

LAW ON ADMINISTRATIVE DISPUTES

CONSOLIDATED TEXT **1**

I. BASIC PROVISIONS

Article 1

For the purpose of providing court protection of the rights and legal interests of natural persons and legal entities, and in order to ensure lawfulness, the court shall decide in administrative disputes on the lawfulness of the acts of the state administration bodies, the Government, the other state bodies, the municipalities and the City of Skopje, organizations determined by law and other legal and other entities, in the performance of public authorizations (holders of public authorizations) when deciding on the rights and obligations in individual administrative matters, as well as for the acts of those bodies adopted in the misdemeanor procedure.

Article 2

In an administrative dispute, the court shall decide on the lawfulness of individual acts adopted in the electoral procedure and of individual acts on elections, appointments and dismissals of holders of public offices, unless determined by law, as well as on the acts of appointment, assignment and dismissal of managerial civil servants, unless otherwise determined by law.

The provisions of the Electoral Code shall apply to the cases referred to in paragraph 1 of this Article when it comes to dispute matters of the elections procedure.

In an administrative dispute, it shall be resolved and decided upon a dispute that will arise from the implementation and enforcement of the provisions of concession agreements, public procurement agreements that are of public interest and from any agreement, to which one of the parties is a state body, organization with public authorizations, public enterprise, municipalities and the City of Skopje, concluded due to public interest or due to performance of professional service (hereinafter: administrative agreements) shall be resolved and decided upon in an administrative dispute.

In an administrative dispute, it shall be as well decided upon individual acts of the state administration bodies, the Government, other state bodies, municipalities and the City of Skopje, organizations determined by law, as well as legal and other entities in the performance of public authorizations (holders of public authorizations), when no other legal protection is ensured in the second instance decision-making process against such act.

In an administrative dispute it shall be decided upon conflict of competences between the bodies of the Republic, the municipalities and the City of Skopje, between the municipalities and the City of Skopje and on disputes arisen due to conflict of competences between the municipalities and the City of Skopje and the holders of public authorizations, if anticipated by law, unless the Constitution or the laws anticipate other type of court protection.

When the acts referred to in this Article are abnegated in an administrative dispute, the provisions of this Law apply to the procedure, unless otherwise determined by another law.

Article 3

Natural person or legal entity shall have the right to initiate an administrative dispute, should it consider that the administrative act violates certain right or direct interest, based on a law.

State body, branch office or other business unit of a trade company, settlement or alike or a group of people, although lacking the capacity of a legal entity, may initiate an administrative dispute if they can be holders of the rights and obligations being decided upon in the administrative procedure.

When a body of the municipalities or the City of Skopje, or of an organization, decides in an administrative matter of first instance of source or delegated competence, and a competent body determined by law has decided upon the appeal against such act, an administrative dispute against the act of second instance can be as well initiated by the municipality and the City of Skopje, i.e. the organization whose body has decided in the first instance, should it consider that the act of second instance violates the right to local self-government, i.e. the right to managing.

Administrative dispute may be initiated by the State Attorney of the Republic of Macedonia, when an administrative act or administrative agreement violates the law or the public interest, i.e. the body it represents, in accordance with law.

A complainant in an administrative dispute may as well be a union organization, should it assess that the right or direct interest, based on a law, has been violated to its member by the administrative act.

When an individual, being a member of an association that according to its rules is obliged to protect certain rights and interests of its members, is violated certain right or interest by an administrative act, the association may, in accordance with the member and on his behalf, file a lawsuit and conduct an administrative dispute against such administrative act.

The association referred to in paragraph 6 of this Article, may at any phase of the procedure, with rights of a secondary intervenor, enter the already initiated dispute on the side of the particular individual and for his benefit it may undertake all the activities and apply all the legal means, unless it is contrary to the statements and actions of the party itself.

Article 4

Administrative disputes in the Republic of Macedonia shall be decided by:

- the Administrative Court as court of first instance,
- the Supreme Administrative Court as court of second instance and
- the Supreme Court of the Republic of Macedonia, which decides upon extraordinary legal means, in the cases when it is regulated by this Law.

Article 5

Decisions of the courts adopted in administrative disputes shall be binding and enforceable.

Article 6

Body, in terms of this Law, are the state administration bodies, the Government of the Republic of Macedonia, other state bodies, administrative organizations, municipalities and the City of Skopje, public enterprises, trade companies, funds, institutions, organization and communities, associations and other organizations and communities when while exercising public authorizations they decide in administrative matters.

Article 7

Administrative act, in terms of this Law, is an act whereby the bodies referred to in Article 6 of this Law decide upon a certain right or obligation of a natural person or legal entity, i.e. other entity that can be a party in an administrative matter, as well as acts of those bodies brought in a misdemeanor procedure.

Article 7-a

Unless this Law contains provisions on the procedure upon administrative disputes, the provisions of the Law on Litigation Procedure shall accordingly apply.

Article 7-b

In an administrative dispute, the parties shall themselves cover the costs they have caused with their actions.

II. ADMINISTRATIVE DISPUTE

Article 8

Administrative dispute may be conducted against a final administrative act adopted in second instance (final administrative act).

Administrative dispute may be as well initiated against an administrative act of first instance, when legal protection is not anticipated in an administrative procedure of second instance.

Administrative dispute may be initiated even when the competent body has not adopted an administrative act upon the request, i.e. appeal of the party, under the conditions anticipated by this Law.

The administrative dispute may be as well initiated due to violation of the provisions of the administrative agreements, in accordance with the provisions of this Law.

Article 9

Administrative dispute cannot be initiated:
1) against acts brought in matters wherefore court protection is provided apart from the administrative dispute;
2) against matters wherefore the Assembly and the President of the Republic of Macedonia directly decides on the basis of constitutional authorizations, except decisions on appointments and dismissals.

Article 10

The administrative act can be abnegated, if:
- it is adopted by an incompetent body,
- the material right is misapplied,
- the actual condition in the procedure preceding the act is incorrectly or incompletely determined and
- in the procedure preceding the act it has not been acted in accordance with the rules of the procedure.

Article 11

Return of seized items as well as compensation for the damage inflicted on the complainant by the enforcement of the disputed act, in accordance with law, can also be requested in administrative dispute.

Article 12

Defendant in the administrative dispute shall be the body whose act is disputed.

Article 13

A third person, who would be directly harmed by an annulment of the disputed administrative act, shall have a position of a party in the dispute as interested person.

Article 14

The complaint, as a general rule, shall not prevent the enforcement of the administrative act against which it is lodged.

When the enforcement of the administrative act would cause harm to the complainant that would be difficult to repair, and when the postponement of the enforcement would not be against the public interest nor would it cause irreparable damage to the opposing party, upon the complainant's request, the body whose act is to be enforced can postpone the enforcement.

Upon each request, the competent body shall be obliged to bring a decision not later than three days upon receiving the request.

The body referred to in paragraph 2 of this Article can postpone the enforcement of the disputed act due to other reasons, until a final court decision is brought, if the public interest allows so.

III. TEMPORARY MEASURES

Article 15

If the competent body that has adopted the administrative act referred to in Article 14 of this Law proceeds to enforce the act before the adoption of the court's decision, the complainant may request the court to bring a temporary measure to postpone the enforcement of the administrative act.

The complainant may request bringing of temporary measure and temporary regulating the condition in regard to the disputable legal relation, if such regulation, foremost with legal relations that last appears to be necessary in order to avoid more serious harmful consequences and threatening violence.

The competence to bring the temporary measure referred to in the previous paragraphs shall be in the court that decides upon the lawsuit.

The court shall decide upon the case for bringing a temporary measure in a period of seven days as of receipt of the request, by a decision that shall be elaborated. The bringing of the temporary measure can be related by the court to the condition to provide compensation for the damage that would eventually be caused to the opposing party, for the purpose of its bringing.

In a period of three days the parties may file an appeal against the decision referred to in paragraph 4 of this Article, to the Supreme Administrative Court, that shall be obliged to decide in a period of three days as of the day of its receipt.

IV. COMPETENCE AND COMPOSITION

1. Actual competence

Article 16

In an administrative dispute, the Administrative Court shall decide in first instance upon a lawsuit against administrative acts. The Supreme Administrative Court shall decide upon appeals against the decisions of the Administrative Court adopted in first instance.

The Supreme Court shall decide upon extraordinary legal means against the decisions of the Supreme Administrative Court.

Article 17

The Administrative Court shall decide upon appeals against administrative acts adopted by funds, public enterprises, institutions, organizations and communities, associations and other organizations and communities, when in the performance of public authorizations they decide in administrative matters and conclude administrative agreements.

The administrative court shall as well decide in first instance upon lawsuits against decisions of the mayor, when deciding in administrative matters and concluding administrative agreements.

2. Composition

Article 18

The number of judges in the Administrative Court and in the Supreme Administrative Court shall be determined by a decision of the Judicial Council of the Republic of Macedonia.

Article 18-a

In an administrative dispute the court shall rule in a council.

In an administrative dispute a sole judge shall decide in cases determined by this Law.

Article 18-b

In first instance the disputes shall be ruled by a council or a sole judge. When a council rules in first instance, it shall be composed of three judges.

Article 18-c

A sole judge shall rule in disputes initiated against the acts adopted in a misdemeanor procedure by the bodies referred to in Article 6 of this Law, whereby a fine that does not exceed the amount of Euro 5.000 in Denar counter-value is imposed, and for which no special misdemeanor measure, seizing of item, is not prescribed, and no prohibition to perform profession and activity is anticipated.

Article 18-d

The Supreme Administrative Court shall rule in a council of three judges.

V. PROCEDURE

1. Acting upon a complaint

Article 19

An administrative dispute shall be initiated by filing a complaint.

Article 20

The lawsuit shall be filed in a period of 30 days as of the day of submission of the administrative act to the party.

The time period referred to in paragraph 1 of this Article shall as well apply to the body authorized to file a lawsuit, if the administrative act has been served thereto. If the act has not been served, it may file a lawsuit in a period of 60 days as of the day of serving the administrative act to the party in whose benefit the act has been adopted.

Lawsuit against the decision referred to in Article 2 paragraph 1 of this Law, except for individual acts adopted in an election procedure, shall be filed in a period of 30 days as of the day of serving the act, and if the act is not served, a lawsuit may be filed in a period of 30 days as of the day of publishing the act, i.e. as of the decision of the Constitutional Court in the "Official Gazette of the Republic of Macedonia."

Due to not fulfilling the obligations from the administrative agreements, a lawsuit shall be filed in a period of 30 days as of the day non-fulfillment of the obligation is established.

Article 21

The complaint shall be directly served to the Administrative Court, or sent by post. The date of sending of the complaint as registered item shall be considered as a day of serving to the court.

If the complaint is not served to the Administrative Court, but to another body and arrives in the Administrative Court after expiration of the deadline for its submission, it shall be considered as submitted on time, provided that the submission to such body can be attributed to ignorance or an obvious mistake of the person submitting it.

For persons serving military duty in the Army of the Republic of Macedonia prescribed by law, the day of serving of the complaint to the military unit, i.e. to the military institution or headquarters, shall be considered as the date of serving to the court.

Paragraph 3 of this Article shall apply both to military and civilian persons serving the Army of the Republic of Macedonia, i.e. in military institutions or headquarters where no regular post service is available.

Article 22

If the body of second instance, within 60 days or a shorter time period determined by special regulation, does not bring a determination on the appeal against the decision of first instance, and again fails to adopt it within seven days as of receiving the repeated request, the party can initiate an administrative dispute as if the appeal was dismissed.

Also the party can act in the manner prescribed in paragraph 1 of this Article when the body of first instance has failed to adopt a determination on its request, against which act there are no conditions for appeal.

If the body of first instance, against which act an appeal can be lodged within 60 days or a shorter time period determined by special regulation, has failed to bring a determination on the request, the

party shall have the right to address the request to the body of second instance. The party can initiate an administrative dispute against the determination of the body of second instance, under the conditions referred to in paragraph 1 of this Article, even when this body has not brought a determination.

Article 23

The complaint must state the name and surname and the place of residence of the complainant, i.e. the name and head office of the legal entity as entered in the Central Register, the act against which the complaint is lodged, the reasons of the complaint, as well as the scope and direction of proposed annulment of the administrative act. The complaint must be accompanied by the original act or a copy thereof.

If return of property or compensation of damage is requested by the complaint, it must also contain a request regarding the object or the amount of the damage suffered.

The complaint shall also be accompanied by a copy of the complaint and the attachments for the defendant and for each interested person, if any.

Article 24

The complainant may waive the complaint at any time before adopting a decision, in which case the Administrative Court shall terminate the procedure by a determination.

Article 25

If the lawsuit is incomplete or incomprehensible, the president of the council or the sole judge shall summon the complainant, if necessary through another court, to eliminate the established flaws of the lawsuit. Thus, it will instruct what to do and how to act, will point to the need of an attorney in fact and to the consequences that will arise unless it acts upon the request of the Administrative Court.

If the complainant does not eliminate the flaws of the lawsuit in the determined time period, thus they prevent the operation of the Administrative Court, the Administrative Court shall by a decision reject the lawsuit as unduly, unless it finds that the abnegated administrative act is null and void.

Article 26

The Administrative Court shall dismiss the complaint by a determination, if it finds that:

- 1) the complaint has not been submitted on time (Article 20) or before time (Article 22);
- 2) the act disputed by the complaint is not an administrative act;
- 3) it is obvious that the administrative act disputed by the complaint does not affect the complainant's right or the complainant's direct personal interest based on law (Article 3);
- 4) an appeal could have been lodged against the administrative act disputed in the complaint, but no such appeal has been filed, or it was not filed on time;
- 5) the subject is an administrative matter wherefore an administrative dispute is not admissible, and
- 6) there is already legally valid decision adopted in an administrative dispute regarding the same matter.

Due to the reasons stated in paragraph 1 of this Article, the Administrative Court shall dismiss the complaint at every stage of the procedure.

Article 27

If the Administrative Court does not dismiss the complaint on the basis of Article 25 paragraph 2 or Article 26 of this Law, and decides that the disputed administrative act contains such substantial deficiencies which prevent the assessment of the lawfulness of the act, it may annul the act with a verdict even without submitting the complaint for a response.

Article 28

If during the court procedure, the body brings another act whereby the administrative act against which an administrative dispute has been initiated is amended or put out of force, that body, beside the complainant, shall at the same time notify the Administrative Court where the dispute is initiated. In that case the Administrative Court shall call up the complainant within 15 days to state whether he is satisfied with the additionally brought act or sticks to the complaint and to what extent, i.e. whether he extends the complaint on the basis of the new act as well.

If the complainant declares that he is satisfied with the act additionally brought, or does not make a statement in the time frame referred to in paragraph 1 of this Article, the Administrative Court shall bring a determination to cease the procedure.

If the complainant declares that he is not satisfied with the new act, the court shall continue the procedure.

If during the court procedure the body of first instance in the cases stated in Article 30 has adopted an administrative act, the Administrative Court shall cease the procedure.

Article 29

If the Administrative Court does not dismiss the complaint immediately with a determination according to Article 25, paragraph 2 or according to Article 26 of this Law, nor it annuls the act pursuant to Article 27 of this Law, it shall submit one copy of the complaint and attachments thereto to the defendant for response and to the interested parties, if any.

The response shall be given within the time period defined by the Administrative Court for each specific case. This time period cannot be shorter than eight or longer than 30 days.

Within the given time period, the defendant shall be obliged to submit to the Administrative Court all records relevant to the case. If the defendant even after the second notice fails to submit the case records, or states that they cannot be submitted, the Administrative Court can decide without the records.

Article 30

Generally, the Administrative Court in administrative disputes shall decide in a session which is not public.

For administrative disputes the court shall decide on:
- the lawfulness of the acts and
- the administrative matter itself.

Article 30-a

In a dispute on the lawfulness of the acts of the bodies referred to in Article 1 of this Law, on the matter referred to in Article 26 of this Law, the Administrative Court shall decide by a decision, without a contention.

The court shall hold a public oral contention and shall, by a verdict, decide on the administrative matter itself, if:

- the complexity of the case in the administrative dispute imposes so,
- if is necessary due to better clarification of the administrative matter or determination of the actual condition,
- the court exhibits evidence and
- in the cases anticipated in Articles 22 and 36 paragraph 3 and 40 of this Law.

Article 31

In matters demanding expert opinion on the issues related to the subject of the administrative dispute in the administrative- judicial procedure, the party shall be allowed to bring an expert to provide expert advice (expert assistant). This person shall not represent the party.

The party cannot call a person without a capacity to contract or a person who practices shysterism to act as an expert advisor in the administrative-judicial procedure.

Article 32

Deleted 

Article 33

The hearing shall be headed by the president of the council.

Minutes shall be kept for the dispute, where only the essential facts and circumstances, as well as the disposition the decision. The minutes shall be signed by the president of the council and the minute-taker.

Article 34

Absence of a party from the hearing shall not withhold the work of the court. The absence of the parties cannot be considered as their withdrawal from the requests and their submissions shall be read.

If neither the complainant nor the defendant attends the hearing and the hearing is not postponed, the court shall decide upon the dispute without the presence of the parties.

Article 35

At the dispute first to speak is the reporter – member of the council, who states the condition and the core of the dispute, thus not giving personal opinion. Second to speak is the complainant in order to elaborate the complaint, then the representative of the defendant and the interested parties, in order to elaborate their legal interests.

Article 36

Generally, the court shall decide upon the dispute based on facts established in the administrative procedure, or based on facts established by the court.

If the court finds that the dispute cannot be decided based on facts established in the administrative procedure, due to contradiction in the facts established and those found in the records, if the facts in substantial points are incomplete, if an incorrect conclusion regarding the facts is derived, or if the

court finds that in the administrative procedure rules of the procedure that may have affected the matter have not been taken into consideration, then the court shall annul the disputed administrative act with a verdict. In such case, the competent body shall be obliged to act as determined in the verdict and bring a new administrative act.

If the annulment of the disputed administrative act pursuant to paragraph 2 of this Article and reopening the procedure before the competent body would cause damage to the complainant that would be difficult to repair, or if based upon public documents or other evidence in the records of the case it is obvious that the facts are different than those established in the administrative procedure, or if the administrative act has already been annulled in the same dispute, but the competent body has failed to act completely in accordance with the verdict, the court shall establish the facts of the case and reach a verdict or bring determination based on the factual situation, as established.

In the case referred to in paragraph 3 of this Article, the court shall establish the facts at the hearing through one of the members of the council, or through another regular court or other body. The party shall be also summoned at the hearing.

Article 37

The lawfulness of the disputed administrative act shall be investigated by the court within the limits of the requests in the complaint, wherefore it is not bound to the reasons of the complaint.

The court takes care *ex officio* regarding the annulment of the administrative act.

Article 38

The court shall reach a verdict or bring determination by majority votes when deciding within the council.

Separate minutes shall be kept for counseling and voting, which are signed by all members of the council and the minute taker.

The counseling and voting shall be conducted without the presence of the parties.

Article 39

An appeal shall be allowed against the decision of the Administrative Court.

Article 39-a

By the verdict, the court shall accept the lawsuit as grounded or shall reject it as ungrounded. If the lawsuit is accepted, the court shall annul the abnegated administrative act.

The court shall, by a decision, as well decide upon the temporary measures referred to in Article 15 of this Law.

Article 40

If the court finds that the disputed administrative act should be annulled, it can decide the administrative matter with a verdict, if the nature of the case and the information in the procedure provide sound grounds therefore. The court shall mandatorily act in this manner if:

- it comes to misapplication of the law (wrongly established legal issue);
- the matter concerns administrative agreements;

- the matter concerns acts brought in misdemeanor procedure by bodies indicated in Article 1 of this Law;
- the procedure is delayed, and in the case in question the facts have been established in the administrative-judicial procedure;
- it has previously annulled the administrative act with a verdict, but the issuing body has failed to act according to the court's guidelines and opinions stated in the verdict;
- the competent authority upon the annulment of the administrative act brings an administrative act contrary to the legal opinion of the court, or contrary to the court's comments regarding the procedure, due to which the complainant submits new complaint and
- in the cases determined in Article 22 of this Law.

Such judgment shall replace the act of the competent body in all aspects.

In the cases of paragraph 1 lines 4 and 5 of this Article, the court shall notify the body that supervises the work of the body having adopted the act which is subject of the administrative dispute. The body that supervises the work of the body having adopted the act which is subject of the administrative dispute shall be obliged to suspend the authorized official who failed to comply with the decision of the court and shall initiate procedure for his liability.

By the verdict that annuls the abnegated administrative act the court shall as well decide upon the request of the complainant for return of the item. In regard to the damage compensation, the court shall instruct the complainant to realize its request in a litigation procedure.

When the complaint is submitted pursuant to Article 22 of this Law, and the court finds it justified, the court shall accept the complaint with a verdict and shall determine in which terms the competent body shall bring a determination.

Article 41

After the completed contention the court shall reach, and orally announce, the verdict.

In the more complex cases the court may postpone the oral announcement of the verdict in a period of three days as of the day of closing the contention, at the latest.

The court shall be announced to prepare the verdict in a period of eight days, and in more complex cases in a period of 15 days as of the day of publication.

If a verdict cannot be reached upon the closed oral contention, since it is necessary previously to determine the type of fact for whose contenting a new oral contention is not necessary, the court shall reach a verdict, without a contention, in a period of eight days as of the determination of the fact, at the latest.

Article 42

The verdict, i.e. the determination, shall contain the name of the court, the name and surname of the president of the council and the members of the council and the minute-taker, the names and surnames of the parties and their representatives, a brief declaration upon the subject of the dispute, and the day when the verdict, i.e. the determination has been pronounced and announced, the disposition, the elaboration and a lesson regarding an appeal. The disposition has to be separated from the elaboration.

The original verdict or determination shall be signed by the president of the council and the minute-taker.

The verdict, i.e. determination shall be issued to the parties as certified copy.

VI. LEGAL MEANS

Appeal

Article 42-a

The parties can file an appeal against the decisions of the Administrative Court in a period of 15 days as of the day of service of the decision through the Administrative Court to the Supreme Administrative Court.

The body whose act was subject of the administrative dispute may file an appeal through the State Attorney of the Republic of Macedonia against the decision of the Administrative Court.

The Supreme Administrative Court shall decide upon an appeal in a council composed of three judges.

Article 42-b

New facts cannot be stated in the appeal, nor new evidence can be proposed, unless they refer to actual violations of the provisions on the procedure with the court, against which an appeal cannot be filed.

Article 42-c

An appeal can be announced against the court's decision, due to:
- actual violations of the provisions on the procedure,
- incorrectly or incompletely determined actual condition and
- misapplication of the material right.

Article 42-d

Actual violation of the provisions on the procedure exists, if the court, in the court of the procedure has not applied or has misapplied a provision of this or another law, which has further affected or might have affected the adoption of a lawful and correct decision.

Actual violation of the provisions on the procedure always exists, if:

- 1) the court was improperly composed;
- 2) a judge, who according to the law has to be exempted, i.e. who by a court's decision was exempted, participated in the decision-making;
- 3) it was decided upon a request in a dispute that is not included in the administrative court competence;
- 4) contrary to the provisions of this Law, the court has based its decision on unallowed dispositions of the parties;
- 5) the party has not been enabled to discuss in court due to illegal actions, and especially due to omission of service of process;
- 6) against the provisions of this Law, the court has rejected the request of the party to provide it with an interpreter in the procedure, while the party appeals thereof;
- 7) the court has adopted a decision without an oral contention, and was obliged to hold one, in accordance with Article 30-a paragraph 2 of this Law;
- 8) as complainant or defendant in the procedure participated a person that was not able to be a party to the procedure, or if the party that is legal entity was not represented by an authorized person, or if the procedurally incapable party was not represented by a legal representative, or if the legal representative, i.e. attorney in fact of the party did not have the necessary authorization for conducting the procedure or for separate actions in the procedure, if the conduct of the procedure, i.e. performance of separate activities in the procedure were not additionally approved;

9) it has been decided upon a request for which a dispute is already ongoing, or for which a legally valid decision has been previously adopted, or for which a court settlement has already been concluded;

10) the public was excluded from the oral contention, against the law;

11) the decision has flaws due to which it is impossible to be examined, and especially if the pronouncement of the decision is incomprehensible, if it is contradictory to itself or to the reasons for the decision, or if there are no reasons in the decision or the reasons for the decisive facts are not state or those reasons are incomprehensible or contradictory to themselves, or if there is contradiction for the decisive facts between what in the reasons of the decision is stated on the content of the documents or the minutes for the statements given in the procedure or the documents and minutes themselves and

12) the court has violated the provisions on use of the language in the procedure.

If the party that is a legal entity was not represented by an authorized person or since if was procedurally incapable party, it was not represented by its legal representation, or if the legal representative, i.e. attorney in fact of the party did not have the necessary authorization for conducting the procedure or for separate activities in the procedure, an appeal may only be filed by the party to which such flaws refer.

Article 42-e

Incorrectly determined actual condition exists when the court has wrongly determined certain decisive fact, i.e. when it has not determined it at all.

Incompletely determined actual condition exists when it is pointed by the facts or evidence that the party has unsuccessfully proposed in the course of the procedure.

Article 42-f

Misapplication of the material right exists when the court has failed to apply the provision of the material law that should have been applied or when such provision was not applied correctly.

Article 42-g

The Supreme Administrative Court shall, as a general rule, decide upon an appeal without a contention.

When the council of the Supreme Administrative Court finds that due to correct determination of the actual condition it is necessary to repeat the already exhibited evidence, it shall schedule a contention.

When at a session of the council it will be determined that the verdict against which the appeal has been announced is based on an actual violation of the provisions of this or another law, or on incorrectly or incompletely determined actual condition, and the verdict had once been abolished, the Supreme Administrative Court shall schedule a contention and decide *in meritum* .

Repeating the procedure

Article 43

The procedure terminated with verdict or a determination shall be repeated upon a request of a party if:

1) the party comes to knowledge of new facts, or finds or obtains an opportunity to use new evidence based on which the dispute would have had more favorable outcome for the said party had those facts or evidence been disclosed or used in the previous procedure;

- 2) the court's decision was a result of a crime committed by a judge or court official, or the decision was obtained by fraud by the representative or attorney-in-fact of the party, the opposing party or his representative or attorney-in-fact, and such act constitutes a crime;
- 3) the decision is based on a verdict reached in a criminal or civil matter which has later been annulled by another legally valid court decision;
- 4) the document on which the decision is based is false or has been falsely modified, or if the witness, expert or party have given false testimony at the hearing, and the decision of the court is based on that testimony;
- 5) the party finds or obtains an opportunity to use the earlier decision brought in the same administrative dispute;
- 6) the person having interest in the case has not been given the opportunity to take part in the administrative dispute; and
- 7) upon a decision of the European Court of Human Rights.

Due to circumstances in paragraph 1 items 1 and 5 of this Article, repeating shall be allowed only if the party has been unable without any fault on its part to disclose those circumstances in the previous procedure.

Article 44

Repeating of the procedure can be requested no later than 30 days as of the date the party has learned about the reason for which repeating is requested. If the party has learned about the reason for repeating prior to the conclusion of the court procedure, but has been unable to use that reason during the procedure, repeating can be requested within 30 days as of the date of delivery of the decision.

Repeating of the procedure cannot be requested five years after the date the decision becomes legally valid.

Article 45

The court that has adopted the decision to which the reason for repeating refers, shall decide upon the appeal for repeating the procedure.

The court where the procedure has been concluded shall decide on the repeating of the procedure in a council composed of five judges.

Article 46

The complaint for repeating the procedure shall be lodged to the court competent for deciding (Article 45).

The complaint has to particularly state:

- 1) the verdict or determination brought in the procedure which repeating is being requested;
- 2) the legal basis for repeating (Article 43) and the evidence, i.e. circumstances that make the existence of such ground probable;
- 3) circumstances implying that the complaint is filed within the legally determined deadline and proves thereof; and
- 4) the scope and direction of proposed modification of the verdict or determination brought in the procedure whose repeating is requested.

Article 47

The court shall decide upon the complaint for repeating in a session which is not open to the public.

The court shall dismiss the complaint with a determination if it finds that the complaint has been filed by an unauthorized person, or that the complaint is not timely or the complainant has failed to make probable the legal ground for repeating.

If the court does not dismiss the complaint pursuant to paragraph 2 of this Article, it shall serve it to the opposing party and the interested parties and invite them to respond to the complaint within 15 days.

Article 48

Upon expiration of the time period for response to the complaint (Article 47 paragraph 3), the court shall decide with a determination upon the complaint for repeating the procedure.

If repeating is granted the prior decision shall be in whole or partly put out of force.

Previous process activities not affected by the reasons for the repeating shall not be repeated.

The main matter shall also be decided upon with the verdict allowing repeating.

Article 49

The Public Prosecutor of the Republic of Macedonia may submit a request for protection of the lawfulness against the decision of the court adopted upon the lawsuit for repeating the procedure.

The Supreme Court of the Republic of Macedonia shall decide upon a request for protection of the lawfulness at a general session.

Article 50

In the repeating procedure provisions of this law regarding procedure upon a complaint and legal means shall be applied, unless otherwise determined in Articles 43 to 49 of this Law.

Article 51

Deleted. **3**

VII. BINDING EFFECTS OF THE DECISIONS

Article 52

When the court annuls an act against which an administrative dispute has been initiated, the case shall be reinstated as prior to the bringing of the annulled act. If according to the nature of the matter that was subject to dispute, a new act is to be brought instead of the annulled administrative act, the competent body shall be obliged to bring it with no postponement and at latest within a period of 30 days as of the day of serving the verdict. The competent body is therefore bound to the legal opinion of the court, as well as to the notes of the court in regard to the procedure.

Article 53

If upon the annulment of the administrative act the competent body fails to bring immediately or within 30 days at latest a new administrative act or an act for enforcement of the verdict pursuant to Article 40 paragraph 5 of this Law, the party can request bringing of such act by special request. If the

competent body fails to bring such act within seven days as of receiving such request, the party can request the court that had reached the verdict to bring such act.

Upon the request of paragraph 1 of this Article, the court shall demand an explanation from the competent body on the reasons for the failure to adopt the administrative act. The competent body shall be obliged to provide such explanation immediately, or within seven days at latest. In case it fails to perform that or if the given explanation according to the court's opinion does not justify the non-enforcement of the court verdict, the court shall bring a determination which in every aspect substitutes the act of the competent body, should the nature of the matter allow so. The court shall serve this decision to the body competent for enforcement and shall at the same time notify the supervising body thereof. The body competent for enforcement shall be obliged to enforce such decision with no postponement.

Article 54

When a verdict is reached in an administrative dispute, and the competent body has brought an administrative act for enforcement of that verdict, and a request is filed with the competent body for repeating of the administrative procedure concerning that administrative act, the repeating can be granted if the cause for repeating occurred on the part of the body having brought the act.

VIII. SPECIAL PROVISIONS

Article 55

The court competent for administrative disputes, in accordance with this Law, shall decide upon the request for the protection of freedoms and rights guaranteed by the Constitution, if such freedom or right is violated by a final individual act and no other court protection is provided.

Article 56

If freedoms and rights guaranteed by the Constitution are violated by an action of an official person in the state administration body, or a responsible person in an enterprise, institution or other organization or community, whereby contrary to the law directly prevents and limits the exercise of right or freedom of an individual, organization or community, protection shall be provided in a procedure established in Articles 57 through 64 of this Law, unless other court protection is provided.

Article 57

The proposal for protection against an unlawful action shall indicate the action, place and time of its commission, the body, organization, community or official person that committed the action, evidence thereof, as well as a request to remove the obstacles or limitations for the exercise of rights or duties.

Article 58

A proposal can be submitted while the action is ongoing.

If the person against whom action is undertaken is unable to submit a proposal for protection against an unlawful action, such proposal can be filed by the spouse, children, parent or legal representative or attorney-in-fact of the person concerned.

Article 59

The Administrative Court shall decide upon the request for protection against an unlawful action. The Court shall decide in a council composed of three judges.

Article 60

The Administrative Court shall act upon the request urgently and in a manner which respects the basic principles of the procedure and provides efficient protection of the rights and interests of citizens and organizations or communities.

Article 61

The court shall with no postponement submit a response to the body, i.e. responsible person, depending on who has committed the action. The response to the proposal shall be submitted in a time period determined by the court.

The court can, according to the circumstances of the case, bring a decision upon the proposal immediately, without requesting a response, if the information in the proposal provides a sound basis for such decision.

Article 62

If the court finds the proposal well-grounded, it shall bring a determination whereby further performance of the action will be prohibited. Otherwise, the proposal will be dismissed.

By the determination the court shall also determine what is necessary to establish lawful condition, leaving time period of enforcement and determining sanctions in case of non-enforcement of the determination.

Article 63

Against the determination referred to in Article 62 of this Law a special appeal can be lodged to the Supreme Court of the Republic of Macedonia within 3 days as of the serving of the determination.

The appeal shall not postpone the enforcement of the determination, but the court can postpone the enforcement upon a proposal, if it finds that the circumstances of the case require so.

Article 64

In order to ensure and enforce the determination, the court, according to the circumstances in the specific case, shall immediately undertake what is necessary, and can also notify the functionary of the supervising body, the public prosecutor and other bodies, so that they can undertake measures determined by the court.

Article 65

If the determination is not enforced within the left time period, the court shall enforce the determination directly or through another court or body.

The enforcement, according to the circumstances of the case, shall be performed at the expense of the body, organization or community, i.e. the official person that has committed the action.

For the purpose of enforcement of the determination, the court may submit to the competent body a request for removal of the responsible person's duty, and can also, if needed, impose a fine of up to

10.000 Denars against the responsible person for failure to enforce the determination in the prescribed time period or impose other measures in accordance with the rules of the enforcement procedure.

IX. TRANSITIONAL AND FINAL PROVISIONS

Article 66

The procedure upon complaints for initiating an administrative dispute filed to the Supreme Court until the date of entry into force of this Law shall be conducted in the following manner:
- administrative cases which by the date of entry into force of this Law are not yet resolved by the Supreme Court, shall be handed over to the Administrative Court.

The Supreme Court shall be required to resolve in reasonable time frame the cases involving extraordinary legal means.

An instruction on the manner of taking over cases from the Supreme Court of the Republic of Macedonia shall be enacted by the Minister of Justice no later than three months as of the day this Law enters into force.

Article 67

Against a decision brought in an administrative dispute until the day this Law enters into force, an appeal can be lodged against the existing regulations, if according to those regulations an appeal has not been anticipated.

Extraordinary legal means, according to the regulations valid until this Law enters into force, can be pronounced against a legally valid decision in an administrative dispute, brought prior to the day this Law enters into force.

Article 68

As of the day of the start of application of this Law, the Law on Administrative Disputes ("Official Gazette of SFRY" No. 4/77; 36/77 and "Official Gazette of the Republic of Macedonia " number 44/2002) shall cease to be valid and applicable.

Article 69

This Law shall enter into force on the eighth day as of the day of its publication in the "Official Gazette of the Republic of Macedonia", and its application shall commence one year after its entry into force.

PROVISIONS	OF	OTHER	LAW
Law Amending the Law on Administrative Disputes ("Official Gazette of the Republic of Macedonia"			
	no.		150/2010):
Article			43
The procedures upon the lawsuits for initiation of an administrative dispute submitted to the Administrative Court before the day this Law commences its application, shall be conducted in accordance with the provisions of this Law.			
Article			44
An appeal may be filed against the decision in an administrative dispute adopted before the day this Law commences its application, in accordance with the provisions valid until the day this Law commences its application, if those regulations anticipate an appeal. Extraordinary legal remedies may be pronounced against a legally valid court decision in an			

administrative dispute adopted before the day this Law commences its application, in accordance with the regulations valid before this Law is applied.

Law Amending the Law on Administrative Disputes ("Official Gazette of the Republic of Macedonia" no. 150/2010):

Article 45

The Supreme Administrative Court shall be constituted and shall commence its operation by 30 June, 2011, at the latest.

Article

46

This Law shall enter into force on the eight day as of the day of publication in the "Official Gazette of the Republic of Macedonia", and shall apply after the constitution and commencement of operation of the Supreme Administrative Court.