of legal changes with modern European legal principles and standards, particularly in light of the country's pending EU accession candidate status.
- Acknowledgement of the current and projected resources of the government and the economy, and the importance of structural and procedural simplicity and modest bureaucratic infrastructure in a transition state of this size that already features a large public sector requiring downsizing..
- Reliance on comparative empirical evidence, where available, of the effectiveness of certain legal and institutional models based on the experience of other European countries, especially comparably situated transition states in Central and Eastern Europe.
- Understanding of anticipated long-term dispute resolution capacity needs based not only on a current extrapolation of administrative disputes (due to enhanced protection of individual rights and growth of the market economy), but also the later likelihood of EU accession and an expected avalanche of EU administrative acts and directives.
- Particular attention to the need for structural and procedural transparency in a post-socialist environment where clientelistic relationships must be curbed as much as possible.
- Acknowledgment of the need for compatibility of proposed legal and institutional changes with the country's legal heritage and current economic and political needs—as filtered through the views and preferences of the administrative justice

system's diverse stakeholders, including businesses, public officials, individual citizens, judges, and nongovernmental organizations.

Perhaps the most important consideration for both the Government and the World Bank to keep in mind in weighing the relevant policy and legislative options is to view the administrative justice system as precisely that: an integrated *system*. This means recognizing not only that shifts of jurisdiction may improve efficiency in one institution while potentially worsening it in others (particularly if other assistance is not provided) but that a wide range of system *players* must all play their appropriate roles if reforms on the books are to be realized in practice. This may require significant technical assistance and training—particularly underutilized *cross-training*—to ensure that judges, administrative decisionmakers, practicing lawyers, and inspectors all have a reasonably shared understanding of procedural fundamentals and improved collective problem-solving capacity. It may also entail substantial public education efforts to enhance citizens' understanding of their rights and responsibilities and their overall confidence in the system.

II. The Law on Administrative Procedure and Administrative Decision-Making Generally

Administrative decision-making—the issuance of administrative acts or the making of omissions having administrative significance—is governed in Macedonia by the Law on Administrative Procedure (LAP) which was recently amended as of May 18, 2005 after nearly two decades of experience with its predecessor, which reportedly dated from 1986. According to a number of experts and practicing lawyers, the new law effects far less of a change than one might expect in terms of a shift toward modern European principles of administrative law or major changes to domestic administrative law tradition. Indeed, several interviewees said that the law was 95% or more identical to the predecessor and that the most significant changes were simply terminological—reflecting the demise of the Yugoslavian Federation and with it, its socialist phraseology—including, references to, for example 'communities' rather than 'municipalities.' Indeed, it was stated that the numbering of articles is only slightly changed, so that those who worked intimately with the older law are easily able to maintain their expertise with little additional study.

That being said, it should be acknowledged that the earlier law was in fact quite progressive by Central and East European standards since it borrowed heavily from pre-war Yugoslav administrative law jurisprudence which was itself highly influenced by Austrian thinking (Austria was the first country in the world to adopt a comprehensive administrative procedure code in the 1920s). Lawyers in the former Yugoslavia are quite fond of pointing to their various versions of the LAP, with some justification, as highly developed and protective of individual rights.

As discussed below, the new LAP is functional and contains most key protections of individual rights that are integral to a progressive and modern administrative justice system. What is missing is better compliance—with deadlines, with requirements for reasoned decision-making and thorough consideration of all of the evidence, and with

provisions mandating access to information about the citizen's case and about administrative procedure generally. These are matters that lie not within the realm of the law as written but of better enforcement, which ultimately rests with improved bureaucratic control and public sector management, more assiduous monitoring efforts by the Administrative Inspectorate (see below), the press, key NGO's, and the public, and more diligent judicial and legislative oversight.

Law on Administrative Procedure

The new LAP covers virtually every key procedural protection and fundamental principle of administrative justice, including the citizen's right to be treated on an equal basis with other citizens (Art. 6), to be heard (Art. 10) and present his or her case (Arts. 138-146), to obtain access to relevant case documentation held by the government (Art. 77), to have the agency receiving an application or hearing a case obtain documentation *ex officio* where it can be more readily accessed by that agency (Arts. 139-140), to obtain legal assistance (Art. 18)(although see comments below), to have an oral hearing in appropriate cases (Art. 152), to communicate in a minority language (in this case, Albanian) if necessary (Art. 61), to have a reasoned decision issued (Art. 212), to reopen a proceeding to present new facts and evidence if they were not able to be presented earlier (Arts 249-254), to have a right to appeal (Arts. 14, 226) with explicit instructions about how to file the same (Art. 213), and to have an impartial decisionmaker decide the case (Arts. 6, 40-45).

Decision-making procedures under the LAP are relatively clear. Cases must be decided by a first-instance authority within 30 days, unless an investigative procedure is necessary to inquire into factual circumstances, in which case a 60-day decision period is permitted (Art. 221(1)). If there is administrative inaction or silence, the citizen is entitled to an explanation within eight days, after which the administrative body can propose a new term for decision or instruct the citizen to appeal, unless he or she has already done so (Art. 221(2), (3)). The citizen has 15 days in which to appeal the administrative act or omission (Art. 230(1), and the first-instance body has 15 days in which to send the appeal on to the second-instance body for review (Art. 238). The second instance body can reject the appeal (if the decision is deemed correct on the merits and on material procedural grounds (Art. 240)), completely or partially revoke the decision, change the decision, or annul it (Arts. 241-244). The second-instance can also completely overturn the first-instance authority's decision on legal grounds and rule on the merits (Art. 243(1)), and in so doing it can decide on grounds more favorable to the citizen if it discerns such an opportunity (Art. 243(2)). The first instance authority has eight days in which to deliver the second-instance body's decision to the citizen (Art. 248).

Notably, if the second-instance body determines that the facts were incorrectly or incompletely determined or the procedure was incorrectly or carelessly conducted, it can, if it wishes, complete the procedure, eliminate the deficiencies, and resolve the case on the merits itself (Art. 242(1)). However, if the second instance authority determines "that the deficiencies from the first instance procedure can be eliminated faster and more efficiently by the first instance authority," it can revoke the latter's decision and remand

the case for a renewed procedure based on instructions, whereupon the first instance body has 30 days to issue a new decision (Art. 242(2)). Although it is useful to have this provision in the LAP, as discussed below, in practice it appears that it has been abused; second-instance authorities allegedly often avoid deciding otherwise ripe and worthy cases on appeal by claiming that the first-instance authority can decide a procedurally or factually deficient case more efficiently (no matter how trivially flawed the facts or procedure are, or no matter how much longer it might actually take the first instance authority to get the case file back and act on the case). This produces huge delays in justice for the Macedonian citizenry.

In general, changes to the original law in the LAP passed last year were exceedingly modest. Aside from the terminological changes noted above and a nod to most modern fundamental European principles of administrative justice in the first several articles, the most noteworthy changes seem to number just a handful:

- Notwithstanding the citizen's right to lodge an immediate appeal based on administrative silence after the time for decision has passed, the administrative authority has an eight-day period to explain the reasons for delay and set a new term, which could obviate the need for the appeal (Art. 221(2),(3)).
- In the same vein, a second instance authority that has received an appeal can ask that the first instance authority set a new term for deciding the case if for some reason the delay is deemed justifiable (if unjustified, the second instance authority can go on to decide the case)(Art. 246)).
- Service requirements were reportedly relaxed, making it easier to attest to proof of delivery of service by mail or announcement, or even if a person wasn't at a place of residence or refused service (see Arts. 84, 86, 87, 94, 96, 99).

In general, it appears that a significant opportunity was missed to improve upon the existing law. The drafting group considering the new law during the past few years was reportedly small and there was minimum discussion with key stakeholders and no public debate. The law also went into effect only eight days after passage in May of 2005, which is a very short time to acquaint major stakeholders or the public with its changes. At this time, several months later, there appear to be a number of provisions that ought to be reexamined going forward to improve the law and produce greater administrative efficiency and compliance. These include the following:

- **Definitions.** The law still appears to lack a comprehensive definition of 'administrative act' that complies with European standards and that embraces administrative inaction or omission (see Art. 2).³ It also does not address the specific question of minor offenses falling within the definition of an administrative act.
- **Principles.** The law seems to lack a clear enunciation of the key principle of proportionality.

³ *The Council of Europe Handbook: Principles of Administrative Law Concerning the Relations Between Administrative Authorities and Private Persons* (Strasbourg, 1996) has a detailed explanation of the definition at p. 8.

- **Damages.** The law is not clear about the basis on which the state may be liable for damages to a private citizen for particular harms. At a minimum, the *Council of Europe Handbook on Administrative Law* (p. 36) provides that damages for injury caused by an administrative act or omission (whether lawful or unlawful) must be guaranteed where such act or omission causes exceptional harm to a private person or group of private persons and it is manifestly unfair that such private persons alone suffer the adverse effects thereof.
- **Assistance to Parties.** The law is perhaps unintentionally restrictive in describing the assistance to be rendered to ‘unskilled parties’(Art. 18); in fact, the state has an obligation to provide all parties information about any factual and legal circumstances that can affect their rights and obligations within the administrative procedure. As the *Council of Europe Handbook on Administrative Law* notes (pp. 16-17), this obligation extends to explanations and guidance on how to initiate and participate in proceedings falling under the competence of an administrative authority.
- **Recusal.** In terms of ensuring an impartial decisionmaker, the recusal provisions (Arts. 40-45) should extend not only to individual officials, but to any administrative authority, as a body, that may have occasion to rule on a matter involving the interests of the head of the agency or senior officials thereof.
- **Burdens of Proof.** The law is vague about burdens of proof and should reference the fact that such burdens depend on the specialized substantive law at issue.
- **Administrative Silence: Second Chances.** The eight-day period within which a previously silent administrative body can seek to propose a new term is useful in terms of avoiding a potentially unnecessary appeal (Art. 221(2),(3)), but in the absence of any provision for determining justifiability, it would seem perverse to permit the body to set a new term as long as 60 days. There ought to be some basis for determining if the period of administrative silence was justified, and the new term should be limited to no more than 30 days unless special circumstances are demonstrated.
- **Administrative Silence Generally.** More generally, the law might benefit from giving private parties a procedural basis for mounting an appeal and seeking a penalty due to administrative silence itself. The law could, in other words, empower a court provide private parties with a separate appeal right and ability to seek fines (based on administrative silence at the first or second instance) in addition to the substantive appeal that was not acted on as a result of the silence.
- **Execution.** Due to huge problems with execution of administrative decisions, provisions authorizing the setting of special fines by courts ought to be considered for non-compliance or excessively delayed compliance with judgments. Although disciplinary actions and/or fines are included in the Law on Administrative Inspection and the draft Law on Administrative Disputes as a general matter, provisions for fines or recourse to minor offense proceedings or disciplinary actions ought also at a minimum to be cross-referenced in the LAP for specific egregious and/or repeated instances of failure by first-instance authorities to execute decisions when they are given clear instructions to do so.

Administrative Decision-making Generally

Given the limited time allotted for this assessment and the relatively small number of interviewees, it is difficult to generalize about problems with administrative decision-making generally and first-instance decision-making in particular across many different agencies and sectors. Still, interviews with a number of knowledgeable observers, including practicing lawyers, government officials, and NGO representatives suggested a number of common problems with decision-making procedures at present. In most cases, these problems are not unique to Macedonia and are common throughout transition countries and especially the countries of Southeastern Europe.

Among these common problems are the following:

- ***Violation of decision deadlines and administrative silence.*** It is widely acknowledged that decision deadlines are routinely missed by large numbers of agencies, and that this is attributable to large case backlogs, insufficient resources, lack of proper customer service mentality and training among bureaucrats, poor management and organizational practices, reluctance to take decisions that might upset powerful interests, and corruption. As to the last factor, several interviewees noted that it is fairly common in Macedonia for significant numbers of people to exert influence or pay ‘speed money’ through friends and relatives so as to move their cases to the head of the queue. This also takes place on a grander scale in some agencies through clientelistic politics. The effect is to preoccupy many officials with special favors, wreaking havoc with normal work routines and the handling of cases in roughly chronological order.
- ***Failure of authorities to use ex officio powers.*** Although officials are required to locate and supply official documentation where feasible from their own agency as well as from other agencies on an *ex officio* basis, in practice citizens are burdened by having to chase down all manner of official documents from a variety of agencies. Often, because the attitude of officials is so poor and they cannot be trusted to carry out their obligations, citizens actually prefer to locate the documents in question on their own in order to feel more secure about their situation.
- ***Failure of authorities to enable parties to furnish evidence and otherwise be heard.*** Officials frequently do not give citizens the notice or opportunity to furnish evidence that would assist their case and routinely deny citizens a chance to rebut a proposed decision on their application or appeal.
- ***Failure of authorities to provide legal and other assistance.*** Officials very frequently do not provide information to citizens about how administrative proceedings operate and what their rights are.
- ***Failure of first-instance decisionmakers to act upon the requests of the second-instance body.*** First-instance decisionmakers often do not adhere to the instructions of second-instance authorities – either in particular cases or systematically – in terms of collecting evidence and following procedure. This seems to happen more commonly in situations where the first-instance body is a separate administration under a Ministry and may have a certain degree of

autonomy or financial clout or both (e.g. in the case of many of the inspectorates), but it also may be a product of the lack of authority and prestige attached to the Government appeals commissions in ruling on decisions by disparate ministries over which they have no line supervisory responsibility (see below).

- ***Failure of the second instance authorities to rule on the merits.*** As noted above, second instance authorities, frequently burdened by large case backlogs and unwilling to make hard decisions that could offend a party or the government, find lots of ways to send cases back to the first instance for further proceedings and rid such cases from their docket despite having clear opportunities to decide such cases on the merits. While this can result in a truly disheartening merry-go-round for the citizen, there currently is virtually no cost to the second-instance authorities in sidestepping their responsibilities in this manner.
- ***Failure of the second instance authorities to provide clear guidance to the first-instance decisionmakers.*** When second-instance authorities do send cases back to the first-instance for any reason, their instructions are frequently intentionally or unintentionally vague (possibly because they are sometimes unfounded) and insufficient to provide clear guidance.
- ***Failure of administrative authorities to execute decisions.*** Even when delays are not an issue, or when decisions finally issue from the administration or the courts, administrative authorities do not act, sometimes due to poor organization and resources, and often for political reasons that are unchallenged by the courts, higher administrative authorities, or public opinion.

These problems, which resemble those of administrative non-compliance or impunity in many parts of the world, vary from agency to agency in their severity. For example, the State Revenue Service and Ministry of Finance are generally well-regarded and function in a reasonably efficient manner. By contrast, cadastre agencies are overwhelmed with their administrative caseloads and some are reportedly prey to significant influence-peddling.⁴ But these problems in general are the product of a complex web of legal, political, cultural, and social factors that are not easily overcome in a short period of time. Another potential problem, which we were not able to assess in any detail, is a lack of conformity of sectoral laws, regulations, internal guidelines, and practices with the requirements of the LAP. Reportedly, there are some contradictions (although substantial harmonization of sectoral laws and regulations with the LAP should not be a problem given the longevity of the predecessor LAP and the relatively minor changes effected by the new LAP, it is possible that there are significant conflicts, particularly based on the experience of other transition states in seeking to establish greater legality in their administrative justice systems during the past 15 years).

Ultimately, all of the following issues are relevant to the success of various reform efforts:

- Improved recruitment, training, and performance monitoring of civil servants involved in administrative decision-making based on their substantive

⁴ One of the Skopje cadastre offices has over 5,000 pending cases with only seven decisionmakers who try to resolve three or four cases per day.

knowledge, organizational skills, fidelity to public service principles and ethical standards, and a willingness of senior officials to impose discipline for poor performance and misconduct (including the initiation of actual disciplinary proceedings in appropriate cases of the latter);

- Better coordination and cross-training of personnel within and between government bodies and between judges and administrative decisionmakers to increase professional respect and understanding and generate shared views on certain issues;
- Changes to the laws on administrative procedure, administrative inspection, and administrative disputes, particularly those provisions that might permit easier imposition of fines and disciplinary proceedings in appropriate circumstances;
- Diminution of the worst excesses of clientelistic politics through determined efforts by top Government leaders and increased monitoring of the bureaucracy by senior officials;
- Increased transparency in the processing of cases and explanation of the same to the public;
- Improved work methods and office procedures;
- Increased use of time-saving equipment and investment in other critical material resources;
- Increased monitoring and scorecarding of the bureaucracy by the ombudsman, the Administrative Inspectorate, NGOs and the press;
- Increased willingness of the public to assert their rights as a result of public education efforts and cultural shifts

General Recommendations

Some of the foregoing factors are obviously more within the manageable interest of government authorities and donors to affect than others. And certain factors lie closer to the specific problems of poor administrative decision-making than others. Certainly, the three key laws just noted should be amended to provide greater incentives (both structural/procedural and punitive) for timely and responsive decision-making.⁵ Also, better general and specific civil servant training on administrative procedure ought to be developed. At present, such training has been minimal and decidedly non-interactive and non-experiential in nature.⁶ That should change. Over time, a cadre of specialized, experienced, and practical instructors on the subject should be enlisted to provide a variety of different training offerings using case studies and simulation exercises. These could also form the basis, along with problem-solving discussions, for cross-trainings that included judges, first- and second-instance decisionmakers, and practicing lawyers. This

⁵ Specific suggestions for amending the Law on Administrative Procedure are described above. Suggestions for amending the Laws on Administrative Inspections and Administrative Disputes are discussed in Sections IV and V of this assessment.

⁶ The Civil Service Agency, which is answerable to Parliament, has undertaken a significant amount of generic training for civil servants in recent years. As part of a larger generic training program, 13 trainings were held between 2002 and 2004 that covered the basics of administrative procedure on a lecture basis. Reportedly, specialized, sector-based training will be offered by individual agencies based on new agency training budgets that are set to rise substantially in the next several years.

type of training could start on a pilot basis in a particular sector. And finally, also on a pilot basis, a particular agency or two might eventually be selected, as part of a larger public sector management initiative, to pioneer innovative work methods in administrative decision-making along with efforts at greater transparency in explaining administrative procedures and the actual handling and tracking of individual cases.

None of these initiatives will gain substantial traction, however, without significant overall public sector management reform and dedicated political leadership at the top not only of an agency but of the Government as a whole. And that may or may not happen without the commitment of top politicians to desist to a more significant degree than in the past from the traditional custom of rewarding friends and supporters with jobs in, and favorable treatment from, the government. More fundamentally, it means triggering a gradual cultural and political shift – also signaled from the top down—whereby it becomes more politically feasible to take difficult decisions and risk the ire of certain parties and constituencies (rather than avoiding such decisions through missed deadlines and a lack of clear guidance that harms the public as a whole).

III. Administrative Appeals Commissions

Internal review normally refers to a process of review on the merits of an agency's primary decision undertaken by another more senior officer or unit within the same agency. Such a review system serves a number of important purposes. It can provide a relatively quick and easily accessible form of review that can efficiently satisfy large numbers of claimants who might otherwise not take up external or court review rights at all (due to perceived barriers) or who in some cases would unnecessarily pursue these more resource- and time-consuming external processes if simpler, more accessible dispute resolution procedures were available (in which case internal review acts as a filter). It can also serve as a useful quality and consistency control mechanism that is wholly owned by an agency, thereby offering the best chance to provide feedback to first-instance officials and influence primary decision-making. The disadvantages of such a system is that it can be subject to agency capture, resulting in few variations of original decisions, and can serve as a barrier to external review if procedures are slow and cumbersome.

Internal review, as such, is more the exception than the rule in Macedonia. Under Article 227 of the Law on Administrative Procedure, appeals of first-instance administrative decisions generally go to special Government appeals commissions established under Article 23(2) of the Law on Government, with the exception of appeals taken from decisions of a separate administrative authority under a ministry or agency, which are resolved under the aegis of the head of the agency (Article 227(1), (2)). Thus, appeals from the State Revenue Service go to the Ministry of Finance, not to a Government commission. Similarly, appeals from Social Protection Centers reportedly go to the Ministry of Labor and Social Policy. These appeals avenues, more typical of internal review, are in the distinct minority. But in fact there is great confusion and inconsistency in the treatment of appeals avenues generally, which was remarked on by a number of the interviewees. For example, appeals of a number of types of decisions involving trade and

investment matters are taken to the Ministry of Economy for second-instance review rather than being sent to the Government Commission on Economy and Finance, which has ostensible jurisdiction over such matters. And recently, appeals from survey and cadastre offices concerning expropriation matters that were previously handled by the Ministry of Finance were redirected to the Commission on Property Issues and Construction Land.⁷ In part due to recent decentralization initiatives, avenues of appeal for decisions by municipalities or municipal units are reportedly very confused, with some appeals going to mayor's offices and others directed to ministries having responsibility for particular subject matters.

The Macedonian administrative appeals system can therefore be said not to consist of a system of internal review wholly owned by administrative agencies, but rather a hybrid system that has some elements of internal review and some elements of external review. As discussed below, this hybrid system, in its particular Macedonian incarnation—which features none of the formal procedural protections of an external court or tribunal—appears to diminish the advantages associated with internal review while magnifying its disadvantages.

The Membership and Operation of the Government Appeals Commissions

The Government appeals commissions were established in 1991, ostensibly as a way of injecting more formal decisional independence into the system of administrative appeals. Rather than maintain a traditional system of internal review with appeals typically reviewed by a single individual at a higher level of the agency, the Government opted to create collective appeals bodies whose membership of anywhere from five to nine legally trained individuals⁸ was drawn from the ranks of purportedly knowledgeable experts from the several different agencies generating appeals within the jurisdiction of those bodies. Insofar as collective decision-making would prevail and each commission would review the decisions of multiple agencies and sectors, capture of the commissions was assumed to be minimized. The commissions would apply the Law on Administrative Procedure as second-instance authorities, but their organization and internal rules would be guided by general Government Rules of Procedure that are supposed to be more fully elaborated through Books of Rules adopted by each commission (Art. 23(4)).⁹ Currently there are thirteen Government commissions: twelve handling cases falling within a cluster of specialized subject matters drawn from different administrative agencies,¹⁰ and

⁷ This may ostensibly have been connected with administrative reorganization efforts giving rise to the new State Authority for Geodetic Works, but interviewees familiar with the situation said this had not been so articulated.

⁸ There are a few members who are not legally trained, and who are allowed to vote but not prepare draft decisions for their particular commission.

⁹ We have not been able to determine if such Books of Rules exist for any or all commissions, and have yet to obtain a copy of any such Book of Rules for an individual commission.

¹⁰ These commissions include those responsible for Defense; Internal Affairs, Judiciary, State Administration, Local Self-Government and Religious Issues; Economy and Finance; Transport, Communications, and the Environment; Education, Science, and Culture; Labor, Social Policy, and Health

one handling all appeals from procurement decisions made by such agencies. There is also reportedly a Parliamentary commission that reviews decisions of a special competition policy body.

Members are nominated for position on the commissions by their own agencies and approved by the Government in a process that appears murky at best. As it turns out, as a formal matter, large numbers of individuals with prior or current first- or second-instance decision-making responsibilities over cases heard by the commissions are appointed as members of the commissions based on their expertise (and the overall scarcity of such knowledgeable individuals across the government).¹¹ While the fact that commission members concurrently serve on commissions and maintain civil service positions in ministries whose decisions they review does not inherently raise conflict of interest concerns, in fact a very large proportion of these individuals work as first-instance decisionmakers who interact on a daily basis with colleagues whose decisions come before the commissions on appeal.¹² Each commission is also staffed by a secretary, a professional who is responsible for setting up the meetings of the commission and organizing the docket.

Despite this ostensibly professional cast, a few individuals were cited by interviewees as lacking in appropriate experience and/or possibly chosen largely on the basis of their ethnic affiliation. More significantly, the chairs of the commissions are in most cases not expert lawyers but rather appointed politicians who hold positions in the government such as ministers or deputy ministers from ministries having nothing to do with the subject matter jurisdiction of the commissions in question (one chair is actually a Deputy Prime Minister and another is a Secretary General of the Government).¹³ Whatever formal stature and relative independence this would seem to give the commissions, the commissions' professionalism and impartiality is undermined by this structure and lack of expert leadership. Perhaps more damaging to stability, consistency, and public trust is the fact that the membership of the commissions will frequently change with a change in chairpersons or the Government as a whole.

Care; Agriculture, Forestry, Water, and Veterinary Medicine; Survey, Cadastre, and the Recording of Real Estate Rights; Property Issues and Construction Land; Pension and Disability Insurance; Denationalization; and Labor Relations (involving other than civil servants).

¹¹ For example, in a more extreme case involving the Commission on Property Issues and Construction Land, all but one member are from the Ministry of Finance and are intimately familiar with first-instance decisionmaking by the Ministry and other state bodies on those issues.

¹² While there purportedly are ethics rules governing the extent of participation of these individuals in commission review of cases generated by their agencies or ministries, we have not yet seen any.

¹³ One curious case of extensive individual politician involvement in commission work concerns Deputy Justice Minister Subhi Jakupi, who is listed as both the head of the Commission on Transport, Communications, and Environment *and* a member of the Commission on Survey, Cadastre, and Recording of Real Estate Rights..

The actual operations of the commissions would seem to undermine severely the original intentions behind their establishment. Based on a limited investigation of two commissions as well as inquiries about several others, it appears that a number of commissions operate under high levels of stress and at least three have very serious backlogs. For all of the formal attributes of professionalism of the commissions, their real work is almost perversely undermined at every turn by critical structural and procedural deficiencies. To begin with, the work of the commission members is unpaid and conducted strictly after regular work hours (although a few commissions are reported to offer small honoraria). Although being a commission member carries some prestige, some members we talked to were eager to try to find a way out of serving, and suggested there was informal pressure applied to them by senior Government and Ministry officials to continue to serve.

Given the lack of time of the members to meet and review cases, some commissions are fortunate if they can hold bimonthly meetings. Large backlogs are prevalent: many commissions have an outstanding caseload of well over 800-1,000 appeals, and receive as many as 300-400 appeals in a six-month span. Many commissions routinely fail to issue decisions within 60 days and ask lawyers or citizens with pending cases to indulge them for another 60-day period.¹⁴

Although there is collective decision-making and voting, in fact all of the commissions we heard about appear to rely on individual members to prepare a summary of each case for the commission and to make a presentation along with a draft decision. There does not appear to be any standard procedure for case allocation among the members in the commissions (e.g., random assignment); in two commissions, cases are allocated geographically (e.g. by region or municipality), which affords some economies of scale in terms of local expertise (in, say, cases involving cadastre or urban planning), but also increases the potential for capture and undue influence. Some individual members are responsible for carrying 50 cases at a time and presenting a dozen cases for decision at a given meeting. Cases often take a minimum of 2-3 hours to wade through properly, and many commission members lamented the toll this after-hours work takes on their private lives at night and on weekends.

Given that cases are typically prepared for review by only one member and that case materials or summaries are generally not distributed to the other commission members beforehand, there is often little active debate at the meetings. The presenting member's already-prepared draft decision more likely than not carries the day, often unchanged, creating powerful path dependence in terms of how decisions are ultimately taken by a commission. Voting is often unanimous. After a decision is taken, it is signed by the

¹⁴ Very significant backlogs exist in the three commissions responsible for deciding property rights questions as well as the Pension and Disability Insurance Commission. Other commissions, according to 2005 data, had very modest backlogs but still were reported in many cases to be avoiding taking decisions on the merits when they otherwise should be doing so.

commission chair, often after the meeting if, as is sometimes the case, he or she was absent for all or part of it.¹⁵ The names of the commission members do not appear.

Reportedly, the commissions play it very safe in terms of the scope of their review and rely heavily on the judgment of the first instance decisionmakers whose appeals they hear (and many of whom, as discussed above, may be the day-to-day colleagues of several of the members of the commission). On one commission, over the course of three meetings spanning six months, 98 cases were decided with no decisions on the merits. A third to two-thirds of the appeals were granted, but then remanded to the first instance for further proceedings. Meanwhile, experts are often not appointed when they should be in order to assist the decisionmakers, and small evidentiary shortcomings are turned into material grounds for remanding cases.¹⁶ When the Supreme Court remands cases to the second instance, rather than checking to see if they can decide the case or if not, at least provide specific guidance to the first instance authorities to do so, the commissions simply send the case and court decision to the first instance body. There again appears to be an incentive to dispose of cases quickly given the large caseloads, as well as a fear of being too specific in many cases and of taking decisions that will potentially alienate certain individuals or constituencies.

Indeed the combination of political appointee leadership, members participating on an extramural, after-hours basis, heavy workloads, diffuse and often haphazard distribution of expertise, potentially biased case presenters, and tardy collective decision-making (with only the chairperson's signature on the record), seems to create a perfect recipe for poor performance and unaccountability. It is nothing short of amazing that the system has lasted this long without being altered, but that may itself suggest that a sizable number of otherwise influential individuals or constituencies have been able to tolerate or influence the work of the commissions while the majority of exasperated and dissatisfied claimants have been too fragmented and/or fatalistic to challenge the commissions' performance using legal, political, or other tools.

That may now change. The system appears to have reached a breaking point, and most interviewees thought the present system would be scrapped in the near future. However, aside from the Supreme Court's proposal to eliminate the commissions and have appeals from first-instance decisions go directly to a new administrative court (see below), we heard of no other concrete plans to replace the commissions with some other form of second-instance review while we were in-country (apparently subsequently some such plans have emerged). There currently exist at least two other potential models for how

¹⁵ There are reportedly significant document security and custody concerns. We were told of one egregious case where a minister took the files from a meeting and got a lawyer outside of the commission to draft certain opinions and then signed them.

¹⁶ One commission member said that in cases involving property rights, although the factual predicates for decisionmaking are often all present, the case presenter will maintain (presumably disingenuously) that there are still survey or measurement issues that need to be looked at and the commission will agree with a decision to remand the case, which has the temporarily beneficial effect of at least getting the case off their pending docket.

second-instance decision-making could be organized in Macedonia. These are discussed briefly below.

Potential Alternatives

There are two currently existing alternatives to the present systems in Macedonia, and a number of potential variations that may prove even more effective as a long-term solution to the problem of administrative appeals.

Procurement Commission. One existing alternative is the Commission on Public Procurement, which hears appeals from all procurement decisions by public authorities in Macedonia. This is a special commission that has gone through several changes since being established in 1996. It consists of five members and five alternates, and a professional staff of two (as opposed to the single secretary used by the regular commissions). The members—and the chair—are selected by the Government (Prime Minister) on the basis of their professional standing in Macedonia. Some are businesspeople, some are lawyers, but all have legal training and background sufficient to be appointed a judge. None is a civil servant. The chair is Peter Silegov, a young and very well regarded attorney affiliated with what is generally viewed as one of the top commercial law practices in Skopje. Members receive a token honorarium of 2,500 denars. The members generally meet weekly, considering between 20 and 25 cases. Although there is a lead presenter of the cases, all members receive copies of the case files and debate and discussion are lively. As with the regular commissions, the members must meet on their own time and take files home at night and on the weekend (but because none of the members is a civil servant, they are able to meet during work hours).

At present, the commission has no institutional home and simply uses a conference room in Government offices. They do have close relationships with the Ministry of Finance, which has responsibility for implementing the Law on Procurement (a new draft law consistent with modern European principles is now in the works) and have a space on the MoF website. Reportedly they will receive dedicated office space and staff in the near future. They must report on their work to the Government formally twice a year, but there is pressure to have the commission increase this reporting requirement to quarterly. In the future, they intend to be even more transparent about their docket and case processing. They have a good database and normally have little or no case backlog. Currently their pending caseload is 683, which reflects the year-end push by agencies to get money out the door via various procurements. Normally the caseload is about a quarter of that amount. Although the commission applies the Law on Administrative Procedure as modified by sectoral/ministry substantive legislation and regulations, the commission cannot decide cases on the merits; they simply send cases back to the agency to decide the case based on different interpretations of the facts or based on facts that should have been included in the decisional calculus.

By all accounts the Procurement Commission is very well regarded, despite (or perhaps because of) the fact that they make very difficult decisions involving very large sums of money. They typically accept about 30% of the appeals sent to them, which is significantly fewer than when they started. This may reflect a trend toward better

government decision-making over time. As it stands, they conduct a good deal of training for government agencies and ministries. However, the total number of appeals is rising, which may demonstrate both the growth of the private economy and outsourcing, as well as the greater trust that the private sector has in the commission.

Whatever its virtues, including greater professionalism, it is hard to view the Procurement Commission as a general model for restructuring all of the current Government appeals commissions. For one thing, the Procurement Commission is an elite body answerable directly to the Prime Minister. Its sensitive subject matter, clients, and monetary stakes are such that it can afford to take extreme care (and succeed) in the selection of members. Yet at the same time, even these individuals are paid only a token honorarium and must work around their regular employment. Moreover, there is still potential for significant bias and lack of transparency¹⁷ in the Procurement Commission's decision-making (although the ethical rules under which they operate – a copy of which we were not able to obtain – are reportedly quite strict and might be adaptable to other commissions).

More significantly, despite the wide-ranging procurement matters that they handle, theirs is a focused subject matter expertise that would be hard to replicate in all but a few commissions unless these revamped commissions' jurisdiction were to be divided up among a larger number of more focused collective decision-making bodies. Meanwhile, all of the things necessary to put the commissions on a more solid and professional footing—including smaller and more focused caseloads, more plentiful staff and other resources, and more generous honoraria or salary supplements—would entail expenditure of significantly greater sums of money, although given the positive impact that it might this would have on the integrity of the administrative justice system, these sums appear relatively modest.

Traditional Internal Review. A very different alternative to the Government commissions is traditional internal review—having appeals go to a specialized, higher-level unit (e.g., the legal department) within a Ministry or administrative agency. This generally would entail review not by a collective body without general supervisory authority over first-instance authorities, but by individual legal experts in a Ministry who are familiar with the specific subject matter. As noted above, there are quite a few kinds of appeals that are still dealt with in this manner, although it is often hard to discern why these appeals avenues are carved out of the general mandates that send most agency and Ministry appeals to the Government appeals commissions.

One particular appeal avenue that makes eminent sense, and seems to be functioning quite well, is the procedure for sending all tax and customs appeals to a special appeals department within the Ministry of Finance. This unit receives about 4,500 appeals per year, of which 80% are tax and 20% customs. The unit has 14 staff members, all of whom have legal training. The average disposition time is about 30-60 days. Backlogs are rare. There is a clear division of labor based on expertise. There is a strong *esprit de corps* and longevity of service among the staff, creating in turn a very strong institutional

¹⁷ However, given the sensitivity of the cases they rule on, the Procurement Commission takes some pains to keep its membership details and meeting schedule under wraps.

memory. Typically, an individual case reviewer in the department works on the appeal and then prepares a draft opinion for review and signature by the head of the unit. In turn, the final decision is signed by the minister. A similar dedicated appeals unit exists at the Ministry of Labor and Social Policy handling welfare claims, but virtually all of the ministries have legal departments that handle a limited number of specialized cases based on special sectoral legislation or regulation.

The advantages of a traditional internal review system seem substantial when such systems are compared side-by-side with the Government commissions, and even with hypothetically improved commissions that might operate with greater transparency and professionalism in Macedonia (unless the latter were given greater independence and more detailed procedural responsibilities and perhaps functioned as quasi-judicial bodies). The reasons have mostly to do with specialization and efficiency in a bureaucratic environment where both are relatively scarce. Having dedicated specialized legal talent working on appeals creates unique economies and institutional knowledge that are dissipated by the slower pace and transactions costs of collective decision-making and significantly broader subject matter coverage.¹⁸ Particularly where second-instance decisionmakers already have a strong tendency to deny or delay justice by failing to decide cases on the merits or provide detailed instructions to first-instance authorities, specialization – and the case processing speed it can produce – become critical. At the same time, there is likely to be greater potential for accountability (at least within a bureaucratic chain of command when it is clearly known which person or persons are responsible for handling certain types of appeals at a given time.

One of the most beneficial aspects of internal review is the communication it fosters between second- and first-instance authorities; the latter usually have a stronger professional and institutional basis for being receptive to the views of a ministry or ministry legal experts than is the case when decisions and guidance come down from a more distant and impersonal Government collective body (unless, again, that body carries the weight and respect accorded a more independent commission having greater subject matter focus). Strong and frequent personal and institutional interactions between first- and second-instance authorities facilitates at least the possibility of internal review units engaging in problem-solving meetings with their first-instance counterparts and on occasion offering systemic training. Finally, there are likely to be greater opportunities for identifying problems in policy and legislation based on this kind of interaction.

By contrast, the main supposed advantages of commissions in Macedonia – their diminution of the bias and capture inherent in many administrative agencies, together with the more diverse viewpoints brought to bear on decision-making – seem not to have been realized. Commission members do not have sufficient time to render truly professional services in their work, generating poor decisions and delays, while the relative scarcity of competent legal personnel in Macedonia means that commissions are

¹⁸ This is borne out by the experience of several Ministry of Finance legal specialists who were recruited to serve on the Property Issues and Construction Land Commission where they handled certain kinds of cadastre appeals that one or two of them previously handled within the Ministry through internal review. After their roles switched, appeals processing times and the case backlog reportedly grew significantly.

staffed with individuals *already* having very close and personal ties with many of the first-instance officials whose decisions they are judging. In the case of *either* internal review or government commissions, strict conflict of interest rules must be enforced and second-instance officials should neither directly supervise nor work in close physical proximity to those whose decisions they review, so as not to create the perception of a lack of independence.

A Mixed or Hybrid Approach. Around the world, many countries employ a blended or hybrid approach that utilizes different kinds of administrative appeals avenues for specialized purposes. In some cases, these avenues may even involve multiple layers of appeal; for example, two levels of internal review for certain agencies or subject matters, while in others cases there may be a single level of internal review followed by recourse to a specialized quasi-judicial commission or external tribunal (other than a court) in others. There is no reason that Macedonia must employ a completely uniform approach, as evidenced currently in Macedonia by the mixed use of internal review and Government commissions (and the special circumstances of the Procurement Commission). Flexibility to utilize a mixed approach appears to be what was intended by the recently passed Amendment XXI to the Constitution, which provides in Paragraph 1 that, rather than have a uniform approach to appeals from primary administrative decisions guaranteed by the Constitution, the subject will henceforth simply be addressed “by law” based on the specific needs of particular sectors or agencies.

For certain kinds of complex, sensitive, or high-profile appeals, a specialized commission endowed with a more highly trained membership, formal independence, and quasi-judicial powers may prove effective. Such might be the case for review of procurement matters, competition policy matters and privatization decisions, , certain defense or national security matters (there is an existing Government commission with jurisdiction over some of these issues), and high-level utilities and infrastructure regulation subjects (we are not familiar with how these cases are dealt with presently). Certain complex tax and customs appeals cases could also be dealt with in this manner. Depending on the specific circumstances, such commissions could be made entities of the Government or of an individual agency. Finally, to create greater independence for second-instance review, special commissions could be created to handle certain kinds of appeals from local governments.

For the remaining types of appeals, the foregoing discussion suggests that internal review is a better, more cost-effective way to render administrative justice and filter out a significant number of cases that need not go to court. As discussed further in Section V, this approach is preferable to eliminating second-instance review altogether, which could overwhelm the courts with unnecessary appeals and replicate some of the bad effects of having a more distant and less knowledgeable authority attempt to review and provide detailed guidance on a wide range of regulatory matters.

General Recommendations

The Macedonian Government should carefully consider whether the current commission system should be scrapped in favor of internal review as a default option for second-

instance review. In the wake of passage of Amendment XXI of the Constitution, this is reportedly the preferred course of action at present, with each ministry being given the flexibility to decide for itself to what extent internal review will be utilized for various types of appeals (although it is also conceivable that direct court appeal may be made available for some kinds of first-instance decisions). If, as is likely, the majority of ministries (with or without strong Government guidance) elect to use some form of internal review, they will have a very substantial task ahead of them in amending sectoral legislation to create appeals avenues and procedures consistent with the new LAP. This will require a careful harmonization effort, with legal specialists from the Ministry of Justice and/or the Government closely involved.

If and when such sectoral legislation and rules are adopted, ministries will also need to determine what, if any, additional resources will be necessary to ensure relatively timely and knowledgeable internal review by legal professionals in some kind of legal unit that is physically and organizationally separate from that housing primary decisionmakers. Ministries will then have to determine the cost-effectiveness of those units and their ability to attract and retain capable legal talent. They will also have to strengthen conflict of interest and other ethical standards to ensure that second-instance review personnel are neither perceived to be, nor in fact are, lacking impartiality in their decision-making. Finally, ministers will need to be encouraged to increase the transparency and accountability of the work of these internal review personnel by committing to more frequent and systematic supervision and review of second-instance decisionmakers and publication of statistical and other information about internal review procedures and results.

As for the more limited circumstances under which some kind of commissions (most likely ministry-specific ones rather than Government-wide ones, except in the case of those such as the Procurement Commission, which has a government-wide mandate) might be retained for certain jurisdictional purposes, there are a number of steps that should be considered in seeking to strengthen them. These considerations should probably include:

- Non-political leadership, with chairs selected on the basis of their professional backgrounds and standing in the legal and/or business community
- Strong professional backgrounds on the part of all members and strict appointment criteria
- In most cases, sufficiently large membership (including potential alternates) to accommodate large portfolios of cases and the possibility that smaller, subject-specific panels could be used for specialized decision-making in particular subject areas
- Sufficient professional staff, including administrative personnel and law clerks
- Adequate remuneration for commission members (if, for example, they are not all full time Government employees).
- Detailed and transparent rules about the functioning of the commission, including terms of appointment of members and ethical standards

Finally, the Government should decide if and how certain quasi-judicial tribunals should be organized to deal with very specialized administrative appeal needs requiring greater procedural protections and evidentiary scrutiny for the public. Comparative experience in Western and Eastern Europe should be consulted and a special working group of well respected legal experts should be convened to study and make recommendations on the matter.

IV. Administrative Inspectorate

The Macedonian Government has overall responsibility for ensuring the efficient functioning of Government appeals commissions and administrative decision-making generally, which is complemented by agency, Ministry, and municipal hierarchical supervision. Within the government, however, there is a specialized organization that is specifically tasked with monitoring and enforcing agency and commission compliance with the provisions of the Law on Administrative Procedure, specialized agency decision-making norms, and the recordkeeping and workflow requirements of the so-called Office Management Regulations, the last of which prescribes how government records are kept and official documents are transmitted. The Administrative Inspectorate's jurisdiction covers all government agencies, state enterprises or contractors carrying out state functions, as well as municipalities. A creature of the former Yugoslav Federation with roots reportedly going back to the Austro-Hungarian Empire, the Inspectorate (housed within the Ministry of Justice) offers a unique tool for improving the quality and timeliness of administrative justice in Macedonia. As will be discussed below, however, the work of the Inspectorate falls short of its promise.

Legal and Organizational Framework for the Inspectorate's Work

The Administrative Inspectorate is a Department within the Ministry of Justice, whose rule book of procedures is written and approved under MoJ auspices. The Inspectorate is led by a Director (currently Mensur Zenuni), Sector Head (currently Cvetan Angelevski), four unit managers with regional oversight responsibilities, and fourteen line inspectors who are based in Macedonia's regions in various municipalities, covering two or three municipalities each. Over the past several years, the number of total staff has hovered between 19 and 23 personnel.

The basic work of the inspectors is governed by the Law on Administrative Inspection, which was recently revised in 2004. The work generally consists of making routine inspections of all government offices on a regular cycle to check for irregularities and lack of timeliness in decision-making and the processing of paper. This cycle may entail some organizations being inspected annually and others biannually.¹⁹ In certain cases in

¹⁹ Each inspector makes a monthly and annual plan of what inspections he or she intends to carry out, which is sent to Skopje for review and comment, and for purposes of ensuring proper coordination among inspectors in the relatively rare case where systemic problems are attacked on a nationwide basis. From time to time, the Inspectorate undertakes to set these kinds of priorities in certain subject areas, such as missed deadlines in cadastre offices. Reportedly, 2-3 such nationwide priority inspections and monitoring are conducted in a given year.

which large numbers of complaints have been filed, more frequent and urgent inspections may be undertaken. Usually, a single inspector undertakes inspections in his or her region, while in Skopje, where larger government agency central offices may be inspected, multiple inspectors conduct the inspections.

The inspectors look at a random sample of cases and records. If the inspector finds irregularities, he informs the head of the agency and prepares a report that is filed within 15 days. The reports consist of minutes and decisions/recommendations concerning the irregularities, as well as orders to undertake changes (Article 17 of Law on Administrative Inspection). These reports are themselves administrative acts, and can be appealed as to content or process (or deadlines, in the case where decision-making is found to be tardy) to the Ministry of Justice.²⁰ The administrative authority has 15 days to inform the inspectorate how it will conform to the recommendations, including any new decision-making or other deadlines that may be imposed. (Article 17.3). Deadlines are assigned by the inspector based on a discussion with the agency and the inspector's understanding of what is feasible based on resource and organizational constraints. Prior to making any decision to seek some kind of formal enforcement of the report and its recommendations (primarily through a minor offense order), the inspector will return for a so-called 'control' inspection (Article 19). This also constitutes a report with minutes, but it may end up recommending either an extended deadline and other remedial actions, or a request for a minor offense order in the case of complete inaction or obstruction (Article 13). The recommendations can also lead to initiation of disciplinary proceedings against particularly neglectful or intransigent personnel (Article 14).

Actual Operations of the Inspectors

Given the Inspectorate's mandate and the large number of municipal government offices and agency and ministry departments subject to inspection, it is obvious that the Inspectorate is severely understaffed and under-resourced. The field inspectors are particularly beleaguered, as evidenced by the poor communications and infrastructure support they receive. Field inspectors, with perhaps a few exceptions, have no computers and sometimes no phone lines. They reportedly often sit in offices leased or donated to the Inspectorate. Since many offices do not have phone lines, the inspectors try to use mobile phones and seek (reportedly with only some success) to get reimbursed. For all of these reasons, the Inspectorate office in Skopje often does not get statistics and reports from the field on a regular or timely basis, but rather only at the end of the year for compilation in an annual report.²¹ In the other direction, field inspectors get only intermittent information about what is going on in other regional offices and in Skopje. Inspectors usually do not have current copies of the official gazette containing new legislation and regulatory changes. They must often find copies from other government

²⁰ The Ministry must decide the appeal within 30 days but its decision is not appealable to court (Article 18.4), nor will the Ministry's deliberations stay the execution of the order.

²¹ The annual report is compiled in the first quarter of each year based on information compiled at the end of the previous year. It is unclear how widely the annual report is circulated, and we have not received a copy despite efforts to obtain it. During this first quarter of the new year, there is a meeting (usually the only one) of all the inspectors in Skopje.

agencies in the region and copy relevant pages for their own use. Staying current with the law is therefore often a challenge. They also have transport problems. In some cases, regions are big enough so that some municipalities are almost 100 km. distant from their home office, and there may be no direct bus lines. Whereas some inspectors used to have an official vehicle, the Inspectorate ran out of money to maintain them and they now must use their private cars. On top of these challenges, administrative inspectors are low-paid and often not high-ranking civil servants, which sometimes may make it hard to inspect offices with personnel whose status, salaries, and knowledge of their own sectoral laws and regulations might be superior to that of the inspectors. This is especially difficult in the case of other inspectorates (e.g., labor, tax, health) that can impose large fines and instill fear in the private sector; the Administrative Inspectorate, though newly-endowed with jurisdiction to inspect these other inspectorates under the revised Law on Administrative Inspection, is sometimes viewed as politically lacking in enforcement clout relative to these and other government peers – especially large revenue-earning agencies.

Despite the best efforts of the field inspectors—whose work ethic was generally not questioned—the work of the Administrative Inspectorate has been hobbled due to resource difficulties, apparent inadequacy of strategic planning and implementation of activities, potentially insufficient political backing by the Ministry of Justice, and the very real practical difficulty of imposing tight decision deadlines and fines on administrative agencies that often cannot meet their obligations under the Law on Administrative Procedure due to their own staffing, resource, or management problems (including a possible unwillingness to deal forcefully with corruption issues).²² Deliberately or not, the Inspectorate leadership in Skopje seems not to have attacked the most egregious problems with concerted enforcement activity and publicity or with statutory and regulatory proposals based on historical and empirical patterns of problems (there appears to be relatively little analysis of trends by the Inspectorate).

Only rarely when complaints mount about widespread problems – e.g., huge delays and case backlogs in the work of first instance denationalization authorities and cadastre offices in recent years – does the Inspectorate apparently see fit to undertake coordinated, nationwide inspections.²³ And even in many of these cases, the Inspectorate seems unwilling to risk the ire of other agencies by making an example of their enforcement work and imposing strict, though not unreasonable penalties on these bodies.²⁴ To some

²² Inspectors estimated that fully a third of the reports they issued would be unnecessary if public agencies had the resources they needed.

²³ With both authorities, there have been problems with deadlines, how decisions are written (usually lacking in adequate explanation under the law in accordance with Article 212 of the Law on Administrative Procedure, and the form templates that are used (which are often outdated and refer to the old LAP).

²⁴ To be fair, the Inspectorate reportedly initiated approximately 150 minor offense cases in 2005 through early December, which is not insignificant in a country as small as Macedonia. On the other hand, given the huge backlog of those cases, it is likely that they will not be acted on very soon. Indeed, when asked, the Head of Oversight said they did not know the status of those cases and were not tracking them. Accordingly, minor offense cases may be a relatively hollow threat to most agencies in the country.

degree this is also the result of the Inspectorate's mandate being purely procedural; in some cases, the Inspectorate's cause is weakened by its inability to delve into what are often equally problematic issues with the quality of administrative decision-making. In most cases, the Inspectorate simply reaches a consensual accommodation with the ministry or agency in question, negotiating conditions and extending deadlines beyond what the law permits.

Although empirical data could not be obtained on the matter, it appears that the vast majority of inspections activity takes place outside Skopje, involving the field inspectors in work with municipal governments and regional branches of central government agencies.²⁵ By contrast, we heard little about inspections conducted of the major ministries and the second-instance Government appeals commissions, even though missed deadlines by some of the latter are reportedly worse than those of most first-instance decision-making bodies. Given the political dynamics involved, it would not be surprising to find that the Inspectorate – and the MoJ leadership – may be wary of pointing an accusing finger or imposing sanctions against another ministry or against commissions that formally answer to the Prime Minister.²⁶

General Recommendations

The Administrative Inspectorate serves a useful purpose in Macedonia that in many ways complements that of the Ombudsman but offers the possibility of achieving more concrete results in improved administrative justice through statutory enforcement efforts. The impact of its work historically appears disappointing, however. The Inspectorate could be much better utilized in terms of collecting more and better data, using the data more analytically, using its resources more wisely by taking on strategic, concerted action that tackles some of the more serious violations of law while generating demonstration effects, and playing a more proactive public education and policy analysis role that highlights some of the more egregious problems requiring serious bureaucratic oversight and/or legislation attention. The Inspectorate has never played such a role and it is unclear whether they could readily do so in the future without a major organizational push from the Minister of Justice with Government support.

Even if a major shift in work priorities and strategy were not possible in the near term, the Inspectorate's work could be improved through technical assistance and training in

Interestingly, disciplinary cases were reported to be filed exceedingly rarely, which may reflect the fact that missed deadlines and other violations are not the product of willful misconduct or gross neglect, or simply that the Inspectorate lacks political will to bring such cases.

²⁵ However, the decisionmaking authorities of municipal authorities and the appeals avenues for decisions taken by municipal departments or mayors appears very confusing and we were not able to obtain a clear picture of whether there is any clear legislative guidance on the subject.

²⁶ The political challenges may be complicated by changes in the government, which affect not only the top leadership of these other ministries and agencies, but that of the MoJ itself. Often, new relationships must be forged and educational efforts made before more serious legal action is contemplated. This is also particularly true of the Inspectorate's relationships with municipal governments, which are finding their way amidst major decentralization initiatives and the assumption of many new responsibilities.

strategic planning and analysis and through the practical application of new ideas and approaches on a pilot basis, including more focused work on a handful of major identified problems, better communications among inspectors, targeted training efforts with civil servants in key agencies, the convening of problem-solving roundtables with relevant first- and second-instance decision-making authorities, and improved public education activities. And even if these activities were deemed too ambitious in the aggregate, major progress could be made simply by having the Inspectorate, in coordination with public affairs personnel at the Ministry of Justice (and with the blessing of the Government), publicize major problems with administrative decision-making by agency and unit. This kind of scorecarding could generate the kind of popular incentives for change that must ultimately underpin and complement any significant top-down bureaucratic reform effort. These kinds of actions could improve the stature of the Inspectorate – demonstrating to the public and bureaucracy alike that the organization carries political and practical weight within the administration.

V. Judicial Review of Administrative Decisions

In both the former Yugoslavia and the early years of the independent Macedonian republic, administrative disputes were heard by a special department of the judiciary. Subsequent to the major reorganization of the courts in 1995, such jurisdiction was transferred to the Supreme Court, where a handful of judges are responsible for serving as the sole instance for all administrative disputes. Currently, seven Supreme Court judges handle such cases, with some specialization among them (for example, one judge handles almost exclusively tax appeals, while another helps with tax appeals and decides health and pension cases). The Court in recent years has received somewhere between three and four thousand new cases annually. Each judge has attempted, on average, to act on about 30-40 cases per month. The caseload in recent years has fluctuated between 2,500 and 4,000 cases.

Law on Administrative Disputes and Current Case Processing

Administrative disputes are governed by the existing Law on Administrative Disputes, which reportedly dates from 1977, and of which we were not able to obtain an English translation. Few of the interviewees provided much insight into current problems with the Law, although it was acknowledged that the law did not provide the individual citizen with sufficient procedural protections, including on matters of burden of proof, hearing rights, and remedies for administrative silence by the administration. These issues may or may not be addressed adequately in a planned revision to the law that is currently in the process of being drafted by a working group that includes the country's leading academic administrative law expert, Borce Davitkovski (who also was the lead drafter of the revised Law on Administrative Procedure). We were not able to meet with Prof. Davitkovski or other members of the working group in December, although reportedly work on the new law had not begun in any event. At present, the only basis for understanding what may be planned in the way of a new law is a draft of a revised law dating from October, 2003, in English translation, that we were able to obtain from the World Bank (see below).

Current Supreme Court Case Processing. Administrative disputes reportedly take up to two years to get resolved. It is not entirely clear why case processing at the Court is so slow, although it appears to be a combination of (1) unfamiliarity of some of the judges with the specialized subject matter of the cases; (2) the fact that some of the judges are working part-time on such cases; and (3) the care that they say they are taking with the cases, which includes a review of the factual determinations as well as the legal reasoning. Despite this slow case processing, lawyers routinely file such court appeals to protect their clients' rights, given the frequent lack of other options and the hope that the Court will force some kind of action by the administrative agency. In many cases, however, this hope is misguided; a frequent problem is that cases are returned to the administrative agency for further processing, either due to an inadequately developed record (sometimes caused by administrative silence in the first instance and in the Government appeals commissions) or a factual dispute requiring the collection and/or weighing of further evidence. At the same time, however, there is some anecdotal evidence that Supreme Court judges hearing administrative disputes are occasionally disinclined to rule on legal grounds even where the facts are not in dispute, the evidence appears to be complete, and the law is clear. This appears to be based on a lack of comfort with the substantive complexities of a given regulatory field or qualms about the procedure utilized below.

Also, at least one interviewee suggested that the Supreme Court did not give sufficient guidance to the second instance about how a case should be handled on remand, which in some situations furnishes yet another reason for the commissions to simply return many cases to the first-instance for further decision-making rather than decide such cases on their own under circumstances where it is possible to do so. According to the Supreme Court, oral hearings are held in only 1-2% of the administrative disputes before the courts, apparently at the court's discretion, in complex cases.

Draft Law on Administrative Disputes. The only draft addressing revision of the existing Law on Administrative Disputes as of December, 2005 was an October, 2003 draft (also available in English) that was confirmed by several interviewees (including Deputy Minister of Justice Cvetkovski) to be the last word on the subject pending the start of work on a new draft by the working group in 2006. The draft purports to establish a separate administrative court with extraordinary right of appeal by the Public Attorney to the Supreme Court. It is worth commenting on a few of the key features of the existing draft insofar as they may reappear or be retained in a new draft.

There are several positive features of this draft: (1) plaintiffs can seek interim protection from execution of an administrative act pending normal court review through a speedy procedure so as to prevent irreparable harm (Art. 14); (2) if there is administrative silence by a second-instance administrative body and 60 days have passed, a plaintiff need only wait seven days after a repeated request to file an administrative dispute (Art. 27); and (3) although the court normally renders judgment based on the facts established by the administrative body(ies), thereby conserving judicial resources, it is empowered by this legislation to establish facts on appeal in extraordinary cases where remanding the case to administrative authorities would cause irreparable harm to the plaintiff, where an

administrative decision has already been annulled previously and the administrative authorities have failed to act in conformity with the court's order, or where the administrative authorities made an obvious mistake in fact-finding (Art. 41).

In terms of administrative non-compliance, the draft law appears to give the administrative court a number of useful weapons: (1) in cases of repeated non-execution of its judgments or instructions by administrative authorities, it can report the non-compliance to superior administrative officials, suspend any offending officials from work and seek disciplinary sanctions against the individual(s) (Art. 44); it can also impose litigation costs on the losing party (creating a potential cumulative incentive for administrative officials to improve their decision-making (Art. 61)); (3) if, after remand, administrative authorities fail to act upon a repeated request by the citizen, the court can impose a new decision where appropriate if the authorities fail to provide good reasons (Art. 63); and (4) the court can entertain special actions to protect any constitutional right that may be violated by an administrative act (A Petition Against Unlawful Action), which actions can result in an injunction as well as damages and the imposition of a fine of 10,000 *denars* against an offending official.

The draft legislation does, however, feature a number of potentially problematic provisions that may need to be addressed in any future variant of the draft.

Definitions. First, one fairly important issue—or omission—is the lack of any definition of ‘administrative act’, although this is something that can be addressed through the development of case law. It is particularly important that it be harmonized with any new Law on Minor Offenses. Presumably, at present it is envisioned that minor offense orders issued by the administration, though ordinarily falling within the definition of an administrative act, will be treated distinctly under new minor offense legislation. However, the logical and factual overlap of administrative acts and minor offense orders in particular kinds of cases may argue in favor of integrating into the Law on Administrative Procedure all of the standards and procedures governing the issuance of such orders. Keeping these areas separate and distinct promises to perpetuate confusion among the public, as well as some degree of unnecessary legal and jurisprudential inconsistency. This is an issue that affects virtually all post-Socialist legal systems in Central and Eastern Europe, and will need to be addressed in order to bring Macedonia's administrative justice system into conformity with EU standards. It also has a bearing on where some or all administrative disputes based on minor offense orders should be heard. Different European countries have different approaches—for example, in Lithuania, depending on the circumstances, appeals of minor offense orders may be taken to both the civil and administrative courts—but this matter ought to be addressed in from a thoughtful, long-term perspective utilizing Council of Europe expertise.

Oral hearings. A second important issue concerns the existing draft's lack of a clear right of the citizen to an oral (and usually public) hearing. Article 35 of the draft provides that the administrative court will review cases at closed sessions. The court may determine that an oral hearing is necessary due to the complexity of the case or unclear facts. A party can also “propose” to hold an open session on the same basis, but this is not treated

as a binding request. This approach, which tends to undermine the protection of litigants in administrative proceedings due to potentially insufficient public scrutiny and arbitrariness, contradicts Council of Europe Ministerial Recommendation (2004)20 on Judicial Review of Administrative Acts (see Principle 4.f), as well as the jurisprudence under Article 6 of the European Convention on Human Rights.²⁷ Both of these support the general right to an oral hearing subject to certain possible exceptions, including the technical nature of the particular proceedings, which may militate in favor of an exclusively written procedure in those cases.²⁸ In sum, the blanket presumption against oral hearings does not meet current European standards and should be altered in any new draft. The same is true of Article 50 of the existing draft, which addresses Supreme Court procedure.

Panels vs. single judge reviewers. A third concern is the draft's requirement of a panel of three judges to hear first-instance disputes (Art. 17). There does not seem to be a good reason for such panels in all cases; it is inefficient and unnecessary except in more complex cases. Thus, decisions about panel size should be left to the discretion of some court governance body.²⁹

Requests for protection of legality. A fourth, more serious concern, relates to the lack of equality of arms as between the right of the Public Attorney to seek a Request for the Protection of Legality (an extraordinary legal remedy) and the lack of any comparable right for the citizen (Arts. 4, 47). Although it makes sense that, as a matter of jurisprudential integrity, the state would have such a right, failing to provide the public with some kind of comparable cassation request unduly disadvantages the citizenry of Macedonia. Interestingly, it would also appear to violate the Macedonian Constitution as recently amended. Amendment XXI of the Constitution guarantees the right of two instances in the adjudication of disputes in court. This would seem to require some kind of appeal as of right to the Supreme Court (and would seem to preclude the Supreme Court's current proposal for administrative adjudication, discussed below, which follows the same track as the draft law).

Standing. A fifth issue is the relatively constricted standing provisions that appear to allow court appeals by associations or other collective bodies only where an individual member has a direct interest at stake. This tends to contradict Principle 2.a of Council of Europe Ministerial Recommendation (2004)20 on Judicial Review of Ministerial Acts,

²⁷ Note that in the recent case of *Miller v. Sweden* (Feb. 8, 2005), the ECHR made clear that the reasons for dispensing with an oral hearing are exceptional.

²⁸ Also, the public may be excluded from an oral hearing for a number of reasons, including privacy, public order, national security, etc.

²⁹ Meanwhile, the Supreme Court is provided three-judge panels to decide only cases of conflicting court jurisdiction on administrative disputes as between the administrative court and other courts. Appeals to the Supreme Court based on requests for extraordinary legal remedies by the Public Attorney are to be heard by five-justice panels.

which allows for more expansive standing to bring court appeals by such organizations based on collective or community interests.

Minutes of deliberations. A final concern is the draft's provision to have judicial deliberations and voting memorialized in minutes signed by the reviewing panel and by the recording clerk (Art. 43). Although this may not be what the legislation (or the English translation thereof) intends, the ostensible effect of having the minutes preserved in this fashion (and/or having the clerk be privy to them) is to undermine judicial candor and ultimately, judicial independence.

Supreme Court and Other Proposals for Administrative Disputes Handling

There is little doubt that the Supreme Court is unhappy with the volume of administrative disputes and the concept of having its jurisdiction indiscriminately extended to all such disputes without any filtering. At the same time, however, the Court's leadership believes that Government commissions are broken institutions and need to be eliminated. Rather than seek to have the administration do a better job of resolving administrative appeals by acting as a more effective filter to reduce the numbers of administrative disputes, the Court believes that a specialized court should play the filtering role. In conjunction with the drafting of the new Law on Courts and a new Law on Administrative Disputes (both scheduled for this spring, with the former on a faster track than the latter), the Supreme Court envisions a new institutional solution to its current administrative disputes problems.

To be specific, the Court would restore the specialization in administrative disputes lost in 1995 by establishing a new administrative court at the level of the current appeals court (i.e., staffed by judges having a level of training equivalent to appeals court judges) that would serve as the sole court appeal instance as of right. As an equivalent of an appellate-level court, the court could either be based as a single court in Skopje or perhaps divided into geographic units located in the cities where the present appellate courts are located (Skopje, Stip, Bitola).

Under this scheme, all appeals from first-instance administrative decisions by government agencies, ministries, or inspectorates would proceed directly to this court. Beyond this court, the Supreme Court would function as a forum for extraordinary legal remedies—ruling on matters of legal inconsistency or gross legal error—but only those brought by the Public Attorney, not by private litigants. This obviously tracks the scheme envisioned in the existing draft Law on Administrative Disputes, as discussed above.

The Court currently estimates that the new administrative court could function with up to 17 or 18 members divided into three major panels, or councils, with 3-5 members each. Under this division of labor, the three panels would handle, respectively, public revenue matters (principally tax and customs cases); urban planning, cadastre, construction, expropriation, and utilities cases; and public benefits cases. There is also envisioned a specialized 3-judge council that would address competition policy, procurement, and telecommunications cases, which would be much smaller in volume. Initially at least, half of the judges for the new court would be drawn from the ranks of existing judges,

while the other half would be recruited from the public administration. Merit-based career advancement and salaries equivalent to appellate-level judges would, in the eyes of the Supreme Court leadership, be sufficient to attract top talent.

The Supreme Court appears to favor this solution for a number of reasons apart from preserving its jurisdiction for higher-order and more complex case resolution. First, the Supreme Court leadership feels very strongly about the need for specialization and having a court solely focused on controlling the administration. Second, it contends that the modern trend in Europe is strongly in favor of specialized administrative courts.

In fact, neither proposition is clear-cut relative to the specific proposal of the Supreme Court. First, while specialization is without question essential, there is no reason why specialization is not equally compatible with a dedicated administrative chamber or division of the regular court system, so long as the latter is situated at a sufficiently elevated level of the court system (e.g., the appellate level) to command the respect of the administration and the public.³⁰ The key is creating a suitable career development path for administrative judges—one that carries sufficient remuneration and prestige.

Second, while it is certainly true that the majority of European countries have opted for specialized administrative courts (including smaller countries such as Lithuania, Albania, Estonia, and Slovenia), a large number of European states – including a number of smaller former Socialist countries comparable in population to Macedonia – have created specialized administrative chambers or divisions within their regular court systems. Thus, Hungary, Latvia, and Slovakia have all made this choice. Hungary sends administrative disputes initially to a special chamber of its district courts and then to a special administrative division of a regional Budapest court, Latvia employs a three-tiered system of administrative chambers within the regular courts (at the district, regional, and Supreme Court levels), and Slovakia maintains a similar system. Interestingly, at this very moment, the Bulgarian parliament is struggling with the question of whether to create separate lower administrative courts (a long-standing objective) or have them function as departments within the regular court system (the country has had a Supreme Administrative Court for quite some time)..

It is noteworthy that the Macedonian Ministry of Justice and the Government reportedly favor a somewhat different structural solution than that of the Supreme Court—one that would not necessarily abolish second-instance administrative (internal) review and would lodge jurisdiction over first-instance judicial review of administrative disputes with the courts of general jurisdiction—in special chambers of either the soon-to-be created ‘higher’ or ‘superior’ first-instance courts that will have jurisdiction over more serious civil and criminal cases, or the appeals courts in Skopje, Stip, and Bitola. It is unclear what the MoJ’s position is on appeals as of right to the Supreme Court.

³⁰ The Council of Europe observes in Point 53 of the Explanatory Memorandum to Recommendation (2004)20 concerning Judicial Review of Administrative Acts that due to the pressures that can often be placed on judges required to adjudicate disputes involving the public administration as a party, judicial review of administrative acts should be lodged with upper courts in a judicial hierarchy.

The decision whether to have specialized administrative courts is not a simple one. Certainly the Council of Europe leaves this question open to solution under national law (see Recommendation (2004)20, Principle 3.b and Explanatory Points 35 and 55), allowing for review by specialized tribunals, by ordinary courts, or a combination of both. A specialized court might attract a different kind of judge who is more committed to administrative dispute resolution, but as noted above, ensuring adequate specialization in the courts of general jurisdiction can be dealt with by having appropriate recruitment, salary, and career development policies in place. On the other hand, there are considerably more serious concerns about specialized courts in terms of (1) preventing capture by special interests; (2) avoiding extra administrative and overhead costs associated with a separate court; (3) ensuring that a separate court carries sufficient prestige and stature; and (4) ensuring appropriate coordination between different types of courts on matters such as the handling of appeals of minor offense orders.

Viewed in the aggregate, these factors would seem to militate against the establishment of a separate administrative court, particularly in a country as small as Macedonia. On the contrary, it would seem preferable to have administrative dispute resolution be part of a larger court system subject to more uniform policies and procedures and benefiting from better economies of scale with respect to various administrative/bureaucratic expenditures.³¹ In this case, it would make sense to have administrative chambers, or divisions located at the appeals court level, most likely attached to the regional courts in Skopje, Stip, and Bitola. This option is preferable to locating such chambers at the first-instance court level, since appellate judges carry more prestige and command more respect, both of which are important given the role they must play and the independence they must exhibit in making rulings against the government (see footnote 30 above). It is also preferable to having a single administrative court instance in one location, which might create access to justice problems for the Macedonian population, as well as run afoul of Council of Europe recommendations (see below).

Wherever the administrative judges are situated, the Supreme Court's proposals to eliminate the appeals commissions altogether (and thereby most or all internal review by the administration) and permit a single instance of court review as of right both seem somewhat misplaced.

Internal review, as noted above, serves as a way to encourage cost-effective and speedy dispute resolution while preserving scarce judicial resources for more difficult or complex adjudication. It also can and should permit greater consistency and correctness in administrative decisionmaking and encourage better control of the administration by senior government officials. Although the current system of government appeals commissions is broken, it does not seem sensible to have very large numbers of

³¹ To be sure, the Supreme Court's position that the proposed Administrative Court somehow be managerially subordinate to the Supreme Court as well as subject to its juridical supervision (via appeals by the Public Attorney of alleged violations of legality) does ensure a modicum of jurisprudential and administrative conformity akin to that which would exist if there were an administrative collegium or chamber of the Supreme Court (but possibly without the prestige and independence that such a truly integrated unit would command).

administrative appeals go straight to court without this administrative filtering system. The number of cases taken to the courts will surely rise by some very large order of magnitude even if first-instance administrative decisionmaking were to improve substantially and alternative dispute resolution avenues (e.g., the ombudsman) were utilized.

This avalanche of new court appeals does not seem to be seriously taken into account by the Supreme Court in looking ahead to the implications of its proposal. Even based on its existing caseload, the Court's estimates of the judges it needs for a new administrative court seem unrealistically low. Looking at statistics from Latvia and Slovenia—two countries whose population is comparable to that of Macedonia—it is apparent that both countries had a much higher ratio of administrative judges to administrative disputes.

Latvia, for example, has a population of 2,290,237 as of July, 2005, which is very similar to that of Macedonia (2,045,262). In 2004, the first instance courts in Latvia hearing administrative disputes decided 1038 cases. There were 17 judges and 18 judicial assistants. At the second instance (regional) administrative courts, 272 cases were adjudicated by 9 judges supported by 10 assistants. The Administrative Matters Department of the Supreme Court decided 272 cases using the services of 6 judges supported by 6 judicial assistants.

Slovenia, with a population of 2,011,070, features a specialized first-instance administrative court and a second instance attached to the Supreme Court (the Administrative Review Department). The administrative court decided 2415 cases in 2004, using 28 judges, while the Supreme Court Administrative Review Department adjudicated 136 cases using 12 judges.

The foregoing statistics show that the even if the current caseload of some 4,000 administrative disputes were to be placed in the hands of a new administrative court, the Supreme Court's projected number of 17-18 judges would be inadequate to tackle the 2,600-2,800 cases that they are reportedly on a pace to decide this year, using only seven judges. That current decisional workload works out to anywhere between 370 and 400 cases per judge per year. With 18 judges, a new Macedonian first instance administrative court today would still imply case handling of some 155 cases per judge annually. By contrast, based on the statistics set forth in the prior paragraphs, Slovenia in 2004 had 28 judges handling first instance disputes at a rate of 86 cases per judge annually, while Latvia had 17 judges at the first instance (the same number as projected for Macedonia under the Supreme Court plan) who decided disputes at a rate of 61 cases per judge per year in 2004.³²

Although the fact that oral hearings are not currently held in Macedonia may permit a larger caseload per judge, the rough comparisons above suggest that a new administrative court might need to be considerably larger than the current roster of Supreme Court judges deciding administrative disputes in order to dispose comfortably of the current

³² These statistics are used for rough illustrative numerical comparisons only, regardless of whether judges in any of the three countries decided any or all of their cases individually as opposed to on panels.

administrative caseload at today's pace. Moreover, that number might need to grow substantially larger if, as the Supreme Court would like, all challenges to administrative decisions in the future could be taken directly to a new administrative court. This suggests the importance of trying to reduce the judicial caseload generally through improvements in judicial and especially administrative decisionmaking, including greater attention to deciding cases on the merits and having administrative authorities enforce the resulting judgments.

As for the question of what kind of appeal levels ought to be available within the judiciary, Amendment XXI to the Constitution suggests that citizens are entitled to have two appeal instances as of right (even if the second instance appeal would consist of a cassation-type appeal), and that limiting appeals to the Supreme Court to requests by the Public Attorney for protection of legality would violate the Constitution. Thus, even though Council of Europe Recommendation (2004)²⁰ does not require two court instances, it recognizes that proper judicial protection does involve the right to two-tier proceedings (*id.*, Point 83) and specifically recommends that it be available for important or complex cases unless national legislation directly refers such cases to a single, higher tribunal). With this in mind, the Supreme Court should be prepared to assume a larger role in administrative dispute resolution and ensuring jurisprudential consistency in administrative law regardless of whether the Law on Courts and the Law on Administrative Disputes end up lodging first-instance review authority in administrative courts or specialized units of the regular court system.

General Recommendations

There is no question that the current system of resolving administrative disputes in Macedonia must be reformed. The two-year period within which cases are typically resolved on appeal before the Supreme Court is unacceptable, and drastic action is called for. The Supreme Court's sole jurisdiction over these cases is a misuse of judicial resources and a recipe for inefficiency. Specialized tribunals of some kind are necessary, as most observers agree that the old Yugoslav system worked reasonably well and that the huge influx of current and future administrative disputes in a modern market economy argues even more strongly for substantial resources to be devoted to a new set of first-instance administrative dispute resolution forums. At the same time, however, even those forums will be overwhelmed if some system of effective administrative appeals resolution (including extensive use of internal review) is not retained.

As to whether administrative courts or specialized departments of the regular court system are established, there are ample examples of both options in comparably sized countries in Central and Eastern Europe. Still, for a small country like Macedonia that is struggling to consolidate better leadership and management of the regular court system with relatively limited financial resources and legal talent and within a culture that invites organizational capture, it does not seem sensible to create an entirely separate court. If anything, the potential for significantly larger administrative dispute caseloads suggests the importance of having maximum organizational flexibility in moving human and financial resources within the existing regular court system to address a wide range of circumstances, both expected and unexpected.

Whatever option is selected, significant resources will need to be devoted to the recruitment, training, and accommodation of new administrative judges. This will require careful consideration of judicial selection criteria, career development tracks, performance evaluation criteria, and continuing education requirements. In the near-term, judicial authorities and the Ministry of Justice should canvass knowledgeable individuals from the legal community about the key topics and problems that should be addressed by the Working Group drafting the Law on Administrative Disputes, and that should form the basis for roundtables and training initiatives with prospective members of the new administrative tribunals. This should include empirical information about the volume of particular kinds of administrative disputes coming to the Court in recent years, and what this implies in terms of judge specialization and specific allocation of judicial resources. The goal should be to collect as much practical and empirical information as possible about existing problems and ensure that these problems are not only dealt with effectively through the new law but also through the adoption of sensible, targeted organizational and policy reforms within the judiciary.