

Research Article

THE ESTABLISHMENT OF AN ADMINISTRATIVE COURT: A NECESSITY FOR RESOLVING ADMINISTRATIVE DISPUTES IN THE REPUBLIC OF KOSOVO

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ABSTRACT

Background: *Judicial control of public administration plays a crucial role in enhancing the quality of the administration's activities and good governance. This scientific paper aims to examine the current situation of judicial control of the public administration of the Republic of Kosovo and provide a comparative analysis of the legal framework of judicial control of public administration in the countries of the region. This paper aims to answer the following questions: How far has the Basic Court in Pristina managed to decide on the legality of acts and actions of public administration authorities? Is establishing the Administrative Court and the Supreme Administrative Court to handle administrative matters necessary? The establishment of the Administrative Court would improve judicial control over the legality of the public administration's work, increase the quality of administration and good governance, and increase citizens' trust in institutions.*

Methods: *In this study, various methodologies were employed, including qualitative, analytical, comparative-legal, descriptive and quantitative (statistical) methods. The qualitative research method analyses the Constitution, laws, by-laws, and other documents. The comparative legal method was applied when comparing provisions in the administrative dispute legislation in the countries of the region. Statistical methods have been used during the study of the annual reports of the Kosovo Judicial Council and the Courts, as well as in the empirical part of the paper.*

Results and Conclusions: *The research and analysis findings conclude that establishing administrative courts in the Republic of Kosovo is necessary for resolving administrative issues. The results provide insights that the existence of only one department at the Basic Court in Pristina with "jurisdiction" for the entire territory of the Republic of Kosovo is not the right solution. For this reason, the authors substantiate the necessity of establishing the Administrative Court in the Republic of Kosovo to resolve administrative issues. The Administrative Court of First Instance is based in Pristina, with branches in six major centers of Kosovo, and the Supreme Administrative Court is the second instance.*

1 INTRODUCTION

The court exercises control over the legality of acts and actions of public administration authorities that are challenged in court. Judicial control over public administration contributes to improving the quality of administration activities and promoting good governance. Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides that “Every person has the right to have his case heard fairly, publicly and within a reasonable time by an independent and impartial tribunal.”¹

Within the Constitution of the Republic of Kosovo, two provisions—Articles 31 and 32—expressly stipulate that “everyone is guaranteed equal protection of rights in the proceedings in the courts, other state bodies and holders of public powers”; “Everyone has the right to a fair and impartial public hearing on decisions concerning rights and obligations or on any criminal charge brought against him/her within a reasonable time by an independent and impartial tribunal established by law”; and “every person has the right to use legal remedies against judicial and administrative decisions which violate his/her rights or interests in the manner prescribed by law.”²

This paper is structured into three main parts. The first part analyses the legal framework and examines the current state of administrative justice in Kosovo, along with its challenges. The second part presents a comparative analysis of judicial control over public administration in neighbouring countries, including the Republic of Albania, Montenegro, Northern Macedonia and Serbia, identifying similarities and differences in their administrative judicial systems. The third part reviews empirical data, including the results of interviews with senior public officials, media and civil society representatives, as well as the findings from questionnaires conducted with senior public officials. Finally, it presents conclusions and recommendations.

The study’s findings highlight that having only one department of Administrative Affairs at the Basic Court in Pristina, with jurisdiction over the entire territory of the Republic

1 Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950) [1955] UNTS 213/222, art 6.

2 Constitution of the Republic of Kosovo (with amendments I-XXVI) (adopted April 2008) arts 31, 32 <<https://www.refworld.org/legal/legislation/natlegbod/2008/en/121392>> accessed 10 December 2024.

of Kosovo, is not the right solution. Legal persons and other parties seeking to realise his/her rights and interests—violated by individual decisions or actions of public administration bodies—often have to wait for years. Furthermore, this article substantiates the need for judicial reform.

This paper aims to make a modest contribution to ongoing academic and political debates regarding the establishment of administrative courts and the analysis of legal and judicial reform. It serves as a reference for discussions on legal administrative justice, offering insights for future legal research and policy development on the benefits of implementing administrative justice. Additionally, it seeks to encourage researchers in the fields of law, public administration, political science, judges, lawyers, and other scientific professionals, to further enrich the literature on effective administrative judiciary and the functioning of good administration.

2 RESEARCH METHODOLOGY

The methodology of this paper is based on the collection and analysis of primary and secondary data. Primary sources include international conventions, constitutions, laws, by-laws, and legal analysis and comparison. Additionally, interviews with senior public officials, media, and civil society representatives, along with structured questionnaires with senior public officials contribute to this study. Secondary sources include scientific articles, written publications, and other relevant literature.

The present study employs a mixed-method approach, incorporating both qualitative and quantitative research methodologies. Quantitative or statistical methods have been applied in analysing various materials, including the annual statistical reports of the Kosovo Judicial Council and the courts from 2013 to 30 September 2024, particularly related to administrative cases. This method is also used in the empirical section of the paper. The authors have presented the processed data in graphs and tables to enhance clarity and comprehension.

The qualitative research method analyses the Constitution, laws, by-laws, and other documents of the Kosovo Judicial Council and the Supreme Court of Kosovo.

Further, the present study uses discussions and interviews with the purposive sample of senior public officials and local experts, media, and civil society to shed light on the needs for legal changes and additions, regarding the establishment of the Administrative Court and the Supreme Administrative Court.

The finalisation of this paper involved four steps:

1. Theoretical analysis of the literature.
2. Analysis of constitutional, legal acts, and judicial practice of the Republic of Kosovo and regional countries.
3. Empirical analysis of data from the Judicial Council and the Supreme Court reports, as well as empirical research.
4. Providing conclusions and recommendations for legal and institutional reform in Kosovo.

The methodology used in this study involves an in-depth analysis of the legal framework and constitutional provisions, along with a review of the legislation governing courts and the administrative disputes in the region. This includes examining relevant laws in Kosovo, the Republic of Albania, the Republic of Northern Macedonia, the Republic of Montenegro and the Republic of Serbia, specifically those pertaining to administrative dispute and specialised courts. In this regard, the comparative approach enables an analysis of these countries' similarities and differences in judicial control over public administration.

Based on these findings, interview questions and questionnaires were designed for senior public officials and civil society. The research sample consisted of 154 senior public officials and 10 representatives from civil society, totaling 164 participants.

The research was conducted through interviews and questionnaires with high-ranking officials and experts. Participants included former parliament members of the 6th legislature (2017-2019), the former Minister of the Ministry Public Administration, the President and judges of the Constitutional Court, judges from the Court of Appeals and Basic Courts of Kosovo, the People's Advocate and Deputy Ombudsman, senior management civil servants and management civil servants, political advisors to the Minister and President of the Republic of Kosovo, and the former Director of the Anti-Corruption Agency. Additionally, representatives from civil society— including leaders of institutes, non-governmental organisations and journalists—were interviewed, some of whom asked to remain anonymous. For a more detailed analysis, see Point 5: Analysis of Empirical Data.

A total of 37 senior public officials were interviewed in open interviews, along with 10 representatives from civil society. Additionally, structured questionnaires were administered to 24 deputies and 93 judges from Kosovo's Court of Appeals and Basic Courts. While some interviews were conducted directly with senior public officials, others were conducted electronically or in written form due to time constraints. The collected data comprises opinions from interviewed senior public officials, civil society representatives, and questionnaire responses.

The research encountered several obstacles during the interview process. Some senior public officials tended to give politically inclined answers or hesitated to respond. Others agreed to be interviewed but requested anonymity due to fear of repercussions. However, senior public officials were more willing to respond to questionnaires due to the anonymity and discretion provided. The purpose of interviewing senior public officials and using questionnaires was to derive results and compare individual findings with the opinions of senior public officials and field specialists.

Based on the conducted research and empirical data results, the hypothesis is confirmed: there is a clear need to establish the Administrative Court and the Supreme Administrative Court in Kosovo.

3 JUDICIAL CONTROL OF THE PUBLIC ADMINISTRATION

The effective functioning of the judiciary is the basis of the modern rule of law.³ The judicial systems of the European Union member states are very diverse, reflecting differences in national judicial traditions.⁴ Also, the judicial frameworks in the Western Balkans differ from those of the EU Member States.

In the Central and Eastern European countries, during the first decade of transformation, three types of efforts dominated the drive for administrative and court reform. First, a large number of legislative changes were made, including the adoption of new constitutions that outlined human rights and fundamental freedoms, provided for the separation of the legislature, executive, and judiciary, and guaranteed the independence of the judges.⁵

Furthermore, while disputes between citizens and public authorities may be settled through civil law proceedings in several states, administrative law is separate. In these cases, the settlement of administrative disputes can fall within the competence of specialised administrative law tribunals or units within a court of general jurisdiction or may be subject to separate administrative law procedures.⁶

In most contemporary states, judicial control of the administration represents the most developed form of external control.⁷ This oversight is essential to prevent administrative authorities from overstepping their powers and to hold them accountable for violations of citizens' rights.⁸ It plays a critical role in cultivating a legal spirit in the exercise of all actions by the administration.⁹ Thus, judicial control of administrative activity and the right of individuals and legal entities to go to court is related not only to the application of general principles, but also to a clear and concrete definition, explicitly stated in special laws, circumstances, and conditions of concrete procedures for possible or mandatory investment of administrative jurisdiction.¹⁰

3 Iryna Izarova and others, 'Advancing Sustainable Justice through AI-Based Case Law Analysis: Ukrainian experience' (2024) 7(1) Access to Justice in Eastern Europe 144, doi:10.33327/AJEE-18-7.1-a000123.

4 'Legal systems - EU and National' (*European e-Justice Portal*, 2024) <<https://e-justice.europa.eu/>> accessed 10 December 2024.

5 Frank Emmert, 'Administrative and Court Reform in Central and Eastern Europe' (2003) 9(3) *European Law Journal* 288, doi:10.1111/1468-0386.00179.

6 CEPEJ, *European Judicial Systems Efficiency and Quality of Justice* (CEPEJ Studies 23, edn 2016, Council of Europe 2014) 208.

7 Agur Sokoli, *Kontrolli i punës së administratës dhe përgjegjësia politike e saj* (Universiteti i Prishtinës 2009) 250.

8 Fadil Memet Zendeli, Memet Seit Memeti and Agron Selman Rustemi, 'Judicial Control over Public Administration' (2012) 8(2) *Acta Universitatis Danubius* 93.

9 Mirlinda Batalli dhe Islam Pepaj, *Doracaku për Përgatitjen e Provimit të Jurisprudences* (Ministria e Drejtësisë 2015) 768.

10 Decision no 461 [2011] Civil College of the High Court of Albania.

The control of the formal validity of administrative acts, as well as the validity of administrative actions and responsibilities, has been addressed by many authors in the administrative field including Esat Stavileci (1997),¹¹ Ermir Dobjani (2004),¹² Agur Sokoli (2009),¹³ Bajram Pollozhani, Esat Stavileci, Ermir Dobjani and Lazim Salihu (2010),¹⁴ Esat Stavileci, Agur Sokoli and Mirlinda Batalli (2010),¹⁵ Agur Sokoli (2014),¹⁶ Mervete Shala (2015),¹⁷ Fejzulla Berisha and Petrit Hajdari (2019),¹⁸ Mervete Shala (2021)¹⁹ and other notable authors.

According to the author Sokol Sadushi, the formal validity of administrative acts and actions is controlled for two primary reasons. First, it addresses incompetence, where the impugned administrative act is alleged to have been issued by a public authority or official without proper legal authorisation. Second, it concerns procedural competence *ultra vires*, meaning that the administrative act was made in violation of essential procedural norms, thereby directly violating the authority's competence.²⁰

As for the control of the validity of administrative acts and responsibilities, Sadushi explains that the court exercises this control for two reasons: first, to review violations of the law, which can be divided into review due to errors in interpretation and application of the law and facts, or errors in assessing the facts, depending on the nature of the contested decisions; second, to review cases where there is an abuse of discretionary power by the public authority.²¹

Additionally, according to Mateja Heda, judicial control over the administration was established as a mechanism to restrict administrative action through impartial courts.²² This paper analyses judicial control of public administration in Kosovo, which will be discussed in the following sections.

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- 11 Esat Stavileci, *Hyrje në Shkenca Administrative* (Enti i Teksteve dhe i Mjeteve Mësimor i Kosovës 1997).
 - 12 Ermir Dobjani, *E Drejta Administrative* (SHBLU 2004).
 - 13 Sokoli (n 7).
 - 14 Bajram Pollozhani dhe të tjerë, *E Drejta Administrative: Aspekte Krahasuese* (Shkup 2010).
 - 15 Esat Stavileci, Agur Sokoli dhe Mirlinda Batalli, *E Drejta Administrative* (Universiteti i Prishtinës 2010).
 - 16 Agur Sokoli, *E Drejta Administrative* (Universiteti i Prishtinës 2014).
 - 17 Mervete Shala, 'Gerichtliche Überprüfung der Akten und Verwaltungsaktion' (The 8th International Conference on Private and Public Law, Vienna, Austria, 10 October 2015).
 - 18 Fejzulla Berisha dhe Petrit Hajdari, *Administrata Publike dhe Kontrolli i Saj: (Aspekti krahasimor)* (Shoqata e Shkrimtarëve të Pejës 2019).
 - 19 Mervete Shala, 'Instrumentet e Kontrollit të Administratës Publike në Republikën e Kosovës' (PhD dis, Universitetit Europian të Tiranës 2021).
 - 20 Sokol Sadushi, *Gjykata Administrative dhe Kontrolli Ligjor mbi Administratën: Një Vështrim Krahasues mbi Drejtësinë Administrative* (Botimet Toena 2014) 169-70.
 - 21 ibid 169-70.
 - 22 Mateja Held, 'The Development of the Administrative Court Systems in Transition Countries and Their Role in Democratic, Economic and Societal Transition' (2022) 22(2) *Hrvatska i Komparativna Javna Uprava* 209, doi:10.31297/hkju.22.2.5.

3.1. Judicial Control of the Public Administration in Kosovo

The court exercises control over the legality of the act and actions of public administration bodies challenged before the court. According to the plaintiff's claims, these acts have violated or restricted legitimate rights and interests, forcing the plaintiff to pay an obligation not based on law or the actual state of facts.²³

Legal and structural reform was implemented in Kosovo with the adoption of Law No. 03/L-199 on Courts of the Republic of Kosovo on 22 July 2010 (hereinafter the Law on Courts) by the Assembly of the Republic of Kosovo.²⁴ According to Article 42 of the Law of Courts, which provides for the abrogation of other Laws, upon the entry into force of this Law, it repealed the Law on Regular Courts of KSAK (KSAK-Socialist Autonomous Province of Kosovo),²⁵ UNMIK (United Nations Mission in Kosovo) regulations²⁶ and the Law on Minor Offenses.²⁷

Law No. 03/L-199 on Courts of the Republic of Kosovo regulates the organisation, functioning, and jurisdiction of the courts. This structural reform began to be fully implemented on 1 January 2013 with the Law on Courts, which, in accordance with Article 8, explicitly states that the court system of the Republic of Kosovo consists of Basic Courts, the Court of Appeals, and the Supreme Court.²⁸

Administrative matters under Article 12 of the Law on Courts in Kosovo fall under the exclusive competence of the Basic Court of Pristina. Article 13 of this law establishes that the Department of Administrative Affairs (hereinafter the DAA) of the Basic Court of Pristina has jurisdiction over the entire territory of the Republic of Kosovo. Law No. 06/L-054 on Courts, Article 17, determines that the DAA of the Basic Court of Pristina adjudicates and decides on administrative disputes related to lawsuits against final administrative acts and other issues determined by law. It judges and decides on the resolution of conflicts of competencies and disputes arising between different public administration bodies.²⁹

23 Decision no 3 (Unifier of the Joint Panels of the High Court of Albania, 02 December 2008).

24 Law of the Republic of Kosovo no 03/L-199 'On Courts' [2010] Official Gazette of RK 79/77.

25 Official Gazette of the SAP Kosovo, Nos. 21/78, 49/79, 44/82, 44/84, 18/87, 14/88 and 2/89.

26 UNMIK Regulations Nos. 1999/5 on the Establishment of an AD HOC Court of Final Appeal and an AD HOC Office of the Public Prosecutor (4 September 1999); 1999/7 on Appointment and Removal from Office of Judges and Prosecutors (7 September 1999); 2000/6 on the Appointment and Removal from Office of International Judges and International Prosecutors (16 February 2000, amended 27 May 2000, extending these provisions to all courts in Kosovo), 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo Trust Agency Related Matters (13 June 2002), 2006/25 on a Regulatory Framework for the Justice System in Kosovo (27 April 2006).

27 Official Gazette of the SAP Kosovo, nos. 7/74, 43/74 and 23/79.

28 Law of the Republic of Kosovo no 03/L-199 (n 24).

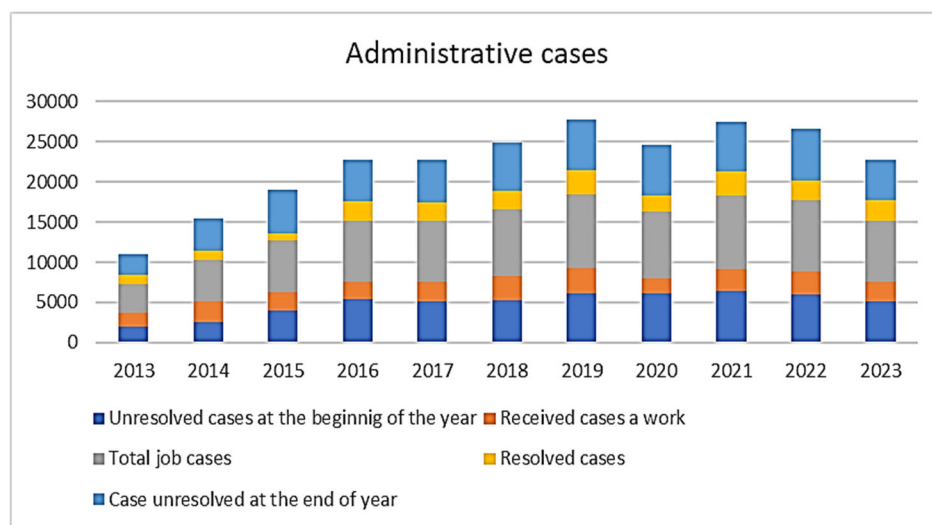
29 Law of the Republic of Kosovo no 06/L-054 'On Courts' [2018] Official Gazette of RK 22/1.

For a dispute or conflict of jurisdiction between administrative bodies to arise, requiring the intervention of the competent court, three conditions must be met:

- The dispute or conflict arises between different administrative bodies.
- The dispute or conflict arises between bodies that declare the will of power.
- The disagreement arises over the definition of the sphere of competencies.³⁰

Through the DAA, the Basic Court in Pristina is responsible for deciding on the legality of final administrative acts (Article 9). These acts, issued by administrative authorities in the exercise of public powers, determine the rights, obligations, and legal interests of natural and legal persons in administrative matters,³¹ as well as the legality (Article 1) of administrative actions.³² In this regard, administrative judicial jurisdiction covers all disputes of public law except those of a constitutional nature, which fall under the jurisdiction of the Constitutional Court.³³

To provide a clearer picture of the administrative cases handled by the Basic Court in Pristina's Department of Administrative Affairs, the Court of Appeals, and the Supreme Court, the data is presented below in graphic and tabular form.



Graph 1. Administrative cases (cases) received, resolved and unresolved from January 2013 to December 31, 2023, in the Basic Court of Pristina

30 Mazllum Baraliu dhe Esat Stavileci, *Komentari: i Ligjit për Procedurën Administrative* (GIZ 2014) 84.

31 Law of the Republic of Kosovo no 03/L-202 'On Administrative Conflicts' [2010] Official Gazette of RK 82/28, art 9.

32 *ibid*, art 1.

33 Law of the Republic of Kosovo no 08/L-182 'On Administrative Disputes' [2024] Official Gazette of RK 3/1, art 4.

Graph 1³⁴ illustrates the workload of the DAA in the Basic Court of Pristina from 2013 to 2023. The department began operations in 2013 with 1,947 unresolved administrative cases. That year, 1,720 cases were received, bringing the total to 3,667 cases for judicial review. Of these, 1,107 were resolved, leaving 2,560 cases carried forward to 2014.

This pattern continued year after year, with an increasing number of cases for judicial review and a large backlog of unresolved cases at the end of each year. A total of 22,898 cases were resolved from January 2013 to 31 December 2023, yet 5,014 cases remained unresolved at the end of December 2023. As a result, natural, legal persons and other parties seeking to assert their rights or interests, which may have been violated by individual decisions or the actions of public administration bodies, have had to wait for years.

The Department initially had only three judges, and a very small number of judges were tasked with handling an increasing number of cases for judicial review. Consequently, while the number of cases resolved each year grew, so did the number of unresolved cases by the end of each year.

According to Kosovo Judicial Council from the DAA of the Appeals Court of Pristina, 668 cases were transferred to the Commercial Court in 2022.³⁵ The Commercial Court of Kosovo was established in August 2022 under Law No. 08/L-015 on the Commercial Court of Kosovo. The court adjudicates matters within its competence in its First Instance and Second Instance Chambers. Additionally, the Fiscal Department operates the Commercial Court,³⁶ with the Fiscal Division transferred from the Basic Court in Pristina. This transfer of 668 cases occurred because, according to Article 13, the Commercial Court has exclusive jurisdiction to adjudicate administrative disputes initiated by business organisations against final decisions made by the Tax Administration, Customs Authorities, the Ministry of Finance, and any other public body responsible for imposing taxes or other state duties.³⁷

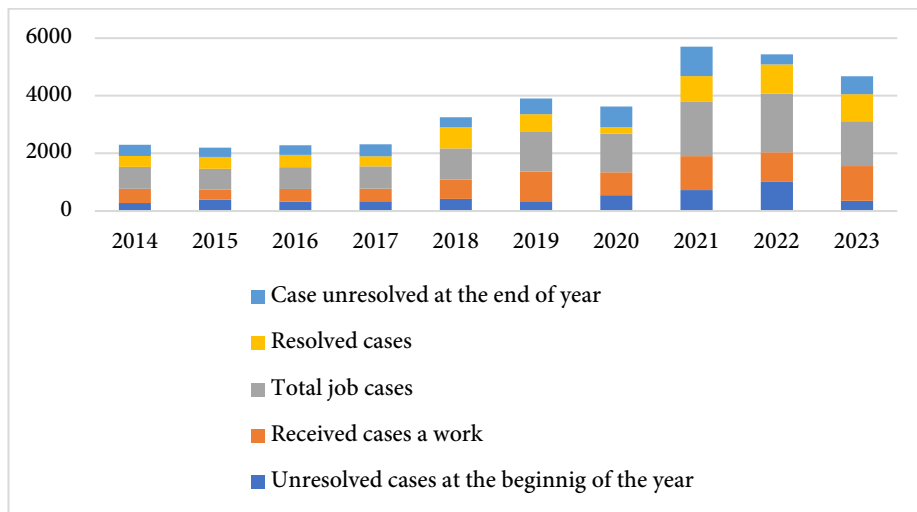
34 Source: based on data from the Statistical Reports and Annual Work Reports of the Kosovo Judicial Council (KJC) from January 2013 to December 31, 2023. The data processed by the authors of the paper. See 'All Reports of the Kosovo Judicial Council' (*Kosovo Judicial Council*, 2024) <<https://www.gjyqesori-rks.org/reports/?lang=en&cYear=2024>> accessed 10 December 2024. KJC *Annual Report* (2014, p. 52; 2015, p. 59; 2016, p. 56); *Statistical Report of the Judicial Council for 2013 - 2017* submitted to the author of the paper on 02.02.2018; *Annual Court Statistical Report* (2017, p. 9; 2018, p. 9; 2019, p. 8); *Statistical Report of the Courts Annual* (2020, p. 7; trem-I 2021, p. 7; 2021, p. 7; 2022, p. 8-9).

35 Këshilli Gjyqësor i Kosovës, *Raporti Statistikor i Gjykatave Vjetor - 2022* (KGK Departamenti i Statistikës 2022) 6.

36 Law of the Republic of Kosovo no 08/L-015 'On Commercial Court' [2022] Official Gazette of RK 7/3, art 10.

37 *ibid*, art 13, para 1.11.

Chart 2³⁸ shows the administrative cases in the Court of Appeals in Pristina, with data broken down by years.



Graph 2. Administrative cases received, resolved and unsolved from January 2014 to 31 December 2023 in the Court of Appeals in Pristina

The graph reflects the situation of the Court of Appeals, which holds second-instance jurisdiction over the entire territory of the Republic of Kosovo. In the DAA at the Court of Appeals in Pristina, there were 271 unresolved administrative cases at the beginning of 2014.

Over the following years, 7,606 cases were received, of which 5,976 were resolved. By the end of 2023, 620 cases remained unresolved. A contributing factor of this backlog is the small number of judges in the Court of Appeals, which makes it impossible to review and resolve cases within the prescribed time limits. This situation is due to the heavy workload, the limited number of judges handling administrative cases, and the growing number of unresolved administrative cases.³⁹

38 Source: based on the data of the Annual Work Reports of the Kosovo Judicial Council (KJC) from January 2014 to December 31, 2023. The data processed by the authors of the paper. See ‘All Reports of the Kosovo Judicial Council’ (n 34). KJC *Annual Report* (2014, p. 48; 2015, p. 57; 2016, p. 54); *Annual Court Statistical Report* (2017, p. 7; 2018, p. 7; 2019, p. 6); *Statistical Report of the Courts Annual* (2020, p. 6; 2021, p. 6; 2022, p. 6; 2023, p. 6); *Court Statistical Report in the first quarter of 2021* (p. 6).

39 Ministry of Public Administration of the Republic of Kosovo, *Strategy on Modernization of Public Administration 2015-2020* (Office of the Prime Minister 2015) 24.

Additionally, Table 1⁴⁰ and Graph 3⁴¹ provide data on administrative cases in the Supreme Court from 2007 to 2013.

Table 1. Administrative cases for the years 2007-2013 in the Supreme Court

Administrative cases for the years	Unresolved cases at the beginning of the year	Received cases at work	Total job cases	Resolved cases	Cases unresolved at the end of the year
2007	2,164	2,886	5,050	3,057	1,993
2008	1,993	1,402	3,395	2,308	1,087
2009	1,087	1,031	2,118	1,326	792
2010	792	1,244	2,036	1,008	1,028
2011	1,028	1,550	2,578	1,194	1,384
2012	1,384	1,637	3,021	1,405	1,616
2013	-	8,940	8,940	8,939	1
Total		18,690	27,138	19,237	

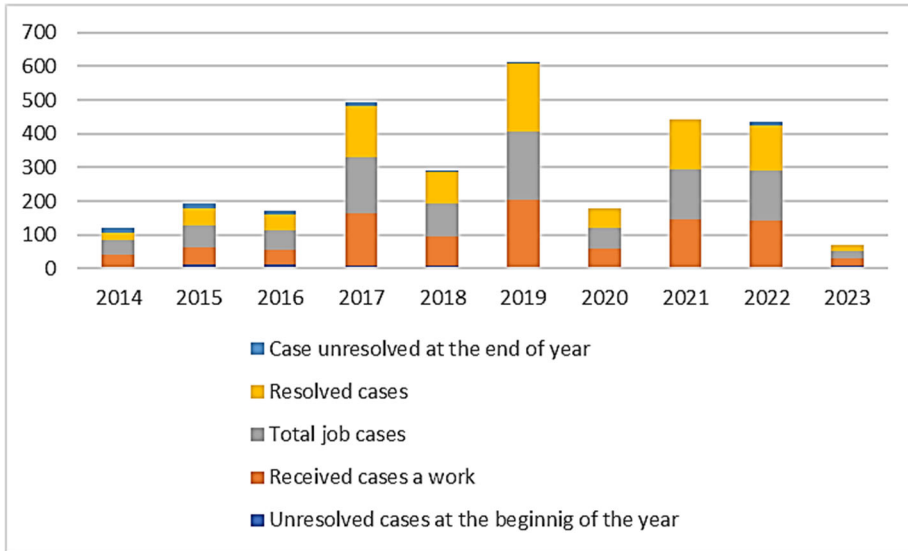
The chart above shows that from 2007 to the end of 2013, the Supreme Court handled a total of 27,138 cases, of which 19,237 administrative cases were resolved. Any cases in the Supreme Court that had not been resolved with a final decision by 31 December 2012, were transferred to the Court of Appeals for handling starting from 1 January 2013.⁴²

Below, the data for administrative cases in the Supreme Court, after the reorganisation under the Law on Courts, which is currently in force, is presented in graphic form.

40 Source: based on data from the Statistical Report of the Supreme Court of Kosovo. Statistical reports provided to the author of the paper on January 25, 2018 by the Supreme Court of Kosovo. See 'Raporti i Punës' (Gjykata Supreme e Kosovës) <<https://supreme.gjyqesori-rks.org/publikimet/raporti-i-punes/>> accessed 10 December 2024.

41 Source: based on the data of the Annual Work Reports of the Kosovo Judicial Council (KJC) from January 2014 to December 31, 2023. The data processed by the authors of the paper. See 'All Reports of the Kosovo Judicial Council' (n 34). KJC *Annual Report* (2014, p. 45; 2015, p. 54; 2016, p. 51); *Annual Court Statistical Report* (2017, p. 4; 2018, p. 4; 2019, p. 4); *Statistical Report of the Courts Annual* (2020, p. 4; 2021, p. 4; 2022, p. 4; 2023, p. 4); *Court Statistical Report in the first quarter of 2021* (p. 4).

42 Gjykata Supreme e Kosovës, *Raporti i punës për vitin 2012* (Gjykata Supreme 2012) 1 <<https://supreme.gjyqesori-rks.org/publikimet/raporti-i-punes/?cYear=2012>> accessed 10 December 2024.



Graph 3. Administrative cases received, resolved and unresolved from January 2014 to 31 December 2023, in the Supreme Court of Kosovo

The graph reflects the cases presented to the Supreme Court of Kosovo, including received cases, resolved cases, and unsolved cases, from January 2014 to 31 December 2023. In 2014, this Court began the year with three administrative cases carried over from 2013. Over the following years, the Court received a total of 942 cases, with cases being resolved by the end of 2023.

Based on the analysis and results, the establishment of administrative courts is necessary. The Administrative Court of First Instance, based in Pristina, should have branches in six major centers of Kosovo, while the Supreme Administrative Court would serve as the second instance. These courts would help ensure the timely resolution of administrative cases, provide legal protection for the constitutional and legal rights, freedoms, and interests of individuals, and address violations arising from the exercise or failure to exercise public functions by administrative authorities. In addition, the Administrative Court would oversee the actions of government bodies and other public authorities responsible for implementing complex public policies.⁴³

43 Timo Ligi, Andrej Kmecl and Villem Lapimaa, *The Functioning of Administrative Judiciaries in the Western Balkans* (SIGMA Papers 73, OECD Publ 2024) 50, doi:10.1787/6499dad5-en.

4 JUDICIAL CONTROL OF PUBLIC ADMINISTRATION IN THE COUNTRIES OF THE REGION

Judicial control of public administration is a principle accepted and applicable in best practices by European Union (EU) countries.⁴⁴ A functional administrative judiciary is also one of the essential elements of the rule of law, explicitly including “access to justice before independent and impartial courts, including judicial review of administrative acts”.⁴⁵ For this reason, effective judicial protection by independent and impartial courts is a cornerstone of the rule of law.

Across the Western Balkans, judicial institutions continue to face many challenges.⁴⁶ While all Western Balkan administrations and judiciaries formally comply with the requirement for access to justice and legal protection against administrative actions, individuals can contest administrative actions before a specialised administrative judiciary or a judiciary of general jurisdiction.⁴⁷ The specific methods of judicial control of public administration in the region's countries will be discussed below.

In the Republic of Albania, Article 135 of the Constitution provides that judicial power is exercised by the High Court as well as by the Courts of Appeal and the Courts of First Instance, which are established by law.⁴⁸ According to Article 3 of the Law on the Organization of the Judiciary, courts with general jurisdiction include the Courts of First Instance and the Courts of Appeal. Special Courts consist of the Administrative Courts of First Instance and the Administrative Court of Appeal.

The Special Court of First Instance and the Court of Appeals are responsible for trailing criminal offenses related to corruption and organised crime. The Supreme Court adjudicates matters of both general and special jurisdiction.⁴⁹

44 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Enlargement Strategy (10 November 2015) 20 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52015DC0611>> accessed 10 December 2024.

45 Ligi, Kmecl and Lapimaa (n 43) 1.

46 Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions: 2021 Communication on EU Enlargement Policy (19 October 2021) 8 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52021DC0644>> accessed 10 December 2024; GIZ, 'Strengthening Rule of law in Serbia' (*Gesellschaft für Internationale Zusammenarbeit (GIZ)*, January 2024) <<https://www.giz.de/en/worldwide/139002.html>> accessed 10 December 2024.

47 Ligi, Kmecl and Lapimaa (n 43) 3.

48 Constitution of the Republic of Albania (adopted 21 October 1998) <https://www.constituteproject.org/constitution/Albania_2012> accessed 10 December 2024.

49 Law of the Republic of Albania no 98/2016 'On the Organization of the Judiciary in the Republic of Albani' (amended 23 March 2021) art 3 <<https://ild.al/en/laws/>> accessed 10 December 2024.

The establishment of Administrative Courts serves two key purposes: First, it simplifies procedures aimed at resolving administrative disputes while ensuring the effective protection of individuals' subjective rights and legitimate interests of persons through a regular judicial process and within a timely and reasonable time.⁵⁰ Second, the courts act as guarantors for protecting subjective rights violated by the administration.⁵¹ In addition, this control serves the normal course of administrative activity and, above all, constitutes a guarantee that the rights of individuals and legal entities are not violated.⁵²

In the Republic of Northern Macedonia, Article 22 of the the Law on Courts stipulates that the judiciary consists of the Basic Courts, the Courts of Appeal, the Administrative Court, the High Administrative Court, and the Supreme Court of the Republic of North Macedonia, all of which exercise judicial power within the judicial system.⁵³

According to Article 25, the Administrative Court⁵⁴ and the High Administrative Court exercise judicial power throughout the Republic of North Macedonia.⁵⁵ The High Administrative Court is competent to decide on appeals against the decisions of the Administrative Court, conflicts of competence between the municipalities of the City of Skopje, and holders of public authorisations, as provided by law (Article 34-a), unless the Constitution or other laws provide other forms of judicial protection.⁵⁶

According to Article 4 of the Law on Administrative Dispute, administrative disputes in the Republic of Macedonia are decided by the Administrative Court as a court of first instance and the Supreme Court of the Republic of North Macedonia, which decides on extraordinary legal remedies.⁵⁷ The Administrative Court resolves appeals against administrative acts (Article 16), while the Supreme Court handles extraordinary legal remedies against decisions made by the Administrative Court. The Supreme Court also decides on conflicts of jurisdiction between the Administrative Court and other courts.⁵⁸

In the Republic of Montenegro, Article 8 of the Law on Courts specifies that courts of general jurisdiction and specialised courts exist. The courts of general jurisdiction include minor offenses courts, high minor offenses courts, basic courts, supreme courts, the Court of Appeal, and the Supreme Court. The specialised courts include Commercial Courts and

50 Decision no 65 (Constitutional Court of the Republic of Albania, 07 November 2016) 5.

51 Sadushi (n 20) 27.

52 Unifying decision no 1 (United Colleges of the High Court of the Republic of Albania, 26 November 2010) 6.

53 Law of the Republic of Northern Macedonia 'On Courts' (into force 19 May 2016, amended 17 May 2019) art 22 <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2019\)016-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2019)016-e)> accessed 10 December 2024.

54 *ibid*, art 25.

55 *ibid*, art 25-a.

56 *ibid*, art 34-a.

57 Law of the Republic of Northern Macedonia 'On Administrative Disputes' (into force 27 May 2006, amended 2010) [2006] Official Gazette of the Republic of Macedonia 62/2006 and 150/2010, art 4.

58 *ibid*, art 16.

Administrative Courts.⁵⁹ The Administrative Court has jurisdiction over the territory of Montenegro and is responsible for adjudicating administrative disputes and performing other duties defined by law (Article 21 and Article 22).⁶⁰

In this regard, judicial control over the legality of public administration actions protects the rights of individuals from arbitrary state interference and prevents the overstepping of executive powers.⁶¹ The Court decides on administrative disputes concerning the legality of administrative acts, the legality of other individual acts provided by law, and on extraordinary legal remedies against final and binding decisions in misdemeanour proceedings. Additionally, the court performs other tasks as defined by law (Article 23 and Article 24).⁶²

In the Republic of Serbia, according to Article 134 of the Constitution, the judiciary is exercised by courts with general and specialised jurisdiction.⁶³ The Law on Courts, Article 10, specifies that the Courts of General Jurisdiction include Municipal and District Courts, Courts of Appeal and the Supreme Court of Serbia. The specialised courts include Commercial Courts, High Commercial Courts and Administrative Courts.⁶⁴

The Administrative Court adjudicates administrative disputes and other duties defined by law (Article 26) in the first instance.⁶⁵ The court has jurisdiction over issues related to the legality of final acts executed by public administration authorities. In addition, the Administrative Court acts as a control mechanism for the entire executive branches.⁶⁶

After a comparative review of the provisions of laws governing administrative judiciary, administrative disputes, the following conclusion is reached. In Albania, Montenegro, North Macedonia, and Serbia, jurisdictions follow the European model of functional specialisation for administrative disputes, with separate administrative courts established, at least at the first-instance level. Kosovo, however, is currently an exception, as it has separate departments for administrative disputes within the system of general jurisdiction courts.⁶⁷

59 Law of the Republic of Montenegro no 23-1/14-18/17 'On Courts' of 26 February 2015 [2015] Official Gazette of Montenegro 11, art 8 <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2015\)049-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2015)049-e)> accessed 10 December 2024.

60 *ibid*, arts 21, 22.

61 Ana Raičević, *Upravno sudstvo u Crnoj Gori: Razumni rok i izvršenje presuda Upravnog suda* (Građanska alijansa 2020) 5.

62 Law of the Republic of Montenegro no 23-1/14-18/17 (n 59) arts 23, 24.

63 Constitution of the Republic of Serbia (adopted 2006) art 143 <https://www.constituteproject.org/constitution/Serbia_2006> accessed 10 December 2024.

64 Law of the Republic of Serbia 'On Organization of Courts' (amended 2010) [2010] Official Gazette of RS 116/08, 104/09, 101/10.

65 *ibid*, art 26.

66 GIZ (n 46).

67 Ligi, Kmecl and Lapimaa (n 43) 13.

5 RESEARCH AND RESULTS

This section presents the analysis and research results from primary data collection instruments, including the analysis of the Kosovo Judicial Council's annual statistical reports from 2013 to 3 September 2024, as well as interviews, field questionnaires, and the main findings.

The purpose of using interviews, questionnaires, and carefully constructed questions is to address the three primary research questions.

1. How feasible is it for the Court of Pristina to resolve administrative cases within a reasonable timeframe?
2. To what extent has the Court decided on the legality of acts and actions of public administration?
3. Is establishing the Administrative Court and the Supreme Administrative Court necessary to deal with administrative matters?

This paper examines these questions and provides recommendations based on the empirical findings.

The research includes input from senior public officials, civil society representatives,⁶⁸ and questionnaires from senior public officials.⁶⁹ Interviews conducted with notable figures include Enver Hasani (President of the Constitutional Court of Kosovo, 2015),⁷⁰ Hilmi Jashari (The People's Advocate of the Republic of Kosovo, 2016),⁷¹ Edita Tahiri (Minister of State for Dialogue with Serbia and former Minister of the Ministry of Public Administration in the Republic of Kosovo, 2016)⁷² etc.

68 Clarification: For the Interviews of a number of senior public and civil society officials the names of the interviewers will not be published at their request.

69 Clarification: The paper will use the opinion of the Members of the Parliament (MPs) of the Republic of Kosovo, judges, prosecutors, senior management civil servants and management civil servants, political advisors and civil society interviewers.

70 Interview with Enver Hasani, former President of the Constitutional Court of Kosovo, conducted by the author paper on 13 September 2015.

71 Hilmi Jashari, the People's Advocate of the Republic of Kosovo in the interview conducted by the author of the paper on 20 January 2016.

72 Edita Tahiri, Minister of State for Dialogue with Serbia and former Minister of the Ministry of Public Administration in the Republic of Kosovo in the interview conducted by the author of the paper on 23 January 2016 (Pristine).

Table 2. Senior public officials participating in this research⁷³

Institutions	Senior public officials participating in this research	No.
Assembly of Kosovo	Ex-President of Assembly of Kosovo and deputies	35
Ministry	Ex Minister of the Ministry Public Administration	1
Constitutional Court	President and judge	2
Court of Appeals	Judges	10
Basic Courts of Kosovo	Judges	92
Ministry	Civil Servants of senior-level management and Civil Servants of management level.	7
MPA and	Political Advisors of Minister and President of the Republic of Kosovo	4
IPA	The People's Advocate and Deputy Ombudsman	2
Anti-Corruption Agency	Ex- Director of Anti-Corruption Agency	1
Total senior public officials		154
Institutes, non-governmental organization and journalist	Civil society	10
Total		164

The research findings and analysis of empirical data indicate that the Department of Administrative Affairs in the Basic Court in Pristina is faced with a large number of cases and a small number of judges (for further details, see Table 3).

⁷³ Source: authors of the research paper.

Table 3. Basic Court of Pristina-administrative cases received, resolved and unsolved from January 2020 to 30 September 2024⁷⁴

Year	Cases received	Total job cases	Cases resolved	Cases unresolved	No. Judge
2020	1,905	8,285	1,947	6,338	
2021	2,816	9,163	2,951	6,212	12
2022	2,933	8,871	2,463	6,408	8
2023	2,418	7,571	2,557	5,014	8
30.09.2024	4,029	8,853	1,542	7,311	8

Table 4. Court of Appeals in Pristina - administrative cases received, resolved and unsolved from January 2020 to September 30, 2024⁷⁵

Year	Cases received	Total job cases	Cases resolved	Cases unresolved	No. Judge
2020	797	1,341	620	721	
2021	1,180	1,901	877	1,024	3
2022	1,010	2,034	1,016	350	4
2023	1,207	1,557	937	620	4
30.09.2024	896	1,516	601	915	4

Based on the data and results, it can be concluded that while the number of cases resolved increases each year compared to the previous one, the number of cases has also risen, leading to a backlog of unresolved cases at the end of each year,⁷⁶ For this reason, the time taken for judgments (i.e., the average time from filing a court case to receiving a judgment) remains a cause for concern, as the overall duration is excessively long. For

74 Source: 'All Reports of the Kosovo Judicial Council' (n 34). KJC *Statistical Report of the Courts Annual* (2020, p. 7; 2021, p. 7; 2022, p. 8; 2023, p. 8); *Statistical Report of the Courts for the 9-month period* (2024, p. 8). The data processed by the authors of the paper.

75 Source: *ibid.* KJC *Statistical Report of the Courts Annual* (2020, p. 6; 2021, p. 6; 2022, p.6; 2023,p. 6); *Statistical Report of the Courts for the 9-month period* (2024, p. 6). The data processed by the authors of the paper.

76 Clarification: The data for year 2024 reflects only in those published in the reports of the Judicial Council of Kosovo.

example, in 2022, the disposition time for administrative cases in the first and second instance was 953 days (compared to 1,339 and 426 days in 2021, respectively).⁷⁷

This delay means that natural and legal persons and other parties must wait years to realise their rights and interests. The empirical data is presented graphically below. Several questions were posed in the research, which are addressed here.

One key question was: Has the Court—specifically, the Department of Administrative Affairs (DAA)—fulfilled its duties and responsibilities? If not, what are the underlying reasons? How do the limited number of judges and the large volume of cases contribute to this?

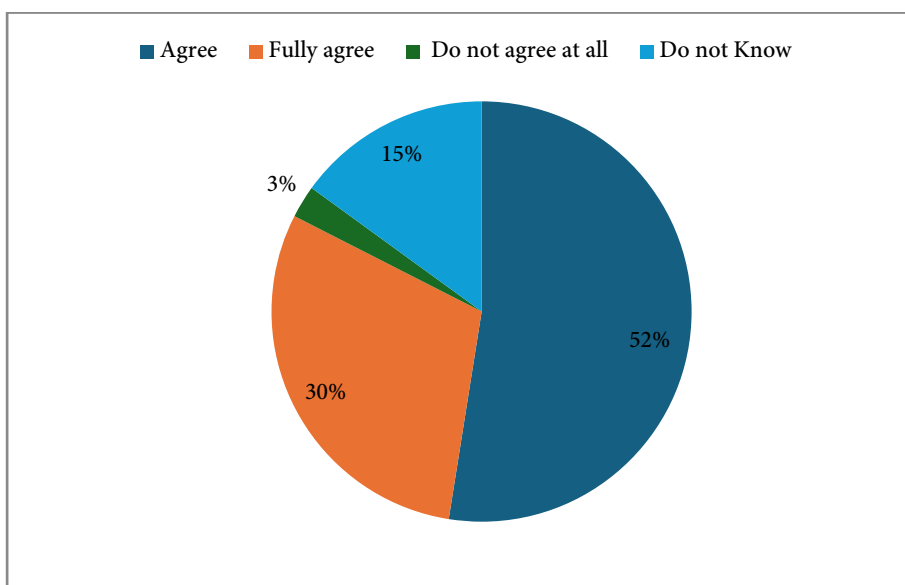


Figure 1. Judges' opinion on the Department of Administrative Affairs⁷⁸

The data in Figure 1 above reflects the opinions of the judges participating in this study. Of the respondents, 52% agree, while 30% fully agree, indicating that a total of 82% of judges believe that the DAA has failed to fulfil its duties and responsibilities due to the small number of judges and a large number of pending cases. On the other hand, 15% of the judges

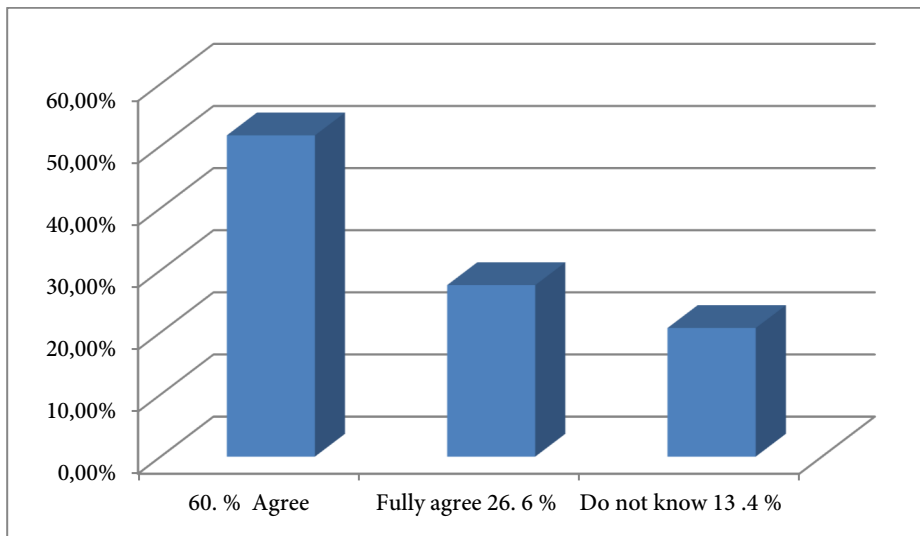
⁷⁷ European Commission Staff Working Document: Kosovo* 2023 Report: Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: 2023 Communication on EU Enlargement policy (Brussels, 8 November 2023) 22 <<https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:52023SC0692>> accessed 10 December 2024.

⁷⁸ Source: author of the research-based paper.

Clarification: the research is part of the dissertation work of the author, see Shala (n 19).

interviewed expressed uncertainty, stating that they did not know whether the DAA had succeeded in fulfilling its duties and responsibilities, attributing the issue to the small number of judges and the large number of subjects.

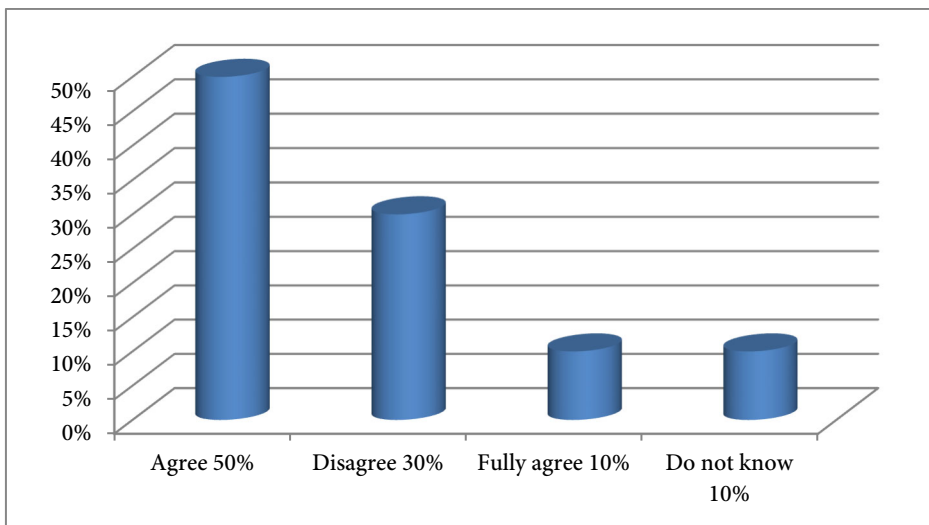
Regarding the question of whether the Administrative Court and the Supreme Administrative Court should be established, the opinions obtained and analysed for this purpose are given graphically.



Graph 4. Opinion of the deputies on the establishment of the Administrative Court and the Supreme Administrative Court⁷⁹

The above graph reflects the opinions of the deputies of the Assembly of Kosovo, with a total of 86.6% of the delegates participating in this study agreeing that the Administrative Court and the Supreme Administrative Court should be established to make the administrative trial more efficient. On the other hand, 13.4% of the delegates expressed uncertainty about the necessity of establishing the Administrative Court and the Supreme Administrative Court of Kosovo.

⁷⁹ Source: authors of the research paper.



Graph 5. Opinion of the judges of the Court of Appeals on the establishment of the Administrative Court and the Supreme Administrative Court⁸⁰

The graph above reflects the opinion of the judges of the Court of Appeals. 60% of judges believe there is the need to establish the Administrative Court and the Supreme Administrative Court in Kosovo. Meanwhile, 10% of judges state that they do not know whether the Administrative Court and the Supreme Administrative Court should be established.

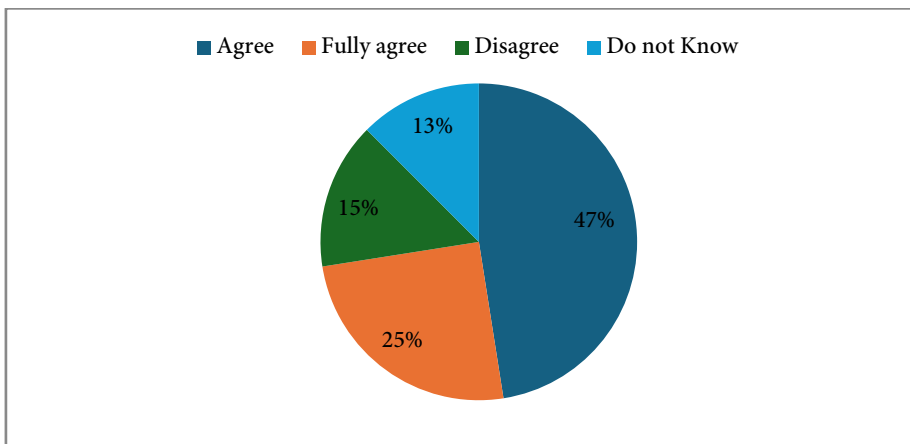


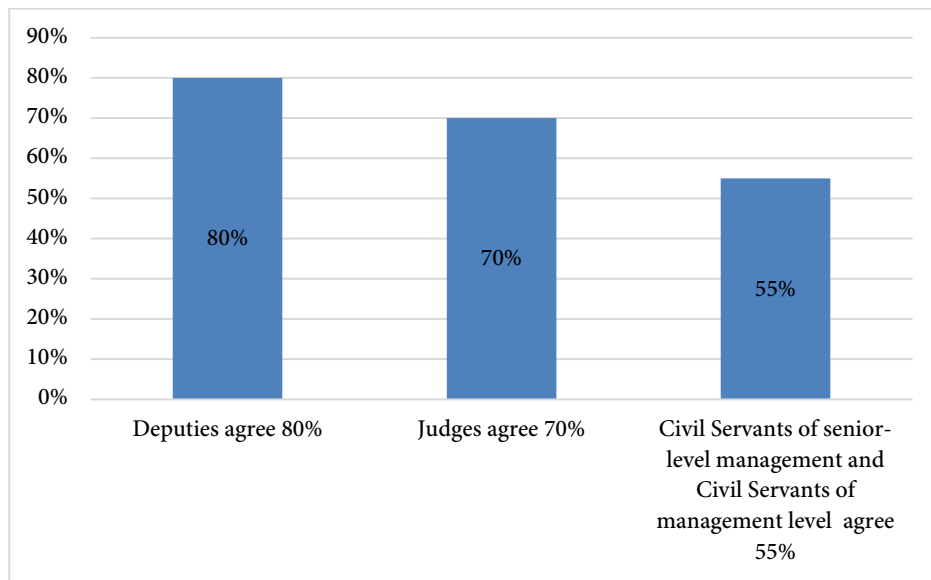
Figure 2. Opinion of Basic Court judges on the establishment of the Administrative Court and the Supreme Administrative Court⁸¹

80 Source: authors of paper based on research.

81 Source: author of the paper based on research.

The above figure reflects the opinion of the judges participating in this study. Of the judges, 47% agree, 25% fully agree, and 72.0% expressed their support for the establishment of the Administrative Court and the Supreme Administrative Court. Meanwhile, 15% of judges disagreed with the establishment of these courts, and 13% stated that they did not know whether these courts should be established.

According to the former President of the Constitutional Court and the judges at the Basic Court, it is widely accepted that for administrative matters, administrative courts should be established in response to the challenges of functioning of the state administration, and that the existence of only one department at the Basic Court in Pristina is not the right solution. A supreme administrative court (the second instance) should be established in Kosovo as a specialised institution that would exercise judicial control over the legality of the work of the entire public administration. The main drawback in Kosovo lies in the judicial control of legality. If this control were effective, it would establish a certain standard of conduct for the public administration. As the situation stands, there is no clear line that the public administration should follow, which is clearly evident in some cases, given the arbitrary nature of public administration decisions in Kosovo.⁸²



Graph 6. Opinion of senior public officials on the establishment of the Administrative Court and the Supreme Administrative Court⁸³

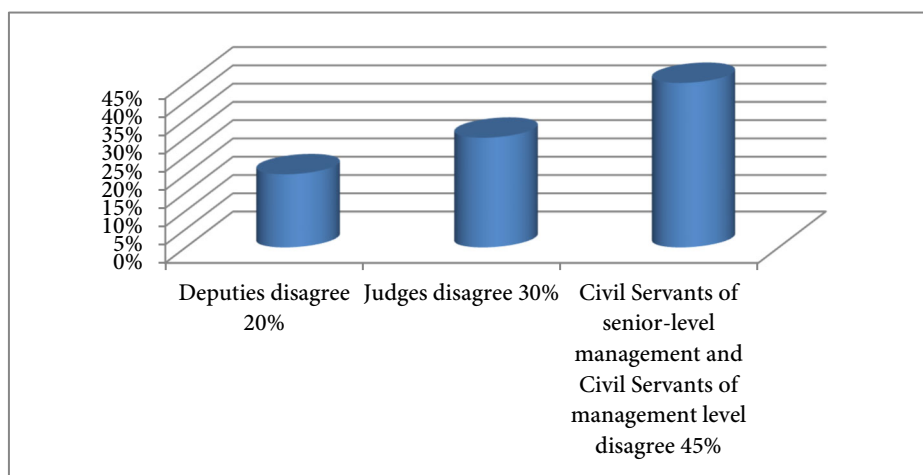
⁸² Enver Hasani, Former President of the Constitutional Court, University Professor, Interview conducted by the author of the paper on 13 September 2015 (Pristina).

⁸³ Source: author of the paper based on research.

The graph above reflects the opinions of senior public officials involved in the survey: 80% of the Republic of Kosovo's Members of Parliament (MPs), 70% of judges, and 55% of senior-level civil servants and management-level civil servants⁸⁴ agree that the establishment of the Administrative Court and the Supreme Administrative Court is necessary.

Based on the research and empirical data results, the hypothesis regarding the necessity of establishing administrative courts in the Republic of Kosovo to resolve administrative issues is substantiated. The Supreme Administrative Court should be established in Kosovo as a specialised institution that would oversee judicial control of the legality of the work of the entire public administration.

However, there are also opinions against establishing the Administrative Court and the Supreme Administrative Court.



Graph 7. Opinion of senior public officials against the establishment of the Administrative Court⁸⁵

84 Law of the Republic of Kosovo no 03/L-149 'On the Civil Service of the Republic of Kosovo' [2010] Official Gazette of the RK 72/12. In the Republic of Kosovo based on Law No. 03/L-149 Article 23 provided that the personnel employed in the Civil Service is divided in four (4) functional categories: 1. Civil Servants of senior-level management; 2. Civil Servants of management level; 3. Civil Servants of professional level; 4. Civil Servants of the technical-administrative level.

Law of the Republic of Kosovo no 08/L-197 'On Public Officials' [2023] Official Gazette of the RK 21/1. This Law of 22 December 2022 repealed Law No. 03/L-149 on the Civil Service of the Republic of Kosovo. According para 2 article 38 of the Law No. 08/L-197 on Public Officials, which provides: positions in the civil service into the following categories: senior-level management category shall include the general secretary, director general in independent and regulatory agencies, executive director, and deputy director of an executive agency, and equivalent positions thereof and mid-level management category shall include the director of department and equivalent positions thereof. Low-level management category shall include the head of division and equivalent positions thereof; The category of specialists shall include the senior professionals in areas that require specific preparation for that area; and the professional category shall include professional officers.

85 Source: author of the paper based on research.

The above graph reflects the opinions of senior public officials who are against establishing the Administrative Court. Of these, 20% of delegates state that there are currently sufficient institutions dealing with administration. They argue that only political will is necessary, and while the necessary institutions exist and there is good legislation, its implementation is lacking.

In addition, 30% of judges argue that there is no need to create another institution to control public administration as such institutions are already in Kosovo. However, they emphasise the need for greater will and more independence, enabling better functioning of the existing institutions.

Some judges further assert that there is no need at all to establish an administrative court or any other institution to oversee public administration in Kosovo. Instead, they propose increasing the number of judges in the Department of Administrative Affairs of the Basic Court in Pristina.⁸⁶ While establishing a new court may be straightforward, they note that doing so does not automatically lead to increased professionalism, efficiency, or effectiveness. In some cases, increasing the number of judges in the administrative department has not led to any improvements; on the contrary, it has even resulted in a decline in the court's efficiency.⁸⁷

On the other hand, the Commercial Court serves as the prime example, demonstrating that establishing new courts is not always the solution. While it has been established, it has yet to offer any miracle solutions to the problems it aimed to address. The same dilemma applies to the Administrative Court.⁸⁸ In addition, separate administrative departments have been established within both the Basic Court and the Commercial Court, which handle administrative disputes arising from business activities.

This research was conducted over several years, involving interviews, discussions, and questionnaires with senior public officials and civil society representatives. The empirical findings and research results provided insights into Kosovo's need for legal reform. In this regard, the Assembly adopted a new law on administrative disputes to improve the administrative justice framework and protect citizens' rights.⁸⁹ Furthermore, the feedback gathered through the interviews and questionnaires influenced senior public officials to initiate legal reforms. Following the submission of the paper to the Journal in 2024, I entered the legislative program for drafting and approving the draft law on the Administrative Court.

86 Shala (n 19) 209-14.

87 Ehat Miftaraj, 'Interview with the Executive Director of the Kosovo Law Institute (KLI)' (*Dukagjini*, 9 June 2023) <<https://www.dukagjini.com>> accessed 9 June 2023.

88 Naser Shamolli, 'Interview with the Staff in Group for Legal and Political Studies' (*Dukagjini*, 9 June 2023) <<https://www.dukagjini.com>> accessed 9 June 2023.

89 Law of the Republic of Kosovo no 08/L-182 (n 33). Into forced one (1) year after the publication in the Official Gazette of the Republic of Kosovo.

Moreover, on 5 December 2024, the Assembly of Kosovo adopted the Law on the Administrative Court.⁹⁰ However, on 13 December 2024, the opposition party (Democratic Party of Kosovo) challenged the law in the Constitutional Court, citing "procedural violations"⁹¹ and alleging that specific deadlines for approving the draft law had been ignored during the second review.⁹² Despite this, adopting the Law on the Administrative Court remains an important step in reforming administrative justice.⁹³ This law defines that the Administrative Court shall have jurisdiction over the entire territory of the Republic of Kosovo and shall be considered functionalised three (3) months after it enters into force.

Looking ahead, the Administrative Court is expected to be established in 2025, with hopes of improving the professionalism of judges and the efficiency of the court's work.

6 CONCLUSIONS

A comparative analysis of judicial control of public administration in the Republic of Kosovo and in the countries of the region that the Republic of Albania, Northern Macedonia, Montenegro, and Serbia, has led to several key conclusions. Given the limited scope of this study, a selection of findings and recommendations is presented.

With the legal reform, Law No. 06/L-054 on Courts determines that the court system of the Republic of Kosovo comprises of Basic Courts, the Court of Appeals and the Supreme Court.⁹⁴ For this reason, administrative disputes are settled within the competence of the Department of Administrative Affairs within the Basic Court in Pristina, which has jurisdiction over the entire territory of Kosovo. Additionally, administrative departments have been established within the Commercial Court to handle administrative disputes initiated by businesses. However, due to the heavy workload, the large number of cases, and the small number of judges dealing with administrative cases, these departments have contributed to an increase in the number of unresolved administrative cases.

90 Republic of Kosovo, *Transcript of the Extraordinary Plenary Session of the Assembly of the Republic of Kosovo held on 5 December 2024* (Assembly of the Republic of Kosovo 2024) 4.

91 Abelard Tahiri, 'Head of the PDK Parliamentary Group at a press conference' (*Telegrafi*, 13 December 2024) <<https://telegrafi.com>> accessed 13 December 2024.

92 The reason why claims procedural violations. Rules of procedure of the Assembly of the Republic of Kosovo Article 52 defines that the agenda, together with materials, is distributed to the Members of the Parliament (MPs) at least two working days prior the plenary session. Report was distributed the MPs in the day of the holder of the plenary session

93 'The adoption of the Law on the Administrative Court, an important step in the reform of administrative justice' (*Kosovo Judicial Council*, 5 December 2024) <<https://www.gjyqesori-rks.org/2024/12/05/miratimi-i-ligjit-per-gjykatën-administrative-nje-hap-i-rendesishem-ne-reformen-e-drejtësisë-administrative/>> accessed 10 December 2024.

94 Law of the Republic of Kosovo no 06/L-054 (n 29) ch 3.

Based on the results of empirical research, Kosovo must establish the Administrative Court of First Instance, based in Pristina, with branches in six major centers, and the Supreme Administrative Court (second instance).

The Administrative Court will be a guarantor for a regular judicial process and, within a quick and reasonable time, for the legal protection of the constitutional and legal rights, freedoms and interests of the subjects that may be violated as a result of the exercise or not of public functions by public administration bodies. The court would enable judicial control of the legality of the work and activity of public administration, increase the quality of administration and good governance, and increase citizens' trust in institutions.

Establishing the Administrative Court would create a certain standard of conduct for public administration, contributing to the creation of a rule of law, good governance in Kosovo, functioning institutions, democratic societies, and integration into the European Union.

The Assembly of Kosovo adopted the Law on the Administrative Court on 5 December 2024. Subsequently, on 13 December 2024, the opposition party (Democratic Party of Kosovo) submitted the law to the Constitutional Court, claiming procedural violations. Based on the practices of legislative treatment, the Constitutional Court will issue a verdict on the assessment of the constitutionality of the law within the legal timeframe. However, if the Court approves the claim and requests the Assembly to repeat the procedure for a second review of the Draft Law, this will delay the establishment of the Administrative Court, the issuance of sub-legal acts by the Judicial Council, the opening of the competition for the selection and appointment of new judges, and the functionalisation of the court. This delay will result in an increase in cases in the Administrative Departments of the Court.

Although the law of the Administrative Court stipulates that the court shall be considered functionalised three (3) months after the law enters into force, challenges to its functionalisation include the transfer of judges, the recruitment of new judges, training for administrative cases, and the transfer of cases from the Department for Administrative Matters of the Basic Court in Pristina and the Department for Administrative Matters and the Fiscal Department of the Commercial Court to the first instance of the Administrative Court.

Finally, this study will contribute to the legal literature and pave the way for a new research direction. Future researchers should focus more on exploring the challenges of functionalising the Administrative Court and assessing the effects of judicial control by both the Administrative Court and the Supreme Administrative Court.

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Competing interests: No competing interests were disclosed.

Disclaimer: The authors declare that their opinion and views expressed in this manuscript are free of any impact of any organizations.

ABOUT THIS ARTICLE

Cite this article

Shala M and Shala X, ‘The Establishment of an Administrative Court: A Necessity for Resolving Administrative Disputes in the Republic of Kosovo’ (2025) 8(2) Access to Justice in Eastern Europe 1-30 <<https://doi.org/10.33327/AJEE-18-8.2-a000106>> Published Online 26 Mar 2025

DOI <https://doi.org/10.33327/AJEE-18-8.2-a000106>

Managing editor – Mag. Bohdana Zahrebelna. **English Editor** – Julie Bold.

Ukrainian language Editor – Lilia Hartman.

Summary: 1. Introduction. – 2. Research Methodology. – 3. Judicial Control of the Public Administration. – 3.1. *Judicial Control of the Public Administration in Kosovo*. – 4. Judicial Control of Public Administration in the Countries of the Region. – 5. Research and Results. – 6. Conclusions.

Keywords: *Administrative Court, acts, administrative disputes, control, public administration, legality.*

DETAILS FOR PUBLICATION

Date of submission: 11 Dec 2024

Date of acceptance: 18 Feb 2025

Date of Online First publication: 26 Mar 2025

Whether the manuscript was fast tracked? - No

Number of reviewer report submitted in first round: 2 reports

Number of revision rounds: 1 round with minor revisions

Technical tools were used in the editorial process:

Plagiarism checks - Turnitin from iThenticate <https://www.turnitin.com/products/ithenticate/>

Scholastica for Peer Review <https://scholasticahq.com/law-reviews>

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

СТВОРЕННЯ АДМІНІСТРАТИВНОГО СУДУ:

НЕОБХІДНІСТЬ ВРЕГУЛЮВАННЯ АДМІНІСТРАТИВНИХ СПОРІВ У РЕСПУБЛІЦІ КОСОВО

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АНОТАЦІЯ

Вступ: Судовий контроль за діяльністю публічної адміністрації відіграє вирішальну роль у підвищенні якості діяльності адміністрації та належного управління. Ця наукова стаття має на меті вивчити наявну ситуацію судового контролю за публічною адміністрацією Республіки Косово та провести порівняльний аналіз правової бази судового контролю за публічною адміністрацією в країнах регіону. Також метою дослідження є відповісти на такі питання: наскільки Суд першої інстанції в Приштині спромігся ухвалити рішення щодо законності актів і дій органів публічної адміністрації; чи є необхідним створення Адміністративного суду та Вищого

адміністративного суду для розгляду адміністративних справ? Створення адміністративного суду покращить судовий контроль за законністю роботи публічної адміністрації, підвищить якість адміністрування та ефективного управління, збільшить рівень довіри громадян до інституцій.

Методи: У цьому дослідженні використовувалися різні методології, зокрема якісні, аналітичні, порівняльно-правові, описові та кількісні (статистичні) методи. Метод якісного дослідження аналізує Конституцію, закони, підзаконні акти та інші документи. Порівняльно-правовий метод застосовано для зіставлення положень законодавства про адміністративні спори в країнах регіону. Статистичні методи були використані під час вивчення щорічних звітів Судової ради та судів Косова, а також в емпіричній частині статті.

Результати та висновки: За результатами дослідження та аналізу можна зробити висновок про те, що створення адміністративних судів у Республіці Косово є необхідним для вирішення адміністративних питань. З огляду на це, можна зрозуміти, що існування лише одного відділу в Суді першої інстанції в Приштині з «юрисдикцією» для всієї території Республіки Косово не є правильним рішенням. Із цієї причини автори обгрунтовують необхідність створення в Республіці Косово Адміністративного суду для вирішення адміністративних питань. Адміністративний суд першої інстанції розташований у Приштині з відділеннями в шести великих центрах Косова, а Верховний адміністративний суд є другою інстанцією.

Ключові слова: адміністративний суд, акти, адміністративні спори, контроль, державне управління, законність.