



**SIGMA**

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**FORMER YUGOSLAV REPUBLIC  
OF MACEDONIA  
ADMINISTRATIVE LEGAL FRAMEWORK  
ASSESSMENT MAY 2009**

## Summary

The thrust of this assessment is to answer the following question: *Do Macedonian administrative practices and the legal administrative framework guarantee sufficiently the democratic principle of legality in administrative decision-making, and are they sufficient and appropriate to guide civil servants and public officials and to make them accountable for their performance?* This report updates Sigma's May 2008 assessment report on Public Service and the Administrative Framework in the former Yugoslav Republic of Macedonia<sup>1</sup> concerning the development of general administrative legislation and administrative practice.

### *Main Developments since last year*

Since Sigma's May 2008 assessment report<sup>2</sup>, Macedonia has made some progress in the development of its general administrative legal framework. Particular mention should be made of the legislation on personal data protection, lobbying, and general administrative procedures and – with regard to administrative and legal practice – of the performance of the recently established Administrative Court and the Commission on Free Access to Public Information.

### *Main Characteristics (strengths and weaknesses)*

The 2008 amendments to the Law on General Administrative Procedures (LGAP) were necessary and have led to better protection of individual rights in citizens' relationships with administrative authorities. However, this reform should not supersede a thorough modernisation of the system of administrative procedures in the coming years. The law in general still reflects the authoritarian understanding of the public administration of the past, provides highly formalised and protracted procedures, perpetuates the absolutely hierarchical structure of decision-making processes, and goes into regulatory details that should be dealt with by secondary legislation or internal administrative rules. Moreover, chapters on the enforcement of administrative acts, notification and delivery of administrative decisions, and costs of administrative procedures need to be introduced or revised. Finally, the replacement of the existing "second-instance commission" system would require the addition of a completely new part to the law, devoted to administrative legal remedies.

The 2008 Law on Lobbying could contribute to improving the quality of legislation as could the Decision on Establishment of the Government Strategic Priorities for 2009, adopted in November 2008.

The Law on Free Access to Public Information was amended in July 2008 to streamline the punitive aspects of the law.

The Law on Personal Data Protection was substantially amended in August 2008 to improve the capacity of the Directorate on Data Protection.

The Law on Proceedings upon Grievances and Suggestions was adopted in July 2008, and its official implementation started in the middle of December 2008. The law regulates the procedure according to which complaints and proposals of citizens and legal entities are to be handled by public authorities. This regulation overlaps with provisions of the Law on General Administrative Procedures; as this issue has not been sufficiently resolved it may pose serious compliance problems.

### *Recommendations for Reform*

1. **Acceptance of the law:** The social and political role of the law is not fully understood. Frequently, public sector institutions do not hesitate to disregard legal provisions or binding procedures as they see fit. Complaints are widespread that administrative authorities ignore Administrative Court rulings or obligatory decisions of other administrative bodies. It is up to

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<sup>1</sup> In this report, the former Yugoslav Republic of Macedonia will hereafter be referred to as "Macedonia".

<sup>2</sup> <http://www.sigmaxweb.org/dataoecd/48/48/41637503.pdf>

the top level of the state to ensure that actions of the executive are in conformity with the principle of legality.

2. **Quality of legislation:** The weak position of parliament within the political system of checks and balances is obvious. A legislative process without substantive public debate during the parliamentary procedure has an adverse effect on the quality of legislation. Therefore, strengthening the capacity of parliament is required in order to prepare this body for its constitutional tasks, which are, among others, the substantive and final participation in the legislative process.
3. **Service-oriented administrative procedures:** The amendments to the Law on General Administrative Procedures adopted in 2008 are a step in the right direction, but should be seen as an interim solution only. A thorough review of the whole system of administrative procedures would still be needed to introduce service-oriented administrative practices, take full advantage of new technologies, and harmonise the public administration with EU standards.

## 1. Introduction

The general legal framework for the administration is comprised, first and foremost, of administrative law. We understand administrative law as a part of the national public law that regulates the powers, competences (responsibilities), organisation and functioning of public authorities or of the public administration as a whole. It is inspired by a constitution that promotes democratic values and respect for individual civil rights. Administrative law, which includes the general legislation on administrative procedures, regulates the relations established internally between administrative bodies and externally with other administrative bodies and the general public.

This assessment is a natural offshoot of the public service assessment, because administrative law is the instrument used by civil servants to perform their obligations. Consequently, reforming the civil service without reforming accordingly the general legal administrative law framework would be an incomplete reform. The thrust of this assessment is thus to answer the following question:

*Do Macedonian administrative practices and the legal administrative framework guarantee sufficiently the democratic principle of legality in administrative decision-making, and are they sufficient and appropriate to guide civil servants and public officials and to make them accountable for their performance?*

## 2. General Administrative Legal Framework

### 2.1 Constitution

Based on the principles and provisions laid down in the Constitution (principles of the rule of law, equality before the law and legality in the action of public powers; citizens' rights, including the right to appeal against individual administrative acts issued in the first instance by an administrative body; judicial protection of the legality of administrative acts), the general administrative legal framework in place contains, formally, many of the instruments that guarantee the principle of legality in decision-making.

The organisation and powers/competence of executive and administrative bodies (including the central government and administration, local governments and organisations exercising public powers by delegation), as well as the administrative apparatuses of constitutional institutions (the Presidency of the Republic, parliament, the Constitutional Court, the court system and the Judicial Council, the Public Prosecutor, and the Ombudsman, etc.), are all regulated by laws.

### *Administrative Procedures*

The Law on General Administrative Procedures (LGAP) was amended in September 2008<sup>3</sup>. The changes in the law were induced by the need to align the provisions of the LGAP to constitutional amendment no. XXI of 2005 regarding appeals of administrative decisions and to shorten deadlines and simplify procedures as part of the activities of the government project on "Regulatory Guillotine"<sup>4</sup>. One of the most important amendments – adding a new paragraph 3 to article 242 – stipulates that, based on an appeal against a first-instance decision that has already been annulled once, the second-instance body is to decide the case. This amendment should lead to a significant improvement in the efficiency of the administrative procedure and prevent the current practice whereby second-instance bodies annul first-instance decisions several times and send them back to the first-instance bodies for resolution.

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<sup>3</sup> *Official Gazette*, no. 110/2008

<sup>4</sup> The government's programme known as "Regulatory Guillotine" ended in 2007. As part of the "Regulatory Guillotine" project, at the beginning of March 2008 the government adopted a decree abolishing the regulations covered by the project. The decree lists a total of 341 regulations that would no longer be in force (decrees, rulebooks, decisions, guidelines, classifications, etc.).

Another significant improvement is the shortening of deadlines within which bodies are obliged to decide in an administrative procedure from one month to 15 days and, in more complicated procedures, from two months to 30 days (art. 221, para. 1).

A new article (art. 129-a) was added to the LGAP to regulate the case of “administrative silence”, to the effect that, as a rule, a formally correct request of a citizen or legal entity is deemed to be approved if the competent administrative authority has not decided on the matter within a legally prescribed period of time.

The possibility of electronic communication between the parties in an administrative procedure and the administrative authorities related to the procedure is also introduced by amendments to several articles in the LGAP (arts. 61, 62, 64, 65, 78 and 209). All of the fines envisaged in the law were raised from 1000 MKD (16 EUR) to 100 EUR. To supervise the implementation of the LGAP, a new article (art. 296-a) introduced the obligation of the bodies deciding in administrative procedures to maintain administrative statistics, which are to be reported to the Ministry of Justice every six months.

In September 2008 the Constitutional Court abolished<sup>5</sup> paragraph 1 of article 4 of the LGAP. This article, entitled “Principle of Legality”, had defined in paragraph 1 that administrative decisions had to be taken “on the basis of and within the framework of the law, the international agreements and other regulations of state bodies, legal entities and natural persons which execute public authorities”. The Court abolished this provision due to the fact that the Constitution was not mentioned as the first framework of foremost importance for the adoption of administrative decisions and due to the absence of the phrase “ratified in accordance with the Constitution” following the words “international agreements”.

The amendments to the LGAP were necessary and have led to better protection of individual rights in citizens’ relationships with administrative authorities. However, this reform should not supersede a thorough modernisation of the system of administrative procedures in the coming years. The law in general still reflects the authoritarian understanding of the public administration of the past, provides highly formalised and protracted procedures, perpetuates the absolutely hierarchical structure of decision-making processes, and goes into regulatory details that should be dealt with by secondary legislation or internal administrative rules. Moreover, chapters on the enforcement of administrative acts, notification and delivery of administrative decisions, and costs of administrative procedures need to be introduced or revised. Finally, the replacement of the existing “second-instance commission” system would require the addition of a completely new part to the law, devoted to administrative legal remedies.

## Conclusion

*The amendments to the Law on General Administrative Procedures adopted in 2008 should be seen as an interim solution only. A thorough review of the whole system of administrative procedures would still be needed to improve administrative decision-making, take full advantage of new technologies, and harmonise the public administration with EU standards.*

### 2.2. Quality of Legislation

The speed of legislative activities displayed by the newly elected parliament in July and August 2008 was unique. In these two months no less than 172 laws were adopted, 50 of which were completely new laws. At one of its sessions in August, when 52 laws were adopted, the average time for the adoption of a single piece of legislation was 35-40 seconds, according to some MPs and NGO representatives who monitor the work of the parliament<sup>6</sup>. The laws were adopted under the “urgent procedure” and most of them (around 140) were proposed by the caretaker government that was acting in the period between the dissolution of parliament on 12 April and the election of the new

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<sup>5</sup> Official Gazette, no. 118/2008

<sup>6</sup> To provide a comparison, in the period between 2002 and 2006 parliament adopted 594 laws.

government on 26 July. The government justified the use of this parliamentary procedure with the argument that most of these laws were needed for the EU integration process.

It is evident that laws that are made like mass-produced goods in an “assembly-line procedure” can hardly meet the quality requirements of solid legislation, not to mention the impossibility for the executive power to properly implement such a bulk of new legislation.

One of these legislative projects was the new Parliamentary Rules of Procedure<sup>7</sup>, adopted primarily to strengthen the role of parliament in the law-making process. The implementation of Chapter IX on the adoption of laws started on 21 October 2008, three months after the entry into force of the Rules of Procedure. The Rules introduce new requirements for the introductory treatment of a parliamentary bill, which are related to the harmonisation of legislation with the EU *acquis*, e.g. a procedure for debating and adopting laws in three readings. It needs to be emphasised that this piece of legislation was adopted without the opposition’s participation (due to the boycott of the opposition parties), which in many European countries would not comply with parliamentary convention, according to which parliamentary procedures are usually adopted on the basis of the broadest possible consensus.

The 2008 Law on Lobbying<sup>8</sup> could contribute to improving the quality of legislation. It applies to lobbying directed towards the legislative and executive powers at central level and towards the municipal council and mayor at local level. It does not apply to persons, agencies, NGOs and organisations that are invited to participate in the process of drafting, explanation and implementation of laws and other regulations, regardless of whether they carry out these activities free of charge or for remuneration (article 23 of the law). Lobbying should be undertaken based on a written contract and by natural persons who meet the conditions prescribed in article 7 of the Law on Lobbying and who are registered in the Register of Lobbyists kept by the General Secretary of the Parliament. The law provides a decent basis for increasing the transparency of parliament’s work.

Based on the Law on the Environment, a Decree on Participation of the Public in the Elaboration of Regulations and other Acts, Plans and Programmes in the Area of Environment was adopted by the government in November 2008<sup>9</sup>. If implemented properly, the decree will provide a good basis for undertaking effective and productive information and consultation of the public in the environmental area as regulated in Art 4 and 6 – 8 of the Aarhus convention<sup>10</sup>.

The Decision on Establishment of the Government Strategic Priorities for 2009, adopted in November 2008<sup>11</sup>, lists among its priorities for 2009 the development of a functional system for regulatory impact assessment (RIA), strengthening of administrative capacities for policy planning and development, increasing the transparency and accountability of the administration in the adoption of decisions, and promoting the active participation of the civil sector. Such a very ambitious programme requires adequate capacity which currently cannot be seen.

With regard to the quality of legislation in general, and in particular in the areas of general administrative framework and civil service, while it seems that all of the basic pieces of legislation are already in place, there are a number of flaws and inconsistencies, not only between the old (even pre-constitutional) legislation and the new legislation, but also between legal and regulatory texts promulgated in the last few years.

However, the main problem remains at the stage of implementation, which is closely related to the weak quality of the legislation and the poor implementation of regulatory impact assessments. This

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<sup>7</sup>     *Official Gazette*, no. 91/2008

<sup>8</sup>     *Official Gazette*, no. 106/2008

<sup>9</sup>     *Official Gazette*, no. 147/2008

<sup>10</sup>     The Decision on conclusion of the UNECE Aarhus Convention by the EC was adopted in February 2005 (Decision 2005/370/EC). In 2003 two Directives concerning the first and second “pillars” of the Aarhus Convention were adopted: Directive 2003/4/EC on public access to environmental information and Directive 2003/35/EC providing for public participation.

<sup>11</sup>     *Official Gazette*, no. 135/2008

may cast some doubts about the capacity of the public administration and judiciary to ensure the appropriate implementation and enforcement of the EU *acquis*.

## Conclusion

*As far as the regulatory framework is concerned, some progress has been made in relation to democratic parliamentary procedures of legislation. However, the quality of legislation is still insufficient. In particular, but not only, the excessive mass of laws produced in a short period of time must be seen as an evident obstacle to ensuring solid quality. In this context, it could be asked to what extent the (time) pressures connected to the EU accession process are counterproductive to the elaboration of good quality legislation that can be internalised by the country and can be sustainable.*

*The legislative process during the first two months following the early elections also illustrates the weak position of parliament within Macedonia's political system. At that time parliament was playing a purely procedural role in the political decision-making process rather than functioning as the legislator. Strengthening the capacity of parliament is required in order to prepare this body for its constitutional tasks, which are, among others, the substantive and final participation in the legislative process.*

### 2.3 Transparency in Public Administration

#### *Free Access to Public Information*

The Law on Free Access to Public Information was amended in July 2008<sup>12</sup>. The amendments were made in order to align the law with the Law on Misdemeanours. They modify the last chapter of the Law on Free Access to Public Information which contains the provisions on punitive sanctions. All of the amounts of fines in Macedonian Denars (MKD) were substituted by amounts in EUR (payable in MKD) and the word "fine" was replaced by the words "monetary punishment".

The Annual Report of the Commission on Free Access to Public Information for 2007 indicates that a total of 330 complaints against the decisions of information-holders had been received in 2007. Very indicative of the level of implementation in 2007 of the Law on Free Access to Public Information is the figure of 205 complaints – out of the 330 complaints in total – that had been submitted on the grounds of silence of the information-holders. The reasons for submission of the remaining 125 complaints, such as not meeting the deadlines for providing the requested information or providing incomplete or partial replies, are also an important indicator of the level of implementation of the law. The numbers reported concerning the outcomes of the complaints procedure were as follows: out of the total of 330 appeals, 142 had been approved, 103 had been withdrawn because the information required had already been provided, and for 16 the decision-making had been moved forward to 2008. The vast majority (197) of the appeals had been filed against the decisions of central-level state institutions.

41 lawsuits concerning free access to public information were filed with the Supreme Court, but the report contains no information about the outcome of the procedures, since the Administrative Court established in May 2007, only began to function in December 2007. 298 holders of information (out of a total of 1393 on the list of the Commission) did not designate an employee in charge of implementation of the Law in the respective institution, while 602 did not submit their annual reports on the implementation of the Law to the Commission (44 submitted reports were assessed as completely non-useable by the Commission, since they reported on the daily activities of the institutions not related to the Law on Free Access to Public Information).

The Commission lists among the identified problems in the implementation of the Law the application of the general administrative procedures and its deadlines which can be prolonged to even 90 days in certain cases. Therefore, it suggests that a special and more expedient procedure might be the proper solution. (As explained above the general deadlines in the Law on the General Administrative

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<sup>12</sup> *Official Gazette*, no. 86/2008

Procedure have now been shortened, however) Due to the very restricted budget of the Commission (for 2007 nearly 232,000 EUR, most of which goes for the salaries of its 15 employees), it was not able to fulfill some crucial activities, such as training of the designated personnel in the institutions for implementation of the access to public information throughout the country, or media campaign to raise the awareness of the citizens about the possibility to exercise their right to public information access. The Commission also notes that the qualification structure of its employees who were transferred from the abolished Information Agency does not match the operational needs of the Commission.

The annual report of the Commission on Free Access to Public Information for 2008 is not yet available, but some data for 2008 was included in the State Budget for 2009. According to them in the period between 1 January and 31 August 2008, 580 appeals were submitted to the Commission, which represents a drastic increase in the number of appeals compared to 2007. The Commission expected that the total number of complaints in 2008 would at least be double the number of complaints in 2007.

#### *Personal Data Protection*

The Law on Personal Data Protection was substantially amended in August 2008<sup>13</sup>. The main purposes of the amendments were as follows: to align the provisions of the law with the regulations of the EU and other international conventions; to strengthen the protection of personal data; to simplify and regulate further the procedure to be followed in the Directorate for Personal Data Protection on receipt of requests by citizens for the establishment of the violation of rights guaranteed by law; and to strengthen the position of the Directorate by granting it inspection powers and powers to conduct misdemeanour procedures and impose fines (these powers became effective at the beginning of 2009; the fines range between 500 and 4000 EUR). The manner of appointment of the director of the Directorate and its deputy were also changed: parliament now selects the director and deputy director upon the proposal of its Committee on Elections and Appointments, based on a public competition. This amendment should strengthen the professionalism and impartiality of the Directorate.

#### *Petition Rights*

The Law on Proceedings upon Grievances and Suggestions was adopted in July 2008<sup>14</sup>, and its official implementation started in the middle of December 2008. The law regulates the procedure according to which complaints and proposals of citizens and legal entities are to be handled by the President, parliament, the government, bodies of state administration, courts, municipalities, public institutions and services, and other bodies and organisations that exercise public authority. It regulates in detail the implementation of the right of every citizen to submit complaints to state bodies and other public services and to receive a reply, as defined in article 24 of the Constitution. A serious problem is the obvious overlapping and duplication of the Law on Proceedings upon Grievances and Suggestions with chapters XIV – XVI of the Law on General Administrative Procedures; the relationship between the two laws is unclear.

#### **Conclusions**

***A number of measures have been adopted by the government to increase transparency in the work of the public administration. The amendments to the Law on Personal Data Protection, on Free Access to Public Information, and on Proceedings upon Grievances and Suggestions could contribute to increased transparency, although the relationship between the Law on Proceedings upon Grievances and Suggestions and the Law on General Administrative Procedures is unclear.***

***The activity of the Commission on Free Access to Public Information is very important for improving transparency. The increase in the number of complaints in 2008 compared to the previous year shows the importance of, and need for, this institution. However, in 2007 almost half***

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<sup>13</sup>      *Official Gazette*, no. 138/2008

<sup>14</sup>      *Official Gazette*, no. 82/2008

***of the administrative bodies in the country did not fulfil their legal obligations to the Commission. The Commission's institutional capacity should be enhanced through systematic training of its staff and a significant increase of its budget.***

#### **2.4 Protection of Legality by Civil Servants**

The Law on Civil Servants applies to civil servants working in all state institutions (not only in institutions depending on the government). While the law establishes the rule that civil servants are subject to the orders and instructions of their hierarchical superiors that are issued in accordance with the Constitution, laws and applicable regulations, it clearly states that civil servants are in any case obliged to perform their duties in accordance with the Constitution and the law. The Law on Civil Servants gives them the right to request written confirmation of an order that they consider to be unlawful and to disobey a hierarchical order which, if executed, would constitute a criminal offence. However, an unlawful action by a civil servant may give rise to personal liability for any damages caused to a third party (whether intentional or as a result of gross negligence) and may, in some serious cases, constitute a criminal offence.

In any event, the actual position of civil servants vis-à-vis their hierarchical superiors – and in particular politicians or political appointees heading ministries and other state institutions – is quite weak. Additional measures would be needed to ensure the independence of civil servants in exercising their duties at the service of citizens, as well as their accountability in case of unlawful behaviour or decisions.

#### **2.5 Control and Review of Administrative Decisions**

##### ***Administrative Review***

According to the legislation in force, as a rule first-instance administrative decisions (“administrative acts”) can be appealed to and reviewed by the appeals commissions established in each state administration body. However, several reports and studies undertaken by the State Administrative Inspectorate had revealed that, in many cases, this review mechanism might simply delay the adoption of a decision or prevent the access of interested parties to judicial review. Therefore, a working group of the Ministry of Justice conducted an analysis concerning the justification, purposefulness and need for the existence of second-instance commissions; the resulting paper (December 2008) was reviewed by Sigma at the request of the ministry.

Both the analysis of the ministerial working group and Sigma’s comments (March 2009) came to the conclusion that the whole system required sweeping changes. As one of the options to be discussed in the second half of 2009, serious consideration should be given to replacing the current second-instance commissions with a system of administrative legal remedies, with decisions to be taken by a supervisory body at a higher hierarchical level of the same administrative branch. Such a system of inner-administrative legal remedies would be more efficient and would also guarantee sufficient legal protection of citizens, at least when completed with an independent administrative jurisdiction with two court instances (the first instance having full jurisdiction on facts and law and deciding on the basis of mandatory oral hearings).

##### **Conclusion**

***An advisable solution for the reform of the second-instance commission system would be to establish a system of internal administrative legal remedies, completed with a two-instance administrative court structure.***

##### ***Judicial Review***

The Administrative Court, operational since 1 January 2008, has developed. Now 25 judges are specialised in six different areas of public administration (property law, de-nationalisation, urban planning and construction, pensions, public procurement, and customs and copyright). There is only one court advisor (junior “judge”) in place, although in fact every judge should have such a legally

educated assistant. The Court does not have a library; some judges use their private books. The most important (and only) source of information is the Internet. The budget<sup>15</sup> covers no more than the basic needs of the Court.

As to the court procedure the chambers of the Administrative Court, each of them composed of three judges, decide on cases following internal deliberations without an oral public hearing. The Court does not establish the facts of the case itself, i.e. has no full jurisdiction. If the Court holds that the administration has insufficiently established the relevant facts, the Court will repeal the respective administrative act and refer the case back to the administrative authority, which in turn has to issue a new administrative act that may again be challenged before the Court.

As a rule, the current Law on Administrative Disputes grants the Administrative Court only “cassation” powers, not full jurisdiction. This means that if the Court concludes that an administrative authority has illegally refused to issue an administrative act in favour of a citizen (e.g. building permit), the Court can only repeal the challenged act (“cassation decision”) and refer the case back to the administrative authority. The Court is not competent to order an administrative authority to render the requested administrative act (“reformatory decision”).

The back referral of cases to administrative authorities in many cases results in a second (in some cases, even a third, fourth, et al.) action being filed in the same case after the administrative body has rendered a new decision (“ping-pong effect”). This effect is one of the main problems of the administrative judiciary because it prolongs the overall duration of proceedings.

The case load is considerable, as the Court received in 2008 about 4000 new cases (according to information provided by the President during the assessment mission). Of the backlog of 6664 cases taken over from the Supreme Court, the Administrative Court has closed almost 80%. Currently the Court has started to process former Supreme Court cases dating from 2006.

The Administrative Court does not have jurisdiction for disputes related to individual rights and obligations of civil servants, with the sole exception of decisions on appointment or dismissal of the highest senior positions (secretaries-general in constitutional or governmental institutions and state secretaries in ministries). Also, the Court does not have jurisdiction for adjudicating cases related to the legality of general normative instruments (regulations), since this jurisdiction is reserved for the Constitutional Court.

An important aspect of the Law on Administrative Disputes is that access to the Administrative Court is open not only to individuals or individual entities directly affected (in terms of their rights or legitimate interests) by administrative decisions, but also to organisations and associations (e.g. trade unions, consumers’ associations) representing collective interests.

## **Conclusions**

***The Administrative Court needs to be fully staffed (advisors) and equipped (library) and sufficiently financed in order to be able to fulfill its tasks satisfactorily.***

***Full jurisdiction on facts and law, jurisdiction on normative acts, mandatory oral hearings, and reformatory instead of only cassation competence would be necessary to improve both the effectiveness and the efficiency of judicial control of administrative actions.***

***In connection with the reform of the second-instance commission system, the establishment of a two-instance administrative court structure – with three or four regional administrative courts and one court of appeals – should be taken into consideration in order to strengthen the legal protection of citizens against administrative actions.***

## **Liability and Accountability**

Article 11 of the Law on General Administrative Procedures sets the principle of “responsibility” as one of the overarching principles governing decision-making in administrative matters. All state

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<sup>15</sup> In 2007: 1,283,176,000; in 2008: 1,641,500,000; in 2009: 1,840, 207,000)

bodies (administrative bodies and other state bodies when deciding on administrative matters) are responsible for any damage caused by making unlawful decisions or by unlawfully refusing to undertake appropriate activity. Also, article 75 of the Law on Civil Servants declares the liability of the respective “body” (those bodies listed in article 3, where civil servants work) for the “material” damages caused by a civil servant to a third party, in the course of performance of his/her official duties. In turn, individual civil servants are liable vis-à-vis the state body in which they work for any damage “to the body” caused intentionally or as a result of complete negligence in carrying out their duties. When the damage was not caused intentionally or if compensation for the damage might “jeopardise the existence of the civil servant and his/her family”, the minister or head of the relevant state body may completely or partially release the civil servant from his obligation to compensate for the damage.

### **3. Recommendations for Assistance**

The following assistance is recommended:

- strengthening the capacity of parliament (short-term perspective);
- improving the quality of legislation through strengthening of law-drafting capacity in the government;
- comprehensive review of the Law on General Administrative Procedures with a view to:
  - improving citizens’ legal protection through replacing the current system of “second-instance commissions” by a more effective system of administrative legal remedies;
  - simplifying procedures;
  - introducing more predictable administrative decision-making and more legal certainty;
  - taking full advantage of new technologies;
  - paving the way to the transposition of the 2006 EC Services Directive;
- establishing a two-instance administrative court system with full jurisdiction for the first instance (mid-term perspective);
- follow-up of newly adopted legislation through a thoroughly prepared and monitored implementation phase.