

Increasing Efficiency in Public Administration Through a Better System of Administrative Justice

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This article seeks to examine the role of administrative justice in increasing the efficiency in public administration. The article intends to analyze the connection between the capacity of judicial review of administrative acts as a crucial instrument to improve the functioning and efficiency of the administration and to ensure good governance in general.

The article raises the question how the judicial review of administrative decisions affects the level of efficiency in public administration through increasing the legal security, prevention of arbitrariness and raising public confidence?

There is a causal relation between administrative justice and the level of efficiency of public administration, therefore the system of judicial review should be considered as the main mechanism to promote the main principles of good governance toward more efficient, transparent and accountable decision making process.

Keywords: Efficiency, administrative justice, judicial review, public administration, arbitrarily.

1. Introduction

One of the essential principles of public administration is reaching the efficiency at all levels of its activity, in order to fulfill the citizen's requirements. Public administration is traditionally oriented toward reaching the efficiency to achieve the objectives concerning the delivery of public services to citizens. Efficiency is considered as the relationship between determined objectives and results that are reached with minimum resources and efforts. In general sense, the efficiency can be achieved under the conditions of take advantage of the products of an administrative action in relation to the assets used.

The efficiency of administration has a direct connection with all stages of reform in public administration such as modernization of public services, computerization of public services and interaction between administration and courts in the reviewing process of administrative acts before a competent court. Public administration in general and governments specifically play curtail role in the administrative reform in order to increase the level of efficiency through offering better and more qualified services, reducing the time for public officers and citizens, reducing the level of corruption, increasing the awareness and trust of citizens on the work of administration, etc. Reform of public

administration is also focused on increasing the level of efficiency through decreasing shortages and taxes and enhancing financial status in order to reach economic developments. The reforms in public administration have changed the relationship between the state and citizen, since the citizen is considered as an active party in an administrative procedure. This proactive position of the citizen in an administrative process promotes a simplification of procedure, higher level of transparency and accountability in public administration.

The principles of good administration determines the relationship between the administration and citizens, where is required an equilibrium between the public and citizens interest. The implementation of such principles seeks a proper administrative system that sets the rules for legal, efficient and timely decision-making process through protection of citizens' rights, as well as the structured administration and the effective administrative justice.

In case an administrative body fails to respect the above rules an individual has the right to judicial review in order to influence the increasing of efficiency in the public administration. In many countries courts are provided with authority to fully examine the legality of the administrative acts, therefore the judicial review over the administration promotes increasing of efficiency in public administration through its influence in the quality of administrative acts. In addition, the process of review of administrative acts by the court obliges the public officials to issue legal decisions in order to improve the level of legitimacy.

Therefore, there is a causal relation between administrative justice and the level of efficiency of public administration. In order to understand the appropriate role for the courts it is necessary to describe what courts can and cannot do, having in mind that the court's authority is to guarantee that the administrative body exercised its functions legally and fairly? In the process of interaction between courts and administrative bodies are frequently evident dissatisfaction and a dose of skepticism considering that public officials are not always satisfied with courts interference in one hand, while judges are not happy with performance and responsiveness of administrative body in another hand.

Therefore, hard work should be made to constitute a better relationship between these branches in order to strengthen the system of decision making, relations, coordination and cooperation and to create appropriate procedures for dispute resolution.

Furth more, judicial review of administrative actions is considered a basic principle toward a modern and democratic administration that has direct impact in increasing the level of accountability, transparency and efficiency in the process of decision-making.

Here is a famous quote from Woodrow Wilson's essay, "The Study of Administration," published in 1887:

"It is the object of administrative study to discover, first, what government can properly and successfully do, and, secondly, how it can do these proper things with the utmost possible efficiency and at the least possible cost either of money or of energy".

2. The Impact of Administrative Justice in Increasing Efficiency Towards Good Administration

Efficiency in administration is considered as main topic of study in administrative sciences bearing in mind that public administration is historically designed to attain the efficiency in order to reach its objectives and goals. Efficiency as concept was formerly adopted at early twentieth century. Efficiency refers to doing things in a right manner, respectively it could be defined as the output to input ratio in order getting the utmost output with minimum assets.

This model is derived in Woodrow Wilson's (1887) famous study on public administration that called for the study of the field along professional lines. In 1957, Farrell already investigated the question how to measure efficiency and highlighted its relevance for economic policy makers. "It is important to know how far a given industry can be expected to increase its output by simply increasing its efficiency, without absorbing further resources".¹

Schechter states that "during the municipal research era, emphasis on efficiency was seen as a means to provide a relationship between citizens and policy, because it could translate provision as related to performance of public goods and services".² George Frederickson has stated "equitable, efficient, and economical" as "three pillars" of public administration. He viewed "equitable" as composed of qualities such as "fairness, justice, and equality," whereas "efficient" is to do the best or the most preferred, and "economical" is to achieve it by least spending.³ Rutgers and van der Meer trace the origins of efficiency back to Aristotle's work on the nature of knowledge, specifically "four aspects of causation" from which his followers derive the notion of efficiency.⁴

Administrative efficiency is the thoughtful operation of government, proper performance and management in order to smooth the progress of administrative effectiveness and simplify the process of decision-making.

Reform of (general) administrative procedures and administrative justice has been a common issue in the Western Balkan for a while, within the good governance and good government context that required following the principles of European Administrative Space, EU and Council of Europe guidelines.⁵

The process of globalization over the past decades seeks a new role of administrative bodies in terms of their functions, role and efficiency, having in mind that governments have been criticized for their negligence to respond to citizens expectations. This process enables new cost-effective developments as well as promotes new technological, social and institutional challenges that governments must deal with in order to encourage social developments. In this process governments must play crucial role in order to enable more effective and efficient services to be delivered to citizens.

¹ M. J. Farrell, *The Measurement of Productive Efficiency*, Journal of the Royal Statistical Society, Series A, General, Part 3, Vol. 120, No. 3, 1957, pp. 253-281.

² H. L. Schachter, *Frederick Taylor and the public administration community: A reevaluation*. Albany: State University of New York Press, 1989.

³ H. George Frederickson, *Social equity and public administration: origins, developments, and applications*, 2010. Retrieved from:

<http://books.google.com/books?id=d0Q7sfY8IHgC&lpg=PR15&ots=GmDoalQErj&dq=equity%20in%20efficiency%20public%20administration&pg=PR4#v=onepage&q=equity%20in%20efficiency%20public%20administration&f=false>

⁴ Mark R. Rutgers, Hendriekje van der Meer, *The origins and restriction of efficiency in public administration: Regaining efficiency as the core value of public administration*. Administration & Society, 2010, 42, 755-779.

⁵ ReSPA, *Efficiency and Simplifications of Administrative Procedures and Justice In The Western Balkan*, Discussion Paper and Provisional Programme, Zagreb, 29 – 30 January, 2014, p. 3.

The system of administrative justice is considered as the main engine to promote the higher level of efficiency in the process of decision making in public administration. Moreover, judicial review appears to be an indispensable instrument to enhance the quality of administrative action and ensure good governance. It is also fundamental for international economic exchanges, since security of trade and investment depends on public decision-making bodies being subject to effective means of oversight and redress.⁶

The ability of the courts to exercise the effective external control over the administration has had a major impact on increasing public administration efficiency in many countries around the world. Therefore, there is a direct relation between the administrative justice and level of efficiency in public administration, hence the system of judicial review should take into consideration the level of independence, strengthening the administration of justice, improving the level of transparency and responsibility, improving the efficiency and effectiveness and simplifying the procedures. New technologies should be adopted in order to provide efficient and consistent services to citizens.

In the article “Public Administration and the Courts, a clash of values,” Diana Woodhouse suggested that the radical reform of the civil service has coincided with a period of judicial activism. She argued that “while the principles upheld by the courts have much in common with the traditional model of public administration, they may not accord with those associated with the drive for efficiency, measured in terms of value for money”. In addition Woodhouse concluded that now, more than ever, both administrators and judges would benefit from a Code of Administrative Practice.⁷

The administrative justice system ought to be committed to improving the level of performance in order to enable rapid, reasonable, and unprejudiced hearings for each subject. The achievement of these objectives requires proficient level of management.

The challenge for the administrative law is to structure the administrative state to permit the agency discretion to deliver on its promise of superior expertise and accountability vis-a vis the courts, while constraining the agency from responding to any perverse incentives it may have to deviate from the promise. The key to this strategy, oxymoronically, is judicial review of the substance of the agency decision making, not the procedure that agency used to reach the substantive decision.⁸

The capacity of citizens to submit administrative activities to judicial review is seen as a foundation of the rule of law but also as an instrument to improve the functioning of the administration and to ensure good governance. Nevertheless, the scope and intensity of judicial review of actions by the administration differs among the legal systems, ranging from a formal legality control to the review of the substantive content of the administrative act. As a result, the court could take either a “judicial review” function or an “enforcement” function, replacing the decision of the administrative authority with its own evaluation.⁹ The judicial review effects the process of the rule of law, in order to guarantee that administrative acts will be issued in harmony with a fair procedure and within the powers given by law. In this regard, administrative justice is required to ensure that public authorities do not act in arbitrary way in excess of their powers provided by laws. Judicial authority in the process of reviewing of administrative act is vested with authority to adjust and influence the level of democracy, legality,

⁶ Jean-Marie Woehrling, *Judicial Control of Administrative Authorities in Europe*, Hrvatska Javna Uprava, god. 6, 2006, br. 3. str. 35–56.

⁷ Diana Woodhouse, *Public administration and the courts: A clash of values*, Volume 15, 1995 - Issue 1, Pages 53-59.

⁸ Mark Seidenfeld, *The Long Arm of Judicial Review*, 32 J. LAND USE & ENVTL. L. (2017). 579.

⁹ Andrew Vaz, *Judicial Decisions and the Impact on Public Administration*, American Society for Public Administration, February, 2015.

responsiveness and efficiency of the administrative agencies in order to enable the implementation of principles of good administration.

The judicial review of administrative acts in many developing countries generally depends on the level of national commitment to the rule of law and the independence of the judiciary. In countries where regimes can easily change laws (by the executive or through compliant legislative bodies), the situation becomes rather tenuous. The laws may negate the jurisdiction of courts or change substantive laws. In these instances there is a state of law, but no rule of law.¹⁰

Most systems in the world permit the court review of administrative acts, though with some restrictions. In European law systems (French model) the public administration decisions are subject of review by special courts called administrative courts, while in the Anglo-Saxon system such decisions are subject of regular courts. However, the role of the courts in judicial review process also changes among different countries. In some cases the judicial review is limited to the legality administrative dispute, while in some countries the courts are authorized in the dispute of full jurisdiction by the competent court.

In the 21st century, governments can manage to increase the level of efficiency and sustainability through direct implementation of court decisions issued in the process of judicial review. The main objectives to improve the efficiency are focused on enhancing access to justice, improving the efficiency of the courts and increasing the level of integrity and accountability in the justice system.

The EU Justice Agenda for Europe 2020 – Strengthening Trust, Mobility and Growth within the Union highlights the contribution of EU justice policy to supporting economic recovery, growth and structural reforms. “The EU has taken action to progressively build the trust necessary for businesses and consumers to enjoy a single market that truly works like a domestic market. Red tape and costs have been cut: a judgment given in one Member State can now be recognized and enforced in another Member State without intermediary procedures (the formality of ‘exequatur’ has been progressively removed in both civil and commercial proceedings)”.¹¹

In order to conduct more effective judicial review of administrative acts, governments should build a culture of efficiency and introduce more transparent, professional and accountable system by integrating performance measures and evaluations at all levels of governmental departments. Accordingly, a system of available and clearly demarcated legal remedies ensures more effective case-management and, as a result, potentially decreases the case backlog of administrative disputes in the respective court. All these activities should be undertaken in harmony with principles of good administration outlined in the European Code of Good Administrative Behavior.

3. Legal Certainty and Prevention of Interference in Administrative Decision Making Process

It often happens that administrative bodies bring decisions which may be in contradiction with the interest of natural and legal persons. In such circumstances, the expectation of individuals for a final fair process is challenged by concerns over the failure of a proper application of the principle of legal

¹⁰ ST/TC/D/SER.E/27, *Rethinking Public Administration: An Overview*, Division for Public Economics and Public Administration Department of Economic and Social Affairs, p. 163. Retrieved from: <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan000455~1.pdf>

¹¹ Theme 6: *Strengthening the quality of judicial systems*, Quality of Public Administration – A Toolbox for Practitioners, p. 341.

certainty and potential interference in administrative decision-making process. However, there is a procedure in administrative justice that allows parties to challenge alleged administrative violations before competent tribunals either through compensation claims or requests to bring the justice in place. This is recognized as “substantive decision making and thus enhances judicial power”.¹² This power invested in the judicial branch balances the inequality of power between public administrative bodies and individuals through legal remedies, supporting the principal that “the right to challenge administrative acts is an inherent right of the citizen based on the principle of equality of treatment”.¹³ So, we may say that administrative justice is a safeguard that controls illegal actions of administrative bodies and simultaneously prevents interference in the administrative decision making process. The parallel control and correction of illegal actions of administrative bodies bring the parties into a better position when it comes to the adequate use of legal remedies and equal treatment. Therefore, the guarantee of the principle of legal certainty contributes towards strengthening the rule of law from both perspectives, applicable to either national or international law.

In a democratic country which respects rule of law principles, the role of judicial power is to affirm legal certainty as a general principle, since, “the principle of legal certainty provides an important assertion of the rule of law that those subject to the law must know what the law is so as to plan their action accordingly”.¹⁴ This principle also requires that legal systems should have clear and concise legal provisions which are acceptable for citizens. Thus, each individual should be able to understand the consequences of interference of administration and its impact in his or her rights.

Judicial review over administrative actions is one of the basic requirements of both the rule of law and democracy, so we may underline that “the power to review administrative acts by the Court is the basis of any democratic society”.¹⁵ Subsequently, the institute of judicial review of administrative actions remains a resilient mean of citizens’ disposal whose rights are denied in an administrative process.

A well-functioning system of judicial review over administrative actions also aims to normalize bureaucratic discretion where people are affected. On one hand, effective judicial review of administrative acts serves as a crucial foundation for human rights protection, while on the other hand, it is an essential instrument which improves the quality of administrative actions and ensures good governance. Therefore, we may say that the “key aim of administrative justice is to control and bring justice for individuals affected by interferences of administration”.¹⁶ So, a good system of administrative law which represents a modern public administration must always be derived from a solid control mechanism.

Through the control of administrative instruments and its structure, justice can be made more attainable to individuals who are the subject of rights violations due to the improper exercise of administrative power, specifically because public administration bodies often issue administrative acts tackling different areas, wherein the rights and freedoms of individuals are broadly jeopardized. In this regard, it is of crucial to have effective control over the work of public administration, considering that

¹² Tom Ginsburg, *Judicial Review in New Democracies - Constitutional Courts in Asian Cases*, Cambridge University Press, 2003, p. 227.

¹³ Natasha Buontempo, *Judicial Review of Administrative Acts in the European Union and in France: A Comparison*. MaltaId-Dritt Vol. XXII (2010). Available at: <http://works.bepress.com/natashabuontempo/1/>.

¹⁴ Alexander H. Türk, *Judicial Review in EU Law*, School of Law, King’s College London, UK, 2009, p. 129-130.

¹⁵ Natasha Buontempo, *Judicial Review of Administrative Acts in the European Union and in France: A Comparison*. MaltaId-Dritt Vol. XXII (2010). Available at: <http://works.bepress.com/natashabuontempo/1/>.

¹⁶ M.P. JAIN, *Judicial Review of Administrative Action*, Malacca Law Seminar, March 9-10, 1985, p. 3.

administrative activity is an extensive area and administrative legal relations in certain cases are established on the basis of the subordination of parties.

Legal certainty is thoroughly linked with the right to a fair trial which is guaranteed through most international standards and human rights treaties. The right to legal certainty is a basic standard for a democratic society run by rule of law principles, as “the right to a fair trial concerning the administrative justice relates not only to the development of the judicial process, but also to the right to initiate a judicial process”.¹⁷ Apart from its impact on legal certainty, the right to a fair trial “also increases the participation of individuals so that their demands are heard and reviewed by another independent and impartial power such as the court established by law and as sanctioned in Article 6 (1) of the ECHR”.¹⁸

Rule of law principles and the right to an effective legal remedy against violations of individual rights should be guaranteed through constitutional provisions. Thus, the principle of legality and citizens’ right to receive the reasoning of administrative decisions remain key requirements for a country which is governed by rule of law principles. In this context, “the most basic rules of administrative law are first that decision-makers may exercise only those powers which are conferred on them by law and, second, that they may exercise those powers only after compliance with such procedural prerequisites as exist. So long as administrators comply with these two rules, their decisions are safe”.¹⁹ Consequently, “The guarantee of the right to legal protection comes to application particularly when citizens experience serious consequences by administrative acts and administrative measures are unaltered. So, the right to legal protection is much less limited”.²⁰ This guarantee in one hand means legal certainty, while on the other hand a kind of prevention of interference throughout administrative decision-making process.

The legal certainty and prevention of interference throughout the administrative decision-making process “requires that government authorisations to issue administrative acts which produce serious consequences, should be sufficiently determined and limited in their content and subject matter in order to allow citizens to easier identify potential violations affected by such acts”.²¹ This also is guaranteed by the following general legal principles: principle of legality, principle of division of powers, as well as the rule of law requirement for an enhanced protection against violation of individual rights from the interference of the government.

The principle of legality in public administration develops from the need for legal certainty and prevention of administrative interference. This principle requires each executive body to ensure that administrative acts are sufficiently determined and limited to the legal basis, regardless of the eventual consequences caused by such acts. Administrative legislation should be based on tangible legal provisions which regulate actions of administrative bodies and should not be limited only to general principles. If public administrations issue administrative acts on the ground of ‘an incomprehensible general clause’, which is more related to general principles rather than concrete provisions, this may lead to cases when acts of the administration are in contradiction with individual rights. Thus, human rights violations become evident. That is why we have the institute of judicial review of administrative acts as a preventive tool and effective remedy for protecting citizens' rights and interests, as “judicial

¹⁷ Mirlinda Batalli, Islam Pepaj, *The Impact of the European Convention on Human Rights in the Field of Administrative Justice*, Acta Universitatis Danubius, Vol. 13, no. 3/2017, p. 87. Available at: <http://journals.univ-danubius.ro/index.php/juridica/article/view/4478/0>.

¹⁸ Ibid, p. 88.

¹⁹ Dr. Nguyen Van Quang, *Grounds for Judicial Review of Administrative Action: An Analysis of Vietnamese Administrative Law*, CALE Discussion Paper, No.3, January, 2010, p.11. Available at: http://cale.law.nagoya-u.ac.jp/_userdata/DP%20No.%203.pdf.

²⁰ Decision (Beschluss) of First Senate, 1 BvR 23, 155/73 – Third part (German Federal Constitutional Court, July 18, 1973).

²¹ Decision of Bay v BVerfGE, VfGH n.F. 1, 81 [91] (German Federal Constitutional Court, July 4, 1956).

review of administrative acts must be effective so that citizens' rights and interests are afforded genuine protection and to ensure the credibility vis-à-vis society and the efficiency of the administration itself".²²

Apart from the previous situations, individuals are enabled with legal certainty also through norming the institute of administrative silence. Thus, individuals might easily lose their trust in administrative making process if a reasonable deadline is not timely limited for the administration to issue an administrative act upon individuals' requests. In order to avoid such situations, all democratic countries set up deadlines which are mandatory for administration to response parties' requests within a reasonable time. The reasonable time is the norm, or standard length of time, required to resolve certain administrative cases... The use of deadlines that require agency action to commence or complete by a specific date is extremely common in the modern administrative state. If a time limit is set, failure to comply with that may well represent a failure to comply with the procedural rules relating to the adoption of an act adversely affecting an individual, thus constituting an infringement of essential procedural requirements.²³

Regarding this issue, the Council of Europe in its recommendation on the judicial review of administrative acts *inter alia* provides: "Under no circumstances may a citizen's interests be harmed by the administration's remaining silent. After a certain time prescribed by law, this silence should open access to a tribunal. In such cases the administrative authority will be required to explain to the tribunal, at the applicant's request or at the request of the tribunal, its reasons for refusing the applicant's request. If the authority fails to give grounds, the tribunal shall hold its act to be unlawful".²⁴ Therefore, "the tribunal must be empowered to instigate proceedings to verify the lawfulness of administrative acts, including administrative silence or failure to act, and to draw the requisite conclusions from its findings".²⁵ The use of deadlines that require agency action to commence or complete by a specific date is extremely common in the modern administrative state. If a time limit is set, failure to comply with that may well represent a failure to comply with the procedural rules relating to the adoption of an act adversely affecting an individual, thus constituting an infringement of essential procedural requirements.²⁶

Therefore, the rule of law principle remains one of the main pillars in a democratic society which *inter alia* aims in respecting the principle of legal certainty with a particular focus on the administrative decisions making-process. If the administrative making process is inconsistent with rule of law principles, chances for an extensive violation of human rights are bigger and the principle of legal certainty incurs flaw, as "one of the main features of legal order is the principle of legal certainty",²⁷ which *inter alia* is guaranteed through the judicial protection of rights. Additionally, a well-functioning public administration ensured through the judicial protection of rights promotes the "function of the legality of the public administration activity, and at the same time it remains a constitutional guarantee for citizens for the protection of their rights through a fair and public trial established by an independent and impartial tribunal".²⁸ Therefore, this form of protection of rights ensures citizens that legal certainty

²² Recommendation Rec(2004)20, adopted by the Committee of Ministers of the Council of Europe on 15 December 2004 and explanatory memorandum, *The judicial review of administrative acts*, Paragraph, 86.

²³ Mirlinda Batalli, *Consequences of administrative silence in public administration*, SEER – Journal for Labour and Social Affairs in Eastern Europe. No. 1/2017, Volume 20, p. 144.

²⁴ Recommendation Rec (2004) 20 adopted by the Committee of Ministers of the Council of Europe on 15 December 2004 and explanatory memorandum, *The judicial review of administrative acts*, Paragraph, 16.

²⁵ Ibid, Paragraph, 21.

²⁶ Mirlinda Batalli, *Consequences of administrative silence in public administration*, SEER – Journal for Labour and Social Affairs in Eastern Europe. No. 1/2017, Volume 20, p. 144.

²⁷ Marek Antoni Nowicki, *European Convention (A short commentary to the ECHR)*. Tirana, 2003, p. 187.

²⁸ Sokol Sadushi, *Procedural Administrative Law*, Tirana, 2017, p. 424.

exists and that public administrative body and their decisions undergo strict legal scrutiny through the application of general procedural rules which are a prerequisite for effective legal oversight.

4. The Impact of Administrative Justice in Improving Public Trust

A well-functioning administrative justice system initially improves both the reality and perception of legal certainty, prevents undue or illegal interference in the administrative decision making process, and improves the general quality of the decision making process. This also improves the citizens trust in rule of law principles wherein “each individual has the right to file a case before a competent court, in addition to this, citizens also have right to seek from the court why administration in some certain cases decline to deliver justice (so called administrative silence).²⁹

Article 6 of the ECHR provides almost the same, since the violation of the right to access to the court and the subsequent denial of justice puts at risk democracies and institutions built on the rule of law principles. Regarding this, a democratic country through the institute of administrative disputes should guarantee that the decision making process is being achieved through a fair process which is free from interference and based on objective criteria wherein parties are free to have their say, because “impartiality is considered as one of the core principles which guarantees law order and allows citizens to trust in the courts, as a core value of democracy”.³⁰

The successful maintenance of the rule of law within a democratic country both requires and builds citizens’ trust in government. This principle is also provided by the preamble of the ECHR, wherein parties are firmly committed to build their democracies based on a rule of law principles, which also relates to administrative justice, as “the power to review administrative acts by the Court is the basis of any democratic society”.³¹ A well-functioning of an administrative law system guarantees a solid judicial protection to its citizens and ensures “...that an administrative decision would be safe if the administrator exercises such powers as have been legally conferred on him (substantive requirement) and complies with procedures required by law (procedural requirement); therefore, grounds for review could be categorized based on these most basic requirements”.³²

Rule of law principles *inter alia* aim to guarantee a mechanism for effective judicial protection providing adequate legal remedies to individuals who want to challenge administrative decisions. Thus, such remedies establish core foundations of the justice which in turn guarantee equal treatment and respect for the dignity of individuals. The ECtHR in its case-law has considerably tackled this issue through obliging all countries to establish a legal system wherein courts try all cases within a reasonable time, because “a justice system fails due to lack timely trials which also impacts public trust in courts”.³³

The ECHR and ECtHR serve as guidelines to increase citizens’ trust in public institutions in delivering administrative justice, as “the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly so of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial”.³⁴ In

²⁹ Marek Antoni Nowicki, *European Convention (A short commentary to the ECHR)*. Tirana, 2003, p. 161.

³⁰ Ibid, p. 182-183.

³¹ Tom Ginsburg, *Judicial Review in New Democracies - Constitutional Courts in Asian Cases*, Cambridge University Press, 2003, p. 227.

³² Dr. Nguyen Van Quang, *Grounds for Judicial Review of Administrative Action: An analysis of Vietnamese administrative law*, CALE Discussion Paper, No.3 January, 2010, Nagoya University Center for Asian Legal Exchange, p.21.

³³ Arta Vropsi, *Due process of the law in case-law of Constitutional Court of Albania*. Tirana, 2011, p. 219.

³⁴ Richard Gordon QC & Tim Ward, *Judicial Review and the Human Right Act*, London, 2000, p. 178.

particular, the court should consider the composition of trial panels, so to avoid situations when judges sitting at the trial panels do not satisfy requirements laid down by the principle of impartiality. In country run by the rule of law, this demand should not be limited only to the parties involved, but should be extended also to ordinary citizens in order to improve the trust in courts.³⁵ The ECHR supports the opinion that the proper use of the right to a fair trial by an independence and impartial tribunal established by law *inter alia* improves citizens trust in courts; the perceived impartiality of the courts being bolstered by the maxim “justice must not only be done, it must be seen to be done”.³⁶

Judicial review consists of the establishment of an independent body which, free from the executive power and administration, is able to review and adjudicate disputes caused by activity of administrative bodies.³⁷ So, the right to a fair trial and public trust will not exist without an effective judicial review of public administration acts, because “were Article 6(1) of ECHR to be understood as concerning exclusively the conduct of an action which had already been initiated before a court, a Contracting State could, without acting in breach of that text, do away with its courts, or take away their jurisdiction to determine certain classes of civil actions and entrust it to organs dependent upon the Government. The fair, public and expeditious character of judicial proceedings are of no value at all if there are no judicial proceedings”³⁸, meaning that this form of review, initially protects and guarantees the principle of legality, which, by extension, improves the citizens trust and avoids the interference in administration.

The citizen’s right to appeal both administrative and judicial decisions is of crucial importance, particularly if such decisions affect individual rights of parties. Whether the appeal should first be directed to an authority at a higher level or to a court is an open question, but as stated in article 10 of the Universal Declaration of Human Rights, everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations. Article 6 of the ECHR similarly states that in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. This implies that a person must always have the right to have his case heard in a court, even when it concerns administrative matters. This procedure, in turn, should be guided by common and universally accepted rule of law principles”.³⁹

The importance of the quality of justice and citizens’ trust in administrative matters might only be seen if the principle of legality is being applied during entire administrative decision-making process, otherwise “the legality of an administrative decision can be judicially challenged on the basis of any of the four grounds for review including inexistence, incompetence, violation de la loi, and vice de forme”.⁴⁰

Judicial protection does not weaken administrative control, but contrary to this, helps it through an increased ability to reset illegal actions caused by administrative acts into legal ones”.⁴¹ This form of protection is only achieved through an effective, quality and independent administrative justice as a

³⁵ Arta Vropsi, *Due process of the law in case-law of Constitutional Court of Albania*. Tirana, 2011, p. 145.

³⁶ This adage is usually traced to Lord Chief Justice Hewart in the McCarthy decision of 1924. Quoted according: Jean Masso, *The powers and duties of the French administrative judge*, Available at: https://law.yale.edu/system/files/area/conference/compadmin/compadmin16_massot_powers.pdf.

³⁷ Esat Stavileci, Agur Sokoli, Mirlinda Batalli, *Administrative Law, Control of the work of administration and political accountability, Computerisation of Administration*, Prishtina, 2010, p. 139.

³⁸ Richard Gordon QC & Tim Ward, *Judicial Review and the Human Right Act*, London, 2000, p. 178.

³⁹ Per Bergling, Lars Bejstam, Jenny Ederlöv, Erik Wennerström, Richard Zajac Sannerholm, *Rule of Law in Public Administration: Problems and Ways Ahead in Peace Building and Development*, Folke Bernadotte Academy, 2008, p. 32.

⁴⁰ Dr. Nguyen Van Quang, *Grounds for Judicial Review of Administrative Action: An analysis of Vietnamese administrative law*, CALE Discussion Paper, No.3, January 2010, Nagoya University Center for Asian Legal Exchange, p. 21.

⁴¹ Sokol Sadushi, *Procedural Administrative Law*, Tirana, 2017, p. 424.

basic right and a key component for an operational justice, because “the right to challenge administrative acts is an inherent right of the citizen based on the principle of equality of treatment”.⁴²

Therefore, through administrative justice, administrative bodies or the administrative actions are rendered under control of the courts. “One effective strategy of courts is to diffuse political power in the face of threats to concentrate it. This counter-majoritarian serves not only to protect the democratic process, as is conventionally argued. Diffusing political power also serves to widen the court’s latitude for substantive decision making and thus enhances judicial power”.⁴³ In relation to this, there are two tests to evaluate if the courts are independent. The first test defines the personal conviction of the judge in a given case; the second test defines if the judge has offered enough guarantees to exclude all reasonable legal doubts. The exclusion of these doubts helps build trust between the public that the courts.⁴⁴

5. Conclusions

In today's reality, the administrative justice system is rightly considered as the main engine in promoting the highest level of efficiency in the decision-making process of any public administration. The ability of the judiciary to exercise effective external control over public administration has on the one hand significantly influenced the efficiency of public administration and, on the other hand, has triggered a constant legal interest in administrative justice, because the latter is rightly perceived as a limitation over administrative bodies and something that is provided by the judicial branch of power.

The right of citizens to challenge administrative decision-making through judicial oversight is seen as a foundation of the rule of law, but also as an instrument to improve the efficiency of administrative bodies and to ensure good governance. The principle of the rule of law for proper legal protection against violations of the rights by public governance is guaranteed via positive provisions of constitutional law, which *inter alia* provide that justice requirements, the principle of legality, and fair trial rights should be constitutionally based. Therefore, all constitutions of democratic countries guarantee that the right of individuals to react to administrative decisions through effective judicial oversight.

A properly accountable administrative justice systems increases legal certainty, which is itself closely linked with the right to a fair public trial, held within a reasonable time and by an impartial and independent tribunal. Legal certainty and the prevention of arbitrariness during administrative decision-making requires that any authorizations given through administrative bodies that have serious consequences, are to be sufficiently limited in terms of their content, object, purpose and measures, so that the violations are computable and objectively predictable for the citizen. Judicial protection does not weaken the administrative control but rather helps uphold the law violated in cases where administrative control itself has failed to sufficiently and effectively guarantee the legality of administrative acts. This protection is guaranteed through an administrative judiciary, which is characterized by quality, independence, and efficiency which are key components for an effective justice system as well as essential for protecting individual rights, including in particular fair trial rights.

⁴² Natasha Buontempo, *Judicial Review of Administrative Acts in the European Union and in France: A Comparison*, MaltaId-Dritt, Vol. XXII (2010). Available at: <http://works.bepress.com/natashabuontempo/1/>.

⁴³ Tom Ginsburg, *Judicial Review in New Democracies - Constitutional Courts in Asian Cases*, Cambridge University Press, 2003, p. 227.

⁴⁴ Arta Vropsi, *Due process of the law in case-law of Constitutional Court of Albania*. Tirana, 2011, p. 144.

Every individual having a legal interest in challenging an administrative action may file a case before the competent court to seek an annulment of or void an administrative act which is not in accordance with constitutional provisions, laws and other sub-legal acts. Courts should pay particular attention to requirements derived from the principle of impartiality. In a rule of law system, the duty of the state's courts is to adhere to the requirements of the impartiality principle in line with European and international human rights standards, as it positively impacts the citizens' trust in justice, and that not only affected parties, but also ordinary citizens.

Finally, a legally accountable administrative justice system is an appropriate mechanism to control the work of administrative bodies through independent, impartial and free courts outside of administration or executive influence and control. Thus, in a democratic society, judicial review of administrative acts becomes a mandatory tool for citizens who want to challenge administrative acts. Furthermore, it improves the quality of administrative actions and, concurrently, upholds good governance principles that are essential for a democratic country.