

CITIZENS' RIGHT TO SEEK JUDICIAL REVIEW OF ADMINISTRATIVE ACTS AND ITS IMPACT ON GOVERNANCE REFORMS

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Abstract

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This article analyses the right to judicial review of administrative acts and its impact on governance reforms as a result of the procedure conducted by a respective court. The article also evaluates and finds that examination of administrative acts by competent court strengthens the rule of law and governance efficiency as a mechanism to guarantee the application of the principle of legality that requires that public authorities should act within a legal boundary and reasonable time to respect the citizen's rights. Data analysis assumes on descriptive approach, an examination of the current legal framework governing the system, reports on the functioning of the oversight mechanism, empirical analyses of the topic, processed cases of administrative justice, and other published work. Administrative justice is not limited to the guarantee of citizens' rights. Its justification also lies in the necessity to defend the public interest and to guarantee a balance between individual rights and the general interest (Woehrling, 2006). This study is of great significance and aims to contribute to the perceptive of judicial review proceedings as a narrow approach for the promotion of good administration and furthermore effective reforms. This study concludes that the administrative judiciary is one of the basic mechanisms that correct the illegal actions of the administrative bodies, prevents arbitrariness, and impact the governance reforms towards increasing efficiency, accountability, and transparency.

Keywords: Judicial Review, Governance, Administrative Acts, Efficiency, Protection of Citizens, Good Governance

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1. INTRODUCTION

The main issue to be addressed in the paper is the study related to the citizen's right to seek judicial review of administrative acts and protection of their rights.

This study attempts to identify the characteristics and importance of citizens' right to seek examination of administrative acts by a competent court and defense their rights. In this regard, this study attempts to find answers to questions related to citizens' rights to seek judicial review of administrative acts.

The judicial review of administrative decisions is the basic mechanism of any democratic society for the protection of the citizens from maltreatment or unlawfulness of the administrative body. Without court review of decisions issued by a competent body, the rule of law in the modern and democratic public administration would fail, since this procedure tends open, quick, and significant implementation of the principle of legality.

The principle of separation and balance of powers is one of the constitutional principles that symbolizes the rule of law and constitutes the need for external control over administrative activity. Our society is living under the principle of separation and balance of powers as one of the key principles of the rule of law and democracy. Based on this principle, all countries define the separation of powers into legislative, executive, and judiciary, and determine the activity of each pillar and mutual control of the respective activity. In a modern public administration, one of the arguments supporting judicial control relies on the implementation of the principle of the separation of powers, since the specialized courts or courts of general jurisdiction are assigned to confirm whether the government is performing within the legal limits they are entrusted with. In this regard, the judicial review of administrative decisions is validated by the principle of separation of powers that permits open implementation of executive powers to be checked by the respective courts to prevent any illegal decision.

Judicial control throughout the administration is considered a key factor in increasing governance efficiency in many countries of the world. Therefore, the system of administrative justice should consider and review the impartiality, objectivity, and professionalism in the decision-making process by the administrative body.

Nowadays, as the difference from previous centuries in the interests of protecting the citizens' rights, the competent courts intervene to a very considerable level over administrative acts by ordering annulment of an administrative decision, abstaining from or suspending some sequences of action, or ordering the fulfilment of legal responsibility.

Judicial control over the administrative actions intends at constraining arbitrary or unfair governmental action to protect the rights of a citizen and to guarantee that each division of government acknowledges the limits of its power. The system of judicial oversight of administrative actions should include formal and substantive elements as an external form of control over the administration, respectively over the administrative acts issued by administrative bodies and one of the basic principles of democracy and the rule of law. The discrepancy of power that exists between public administrative authorities and individuals must be checked effectively to restore the rights of citizens which could be breached by an administrative body. Judicial control over the administration is a basic tool to ensure whether administrative acts are complying with the law, principles of administrative procedure and whether there is arbitrariness, having in mind that often administrative bodies decide contrary to the legitimate interests of the parties. However, through the judicial review, the

administrative body that makes such a breach can be sued in court by the person or organization interested in obtaining compensation for damage caused or for putting in place the infringement.

State and public administration perform different legal authorizations to fulfill the citizens' demands and expectations in a democratic state. Such authorizations are mainly focused on organizational issues and the management of public services. Judicial control is considered the authority of the judicial branch to observe the legality of the final decision issued by the administrative body, to protect the basic rights of the citizens. Final administrative acts can be disputed in the respective court to verify if the administrative body has exercised its authorizations based on the law or if it exercised its functions arbitrarily.

The globalization process over the past years requires more advanced responsibilities taking into consideration that governments have been denounced for their mistreatment to provide proper public services and fulfil citizens' expectations. The era of administrative reforms requires the application of advanced technologies, economic and governance changes in order to enable the provision of efficient, fast, and accessible services to citizens.

Any citizen who is unsatisfied with the decision issued by an administrative body can challenge it through the judicial review to dispute the decision considered unfair, illegal, or unreasonable. Consequently, upon the judicial review, the respective court may declare the decision as null, may seek the reconsideration of the decision, or may issue a decision in the procedure of full jurisdiction, when a court decides on the merit of the administrative matter.

Wade and Forsyth (2004) have pointed out that "the primary purpose of administrative law is to keep the powers of government within their legal bounds, so as to protect the citizen against their abuse" (p. 5). In addition, they state "that the powerful engines of authority must be prevented from running amok" (Wade & Forsyth, 2004, p. 7). To submit a lawsuit for review of administrative decisions a citizen must have grounds for review. The grounds for judicial review are related to material or procedural breaches. Material breaches are related to failure to apply the law or incorrect application of the law, while procedural breaches are related to the issuance of an administrative act by an incompetent body, an erroneous factual situation, or a breach of any procedural principle.

Today, governments are able to improve the level of proficiency and sustainability through the execution of judicial verdicts that have an explicit influence on increasing the degree of reliability and responsibility within the governance branch.

The right to access the court to dispute an administrative act is considered democratic accountability to strengthen the rule of law. Democratic accountability also affects the quality of administrative activity in general and administrative legal relations.

However, to do so, a review of this activity is needed from another branch, such as the judicial power through the administrative justice, since as emphasized by Longley and James (1999) "judicial review is significant in qualitative terms and because of the impact it can have on administrative decision-making" (p. 105).

In the scientific and theoretical aspect, the judicial review of the administrative act is intended to strengthen administrative decision-making by eliminating possible violations and errors. However, practice often proves a bureaucratic decision-making process as the public body is often not implementing court recommendations.

The structure of the paper is as follows. Section 2 reviews the relevant literature that has been used to research the citizens' expectations to seek judicial review of administrative acts. Section 3 analyses the research methodology that has been used to conduct the research. Section 4 provides the discussion and results that have been gathered upon the conduct of the research related to the above topic. Section 5 provided the conclusions that have been made based on the research.

2. LITERATURE REVIEW

Judicial review proceedings are different from private law proceedings because the interests in play are typically not just those of the parties to the litigation. It may also be necessary to consider the public interest (Judiciary for England and Wales, 2021).

Woolf, Jowell, and Le Sueur (1999) argue that "judicial review should be seen in the context of the general administrative system where different mechanisms are employed to hold public bodies accountable" (p. 4). The aim of judicial review is to ensure that public officials stay within the law and do not abuse their powers (Craig, 1989). Through this procedure, the respective court finds out whether such acts issued by an administrative authority are in harmony with the constitution and legal provisions of a country. Court review intends to verify if an administrative body has acted in line with material and procedural provisions, as well as whether a body's action is arbitrary or misused the discretion.

The term "administrative justice" has a pervasive homogenizing influence. Tribunals and other government agencies were created in the first place to achieve diverse goals through diverse structures and procedures (Harris & Partington, 1999). A decision-maker who has mistaken a fact or made an error in law may nevertheless make the correct or preferable decision if he legitimately applies a policy wide enough to require the same decision whether there is a mistake or an error of law (Brennan, 1986). An ambitious exposition of the concept of rule of law was made by Lord Bingham who defines rule of law as "all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of the laws publicly and prospectively promulgated and publicly administered in the courts" (Bingham, 2007, p. 69). The importance of the judicial control of the administrative activity focuses on the protection of the legality and rights of the party through the annulment of the final act that is derived from a body of the state or public administration. For this reason, almost many states belonging to the European system have established their administrative courts as specialized bodies for resolving administrative disputes. Through such

a judicial control system, it is possible to realize the citizens' expectations for the protection of their rights if the party claims that the administration has committed the material or procedural violations during the establishment of the administrative issues. However, in the practical aspect, the citizens' expectations often are not or partially recognized because the party does not make efforts to continue the process of judicial control through filing regular or extraordinary legal remedies at higher levels of the court.

Judicial review can be put into a "regulatory perspective" at two levels. Firstly, one might consider extending to which judicial review is effective in securing compliance with administrative law. Secondly, one might consider the extent to which compliance with administrative law is effective in fulfilling the regulatory goal of "good administration" (Halliday, 2004, p. 14). As Wade (1987) states that the judicial instinct is to fight on all fronts against uncontrollable power, and although there will always be a great deal of power in human affairs which no law will ever control, that is no reason for not annexing new territory wherever possible, and for not protecting against public abuse. The laws adopted by the legislative branch should have the attention of respective judges when deciding on the legality of an administrative decision (Ekins, 2012).

Wade and Forsyth (2004) have indicated that the primary purpose of administrative law is to keep the powers of government within their legal bounds, to protect the citizen against their abuse. The powerful engines of authority must be prevented from running amok.

The corresponding purposes of judicial review are often linked to the imperatives of ensuring efficiency in public decision-making processes and protecting individuals in the face of those processes. While the "efficiency" and "protection" imperatives need not be regarded as mutually exclusive, they can nevertheless be associated with different rationales for the principle and practice of judicial review (Anthony, 2008). What is clear, however, is that the exercise of discretionary powers is an important feature of modern public administration? (Holzer & Yang, 2005).

In the process of interaction between courts and administrative bodies, dissatisfaction and a dose of skepticism are frequently evident considering that public officials are not always satisfied with courts interference, on the one hand, while judges are not happy with the performance and responsiveness of administrative bodies, on the other hand (Batalli & Pepaj, 2018).

Discretion means choosing from amongst the various available alternatives but with reference to the rules of reason and justice and not according to personal whims. Such exercise is not to be arbitrary, vague, and fanciful, but legal and regular (Massey, 2001). The most obvious benefit brought by judicial review is that it forces care in administrators and reviewers in their adjudicative processes (Crock, 1999). From Galligan's (1986) perspective, the exercise of discretionary power is relevant to "the degree of power which one official has over another, the extent to which it is hierarchical, the degree of autonomy particular officials has to

act as they think best, the position regarding promotion — each of these factors, together with a range of others” (p. 133).

In judicial review proceedings, the case title differs from other civil proceedings to reflect the fact that judicial review is the modern version of a historic procedure (Civil Procedure Rule Committee [CPRC], 1998).

The judiciary’s view about the meaning of the rule of law in relation to judicial review matters because it falls to the judiciary to apply any relevant legislation passed by Parliament (Street, 2013). The main mission and vision of the democratic state and public administration are too “mediate” in the decisions of the government to promote an accountable, fair, and effective rule-making process. Such a mission of democracy is guaranteed in the process of judicial review of administrative acts to protect the rights of the citizens from unfair and illegal decisions.

2.1. The impact of administrative justice on rule of law and governance efficiency and accountability

The principle of legality is considered a basic principle of an administrative procedure that implies respect for national and international legislation. Consequently, in judicial review of an administrative act administrative judge observes the implementation of this principle to verify the legality or illegality of a decision issued by an administrative agency. The past decades in general have been seen as a time of reforms in public administration due to a process of transformation from a classic rule of law system to governance in the new regulatory state. This transformation process requires that all official authorities in the process of decision-making exercise their functions in an efficient manner and with accountability.

There is a little-known, but hugely important, justice system that impacts everyone’s life — administrative justice. Made up of various bodies it is concerned with the laws surrounding decision-making and dispute resolution of public bodies. The system also ensures that government officials make correct decisions in areas such as housing, education, health and social care, and immigration. These decisions often have the greatest impact on the most vulnerable in society (Nason, 2018).

In recent years, the experience of different countries shows that with the rise of the welfare state, the law of judicial review starts to give attention to the government’s unlawful inaction so as not to restrain but to stimulate the government (Mashaw, Merrill, & Shane, 1992). Administrative justice is a crucial element of democratic and modern administration that indicates a dedication to the implementation of rule of law and principles of administrative procedure. The interaction between the citizen and the administrative authority has a significant influence on the activity of government and fiscal development of the society. Administrative justice enables the private or legal entities to dispute administrative decisions and to seek public official consistency and liability for the decision-making process through a judicial review. Therefore, administrative justice is considered a protective measure of fair, efficient, and accountable governance through an objective court review.

Good governance implores values from those that have the power to govern. As one of the values, rule of law is pivotal in ensuring fair, just, and stable governance. Public and private governance apply the same values and principles and there is interconnectivity between the two. In fact, they are intertwined, and they are interdependent on each other for efficiency and effectiveness (Mahmod, 2013).

In democratic and modern states administrative decisions are subject to a court review and supervision. The rule of law envisages open access for all citizens to a competent and impartial court that intends to ensure effective access to judicial review and the right to a fair trial. The rule of law may be guaranteed through natural justice to ensure the promotion of procedural principles and to ensure that administrative authorities did not issue arbitrary or erroneous decisions. Concerning the notion of “natural justice”, e.g., in Dr. Bentley’s Case (1723), it was said that “not even God failed to provide Adam and Eve with a hearing before casting them out of the Garden of Eden”.

Rule of law principles and the right to judicial review of administrative actions should be assured through constitutional, legal, and regulatory provisions. Rule of law principles *inter alia* intend to assure an effective judicial process through providing to the subjects who want to challenge administrative decisions.

Judicial review is just one of the ways in which we maintain checks and balances in our democracy. The courts have and will continue to develop the application of the rule of law through judicial review, and quite rightly so (Ministry of Justice, 2021).

Administration justice represents the main pillar of supervision of administrative acts through which citizens have their expectations regarding objective and impartial oversight over the legality of administrative acts. Judicial decision-making regarding the legality of an administrative act is the last instance for citizens’ expectations who await the assessment of the legality, through the issuance of a new act from the administrative body or through the *in meritis* decision of the competent court.

The public inquiry represents a final accountability backstop in many jurisdictions — an institution born of the failures of other mechanisms to respond to scandals, crises, and disasters. While each inquiry responds to differing political and administrative dynamics, there are many shared features and challenges in delivering their mandate of truth and reform (Donson & O’Donovan, 2021).

Administrative justice is part and parcel of the common, though frequently unarticulated, understandings and expectations inherent in the constitutional fabric woven from the weft and warp of our political and legal systems. It is a fundamental principle that government — at all levels and in all its manifestations — should act justly in its dealings with the public (Longley & James, 1999). Legality implies that administrative acts that concern citizens’ rights must be based on law, while fairness indicates that administrative action must be reasonable based on the factual and legal status. The administrative body is obliged to act within the provisions of the respective law, however in the case when a citizen feels that his rights have been violated will be eligible to approach

a competent court to arbitrate whether an administrative decision is issued within the legal authority. The purpose of judicial review of administrative acts is to make sure that an administrative body has conducted a fair procedure. Protection of legality is the crucial principle for judicial control; therefore, anyone seeking from the court to review an administrative act should be capable to convince the judge regarding the basic grounds to review the final act of the administrative body.

The judiciary has the ultimate duty to protect citizen's rights, while the citizen has the right to seek judicial protection in case his rights are breached or endangered by the public or state administration through the issuance of the administrative act. In all such cases, it becomes the duty of the judiciary to protect their rights not only by the judicial judgments and decrees but also by enforcing the executive authorities to impose them.

2.2. Judicial protection of administrative acts toward implementation of the principle of the right to "good governance"

All concerns and actions raised in relation to the judicial review of administrative acts are oriented toward increasing the level of efficiency and accountability to promote a good administration. The main concerns in this regard are related to a modern state, democracy, and the protection of human rights. In this regard, through judicial control respective courts aim to provide a good opportunity for the legal community. Administrative justice and the rule of law have often been in tension. However, they have converged over time as the scope of administrative justice and the conceptions of the rule of law have shifted (Marique, 2021).

Political scientists perceive judicial review as an instrument of "good governance". In essence, they conceive of the relationship between elected governments and independent administrative agencies through the lenses of the principal-agent theory (Lehmkuhl, 2008). Oladoyin, Elumilade, and Ashaolu (2005) insist that internal mechanisms adopted by institutions do not sufficiently guarantee transparent and accountable service in the conduct of official business in the financial sector. Moreover, Woehrling (2006) states that judicial control appears to be an indispensable instrument to enhance the quality of administrative action and ensure good governance. This protection operates either in a negative sense (it can prevent administrative bodies from taking steps that would harm the user's lawful interests and rights) or in a positive sense it actively requires administrative bodies to exercise their statutory activities (by issuing administrative acts of any kind) and practical activities in such a way as to serve the lawful interests or specific rights of users (Fortsakis, 2005). According to the Commission on Global Governance, it is a continuing process through which conflicting or diverse interests may be accommodated and cooperative action may be taken (The Commission on Global Governance, 1995).

Good administration as a complex and multifaceted concept (Mendes, 2009) can be reached in the case when the following principles of good administration will be implemented:

- the principle of legality, non-discrimination and proportionality;
- the principle of impartiality and fairness;
- the principle of promptness;
- right to be heard;
- right to access to personal folder;
- access to public information;
- the obligation of the public institution to declare in writing the reasons that led to a decision;
- the obligation of the public institution to notify all interested parties of a decision;
- obligation to recommend possible solutions to issues raised by citizens, etc.

Good governance is protected as a fundamental right that obliges state bodies and civil servants by creating rights that are realized through the administrative judiciary. Good governance is guaranteed by the constitution, administrative laws, and sub-legal acts adopted by governments of different states. Conformity with good governance is also subject to legal control.

There is a lack of agreement about the set of principles that are applicable or the considerations which should be considered in judging what "good administration" requires (Halliday, 2004). Oversight of administrative acts by the competent court mitigates the progress of work in the administration by enhancing the level of efficiency and responsiveness, encourages the execution of the principle of legality and promotes the protection of citizen rights from maladministration. The right to judicial review promotes the transformation of state and public administration toward the democratic and modern procedures of decentralization and free administration as basic factors of good governance. The Charter of Fundamental Rights of the European Union¹ promulgated at the Nice summit in December 2000 contains as fundamental rights of citizenship the right to good administration and the right to complain to the European Ombudsman against maladministration.

Public administration is facing growing expectations and requirements regarding quality and content. That is why it is important to ensure that authorities act appropriately and in compliance with the law and that the rights of the individual are fully realized. People are no more satisfied with only lawful administrative activities and receiving the benefit and services of a welfare state; people also expect more services of a higher quality (Mäenpää, 2020).

Academic researchers provide a normative explanation of good administration and administrative justice (Galligan, 1986). The promotion of good administration is directly associated with the development of modern and democratic procedures operating within the legal provisions. In the process of judicial review, respective courts can improve the level of administrative decisions, therefore courts may be considered as supporters. Wade and Forsyth (1994) have emphasized that "In many cases, legal rights are affected, as where

¹ https://www.europarl.europa.eu/charter/pdf/text_en.pdf

property is taken by compulsory purchase, or someone is dismissed from a public office. But in other cases, the person affected may have no more than an interest, a liberty, or an expectation ... a 'legitimate expectation' which means reasonable expectation, can equally well be invoked in any of many situations where fairness and good administration justify the right to be heard" (p. 9).

Even in accordance with an installed system of judicial control of administrative activity, today's citizens' expectations often remain unrealized or partly realized because of prolonged procedures, especially for the Western Balkan countries, where the party needs to wait for years to realize its rights because of the so-called ping-pong system where the administrative issue is returned for review to the administrative bodies.

The modern and democratic public administration must endorse and sustain a high standard of professionalism, accountability, and responsiveness of public officials, to reduce the number of cases sent to the court for judicial review. Good administration must reflect administrative services to be granted objectively, reasonably, impartially, and without prejudice.

In addition, as important measures to guarantee good governance are transparency, increased efficiency, impartial decision-making administrative culture and ethics, the level of professional capacity of civil servants, and good administrative practices. In contrast, bad governance destabilizes the legitimacy of the authorities, limits transparency, increases bureaucracy, and permits the abuse of power. Good governance demands the implementation of legal frameworks, access to justice, protection of human rights, specifically those who are disregarded, as well as an independent and impartial judiciary. Administrative justice is considered a crossing point between public administration and citizens and a fundamental tool for keeping the government accountable and efficient.

2.3. Citizens' right to judicial review and case law of the European Court of Human Rights

The right of access to a court or the right of judicial appeals as a fundamental right is included in the human rights provided in Articles 8 and 10 of the Universal Declaration of Human Rights (United Nations, 1948) and Articles 6 and 13 of the European Convention on Human Rights (ECHR) (Council of Europe, 1950).

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law" (United Nations, 1948, Article 8); "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..." (United Nations, 1948, Article 10). Also, "Right to a fair trial" (Article 6 of The European Convention on Human Rights), "Right to an effective remedy" (Article 13 of The European Convention on Human Rights").

While the jurisdiction of courts, as well as the right of persons who have the right to initiate a judicial process and exercise of this right, are usually regulated by the constitution, laws, and administrative acts, as well as by the orders and

regulations of the courts of the respective states. The court practice law of the European Court of Human Rights (ECtHR) notes that access to a court or the right to contest an administrative act is an integral part of the right to a fair trial as a guarantee of Article 6.1 of the ECHR because justice, speed, and public proceedings are features of the judicial process that would have no value if such process would not exist (*Golder v. The United Kingdom*, 1975, para. 35; *Malhous v. The Czech Republic*, 2001, para. 55).

According to Article 6.1 of the European Convention on Human Rights, "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" (Council of Europe, 1950).

It is further noted that the ECHR, specifically Article 6.1, refers, *inter alia*, to a fair trial and regular judicial proceedings, and does not explicitly refer to the right to access to the courts to oppose an administrative act. However, European Court for Human Rights with its precedents has extended the interpretation of Article 6 of the ECHR where, according to the practice of this court, the right to access to court is included in the framework of a due legal process, which is considered a fundamental right that should be provided to any individual without which any mechanism or other rights would be of no value, because, unless the right to access the court is not guaranteed, then shall be violated the right to raise civil claims, or to challenge administrative decisions or criminal charges before a court.

Referring to the case of *Golder* against the United Kingdom, *inter alia*, the ECtHR stated that "It would be inconceivable, in the opinion of the Court, that Article 6.1 should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees, that is, access to a court. The fair, public and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings" (*Golder v. The United Kingdom*, 1975, para. 35). In this case, the ECtHR held that the procedural guarantees laid down in Article 6 concerning fairness, publicity, and promptness would be meaningless in the absence of any protection for the pre-condition for the enjoyment of those guarantees, namely, access to the court. Article 6.1 secures everyone the right to have any claim relating to his civil rights and obligations brought before a court (*Golder v. The United Kingdom*, 1975, paras. 28-36).

Regarding the ECtHR's practice as far as access to court is concerned, the same precedent is found as well in the case of *McElhinney v. Ireland*, 2001, where the European Court on Human Rights has reiterated that "... Article 6.1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court" (para. 33). But regarding ECtHR, the right of access to court is not, however, absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to

such an extent that the very essence of the right is impaired (*Waite and Kennedy v. Germany*, 1999, para. 59).

The right to access the courts to contest the administrative act is related also with Article 13 of ECHR which sets out the right to an effective remedy, imposes the following obligation on States Parties: "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity" (Council of Europe, 1950). According to the ECtHR case law, this provision "... must be sufficiently certain, not only in theory but also in practice" (*McFarlane v. Ireland*, 2010, para. 107).

Thus, by making an interpretation of "effective rights", the European Court of Human Rights in decisions of *Golder v. The United Kingdom*, 1975; *McElhinney v. Ireland*, 2010; *Waite and Kennedy v. Germany*, 1999; *Riccardi Pizzati v. Italy*, 2004; *Kudła v. Poland*, 2000; *El-Masri v. "the former Yugoslav Republic of Macedonia"*, 2012; *M.S.S. v. Belgium and Greece*, 2011, ruled that "the due process guarantees provided for in Article 6 of the ECHR would be not valid if it would be impossible to start a judicial process (as cited in Ovey & White, 2006).

The right to access the courts to contest the administrative act, besides strengthening the judicial branch, at the same time strengthens the rule of law. This is argued by considering the fact that the Council of Europe's Statute foresees that every member of this organization should accept the principle of the rule of law. Therefore, if an individual is denied the right to a judicial review of an administrative act, in this case for he/she is very difficult to perceive the principle of the rule of law and at the same time, the public confidence in the public administration will be lost.

Denying the possibility of justice, some authors clarify the same as denying the development of international law by stating that: "denial of justice lies at the heart of the development of international law At the same time, this notion is inextricably linked to the broader concept of access to justice, understood as the individual's right to obtain the protection of the law and the availability of legal remedies before a court or other equivalent mechanism of judicial or quasi-judicial protection. Intuitively, this type of protection is a *sine qua non* for any type of constitutional democracy, where the rule of law and the independence of the courts, rather than the benevolence of the ruler, provide the fundamental guarantees of individual rights and freedoms" (Francioni, 2009, p. 730).

Therefore, we can conclude that if the individual had been denied the right to access the courts for contesting an act of public administration, it is very difficult for he/she to perceive the principle of the rule of law without being able to appear before the court.

3. RESEARCH METHODOLOGY

This research relies on data from various sources. The authors began collecting data regarding citizens' right to seek court review of administrative acts based on secondary resources from many official sources in the EU countries. Other data were collected from journal articles, university books,

handbooks, online publications, governance reports, research papers, journal articles, publications, other published work. The reviewed literature is of international level by several indexed databases.

This study is qualitative that enables addressing the main issues related to judicial control. Data were collected using a variety of qualitative methods, such as observation and case studies. The qualitative research method requires an intensive discussion on different approaches to judicial protection of administrative acts toward implementation of the principle of the right to "good administration". This study, in addition to the academic part, also has a pragmatic part, which was done to analyze in more detail the relevant topic. In this regard, the researchers will try to give responses to the theories raised through the results that were collected from the different authors' explanations. Given that the research is mainly descriptive and is committed to an inductive approach, therefore, the analysis involves different literature reviews to describe different approaches to the topic. On the other hand, the normative-legal method is one of the methods that respond the most to the work and topic since the research topic has a legal basis. As an alternative research method, the information is observed and collected from the data based on citizens' experiences and expectations with courts and governance bodies in the policymaking process. Our aim in this study is to focus on citizens' experiences to replicate their observations about the relation between the judicial oversight of administrative acts and possible reforms in the field of administration. This paper also analyzes the approach of government and accountability to institutions and to the European integration process related to the more effective judicial administrative procedures and its impact on increasing efficiency in public administration. The jurisprudence of the European Court of Human Rights was analyzed during the study as well.

4. RESULTS AND DISCUSSION

Based on the current research, it is obvious that administrative bodies are obliged to issue decisions in harmony with positive legislation to guarantee the protection of human rights and the principle of legality.

Based on the positive national and international law, any party which is dissatisfied with a final decision of an administrative body has the right to request through the lawsuit the review of the legality of the administrative act and its annulment. The judicial review aims at protecting the rights of the party in the proceedings, respecting the principle of legality, and exercising control over administrative activity.

Administrative justice is an inexorable companion of public administration based on the rule of law in democratic governments and implies the existence of legal remedies against decisions of administrative authorities (Tollenaar & de Ridder, 2010).

Administrative acts that could be considered as an object of the administrative dispute before the respective court should be given the opportunity for judicial review within a reasonable time. Protecting citizens against potential mistreatments of the administrative authority is a basic reason for

judicial control over the administration. Judicial review of administrative acts is a fundamental mechanism to promote good administration, legality, responsibility, and government stability. The right to seek an assessment of administrative acts is one among other main mechanisms for the protection of citizens' rights once the internal remedies within the administrative procedure are exhausted. For filing a lawsuit in the respective court, it is essential to use ordinary legal remedies in the regular administrative proceedings, in order to seek the legality of the final act issued by the administrative body of the first/second instance.

Despite the importance of judicial control of administrative activity in the protection of citizens' rights and protection of legality in the objective aspect, practice often proves that the parties face many challenges and difficulties to realize their rights through specialized administrative courts or courts of general competence.

Given this complexity, courts have to be analyzed not only from an ideal theoretical perspective but also from an empirical one. Furthermore, judges have to be analyzed as agents affected by different factors, including the organization of the court; the rules applying to their jobs, their preferences, values, and political circumstances, and the interaction of the two other branches of the State (López-Ayllón, García, & Fierro, 2011).

This situation is created because the court initially turns the issue for review to the administrative body that has issued the final decision, obliging it within the legal deadlines to issue the legally eligible act according to the recommendations of the Court. However, often occurs administrative silence, when the administration does not undertake actions according to the recommendations of the judicial bodies or draw the same act in the constraint. This situation often affects the expectations of citizens or reveals citizens to give up on the continuation of the judicial administrative procedure.

The achievement of reasonable compliance with the requirements of administrative justice has, over the past three decades, come to be seen as an indispensable part of any constitutional democracy. In particular, the role that administrative fairness and efficiency can play in the protection of human and constitutional rights is increasingly recognized, as the notion of "democracy" advances from a majoritarian representative model to a participative and responsive model (Corder & Mavedzenge, 2019).

As a result of this study, we can presume that despite some concerns that are raised above, judicial review of administrative action can be considered a dogmatic method of good administration within government.

5. CONCLUSION

Final administrative decisions issued in administrative procedure, create the need for the application of the principle of legality as well as the principle of transparency of public administration as the main tool for modern public administration. Legal and democratic states should create stable institutions to guarantee democracy, the rule of law,

and the protection of human rights and freedoms. The states also should establish special bodies for the administration of justice and resolving disputes that arise during the establishment of legal administrative relationships. The article proposes the promotion of the principles of good administration as a general principle for protecting the citizens' rights against arbitrary decisions of the administrative body.

The optional powers of administrative authorities should be exercised within their authorizations given by the legislation to avoid the abuse of such powers or any illegal activity. While reviewing the legality of an administrative act, the respective judge should first pay attention to the general interest of the public prior to subjective interest. Reviewing administrative decisions by the court is a forceful mechanism toward more efficient acts by giving citizens the right to challenge executive authorities at the court.

The review of administrative acts by the court should be considered as protection of citizens' rights against the abuse of authorizations exercised by a public official, to guarantee the rule of law in the decision-making process. The position of judicial review of administrative acts has become more significant with the enforcement in the authorizations and carefulness of the public officials in the decision-making process in democratic and reformed public administration. The scope of judicial review of administrative acts may be different, but there is no situation in which administrative authorities can declare their rights as unlimited. Therefore, in any case, the exercise of powers by an administrative body cannot avoid sending its decision to the respective court to evaluate its legality.

The decision-making process today has changed toward strengthening the position of the parties in an administrative process before the administrative body or the respective court. However, public understanding about admission to administrative justice through judicial review of administrative acts is commonly low, bearing in mind that proceedings may be initiated only privately and not ex officio. Reasonable procedural standards to be implemented during an administrative process derive from different international standards, laws, and agreements. In this regard, a decision-maker should take into consideration subjective right against the public one to guarantee equilibrium between the attributions given to the administration and the restrictions. The decision-maker should be a protector of public interest first, while in the process of judicial review, a judge should resolve the conflict rose against an administrative decision when subjective rights are concerned. A fundamental imperative of the ruling of principles is that the government's authorizations are over sighted and constrained by law; on the contrary, the issuance of an administrative decision without authority will have no legal effect.

The judicial control should not be considered as interference over the administrative activity, since the competent court shall begin its procedure only by the suite of the party who considers that his rights have been violated with an administrative act, abrogated, or are likely to be abrogated because of

some action of the public official. Through the control of legality or full jurisdiction of administrative acts made by specialized courts or courts of general jurisdiction, the aim is to increase the efficiency of decision-making in the administration, enhance accountability and demonstrate a higher degree of professionalism towards respecting the form and the content of the law.

Consequently, the judicial review procedures tend to balance individual rights through enforcement of the rule of law by the administrative body to promote and enhance good governance. This process must guarantee that the basic principles of administrative procedure are implemented. The judicial review of administrative acts is not being observed adequately, but we must pay attention to its legal consequences that affect the efficiency to evaluate how this court review has the power to increase the level of quality, transparency, and accountability in public administration.

The recommendation for further research is to analyze and examine the impact of the administrative judiciary in increasing efficiency, transparency, and accountability in public administration through

the execution of judicial decisions as a result of administrative justice.

This research can help as a hypothesis based on future empirical study, as it provides information on the importance of judicial review for the protection of citizens' rights. However, this research has its limitations due to insufficient data that can be provided through government bodies regarding the measures taken by the executive power in cases when the court finds that administrative bodies have made material or procedural violations during the decision-making of the administrative issue. These restrictions are related to the fact that in most countries the executive bodies continue with the practice of issuing the same acts without considering the court judgment.

As a result, this research offers analysis for lawyers, public officials, academics, and judges who want to identify and study further the deficiencies in the performance of the courts in judicial administrative procedure and protection of citizens' rights from unlawful administrative decisions, as well as to detect the fields where deeper research is needed.

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