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The functioning of administrative judiciaries in the Western Balkans

SIGMA Paper No.73

A functional administrative judiciary is one of the mandatory elements of the rule of law, which explicitly includes "access to justice before independent and impartial courts, including judicial review of administrative acts". As such, effective administrative justice as a form of oversight is also a vital element of a good and functional public administration. Efforts to improve the functioning of administrative judiciary form an intersection where public administration reform and rule of law reforms meet. This paper analyses selected elements of Western Balkan and European Union (EU) administrative judiciaries, to understand in which respects Western Balkan judiciaries fall short of the standards achieved by their EU counterparts and what could be done to improve the functioning of the administration. The selection of elements to be covered in this analysis was based on discussions with Western Balkan judges, public authorities and other stakeholders, with the overall aim of focusing on elements that are relevant across the region or in a majority of jurisdictions.

For further information, please contact: sigmaweb@oecd.org

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The functioning of administrative judiciaries in the Western Balkans

SIGMA Paper No. 73

Authorised for publication by Ms. Elsa Pilichowski, Director,
Public Governance Directorate, OECD

2 Rue André Pascal
75775 Paris Cedex 16
France
E-mail: sigmaweb@oecd.org
Tel: +33 (0) 1 45 24 82 00
www.sigmaweb.org

Foreword

A functional administrative judiciary is one of the mandatory elements of the rule of law, which explicitly includes "access to justice before independent and impartial courts, including judicial review of administrative acts".[1] As such, effective administrative justice as a form of oversight is also a vital element of a good and functional public administration.[2] Efforts to improve the functioning of administrative judiciary form an intersection where public administration reform and rule of law reforms meet.

Formally, all Western Balkan administrations and judiciaries comply with the requirement of access to justice for legal protection against the administration. Individuals can contest acts of the administration before a specialised administrative judiciary or a judiciary of general jurisdiction. However, in substance, challenges tend to persist even though, based on purely statistical comparison of some indicators, the Western Balkan judiciaries and administrations appear to be relatively similar to their counterparts in the European Union (EU).

The level of preparation in the functioning of Western Balkan administrative judiciaries is usually at an early stage or at moderate level, according to the European Commission's (EC) annual enlargement reports. The most recent such reports note challenges in handling administrative disputes that stem from large backlogs, long delays in duration of court procedures and from non-enforcement of court decisions, which can lead to repeated procedures. In the Western Balkans in general, public perception of judicial independence is low. Judicial control over the administration tends to focus more on observing procedural rules than ensuring the lawful substance of the administrative decision. As a result, administrative matters are frequently volleyed back and forth between the administration and the judiciary. Challenges related to the enforcement of court decisions by the administration limit the effectiveness of the legal remedies that are formally available.

The objective of this paper is to analyse selected elements of Western Balkan and EU administrative judiciaries, to understand in which respects Western Balkan judiciaries fall short of the standards achieved by their EU counterparts and what could be done to improve the functioning of the administration. The analysis and selection of elements is not comprehensive. For example, its scope does not include training of judges or the budget preparation process of the courts and the allocation of resources within the (administrative) judiciary, to name just a few elements. The selection of elements to be covered in this analysis was based on discussions with Western Balkan judges, public authorities and other stakeholders, with the overall aim of focusing on elements that are relevant across the region or in a majority of jurisdictions.

The findings of the paper are based on deskwork, as well as notes and the results of surveys conducted during six focus group discussions with Western Balkan judges. The paper was drafted by Timo Ligi of the

[1] See Venice Commission, Rule of Law Checklist, 18 March 2016, para 18.

[2] See also OECD (2023) *The Principles of Public Administration*, Principle 17, OECD, Paris. https://sigmaweb.org/publications/Principles-of-Public-Administration-2023.pdf.

SIGMA Programme with Andrej Kmecl of the Supreme Court of Slovenia and Villem Lapimaa of the Tallinn Court of Appeal as co-authors who provided significant contributions to the content of the analysis. The authors received valuable input and suggestions from SIGMA colleagues Gregor Virant, Péter Vági, Jose Diaz, Aleksandra Melesko and Blanca Lazaro. We extend our gratitude to Zhani Shapo, Rinor Hoxha, Emina Zahirović-Pintarić, Jovana Homen, Zarko Hadzi-Zafirov and Dawid Szescilo for their invaluable comments and contributions. Finally, we would like to thank the judges and officials from Western Balkan judiciaries and administrations, who took the time to talk to us, as well as colleagues in DG NEAR of the EC, who provided invaluable feedback for the finalisation of the paper.

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Abbreviations and acronyms

Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union	ACA-Europe
European Commission for the Efficiency of Justice	CEPEJ
Council of Europe	CoE
European Commission	EC
European Court of Human Rights	ECHR
European Union	EU
gross domestic product	GDP
information and communications technology	ICT
Organisation for Economic Co-operation and Development	OECD
Support for Improvement in Governance and Management	SIGMA

The International Organization for Standardization (ISO) defines three letter codes for the names of countries, dependent territories and special areas of geographical interest. The table below presents the codes used for the geographical display of some figures in this publication in line with the ISO codes and, where there is not an official ISO code, the OECD practice:

Albania	ALB
Bosnia and Herzegovina	BIH
Kosovo*	XKV
Montenegro	MNE
Republic of North Macedonia (hereafter, 'North Macedonia')	MKD
Serbia	SRB

* This designation is without prejudice to positions on status, and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's declaration of independence.

Furthermore, on a few occasions, the following codes are used for Bosnia and Herzegovina:

Bosnia and Herzegovina – State level	BIH_State
Bosnia and Herzegovina – Federation of Bosnia and Herzegovina	BIH_FBIH
Bosnia and Herzegovina – Republika Srpska	BIH_RS
Bosnia and Herzegovina – Brčko District	BIH_BD

Executive summary

This paper analyses core elements in the functioning of the administrative judiciaries in the Western Balkans. Comparing them with those of their counterparts in the European Union (EU) can help to identify the possible differences and, if necessary, ways to further enhance the Western Balkan administrative judicial systems. Administrative judiciaries, one of the cornerstones of the establishment of the rule of law and the protection of human rights, provide protection against the unlawful use of power by public authorities. However, if this protection is to be effective, the administrative judiciary must be accessible and function efficiently, and the courts' judgements should have genuine impact (including timely enforcement by public authorities and provision for learning from mistakes).

Each of the Western Balkan judiciaries has established various key elements for promoting effective handling of administrative disputes and for ensuring an adequate reaction from public authorities. The institutional set-up promotes specialisation on administrative disputes in nearly all jurisdictions. The fees for initiating administrative disputes are low and do not present any barriers to justice in Albania, Montenegro, North Macedonia and Serbia. The legal frameworks in Kosovo* and in North Macedonia stipulate an active role for the judge and an obligation to provide guidance to the administration for reconsideration of the case when the court upholds the complaint. Albania and North Macedonia are most consistent in publishing court judgements online. North Macedonia and Serbia have the most advanced case management systems in the region. The legal framework in Bosnia and Herzegovina provides the widest possibilities for disciplining the public authority if it does not comply with court orders or judgements. In Montenegro, the financial consequences of lost court cases are monitored and consistently made available to the Government as well as to the general public.

Still, not a single Western Balkan jurisdiction is fully consistent in providing citizens and businesses effective protection from the wrongdoing of public authorities. Ultimately, this is clear from the problems related to the enforcement of court judgements by public authorities, in not only administrative but also civil disputes. Voluntary execution of judgements that involve monetary obligations is not typical, which generates significant additional costs both to the state and to all taxpayers. Western Balkan administrations spent more than EUR 20 million alone on interest payments and bailiffs' fees in 2022, because court judgements against the state – both administrative as well as civil – were not voluntarily executed. When a bailiff is required to ensure that the public administration complies with a court judgment, the state concerned does not respect the rule of law and wastes public resources. Failure to execute judgements also generates additional court cases (e.g. enforcement-related disputes or repetitive cases revisiting the same matter), which further overburden the courts and increase the duration of administrative court procedures. In Montenegro and Serbia, these already exceed the EU median by four- or fivefold. In Albania, the estimated disposition time for administrative disputes at the appeal court level is no less than 15.5 years – which in itself defines a lack of effective access to legal remedies. Meanwhile, Western Balkan public authorities are not consistent in analysing the causes and consequences of court cases in order to learn from mistakes, avoid future errors, address any shortcomings in the legal framework, and reduce judicial caseloads.

While differences certainly exist among jurisdictions and individual judges, Western Balkan administrative judges tend to be less inclined than their colleagues in EU Member States to investigate the facts of a case so they can settle the dispute with a well-reasoned final judgement. There can be objective reasons for this, starting with the large caseloads and the use of purely quantitative criteria for appraising judges' performance. In Bosnia and Herzegovina, Montenegro and Serbia, procedural law also limits the judge's mandate to establish the facts of the case on his or her own initiative to disputes where a public hearing is held or where the court decides to replace the administrative act in full with its own judgment (i.e. deciding in full jurisdiction), both of which are extremely rare. Subsequently, Western Balkan judges appear to act more in the cassatorial role (also at lower court instances), revoking the disputed administrative act and returning the case to the administration for reconsideration, rather than deciding the case in substance or in full jurisdiction. Restrictions that limit the public authorities' right to contest a judgement of the court of first instance in a superior court in Bosnia and Herzegovina, Montenegro, North Macedonia and Serbia also detract from establishing a definitive and clear court practice. The limited investigative role of the judge and inconsistent practice of deciding on substance allow less responsive public authorities to persist in their unlawful practices, which ultimately generate additional disputes and limit access to effective legal remedies for citizens and businesses.

Figure 1. The vicious circle in the handling of administrative disputes in the Western Balkans

Source: SIGMA.

The main recommendations for Western Balkan administrations and judiciaries for breaking the vicious circle are:

- Reduce the duration of administrative court procedures, first by increasing the internal efficiency of the judiciary (e.g. deciding disputes in first instance by a single judge, specialisation of judges) or, if needed, increasing the number of judges (even as a temporary solution until the situation normalises, upon which it is possible to reduce the number of judges by not replacing the retired judges);

- Encourage judges – through training, internal working methods and case law of the higher courts, as well as with legislative changes, if necessary – to undertake a more active role in resolving disputes and preparing well-substantiated final judgements based on the merits of the case. The court should do its utmost to make sure that the plaintiff does not need to return to the court to adjudicate the same dispute and to ensure that the judgement provides sufficient guidance for the administration to handle similar cases in the future;
- The public administration should execute court judgements voluntarily and in a timely manner – to ensure the rule of law and reduce costs. The internal procedures within the executive should ensure that resources for enforcing judgements stipulating monetary obligations are planned in advance or made available upon request, without the need to initiate enforcement proceedings by bailiffs against the state.

1 General characteristics of Western Balkan administrative judiciaries

1.1. Institutional set-up

The institutional set-up of the Western Balkan administrative judiciaries varies widely. Separate first instance administrative courts have been established in Albania, Montenegro, North Macedonia, and Serbia. In Kosovo*, separate administrative departments have been established within one Basic Court and also in the Commercial Court (which handles administrative disputes initiated by companies). However, in February 2024, the Government approved a draft law (yet to be adopted by the Parliament) on establishing a separate Administrative Court to handle all administrative disputes. In Bosnia and Herzegovina, administrative cases are handled by courts of general jurisdiction; nevertheless, some judges in the general courts have predominantly specialised on administrative disputes.

As for the geographical location of courts of first instance, in Kosovo*, Montenegro and North Macedonia, administrative cases are handled in one geographical location, the respective capital. In Serbia, the Administrative Court operates in four locations – in Belgrade (the main seat) as well as in the departments established in Novi Sad, Kragujevac and Niš. Since July 2023, the Albanian judiciary has had two administrative courts (in Tirana and Lushnjë), compared to the six locations before the reorganisation of the judicial map. In Bosnia and Herzegovina, administrative disputes are handled by the courts of general jurisdiction, including 10 cantonal courts (in the Federation of Bosnia and Herzegovina), five district courts (in the Republika Srpska), one basic court (in the Brčko District), as well as the Court of Bosnia and Herzegovina (at State level).

In Albania and Kosovo*, the administrative judiciary involves three court instances. Albania has established a separate Administrative Court of Appeal, while in Kosovo*, a separate administrative department has been established in the Court of Appeal. A separate chamber for administrative disputes has been set up in the Supreme Court of Albania. In Kosovo*, Supreme Court administrative disputes are usually handled by judges who are more experienced with such cases, but there is no strict specialisation (and no formally established separate chamber). Bosnia and Herzegovina, Montenegro, North Macedonia and Serbia have a two-instance administrative judiciary. In Montenegro and Serbia, the supreme court acts as the highest instance for administrative disputes, though access to supreme court instance in Serbia is extremely limited (see Chapter 2). In North Macedonia, the Higher Administrative Court is the second and final instance for handling administrative disputes. In Bosnia and Herzegovina, the supreme courts of the Federation of Bosnia and Herzegovina, as well as the Republika Srpska and the Appellate court of the Brčko District, act as the highest instances for administrative disputes. At State level, the Court of Bosnia and Herzegovina acts as the court of first instance as well as the highest instance for administrative disputes. The cases in the first instance are registered with a different category from the cases in the final instance and it is ensured that the same judge cannot handle the case in the first and the final instance.

Table 1. Institutional set-up of Western Balkan administrative judiciaries

	Separate administrative court	Number of geographical locations in the first instance	Number of court instances handling administrative disputes
Albania	Yes, in the first instance	**2**, since July 2023, in Tirana and Lushnjë	**3** (Administrative Court of Appeal and administrative chamber in the Supreme Court)
Bosnia and Herzegovina	No	**17** (10 cantonal courts, 5 district courts, 1 basic court, 1 court of BIH)	**2** (no specialisation on administrative disputes at the highest instance)
Kosovo*	Administrative departments within basic and commercial court	**2**, both in Pristina (basic court and commercial court)	**3** (separate department for administrative disputes in second instance, but not at Supreme Court level)
Montenegro	Yes, in the first instance	**1**, in Podgorica	**2**, separate chamber for administrative disputes in Supreme Court
North Macedonia	Yes, in both instances	**1**, in Skopje	**2**, Higher Administrative Court as the highest court instance
Serbia	Yes, in the first instance	**4**, in Belgrade, Novi Sad, Kragujevac, Niš	**2**, no specialised chamber on administrative disputes at Supreme Court level

Source: SIGMA, based on the laws regulating organisational set-up of administrative judiciaries in the Western Balkans.

Among the members of the Council of Europe, separate first instance administrative courts exist in 30 of the 44 judiciaries that responded to the 2022 evaluation cycle of European judicial systems conducted by the European Commission for the Efficiency of Justice (CEPEJ). In common law legal systems and those inspired by them, where administrative litigation is not considered as separate, there are no separate administrative courts. Accordingly, in Denmark, Iceland, Ireland and Norway, not only are there no administrative courts, but administrative law cases do not exist and are part of civil litigation. In UK-England and Wales and UK-Scotland, administrative cases constitute a separate category of cases but are dealt with by courts of general jurisdiction. This is also the case in Romania and the Slovak Republic[3]. The majority of EU Member States have also established either separate administrative courts at the highest court instance (Germany, Austria, Belgium, Czechia, Finland, France, Greece, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Portugal and Sweden) or separate chambers specialising in administrative disputes (Estonia, Hungary, Latvia, the Slovak Republic and Spain)[4]. In conclusion, the functional specialisation of courts, which began in various countries of Europe at different moments of their history and with different outcomes, increasingly characterises the European landscape. Functional

[3] "European Judicial Systems", CEPEJ Evaluation Report. 2022 Evaluation cycle (2020 data), p. 101, https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279

[4] "Administrative Justice in Europe", Observatory for Institutional and Legal Changes of the University of Limoges, 2007, p. 21.

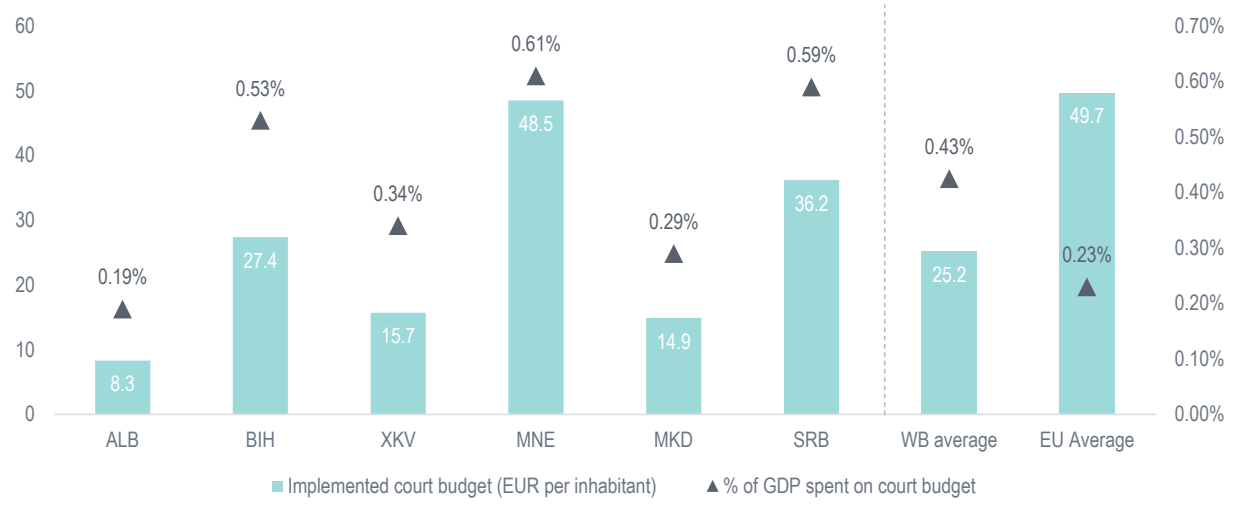
specialisation can, under certain circumstances, better promote the respect of the rule of law. But it ought not to be confused with it[5].

The majority of Western Balkan jurisdictions follow the European model of functional specialisation on administrative disputes and have set up separate administrative courts, at least in the first instance. Bosnia and Herzegovina and Kosovo* are currently the only exceptions, but Kosovo* has already established separate departments for administrative disputes within the system of general jurisdiction courts and also seems to be moving toward establishing a separate first instance administrative court.

1.2. Judicial budget and salaries of judges

No comparative data is available specifically on the budgets of the administrative judiciaries, and the numbers may also be difficult, if not impossible, to compare, owing to the differences in the organisation of the judiciaries. At a more general level, in comparing the size of the implemented total court budget (including the civil and criminal branches) per inhabitant, Albania, Kosovo* and North Macedonia spend the least on their respective judiciaries in the region[6]. Montenegro – whose population is the smallest – spends the most, close to the average of EU Member States. On average, Western Balkan jurisdictions spend about 50% less per inhabitant on their judiciaries than in EU Member States. However, when comparing the share of court budgets with gross domestic product (GDP), it is clear that Western Balkan jurisdictions spend a more significant part of their GDP on courts than an EU Member State on average. In all Western Balkan jurisdictions except Albania, the share of the court budget from GDP is higher than the EU average. In Bosnia and Herzegovina, Montenegro and Serbia, the share is more than twice the EU average. In sum, Western Balkan jurisdictions appear to spend on their judiciaries what is possible according to their overall economic capacity.

Figure 2. Court budgets as a proportion of GDP and per capita (2020)



Source: 2022 cycle of the evaluation of judicial systems conducted by the Council of Europe/CEPEJ.

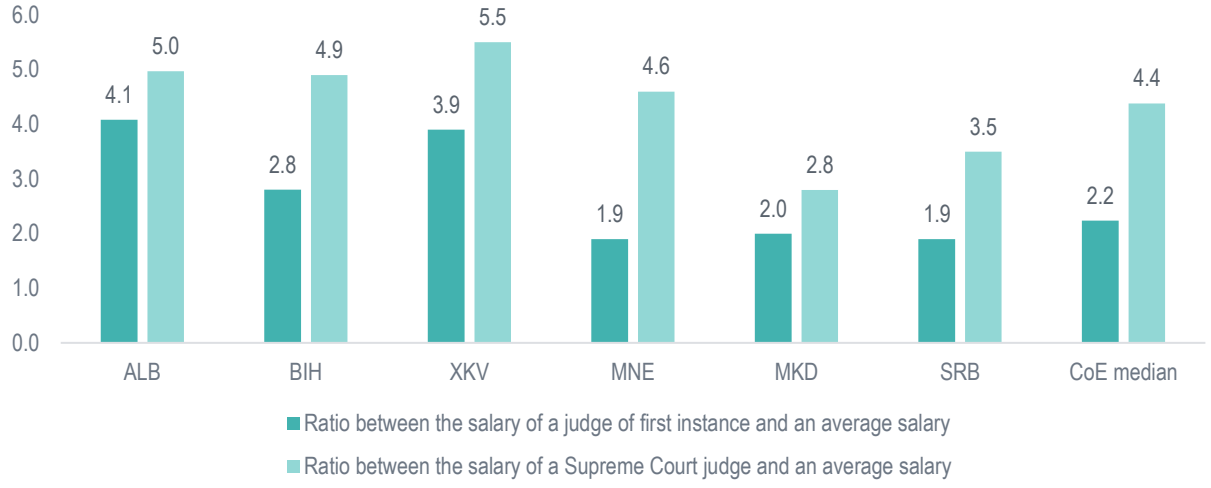
[5] "Judicial Review of Administrative Action in Europe: Common Trends and Requirements", Giacinto della Cananea, ERPL/REDP, Vol. 30, No 3, autumn/automne 2018, p. 774 https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3309587_code2865257.pdf?abstractid=3309587&mirid=1.

[6] According to the 2022 cycle of the evaluation of judicial systems conducted by the Council of Europe (CoE)/CEPEJ.

The salaries of judges in the Western Balkans differ both in absolute terms as well as in comparison to the average salaries in each. In Albania and Kosovo*, first instance judges earn about four times the average national salary, but Albania and Kosovo* also have the lowest average salaries in the region. In other Western Balkan jurisdictions, the difference between the average salary and the salary of judges is not as great, especially at entry into first instance[7]. The salaries of North Macedonian judges are the lowest in the region, by comparison with the respective average salary (at first instance as well as at Supreme Court level), and are also below the Council of Europe (CoE) median levels. However, it is necessary to highlight that the judges of the Administrative Court and the High Administrative Court have a higher status than that of the judges of the general jurisdiction in first and second instance courts and their salaries are higher[8].

Judicial salaries are one element in the overall attractiveness of the profession (as compared to other legal professions), and the comparatively lower salaries can steer the best lawyers toward another career path, ultimately proving costly for the overall functioning of the judiciary and the state. It is important to keep judicial salaries competitive, given their role in ensuring independence and impartiality[9]. In order to ensure that the judicial salaries remain competitive compared to the salaries of other high level public officials, some EU Member States such as Estonia have linked the judicial salaries by law with those of other public officials[10]. For example, the salary of the President of the Supreme Court is by law equal to the salary of the President of the Republic. The salary of a Supreme Court judge is 85% of the salary of the President of the Republic (and equal to the salary of ombudsperson, for example). The salary of an appeal court judge is 75% of the salary of the President of the Republic and the salary of a judge of the first instance court is 65% of the salary of the President of the Republic (and equal to the salaries of the ordinary Members of Parliament).

Figure 3. Judges' salaries in comparison to average salaries (2020)



Source: 2022 cycle of the evaluation of judicial systems conducted by the CoE/CEPEJ.

[7] It is also important to keep in mind that in Montenegro and Serbia, salaries of administrative court judges are equal to that of the judges at appellate level.

[8] Law on Salaries of Judges (Official Gazette of the Republic of Macedonia" no 110/2007), Article 6 and 7.

[9] As noted in the Recommendation (2010)12 of the Committee of Ministers of the Council of Europe, with an explanatory memorandum: https://rm.coe.int/cmrec-2010-12-on-independence-efficiency-responsibilites-of-judges/16809f007d.

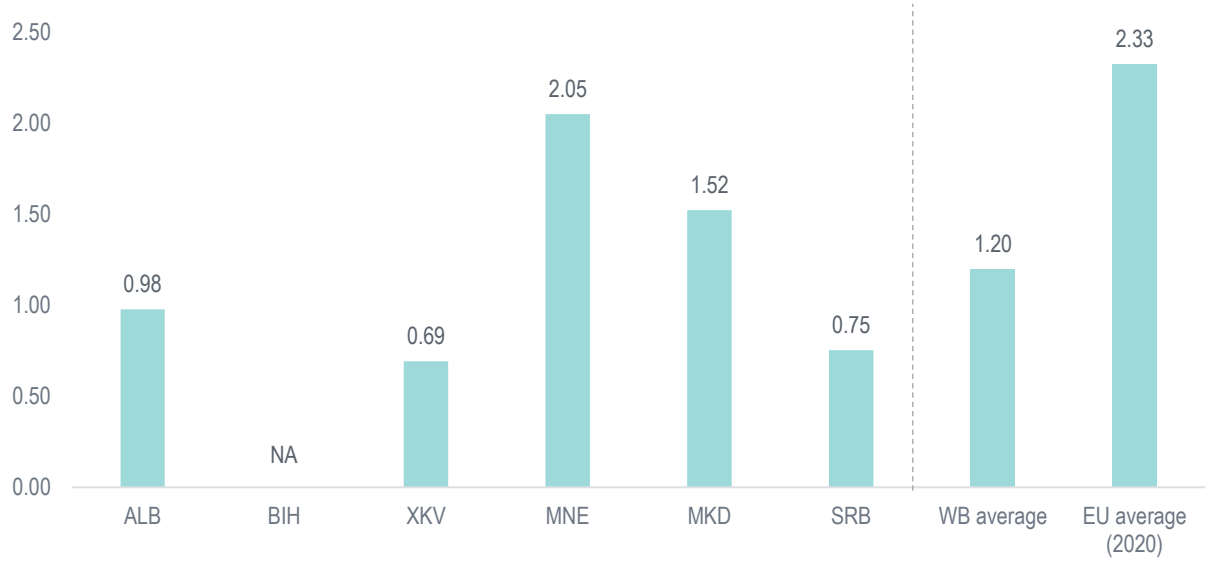
[10] Salaries of Higher State Servants Act, https://www.riigiteataja.ee/en/eli/504032024001/consolide

1.3. Administrative judges: number and entry into profession

The number of first instance administrative judges per capita varies significantly among Western Balkan judiciaries. There is no "correct" ratio, since the number depends on various criteria, including the competences of the courts/judges handling administrative disputes, the caseload, whether a single judge or a panel of three judges decides on cases and on the size of the population. Montenegro, with the smallest population but a relatively high caseload of administrative disputes, has the highest number of administrative judges per capita in the region. The average number of administrative judges among the 16 EU Member States for which data is available is 2.33 per 100 000 inhabitants; only in Italy, Malta and Spain is the number of administrative judges per capita lower than the Western Balkan average.

In the Western Balkan judiciaries with the highest number of administrative judges per capita – Montenegro and North Macedonia – the first instance court usually decides administrative disputes with a panel of three judges (the same applies for Serbia). In Albania and Kosovo*, a single administrative judge decides in first instance; in Bosnia and Herzegovina, non-specialised judges preside over the majority of administrative disputes single-handedly (three-judge panels are the rule at State level, but at the level of the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District courts, where most cases are handled, a single judge is the rule).

Figure 4. Number of first instance administrative judges per 100 000 inhabitants (2023)



Note: The number of judges reflects number of judges effectively in the office in 2023.
Source: The number of judges in the Western Balkans is based on courts' annual reports as well as administrative data provided to SIGMA. Population data from national offices for statistics. EU data is from the 2022 cycle of the evaluation of judicial systems conducted by the CoE/CEPEJ.

Western Balkan judges, including those handling administrative disputes, are usually appointed for life, with the exception of the Supreme Court judges in Albania, who are appointed for a nine-year, non-renewable term. In Kosovo*, newly appointed judges undergo a three-year probationary period, upon successful completion of which they are appointed for life[11]. The basic requirements for administrative judges are the same as for judges in the courts of general jurisdiction, and include a law degree as well as

[11] Serbia followed the same system until 2022. It was modified under Amendment 8 to the Constitution, Article 146, confirmed in the referendum on 1 January 2022.

passing the bar exam or equivalent. However, there are variations in the required work experience and additional preparatory training.

Table 2. Key requirements for administrative judges of first instance

	ALB	BIH	XKV	MNE	MKD	SRB
Work experience	3 years in legal profession, including 1.5 years in public administration or "very good" results in administrative law in the School of Magistrates	3 to 5 years after taking the bar exam (vs. 3 years for basic court judge)	6 years in the legal profession, including experience in administrative matters (vs. 3 years for a basic court judge)	8 years in the legal profession, after taking the bar exam (vs. 2 years minimum for basic court judge)	2 years in legal affairs after sitting the judicial exam, plus 4 years of uninterrupted service in basic court	10 years in the legal profession after taking the bar exam (vs. 3 years for basic court judge)
Additional preparatory training	Graduation from School of Magistrates, 3 years' initial training as candidate judge	No	12 months' initial training after being appointed as a judge	Minimum 3-month initial training as a candidate for judge (vs. 18 months for candidates for basic court)	Graduation from the Academy of Judges (with 24 months' initial training as a candidate for judge)	No

Source: Laws regulating judicial position.

The required qualifications for administrative judges are more stringent than for basic court judges in all Western Balkan judiciaries. In Montenegro and Serbia, the post of administrative court judge is considered equal to that of an appeal court judge and the required legal experience is thus slightly longer for administrative court judges than for judges in the first instance of general jurisdiction courts. In Kosovo*, candidates applying for a position handling administrative disputes in first instance must also have at least six years' legal experience (as compared to three years for basic court judges)[12]. In North Macedonia, administrative court judges must have served in courts of general jurisdiction, i.e., it is only possible to become an administrative judge (in administrative court or higher administrative court) after certain years of tenure in basic court or appellate court.

Additional preparatory training is required in all Western Balkan judiciaries except in Bosnia and Herzegovina and Serbia. Albania and North Macedonia have established two- to three-year initial training programs in schools or academies for all judicial candidates, while in Montenegro, the minimum initial training is three months (but may vary depending on the candidate's background). In Kosovo*, the 12 months of initial training takes place upon appointment and must be successfully completed before becoming a fully-fledged judge (with the authority to handle cases without the supervision of a mentor).

The Consultative Council of European Judges has recommended mandatory initial training, while highlighting also the importance of adapting this training to the candidates' prior professional experience[13]. A relatively recent university graduate may be required to undergo a different kind of training (of different durations) from an experienced lawyer. In addition, the Kyiv recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia emphasise that access to the judicial profession should be given not only to young jurists with special training but also to jurists with significant experience working in the legal profession (that is, through midcareer entry into the judiciary). The degree to which

[12] However, as of March 2024, a draft law in the Assembly aimed to abolish this additional requirement for administrative judges, reducing the requirements for administrative judges to those for judges of general courts.

[13] Consultative Council of European Judges (2003), Op. No. 4, p 26, https://rm.coe.int/1680747d37.

experience gained in the relevant profession can qualify candidates for judicial posts must be carefully assessed[14].

Current preparatory training systems in Albania and especially in North Macedonia (where a future administrative judge needs to undergo four years of service at basic court in addition to the two years' initial training) may not be fully aligned with this approach and may limit the attractiveness of a career in the administrative judiciary to experienced administrative lawyers, e.g. from academia, civil service or from among private lawyers/barristers. The entry requirements and procedures in Albania and North Macedonia do not encourage establishment of an administrative judiciary comprised of judges of diverse professional backgrounds[15]. In addition, the judiciary in general may forgo the possibility of attracting the most experienced lawyers in mid-career.

1.4. Caseload in administrative disputes at different court instances

The number and types or categories of cases handled by administrative judges in the Western Balkans differs in each of them, although in general, the CoE definition defining administrative law cases as litigation as well as non-litigious cases between citizens and authorities applies. In Albania, Kosovo*and North Macedonia, administrative judges handle certain misdemeanours or administrative offences, while in Montenegro and Serbia, separate misdemeanour courts have been set up. In Montenegro, administrative judges handle bankruptcy cases against banks (which are usually considered civil litigation), since such bankruptcies are initiated by the Central Bank with an administrative act. For all of these and many other reasons, a comparison between Western Balkan jurisdictions, as well as with EU Member States, purely based on the caseload can be misleading. However, general trends can be analysed to study the overall functioning of the administrative judiciary.

Incoming administrative cases in the Western Balkan first instance judiciaries differ a lot in absolute numbers, as well as on a per capita basis. This is explained to some extent by the different competences of the court. The differences have increased in the last four to five years, due mainly to the significant growth in the number of incoming cases for example in Montenegro and Serbia. The number of incoming administrative cases per 100 000 inhabitants in both exceeds the median among EU Member States (308 cases per 100 000 inhabitants[16]) significantly.

The main reason for the increase in the number of incoming cases in Montenegro and Serbia has been a proliferation of complaints submitted in the area of access to information. Certain lawyers are submitting hundreds and thousands of requests for information to the authorities. When the authorities fail to respond in a timely fashion, the lawyers submit administrative appeals and complaints to the court in relation to administrative silence, in order to claim compensation of the lawyer's fee when the court upholds the complaint. The submission of numerous complaints is on the one hand caused by unresponsive

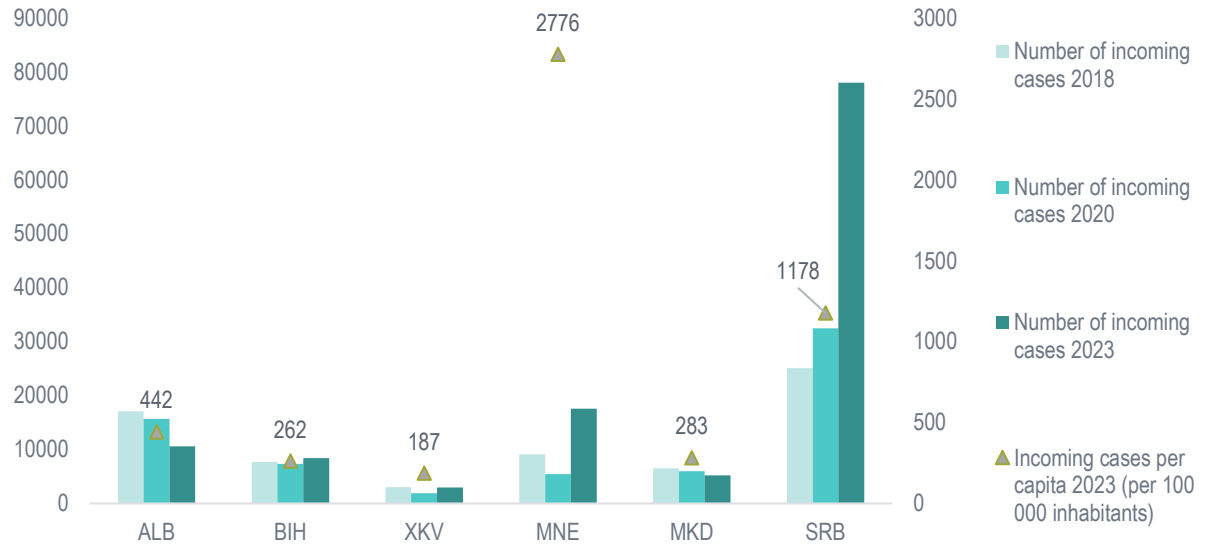
[14] Kyiv recommendations, p. 17, https://www.osce.org/files/f/documents/a/3/73487.pdf.

[15] In Serbia, entry requirements are different and less discriminatory towards candidates from outside the judiciary, but a similar phenomenon is evident. Statistical data on the background of judges appointed to the Administrative Court indicate that the selection system gives priority to internal advancement over the selection of candidates from outside the judiciary. Of 32 appointed judges, 20 had served previously as assistant judges, nine as judges of other courts, and one was selected from the ranks of the Ministry of Justice. Only two appointees had not previously served in the judicial system (according to "Functional Analysis of the Administrative Court of Serbia" prepared by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) project "Strengthening the Rule of Law in the Republic of Serbia", p. 116).

[16] EU median from 2022 cycle of the evaluation of judicial systems conducted by CoE/CEPEJ.

authorities, but it is further encouraged by the rigid system for compensating lawyers, which in Montenegro, for example, provides a EUR 500 fee to lawyers in every administrative dispute with a public hearing, regardless of complexity or actual time spent by the lawyer. If the administrative complaint against the public authority that fails to respond is upheld, the state is obligated to pay the lawyer's fee.

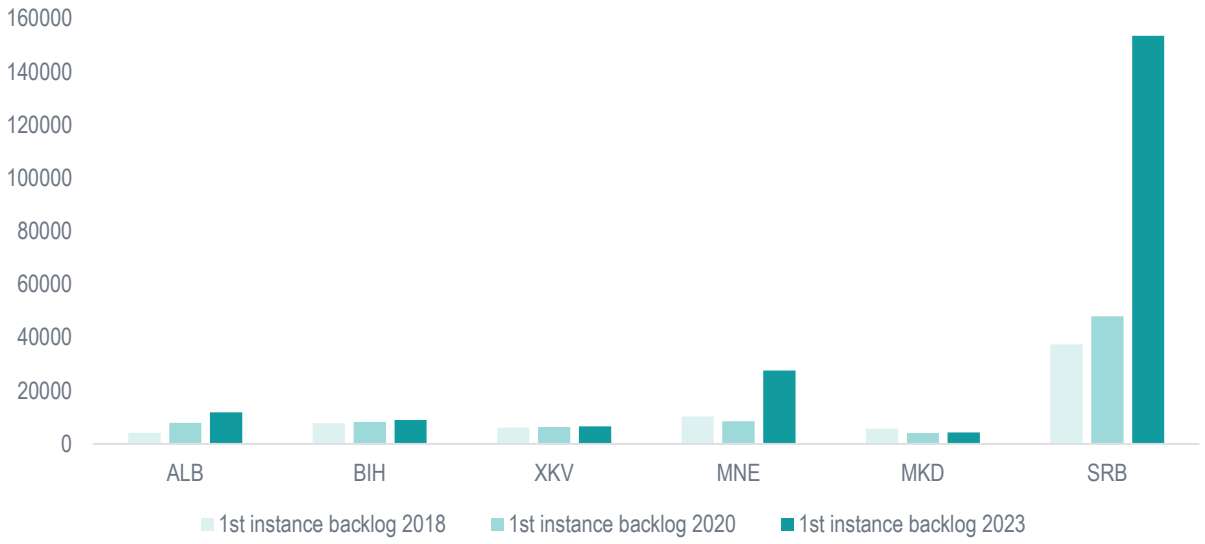
Figure 5. Number of incoming administrative cases in Western Balkan first instance courts, 2018-2023



Source: Data from annual reports of the judiciaries. Data on number of inhabitants from Western Balkan national statistical offices.

Courts in Montenegro and Serbia have not been able to handle the huge increases in the number of incoming cases, and the backlogs have grown as a result. For example, the backlog of first instance administrative disputes in 2023 has increased by 310% in Serbia and 165% in Montenegro, compared to 2018. But backlogs have also grown in other Western Balkan administrative judiciaries, where the number of incoming cases has been relatively stable (Bosnia and Herzegovina, Kosovo*) or has even decreased (Albania). In fact, the only Western Balkan administrative judiciary that has been able to reduce the size of the backlog of administrative disputes in the first instance since 2018 is North Macedonia (by 24%).

Figure 6. Size of the backlog in first instance administrative disputes, 2018-2023



Source: Data from annual reports of the judiciaries.

Comprehensive data on the most frequent categories of administrative cases is not available for all Western Balkan judiciaries, but some data or estimates still exist. The following overview is provided simply to indicate which areas of work of the public administration and the courts could be analysed further to identify potential for lowering judges' caseloads (e.g. by addressing the problems that have caused the increased submission of complaints to the court).

In Albania, no categorisation has been set up to identify the subject matter of disputes in the case management system (e.g. to identify cases related to tax, civil service, etc.), but according to the annual report of the Tirana Administrative Court, about 39% of cases handled by administrative judges in 2022 were execution orders (i.e. related not to the adjudication of the initial dispute but to the enforcement of a prior court decision). In Bosnia and Herzegovina, based on data from two of the courts handling the highest number of administrative disputes (the Cantonal Court of Sarajevo and District Court of Banja Luka), disputes related to the cadaster (42% in Banja Luka) and against the Ministry of Spatial Planning, Building and Environmental Protection (18% in Sarajevo) are the most numerous. Kosovo* has no categorisation based on the subject matter of the dispute in the case management system, but according to estimates by the judges handling administrative disputes, about 30% of disputes are related to fines (i.e. misdemeanour cases), 25% to social schemes, 20% to labour disputes, 18% to tax/customs and 10% to cadaster/ property/environmental disputes[17].

In Montenegro, 40% of resolved administrative cases are related to disputes on access to information (three-quarters of these have been submitted for reasons of administrative silence). Other more numerous categories include disputes in the area of taxes (9%) and cadaster (6%). In North Macedonia, 18% of solved first instance administrative disputes are misdemeanour cases. More detailed categorisation on the other administrative disputes in the first instance court was not available during the drafting of this analysis. In the higher administrative court, the most prolific category of cases relates to taxes and excise duties (about 33%)

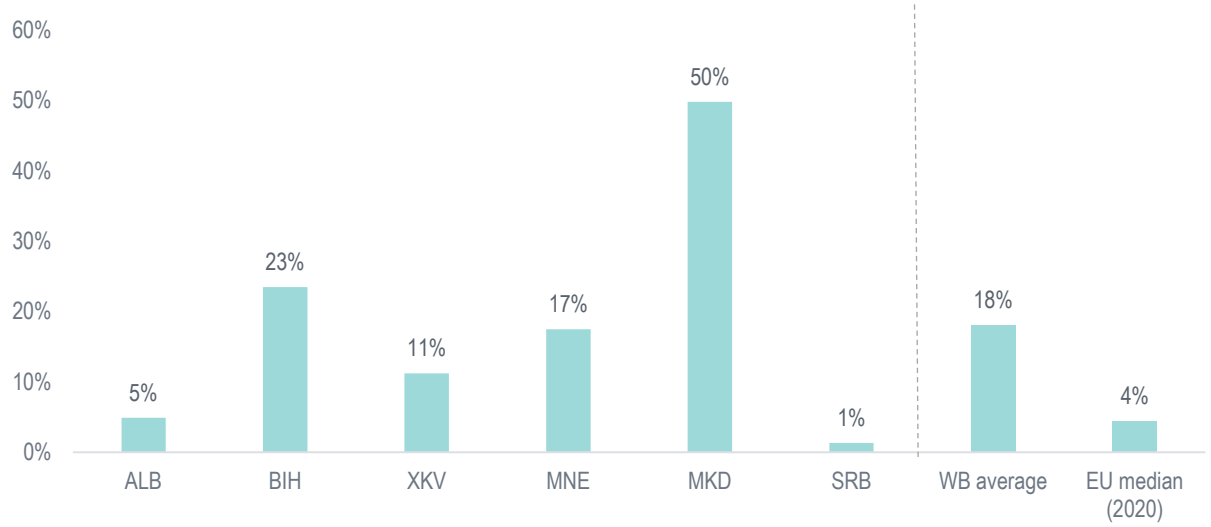
[17] Based on information from the concept document on the establishment of the Administrative Court approved by the government in 2023. Share of tax/customs disputes calculated based on data from the Statistical Report of the Kosovo Judicial Council and on the number of tax/customs-related disputes currently being handled by the Commercial Court.

and 14% of cases are related to different kinds of offences (i.e. misdemeanours). In Serbia, 66% of cases received in 2021 by the Administrative Court were related to administrative silence, 7% of which were pension-related disputes and 4% tax-related. Ninety percent of the administrative silence cases are submitted against 10 authorities, Pension and Disability Insurance being the most common defendant[18].

The share of resolved first instance cases compared to the number of incoming cases to the highest court instance ("the rate of appeal to highest instance") is a useful indicator to illustrate the balance of workload in the judiciary, as well as of the ease of access to higher instances. The indicator also needs to be kept in mind when analysing and comparing the overall duration of proceedings. If the rate of appeal is high, the duration of proceedings in the higher instances is also of significant importance (in addition to the duration of proceedings in the first instance). The use of the word "appeal" in the context of this paper refers to any form of contesting judgements in higher court instance, i.e. extraordinary legal remedies as they are known in the majority of Western Balkan jurisdictions are also included here, even if they are considered much more limited than the standard appeal.

In the Western Balkans, the rate of appeal to highest instance differs significantly, and similar differences can be seen among EU Member States. Naturally, this share depends on the number of court instances (whether two or three) as well as on the filtering mechanisms applied in the respective judiciary for entering higher court instances. For example, in the Western Balkans, the share is the highest in North Macedonia, where there are only two court instances and relatively few limits on appeals to the Higher Administrative Court. At the same time, the share is relatively low in Albania and Kosovo*, which have three court instances, and the appeal instance is able to reduce the number of cases reaching the Supreme Court. However, in Albania, the share is further influenced by the low rate at which cases are resolved at the level of the appeal court (40% in 2023), which leaves few resolved cases to appeal at the Supreme Court. The rate of appeal to highest instance is higher than or at regional average in Bosnia and Herzegovina and Montenegro, which have two court instances in administrative disputes. Serbia is a significant outlier in the Western Balkans, with a very low rate of appeal to highest instance in a judiciary, and with two court instances for administrative disputes. This is mainly caused by stringent restrictions on the right to appeal to the highest court instance (see Chapter 2 for further details).

Figure 7. Rate of appeals to the highest court instance in administrative disputes (2023)



Source: Western Balkan data from annual reports of the judiciary. EU median from 2022 cycle of the evaluation of judicial systems conducted by CoE/CEPEJ.

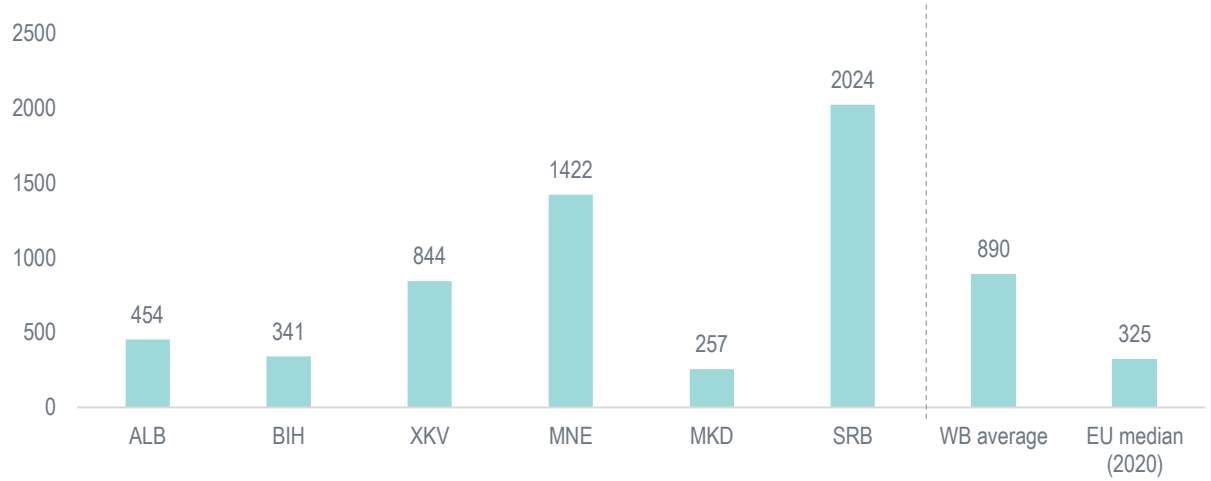
[18] Functional Analysis of the Administrative Court of Serbia prepared by the GIZ project "Strengthening the Rule of Law in the Republic of Serbia", pp. 49-51.

1.5. Duration of court procedure in administrative disputes

In addition to the caseloads, another important indicator of the functioning of the judiciary is the duration of procedures. According to the practice of the European Court of Human Rights (ECHR), one to two years' maximum per instance could be viewed as a reasonable period (although such circumstances as complexity, the behavior of the parties and the consequences for the complainant should be taken into account in assessing reasonability of duration). As a consequence of different circumstances, it has been difficult to resolve administrative disputes during a reasonable period in several Western Balkan judiciaries.

In fact, only the Administrative Court in North Macedonia is currently able to resolve cases in a shorter time period on average than the ECHR benchmarks. In Bosnia and Herzegovina, the average is close to the ECHR standard, but selected courts in the Federation of Bosnia and Herzegovina and at State level currently still exceed it[19]. The average duration for handling administrative disputes in the first instance courts of Kosovo*, Montenegro and Serbia significantly exceeds the ECHR benchmark, meaning that the majority of administrative disputes take longer to resolve than is considered reasonable. In addition, the disposition time of administrative disputes in these jurisdictions by far exceeds that of any EU Member State[20]. In Serbia, a first instance administrative dispute would take more than five years to solve on average, nearly four years in Montenegro, and more than two years in Kosovo*. In Montenegro and Serbia, the huge increase in the disposition time has occurred during the last four to five years, owing to significant increases in the number of incoming cases caused by the lawyers abusing the system for legal remedies[21]. In Kosovo*, the problem has persisted for longer, as the handling of administrative disputes in first instance was delegated to the Basic Court in Pristina in 2013.

Figure 8. Disposition time of administrative disputes in first instance courts in 2023



Note: Disposition Time (DT) is the calculated time necessary for a pending case to be resolved, considering the current pace of work. It is calculated by dividing the number of pending cases at the end of a particular period by the number of resolved cases within that period, multiplied by 365 (definition from CoE/CEPEJ).
Source: Data from annual reports of the judiciary. EU median from 2022 cycle of the evaluation of judicial systems conducted by the CoE/CEPEJ.

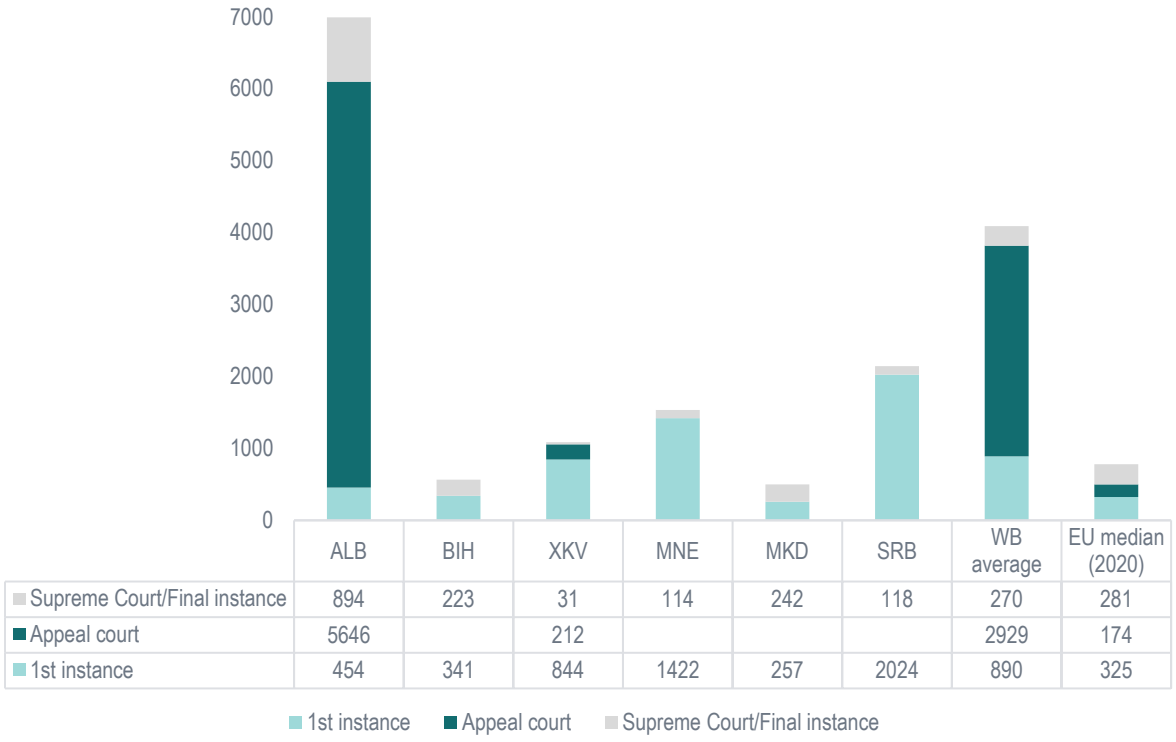
[19] For example, 765 days in the cantonal court of Sarajevo, 633 days in cantonal court of Mostar, 495 days in the cantonal court of Široki Brijeg, 423 days in court of Bosnia and Herzegovina. These courts solve 42% of all first instance administrative disputes in Bosnia and Herzegovina.

[20] EC Justice Scoreboard 2023, https://commission.europa.eu/document/db44e228-db4e-43f5-99ce-17ca3f2f2933_en.

[21] In Montenegro and Serbia, the number of disputes involving access to information (including against administrative silence) has increased the most. For example, in 2016, the disposition time of first instance administrative cases in Montenegro was 241 days in Montenegro and 535 days in Serbia. In 2018, the situation was still relatively comparable to that of EU counterparts in Montenegro (401 days), but already 734 days in Serbia.

The disposition time in Albanian first instance administrative courts was well below the EU median until 2023 (e.g. 179 days in 2022). The main reason for the recent increase in the duration has been the temporary transfer of first instance judges to the Administrative Court of Appeal to help reduce its backlog. Namely, the duration of handling administrative disputes in the Albanian second and the third instance courts significantly exceeds that of EU counterparts, as well as the ECHR benchmarks. At appeal court level, the estimated disposition time in 2023 was 5 646 days – or 15.5 years. This presents a perfect opportunity to delay and effectively avoid execution of any unfavorable first instance court decision. For example, of the 2 676 cases with opposing parties (i.e. excluding execution orders and other claims without an opposing party) that were solved substantively (i.e. not dismissed or rejected for procedural reasons such as incompetency) by the Tirana Administrative Court in 2022, 2 089, or 78%, were appealed to the higher court.

Figure 9. Disposition time in all court instances in 2023 (days)



	ALB	BIH	XKV	MNE	MKD	SRB	WB average	EU median (2020)
Supreme Court/Final instance	894	223	31	114	242	118	270	281
Appeal court	5646		212				2929	174
1st instance	454	341	844	1422	257	2024	890	325

Source: Data from annual reports of the judiciary. EU median from 2022 cycle of the evaluation of judicial systems conducted by the CoE/CEPEJ.

The main cause for the length of proceedings at appeal court level in Albania seems to be the chronic understaffing and vacancy rate of judicial posts in the Administrative Court of Appeal[22]. As a consequence, there is a huge increase in the backlog of the court with every year that passes. In 2023, the judges in office were able to resolve 40% of the incoming cases (up from 24% in 2022) and the backlog of the court

[22] Of the 13 judicial posts, more than half were vacant in 2021-22. Only during 2023 the number of judges in office was increased to 11 (mainly by appointing first instance judges temporarily to appeal court). The estimated average duration of procedures had already outrun the domestic and international benchmarks in 2018 (803 days), but as the number of resolved cases has decreased by a factor of 4 since then (5 551 vs. 1390) and the backlog has nearly doubled (12 217 vs. 21 501), the disposition time in 2023 was 7 times higher than in 2018.

and the duration of proceedings continued to increase. The duration of procedures in Albania in the third instance – the Supreme Court – is also significantly longer than in the rest of the region or the EU, currently at 894 days or 2.5 years, but the judges there are reducing the backlog at a good pace. This is largely thanks to the low number of cases resolved by the appeal court (i.e. there are simply not very many decisions to appeal to the highest instance[23]). Still, to go through all court instances in Albania to reach a final verdict in an administrative dispute, it would currently take 6-994 days or 19 years (summarising the disposition times of all court instances).

The ECHR does not publish statistics per country and type of violation for administrative court procedures separately, but based on more general statistics, it is evident that excessive length of proceedings has been a frequent cause for violations in cases against several Western Balkan jurisdictions. Such violations amount to 46% of all violations confirmed against Montenegro and 25% against Serbia, for example.

In addition to exceeding the ECHR benchmarks, the duration of administrative court proceedings also exceeds the limits established in domestic legislation in Albania (one year per instance, according to Article 399 (2) of the Code of Civil Procedure). In all Western Balkan judiciaries except Kosovo* (where the Government is currently working on a law to establish this right) and the Federation of Bosnia and Herzegovina, it is possible to request acceleration of proceedings and to claim compensation for any confirmed violation of the right to trial within a reasonable time. Nevertheless, until now, the number of such requests has remained relatively low (by contrast with the severity of the problem of excessive duration). According to its annual report, the Montenegro Supreme Court, for example, handled 100 requests for compensation in 2023 and awarded EUR 33 100 in compensation (including violations in civil and criminal proceedings). In Serbia in 2021 and 2022, EUR 45 180 was awarded in compensation for violations of the right to trial within a reasonable time specifically by the Administrative Court. Since the average length of proceedings has significantly increased in recent years in Montenegro and Serbia, these figures are likely to increase in the near future (as already evidenced in Serbia, where the number of complaints increased by 139% in 2023 compared to the previous year (from 526 to 1 256)).

In Albania, the relatively small number of complaints against excessive length (e.g. 34 requests in 2023, of which two were upheld) can be explained by the complexity of the procedure for claiming compensation. Namely, after obtaining the decision from the Supreme Court that indeed the right to trial within a reasonable time has been violated, the applicant would have to initiate another court case in civil court for claiming compensation from the state. This can again take years and therefore most participants of lengthy administrative disputes (especially at appeal level) simply prefer not to spend their time and resources on going through such a time-consuming and complex procedure.

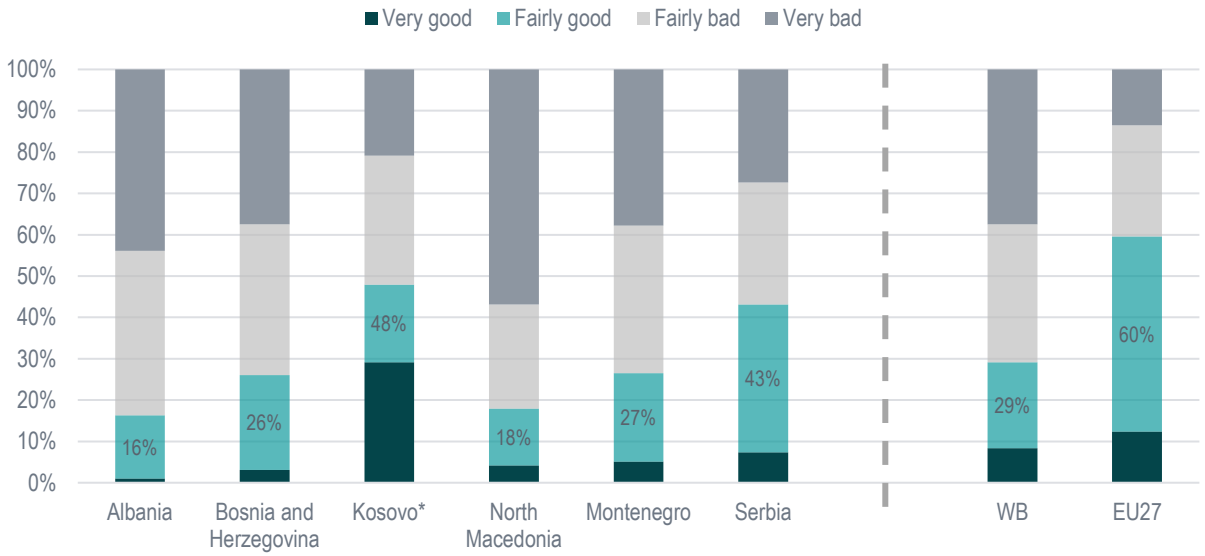
1.6. Public perception of the functioning of the judiciary

Public perception of the independence of the judiciary is an indication of how the general public views the existence of sufficient guarantees (i.e. in the institutional set-up, in the procedural laws, as well as in practice) for the judiciary to handle the disputes in an impartial and objective manner. In addition, the perception of independence can indicate how likely citizens are to turn to the courts to protect their rights; and in this sense, is also related to access to justice. No known surveys have specifically monitored the perception of independence of the administrative branch of the judiciary. The results of Balkan Barometer 2023 and SIGMA Survey of Citizens on public administration in the Western Balkans 2024 were therefore

[23] In 2023, the Administrative Court of Appeal solved 1390 cases, and 33% of these (466) were appealed to the Supreme Court. This is one of the highest rates of appeal against the decisions of the lower court in the WB in administrative disputes. Only in North Macedonia is the rate of appeals against the decisions of the Administrative Court to the High Administrative Court higher, at 50%.

used to examine perception of the entire judiciary (including civil and criminal branches). Still, the judiciary is usually seen by the layman as a single organisation, which means that the perception of the administrative branch (where it has been established separately) should not differ much, if at all, from the perceptions of the other branches.

Figure 10. Perceived independence of justice systems in the Western Balkans and the EU in 2023



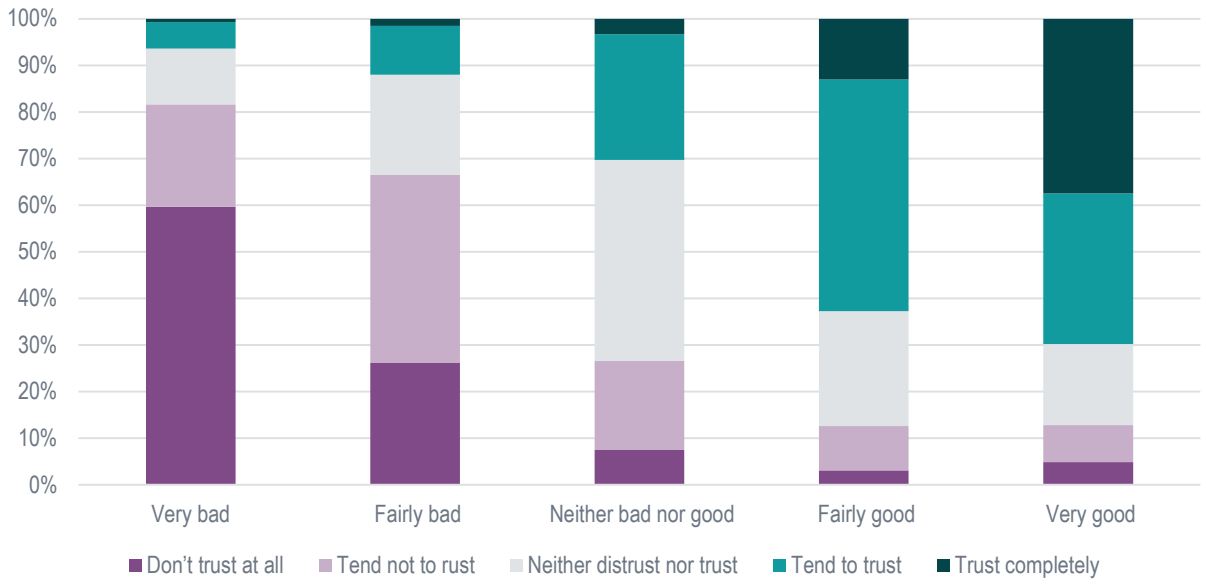
Sources: 1. Eurobarometer June 2023 (https://europa.eu/eurobarometer/surveys/detail/2667). "From what you know, how would you rate the justice system in (THIS COUNTRY) in terms of the independence of courts and judges? Would you say it is very good, fairly good, fairly bad or very bad?" 2. Balkan Public Barometer 2023 (https://www.rcc.int/balkanbarometer/results/2/) "Do you agree that judicial system is independent of political influence?" Answer options: "totally agree", "tend to agree", "tend to disagree" and "totally disagree". Field work February April 2023. Notes: The bars represent percentages of valid responses (excluding those who refused to answer). The figure in the middle of the green bar is the share of respondents who answered very positively or positively about judicial independence.

Western Balkan judiciaries have historically been perceived by their citizens as less independent than those of the EU Member States (on average). The perception of independence of judiciaries in the EU differs a lot, as can be expected, from almost 90% of respondents in Finland and Denmark to 24% in Croatia and 26% in Poland. In all other EU Member States, the perception of independence is higher than the Western Balkan average (29%).

It is interesting to note that since it became an EU Member State, the perception of independence of the judiciary has not improved in Croatia, the last country to join (and the regional neighbour of the region studied in this paper). The opposite is in fact the case; in 2016, when the Eurobarometer survey was first conducted[24], 30% of those surveyed considered the Croatian judiciary to be independent, compared to 24% in 2023. In the same period, the perception of judicial independence in another regional neighbour, Slovenia (which joined the EU in 2004), has improved from 32% to 58%.

[24] European Commission (2016), Flash Eurobarometer 435 (Perceived Independence of the National Justice Systems in the EU among the General Public) (database), http://dx.doi.org/10.4232/1.12669 (accessed on 9 October 2024).

Figure 11. Perception of independence and trust in justice in the Western Balkans, 2024.



Notes: Each bar represents the distribution of valid responses (excluding those who refused to answer) to the question about trust in the courts and the judiciary in the Western Balkans for each level of perception of independence of courts and judiciary.
Source: SIGMA Survey of Citizens, 2024

A it can be seen in Figure 14, perception of trust in justice[25] is highly correlated with perception of independence of the judiciary. Those who has a bad or fairly bad perception of independence of the judiciary tend to have a very low level of trust, while the majority of people with a good or fairly good perception of independence do trust the courts. Interestingly enough, the majority of those who does not have a strong opinion on independence of justice (neither bad nor good) also do not have a strong opinion on trust (as they responded that they neither trust, nor distrust the courts).

Trust in different institutions related to the functioning of the state is regularly monitored by the Balkan Barometer[26]. In the Western Balkans on average, only political parties (22%) are trusted less than the judicial institutions (34%). Trust in the Parliament is equal to that in the judiciary, while trust in the

[25] Trust is an important indicator of how people view and evaluate their government institutions. The OECD has developed a comprehensive framework to understand what drives trust in public institutions and applies this framework in the biennial OECD Trust Survey (OECD, 2021), which up to now has been implemented in OECD member countries and Brazil. The OECD Trust Survey examines what affects trust by measuring people's perceptions of government competence (reliability and responsiveness) and values (integrity, fairness, and openness), then connecting these factors to trust levels across various institutions. More information can be found here: https://www.oecd.org/en/publications/oecd-survey-on-drivers-of-trust-in-public-institutions-2024-results_9a20554b-en.html Results from the OECD Trust Survey 2021 showed that for OECD countries judicial independence was likewise a driver of trust in the judicial system.

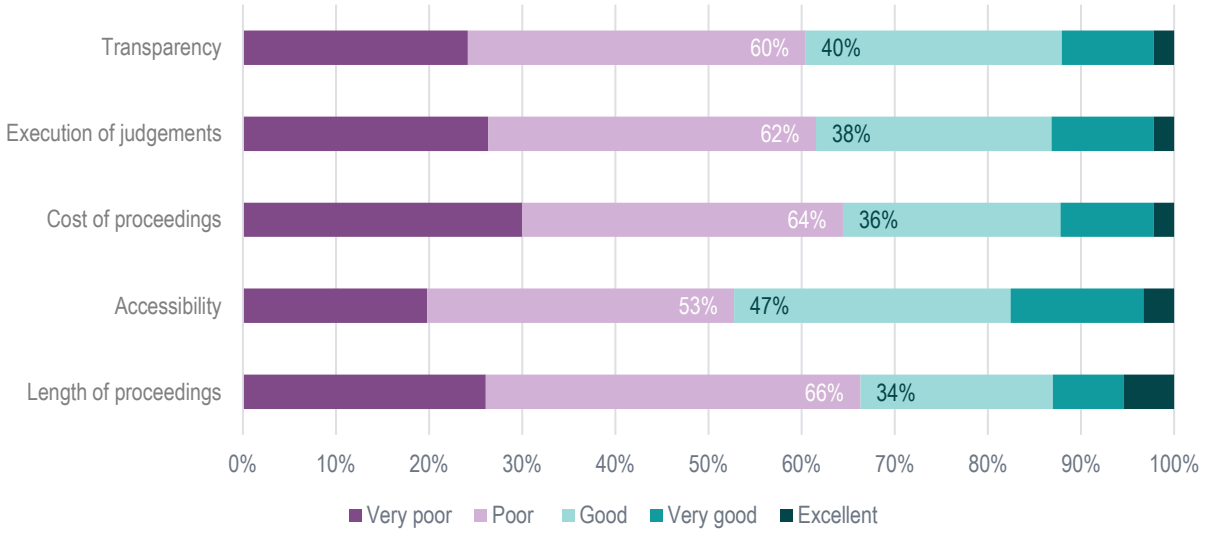
Recognising trust as a valuable indicator of public governance performance, the SIGMA Survey of Citizens on public administration—while distinct from the OECD Trust Survey— includes specific questions about trust in public institutions to complement existing indicators from the Assessment Methodology.

[26] Most recent Balkan Barometer report on Public Opinion available at: https://www.rcc.int/download/docs/BB%202023-PO.pdf/5495f3e223e456e99fc3bdce76054b7e.pdf

Government (35%), the media (35%) and other oversight institutions, such as the Ombudsman (40%) and the Supreme Audit Institutions (37%), is higher than in the judicial institutions.

Of the different aspects related to the functioning of the judiciary in general (rather than simply the administrative branch), e.g. length of proceedings, access, cost, execution of judgements and transparency, on average more than half of respondents in the Western Balkans consider their respective judiciaries to be functioning poorly or very poorly. Access seems to be the least problematic aspect and the length of proceedings the most critical, in the public perception.

Figure 12. Perception of different aspects of the functioning of Western Balkan judiciaries in 2023



Note: Each bar represents the distribution of valid percentages (excluding those who refuse to answer) to different aspects of courts functioning. The figure in white is the share of those who answered "poor" or "very poor", and the figure in black is the share of those who answered "good", "very good" or "excellent".
Source: 2023 Balkan Barometer.

1.7. Rule of Law Index

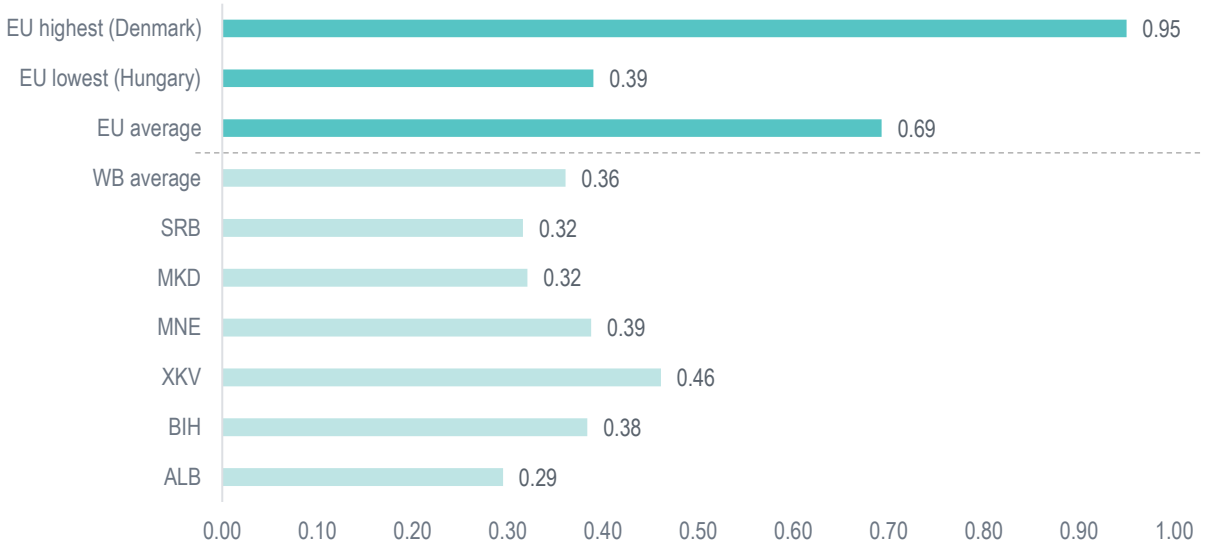
The World Justice Project developed a Rule of Law Index as a quantitative tool to measure the rule of law in practice. The Index measures adherence to the rule of law by looking at policy outcomes, such as whether people have access to courts or whether crime is controlled effectively. Index scores are built on the assessments of residents (generally 1 000 respondents per country or jurisdiction) and local legal practitioners and experts[27]. The index covers 140 countries and jurisdictions, including the Western Balkans.

While the index does not focus specifically on the functioning of the administrative judiciary (although separate questions do exist for civil and criminal branches), one factor is directly linked to the effectiveness of administrative judiciaries: are the government's powers effectively limited by the judiciary? Of all judicial branches, the administrative branch of the judiciary is probably the most directly linked to limiting government powers, as it usually handles complaints against the individual decisions (administrative acts)

[27]The World Justice Project, Rule of Law Index 2023, p. 12, https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIndex2023.pdf.

of the government and the public administration. The result is thus also relevant for our study. In this respect, Western Balkan judiciaries, again, generally perform less well than their EU counterparts. Only two EU Members' judiciaries, Bulgaria and Hungary, are considered less effective in limiting government powers than Kosovo*, the Western Balkans' regional leader.

Figure 13. Effectiveness of limiting government powers by judiciary

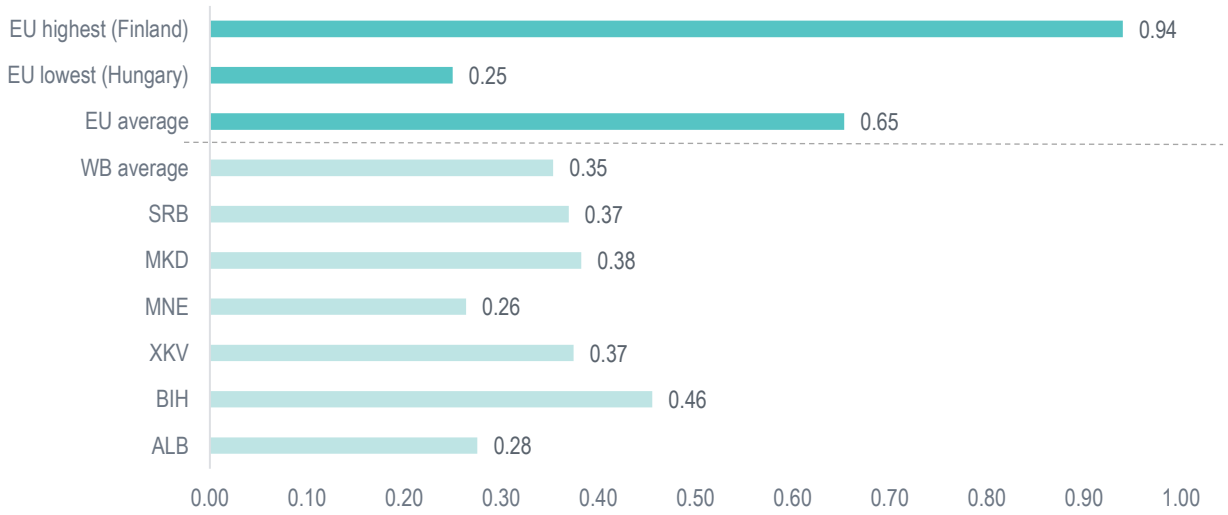


Source: World Justice Project Rule of Law Index 2023.

Another aspect from the approach for the World Justice Project Index, indirectly related to the functioning of the administrative judiciary, is the level at which due process is respected in administrative proceedings. Administrative proceedings are conducted by the public administration (not by the judiciary), but any violations regarding due process should be challenged in administrative disputes in front of the judiciary in order to obtain effective legal remedies. This aspect illustrates the ability of the judiciary to ensure that administrative authorities do respect due process in conducting administrative proceedings.

A strong and effective administrative judiciary should be able – with guidance provided by case law and by ensuring effective execution of its decisions – to ensure that the public administration respects due process in administrative proceedings. If it is not, this indicates that – for whatever reason, e.g. lack of access to justice, overly long court proceedings, lack of consistent guidance, ineffective execution, etc. – the administrative judiciary has not been effective in protecting the rights of the parties of administrative proceedings. A similar gap exists between the Western Balkans and the EU Member States regarding the respect of due process in administrative proceedings (as shown by the judiciary's effectiveness in limiting government powers). Bosnia and Herzegovina and North Macedonia are the regional leaders on this account.

Figure 14. Due process is respected in administrative proceedings



Source: World Justice Project Rule of Law Index 2023.

1.8. Chapter summary

The institutional set-up of Western Balkan administrative judiciaries varies, comprising of judiciaries with two instances (Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia) and three instances (Albania, Kosovo*). Handling of administrative disputes is as a rule separated from the other judicial branches through the establishment of administrative courts (Albania, Montenegro, North Macedonia, Serbia) or administrative departments within the basic court system (Kosovo*). As a positive element, all Western Balkan judiciaries except Bosnia and Herzegovina have judges specialising in the handling of administrative disputes. More detailed specialisation on specific categories of administrative disputes is in place only in North Macedonia. Western Balkan jurisdictions spend a higher share of their GDP on judiciaries (including the administrative, civil and criminal branches) than the EU Member States on average, but less when compared per capita. The salaries of judges in relation to the national average salary are comparable to median of the Council of Europe members, except in North Macedonia, where lower salaries may negatively influence the attractiveness of the judiciary as a career path for lawyers. The requirements for candidates of administrative judges established in the Western Balkan legal frameworks as a rule enable the selection of judges with relevant personal and professional background. However, in Albania and North Macedonia, entry to the judicial profession is open only to those who have studied at the judicial academies, which can limit the profession's appeal to experienced lawyers.

The average duration of court procedures remains a major problem in the Western Balkans. The disposition time of administrative disputes significantly exceeds the EU median throughout the Western Balkans, except in North Macedonia and in Bosnia and Herzegovina (although problems persist there in selected courts with the highest workload). In Kosovo*, Montenegro and Serbia, the first instance courts are most problematic, where procedures last on average more than two to five years; in Albania, the average disposition time of administrative disputes at the appeal court level exceeds an astonishing 15.5 years. The length of court procedures is a major challenge for access to justice, alongside the poor perception of independence and lack of trust (in the judiciary as a whole, not simply the administrative branch). According to the World Justice Project Rule of Law Index – a benchmark based on the views of legal practitioners – Western Balkan judiciaries are significantly less effective in limiting the powers of the government (a specific task of administrative judiciaries) than their counterparts in the EU.

2 Access to administrative justice

Access to justice is one of the key preconditions for effective legal remedies, as well as for promoting the rule of law[28]. Without real access to justice, other elements of well-functioning judiciaries, such as efficient court process and execution of court decisions, can also become meaningless. Lack of equal access to justice generates significant costs for individuals and societies[29].

In the Western Balkans, 38% of administrative judges – including 71% in North Macedonia and 60% in Serbia – do not believe that access to justice is a problem in their respective administrative judiciary. Access to justice was also ranked as the least problematic aspect of the functioning of judiciaries in the Balkan Barometer's public perception surveys (in comparison to other factors, such as the length of proceedings, cost, execution of judgements and transparency, see p. 28).

Of factors considered as a negative influence on access to justice, Western Balkan judges ranked lack of public trust the most significant. This perception was most widespread in Montenegro (36%), Albania (25%) and North Macedonia (24%). Other factors were noted less and the perception of judges from different judiciaries varied widely. In Kosovo*, lack of legal aid is considered a major obstacle to access to administrative justice, but elsewhere significantly less so or not at all. Duration of court procedures was not presented to the judges as an answer option, but it is likely that the excessive length of appeal court proceedings in Albania (an average of 15.5 years), and the duration of first instance proceedings in Kosovo*, Montenegro and Serbia, have made the respective administrative judiciaries less accessible for citizens and businesses in need of legal protection from the public power. Justice delayed is justice denied[30].

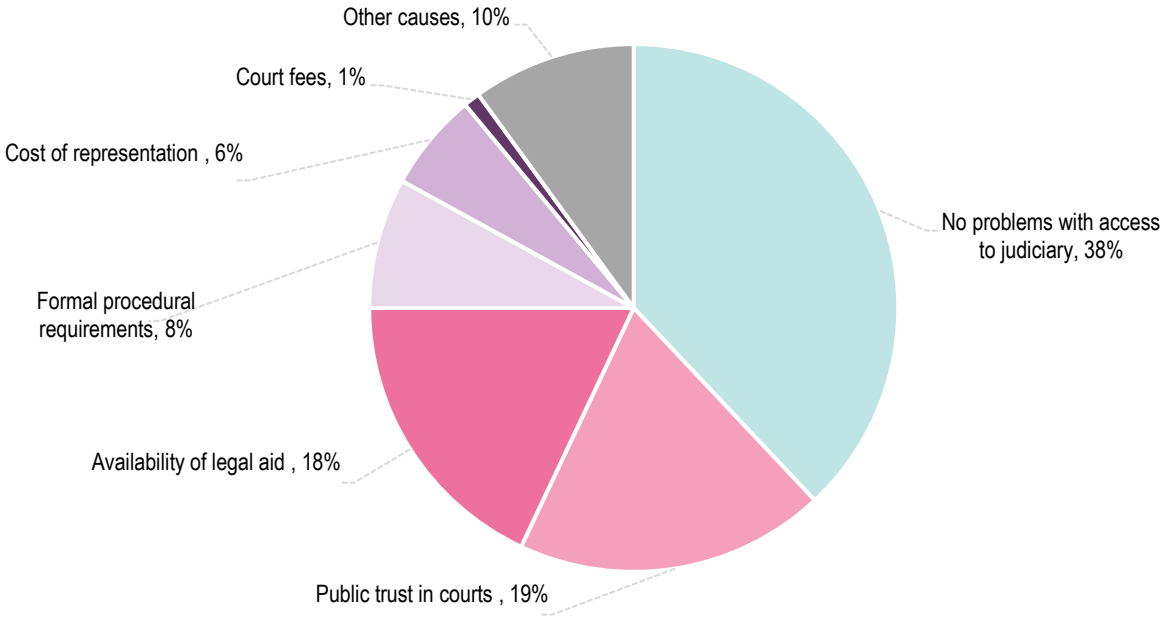
The following chapter provides a brief overview of some of the other key elements influencing access to justice in the Western Balkans (unrelated to duration of the procedure and to public trust, which were covered in Chapter 1. The elements include: the preconditions for submitting a complaint to court, the cost of the procedure and restrictions on the right to contest first instance court decisions.

[28] See Target 16.3 of the Sustainable Development Goals: "Promote the rule of law at the national and international levels and ensure equal access to justice for all". See also the Recommendation on Access to Justice and People-Centred Justice Systems adopted by the OECD Council on 12 July 2023, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0498.

[29] Riga Statement "Investing in Access to Justice for all!" High-Level Panel, OECD Roundtable on Equal Access to Justice, Riga, Latvia, July 2018, https://web-archive.oecd.org/2018-09-21/494751-equal-access-to-justice-roundtable-latvia-riga-statement.pdf.

[30] The concept is expressed, although not verbatim, in Roscoe Pound, "The Causes of Popular Dissatisfaction with the Administration of Justice", in the American Bar Association, Report of the 29th Annual Meeting of the American Bar Association, pp. 395-417 (1906).

Figure 15. Western Balkan judges' perception of the main causes of problems associated with access to justice



Source: SIGMA data collected in surveys conducted at roundtables held during the preparation of this analysis, including 83 responses collected from six roundtables. Judges were allowed to designate one answer.

2.1. Preconditions for exercising the right to initiate administrative court proceedings

Four major factors are usually singled out as conditions for exercising the right to initiate administrative court proceedings: 1) exhaustion of preliminary appeal procedures; 2) the appellant/plaintiff; 3) the administrative acts and 4) the time limits[31]. In addition, the types of complaints/claims allowed or the object of the lawsuit can also be considered relevant in analysing the conditions.

In the Western Balkans, as a rule, the complainant has to exhaust the preliminary administrative appeal procedures before turning to court. In the rest of Europe, this is not the case in the majority of judiciaries, i.e. the exhaustion of preliminary channels of appeal is not a requirement for referral to court. Administrative appeal is usually possible as one path for legal remedies, but it is not a condition for admissibility to court[32]. In the Western Balkans, there are also some administrative procedures, e.g. complaints against tax decisions in North Macedonia, where there is no administrative appeal and legal remedies are available only by submitting a complaint to court. Similar examples exist in the rest of Western Balkans, where laws do not provide for second instance administrative proceedings.

Throughout the Western Balkans, any natural or legal person can act as the plaintiff in an administrative dispute, if they find that their rights have been infringed upon by an administrative act. Some other

[31] "Administrative Justice in Europe", Observatory for Institutional and Legal Changes of the University of Limoges, France, 2007, pp. 49-53.

[32] Ibid., p. 50. However, in Austria, Czechia, Hungary, Poland and Spain, exhaustion of administrative appeal is a condition for admissibility.

authorities also have the standing to sue in selected Western Balkan jurisdictions. For example, in Albania, associations and interest groups can initiate administrative disputes against infringements of public interests. In Bosnia and Herzegovina, North Macedonia and Serbia, in specific cases the dispute can also be initiated by a state attorney or public prosecutor with the mandate to protect the interests of the state or the level of the government they represent[33]. In Bosnia and Herzegovina, an administrative dispute can be initiated by the Ombudsman who finds that human dignity, rights and freedoms of citizens guaranteed by Bosnia and Herzegovina's Constitution have been violated by an administrative act.

The practices of EU Member States and certain Western Balkan administrations can differ over the rights of public administration authorities to initiate administrative disputes in specific administrative procedures. For example, while in EU Member States, the contracting authorities can contest the decisions of the public procurement review body (a quasi-judicial entity established for expedient handling of disputes in public procurement) in court, this is not the case in Serbia. A similar practice existed until recently in North Macedonia in the area of access to information. Public information holders were not allowed to contest the decisions of the Agency for the Protection of the Right to Free Access to Public Information, but recently this practice has been changed.

As a rule, throughout the Western Balkans and in the rest of Europe, the main object of the dispute is the administrative act. Some types of administrative acts may be beyond the scope of judicial review. In Bosnia and Herzegovina, Kosovo*, Montenegro and Serbia, administrative acts of the Parliament and the President cannot be contested in an administrative dispute if they "decide directly on the basis of constitutional authorities" (such disputes are handled by the respective constitutional courts). On the other hand, in Albania and Kosovo*, it is possible to contest normative acts in an administrative dispute if there is no legal protection available against such acts through other court processes. In Serbia, the jurisdiction of the Administrative Court also encompasses the assessment of compliance of general acts of local self-government units with their Statutes[34].

The time limits for initiating administrative disputes vary between 20 days from the delivery of the administrative act in Montenegro to 45 days in Albania and 60 days for Bosnia and Herzegovina State level. Similar ranges exist also in the rest of Europe, e.g. three weeks in Sweden, 30 days in Estonia, Germany, Finland, Lithuania and Poland, six weeks in Austria, two months in Czechia, France, Italy and Spain. Some EU Member States allow a longer time limit: three months in Ireland and Luxembourg, and six months in Belgium[35].

In some specific instances, the rules regarding deadlines for initiating administrative disputes in the Western Balkans can be considered disproportionate, if not problematic, for ensuring effective and equal access to justice. For example, in North Macedonia and Albania, the deadlines for submitting a complaint against administrative silence are respectively 30 and 45 days after the deadline the authority had for adopting the act[36]. This is relatively short,[37] and not only puts the burden on the potential plaintiff to react

[33] This possibility currently exists in Kosovo*, although when the new Law on Administrative Conflicts enters into force in in 2025, it will preclude this option.

[34] Article 83 (2) of the Law on Local Self-Government.

[35] "Administrative Justice in Europe", Observatory for Institutional and Legal Changes of the University of Limoges, 2007, p. 53.

[36] See Article 26 (2) in MKD Law on Administrative Disputes and Article 18 in ALB Law on the Administrative Courts and Adjudication of Administrative Disputes.

[37] In Estonia, the deadline is one year from the expiration of the deadline for the public authority (or two years from the submission of the application, if no deadline was anticipated). Poland has no such deadline. In Luxembourg, the action

quickly against any administrative silence but may burden the Administrative Court with ultimately unnecessary complaints (e.g. if the authority simply responded with a delay[38] or if there were problems in the delivery of the act). Finally, in Montenegro[39], the deadline for submitting a complaint to the court against an administrative act that was not directly delivered to the affected person (i.e. if the person was not the recipient of or participant in the administrative proceedings, but the administrative act does influence their rights and obligations), is 60 days from the delivery to the favoured party. A more proportional solution would be to count the time limit from the moment when the person was informed about the existence of the administrative act. This would motivate the administrative authorities and other participants of the proceedings to engage and inform all interested parties in due course.

All Western Balkan jurisdictions allow the key types of claims in administrative disputes, e.g. action on annulment of an administrative act, action on the issuance of an administrative act and action on damages. However, some differences exist regarding other claim types. Notably, claims regarding administrative actions are only explicitly allowed in Albania and Kosovo* (and to some extent in Montenegro). In the rest of the region, in order to contest administrative actions (or to demand the performance of an administrative action), the plaintiff needs to take an additional step and turn to the relevant authority demanding a written refusal, which can then be contested in court as the administrative act. Administrative courts in Albania, Kosovo* and North Macedonia also need to handle disputes related to the competences of public authorities, which ideally should be resolved within the executive, to avoid burdening the courts.

can be brought three months after the date the administration should have issued its decision. In Cyprus, such recourse must be made within 75 days of the day the omission came to the knowledge of the person filing the recourse. See the General Report of the Council of State of Italy and Association of the Councils of State and Supreme Administrative Jurisdictions of the EU (ACA)-Europe seminar "Techniques for the protection of private subjects in contrast with public authorities: Actions and remedies – liability and compliance", Rome, 23 May 2022, https://www.aca-europe.eu/seminars/2022_Rome/2022_Rome_General_Report_en.pdf.

Note by the Republic of Türkiye

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

[38] A recent SIGMA study found that concluding administrative procedures within the statutory deadline is often a problem in the Western Balkans, including in Albania and North Macedonia (e.g. with procedures for issuing construction permits). See "Implementation of laws on general administrative procedure in the Western Balkans", pp. 31-33: https://www.oecd-ilibrary.org/governance/implementation-of-laws-on-general-administrative-procedure-in-the-western-balkans_e5162057-en.

[39] Article 17 of the Law on Administrative Disputes.

Table 3. Claim types in Western Balkan administrative disputes

Type	ALB[40]	BIH[41]	XKV[42]	MNE[43]	MKD[44]	SRB[45]
Action on annulment of an administrative act (in partial or in full)	X	X	X	X	X	X
Action on the issuance of an administrative act	X	X	X	X	X	X
Action against unlawful administrative action	X		X	X		
Action to prohibit the performance of administrative action (or to prohibit the issuance of an administrative act)	X		X			
Action for damages	X	X	X	X	X	X
Declaratory action	X		X			X
Action for determining the competent organ	X		X		X	

Note: Even though contesting administrative actions directly in court is not possible in Bosnia and Herzegovina, North Macedonia and Serbia, it is possible to contest action through administrative appeal and then submit a complaint to court against the appeal decision or silence of administration.
Source: The laws regulating handling of administrative disputes in the Western Balkans.

2.2. Costs of the procedure: fees and cost of representation

The fees for initiating administrative disputes are relatively symbolic in the Western Balkans. The only exceptions to the rule are Bosnia and Herzegovina and Kosovo*, where the fees amount to 8%-10% of a monthly salary. As such they exceed the fee levels in several EU Member States, where average salaries are higher [46], though there are also European judiciaries with higher fee levels in administrative disputes[47]. As a rule, it is possible for those of low income to be exempted from paying the fee, but in Kosovo*, this will become available in all administrative disputes only in 2025, when the new Law on Administrative Conflicts enters into force[48]. Western Balkan administrative judges also believe that court fees are

[40] Article 17

[41] Article 8-10, 13

[42] Article 13.

[43] Article 12, 19.

[44] Article 3 and 24.

[45] Article 14-16.

[46] For example, Luxembourg and Sweden have no fees, with EUR 1 in Romania and EUR 20 in Estonia. According to the General Report of the seminar organised by the Supreme Administrative Court of Czechia and ACA-Europe on "Measures to Facilitate and Restrict Access to Administrative Courts" in Brno, Czechia, on 9 September 2019, https://www.aca-europe.eu/images/media_kit/events/0069/pdf/Molek-nova.pdf.

[47] For example, EUR 148 in Slovenia, but some categories of cases have no fee at all, or it may be reduced (e.g. EUR 41 in social disputes) and a relatively uncomplicated procedure for exemption from fee payment.

[48] Until then, exemption from the payment of the fee is possible only in certain types of cases, under Administrative Instruction No. 01/88 of the Kosovo Judicial Council of 22 March 2017, https://www.gjyqesori-rks.org/wp-content/uploads/lgsl/Udhezimi%20administrativ%20nr.%20012017%20per%20unifikimin%20e%20taksave%20gjyqesore%20shqip.pdf.

generally not an obstacle to access to justice. Only 6% of Bosnia and Herzegovina judges share this view, and none of the judges in the other Western Balkan judiciaries[49].

Table 4. Fees for initiating administrative disputes and their relation to the average salary (EUR)

	Fee	Average gross monthly salary in EUR (4Q 2023)	% of monthly salary
Albania	26.6	753	3.5%
Bosnia and Herzegovina	51.16	1024	5%
Kosovo*	50	521 (2022 data)	9.6%
Montenegro	10	1013	1%
North Macedonia	8-26	1003	0.8-2.6%
Serbia	3.3	1114	0.3%

Source: Laws stipulating court fees. Data on average salaries from the statistical offices: https://www.instat.gov.al/, https://bhas.gov.ba/, https://ask.rks-gov.net/, https://www.monstat.org/, https://www.stat.gov.mk/, https://www.stat.gov.rs/en-US/.

Another element related to the costs of the procedure is the cost of representation. This is considered to be an obstacle to access by some of the Western Balkan judges and is especially true for Bosnia and Herzegovina (18%), Serbia (13%) and Montenegro (7%). In all three jurisdictions – as well as in Kosovo* and North Macedonia – the advocate's fees are determined by the tariffs established by the Bar Association. In Kosovo*, North Macedonia and Serbia, the Bar Association is completely independent in adopting the tariffs. In Montenegro, the tariffs are adopted with the prior approval of the Government. In the Federation of Bosnia and Herzegovina the Bar Association proposes the tariffs, but they are adopted by the Ministry of Justice (in consultation with other relevant ministries) and in the Republika Srpska, the tariffs are adopted by the Bar Association with the prior approval of the Ministry of Justice. The usual logic of these tariffs is that all administrative disputes are considered equal, regardless of complexity or time spent on the dispute; only the tariffs in Serbia provide for differences based on the category of the dispute (e.g. disputes related to tax, customs and planning and construction are valued higher than the rest). In addition, the tariff can vary for representation in administrative disputes with monetary value, but as a rule, the monetary value of an administrative dispute is not quantifiable (e.g. in cases of access to information). The Federation of Bosnia and Herzegovina, Kosovo*, Montenegro and Serbia jurisdictions envisage a difference in the fee depending on whether or not a public hearing also took place.

Table 5. Lawyers' fees in the Western Balkans (EUR)

	Submission of the complaint	Representation at hearing	Comments
Albania	The Bar Association and Minister of Justice have adopted the advocates' fees (https://dhka.org.al/sq/tarifa-te-shperblimit-te-avokateve-per-dhenien-e-ndihmes-juridike/), but these apply only in cases when no agreement can be reached on the fee between the party and the lawyer and which do not stipulate a fee for legal representation in administrative disputes.		
BIH_FBIH	EUR 120 (administrative disputes without monetary value)	EUR 120 (administrative disputes without monetary value)	**BIH_FBIH**
BIH_RS	EUR 300		**BIH_RS**
Kosovo*	EUR 160	EUR 160	Disputes usually resolved with a public hearing.
Montenegro	EUR 200 (administrative disputes without monetary value)	EUR 200 (administrative disputes without monetary value)	Public hearing held in about 50% of disputes.

[49] According to surveys conducted at roundtables held during the preparation of this analysis.

North Macedonia	EUR 114		
Serbia	EUR 210-EUR 382 (depending on the category of the dispute)	EUR 250-EUR 420 (depending on the category of the dispute)	Public hearing held in about 4% of disputes.

Source: Advocates' tariffs adopted by the Bar Associations.

The reason for adopting fixed tariffs for advocates' fees is mainly to ensure stability and predictability in the costs of legal representation, and also to avoid disputes over how reasonable the lawyer's fee is, when it has to be compensated by the party that lost the case. The alternative approach is that the parties agree on the fee bilaterally and when their claim is successful and the other party is required to compensate the costs, the judge determines the appropriate fee level, which the other party is required to compensate (based on the estimate of reasonable working time and fee). For the system of predetermined tariffs to function, it should not deviate unreasonably from the actual cost of the relevant working time required to provide legal representation in the dispute.

The tariffs in four of the Western Balkan jurisdictions (Bosnia and Herzegovina, Kosovo*, Montenegro and North Macedonia) do not take into account the complexity of the administrative dispute or the actual time spent (the tariffs in Serbia do take into account some differences between categories of administrative disputes). As such, the fees can turn out to be too low for the more complex disputes and possibly too high for more straightforward disputes, distorting the legal aid market. As a result, lawyers may have no interest in providing legal representation in tax and customs disputes but may be encouraged to fabricate straightforward and winnable disputes in order to earn easy money (as has happened in Montenegro and Serbia in the area of access to information). Secondly, the current fees in some Western Balkan jurisdictions (especially in Montenegro and to some extent in Serbia and the Republika Srpska of Bosnia and Herzegovina) exceed the fee levels in EU Member States with higher levels of income and with a similar legal doctrine (where the fee is based on tariffs adopted by bar associations and not on an estimate of the time spent by the lawyer)[50]. High costs for legal representation can seriously undermine access to justice, and the Western Balkan governments should consider exercising a stronger influence on the fee levels set up by the tariffs. Established fees for legal representation in administrative disputes also determine the costs borne by the state in case of lost disputes (and thereby influence the use of public funds). Establishing more proportionate fees can also help address some of the existing monetary incentives for abusing the system, especially in the area of access to information in Montenegro and Serbia. In Montenegro (as well as in Bosnia and Herzegovina), the prior approval of the executive branch for adopting the tariffs is already stipulated in the legal framework. In Kosovo*, North Macedonia and Serbia, this requirement would first have to be added in the legal framework, if the Bar Association is not able or willing to self-discipline.

In addition to the fee levels and cost of representation, it is necessary to keep in mind that in Kosovo*, until the recently adopted new Law on Administrative Conflicts enters into force in early 2025, participants in a court procedure bear their own costs, regardless of the outcome. This is a significant difference from the practice of EU Member States and can significantly hinder access to justice in more complex legal disputes where a plaintiff could benefit from professional legal representation (e.g. tax disputes). Given the relatively high costs associated with legal representation, it can be less costly not to initiate an administrative dispute contesting an administrative act (or to represent oneself in the dispute regardless of the outcome) than to initiate the dispute, hire a lawyer and win, because the costs of legal representation would not be compensated. A system that does not compensate the costs of representation in administrative disputes does not promote the development of lawyers specialised in administrative disputes, which has a negative effect on the quality of legal aid available for all.

[50] For example, EUR 150 in Slovenia.

In Montenegro until recently, Article 39 (1) of the Law on Administrative Disputes stipulated that the participants of the court procedure would bear their own costs regardless of the outcome, unless there was a public hearing held in the dispute (only if a public hearing was held would the defendant compensate the costs of the plaintiff if the complaint was upheld). The relevant provision was declared unconstitutional in December 2023[51]. Such a rule encouraged the plaintiff to request a public hearing, even if it was not called for by the nature of the dispute, and Montenegrin judges confirmed that public hearings were requested even in very simple cases like administrative silence. This meant that handling disputes took up more of judges' time and reduced the resolution rate of cases.

Throughout the Western Balkans, except for Bosnia and Herzegovina, if the administration wins the administrative dispute, the costs of legal representation (if incurred) as a rule are not compensated by the plaintiff. This is an exception to the general principle of "loser pays" that is applied in civil court procedure, because the public administration is expected to be able to represent itself in court disputes with its own resources (the risk of having to compensate the legal representation costs of the state may limit access to administrative justice). The same rule applies among EU Member States. However, in Bosnia and Herzegovina, specifically when the public authority is represented by the Attorney General, the costs of legal representation are to be compensated by the plaintiff, in case the complaint is not upheld by the court.

For plaintiffs, it is possible to apply for free legal aid throughout the Western Balkans and these systems seem generally to be functioning well. Kosovo* is an exception. The Agency for Free Legal Aid provides the service there, but its staff only prepare the claim, and a lawyer is hired afterwards to represent the case in court (Agency staff are not permitted to represent cases under a prohibition stipulated in the Law on Free Legal Aid). According to judges, lawyers often end up unprepared and with little information about the case, because they have not prepared the claim. Consequently, 75% of Kosovo* judges consider the lack of legal aid the main cause of problems over access to administrative justice[52].

2.3. Restrictions to the right to contest a first instance court decision

Four of the six Western Balkan judiciaries analysed in this paper (Bosnia and Herzegovina, Montenegro, North Macedonia and Serbia), present a two-instance administrative judiciary, i.e. with only one possibility to contest a judgement of the first instance. All four of these judiciaries also have additional rules and practices that further limit the right to appeal. Serbia has the most limited options for contesting first instance judgements, and requests for extraordinary legal remedies can be submitted only if the first instance court decided in full jurisdiction and there was no possibility for appeal in the pre-judicial administrative proceedings. There are very few such administrative proceedings, and this also explains the very low rate of appeals – or requests for extraordinary legal remedies, as they are rightly called in Serbia (1% of first instance decisions in 2023).

The share of contested first instance decisions is higher in Bosnia and Herzegovina (23%), Montenegro (17%) and North Macedonia (50%), because appeals and extraordinary legal remedies are allowed also in procedures, where administrative appeal exists, but effectively, only these first instance decisions can be contested, which reject the complaint of the plaintiff (i.e. the court found in favour of the public administration authority). This is because the public administration authorities, i.e. defendants in the court of first instance, in Bosnia and Herzegovina (State level and the Federation of Bosnia and Herzegovina), Montenegro and North Macedonia do not have the right to contest the judgement of the first instance court,

[51] https://www.ustavnisud.me/ustavnisud/objava/blog/4/objava/204-odluka-ustavnog-suda-crne-gore-o-ukidanju-odredba-clana-39-stav-1-zakona-o-upravnom-sporu-sluzbeni-list-crne-gore-broj-54-16-u-i-br-44-20-11-23-i-31-23.

[52] SIGMA data collected in surveys conducted at roundtables held during the preparation of this analysis.

which quashes their administrative act. This practice stems from the legal doctrine, whereby the public authorities could only contest a court decision made "in full jurisdiction", since only such a decision is considered to effectively influence their rights. There is no comprehensive overview of the percentage of cases decided in full jurisdiction in the four Western Balkan judiciaries, but based on available evidence, the share is low[53]. This is despite the fact that there are wide grounds for doing so (only administrative matters, which must be decided by applying administrative discretion, are universally excluded) and in North Macedonia, the administrative judges are explicitly obligated to decide in full jurisdiction[54]. Subsequently, the administrative authorities do not have the right to contest the decisions if they lose to the higher court and are required to reconsider the administrative matter. According to interviews with authorities, they often do not agree with the decision of the court of first instance and frequently decide the matter in the exact same manner, only adjusting some of the substantiation, thereby contributing to the back-and-forth between the administration and the judiciary (sometimes referred to as "ping-pong"). The authorities would prefer to obtain the view of the highest court instance – which they consider as authoritative and final – but current doctrine does not allow this.

Albania and Kosovo have established restrictions on the right of appeal, based on the value of the claim in an administrative dispute. In Albania, appeal to second instance is not allowed in disputes with a value less than 20 times the minimum salary and appeal to highest instance is not allowed in disputes with a value less than 40 times the minimum salary[55]. This applies to administrative disputes, where the monetary value can be estimated (e.g. disputes on access to public information are not covered by this rule). As the Albanian administrative judiciary also handles complaints against decisions in administrative infraction cases (e.g. monetary fines), this rule is mainly intended to limit the possibility to appeal on fines with low monetary value. In Kosovo*, in administrative disputes of a fiscal nature access to the Supreme Court is only possible in disputes with a value higher than EUR 30 000[56]. A rather high threshold (considering the average gross salary of EUR 521 in 2022), which can disproportionately limit access to the highest court instance, which is in charge of ensuring uniform court practice.

Restrictions on the right to appeal to the highest court instance are also not uncommon among EU Member States (and are considered compatible with Article 6 of the European Convention of Human Rights[57]), but they are usually not based on monetary value of the claim/complaint, the existence of the possibility for administrative appeal or the fact, whether the first instance decision was made in full jurisdiction or not. As common practice, the appeals or cassation requests to the highest court instance have to generate

[53] For example, according to the annual report of the Administrative Court in Montenegro, it resolved 7 039 cases in total in 2020, of which 68 (i.e. less than 1%) were in full jurisdiction. Such explicit information is not available for later years or for other countries, but in Serbia, for example, under Article 34 of the Law on Administrative Disputes, an oral hearing is mandatory when deciding in full jurisdiction and in 2022, an oral hearing was held in only about 4% of cases (1 080 hearings, 25 178 cases resolved). The share of cases decided in full jurisdiction is probably even lower than 4%, as the fact of organising a public hearing – while being a precondition for it – does not mean that the case was in fact resolved in full jurisdiction.

[54] Article 60 of the MKD Law on Administrative Disputes.

[55] The 2022 Law on Commercial Court established a similar restriction on the initiation of extraordinary legal remedies in the area of commercial administrative disputes (e.g. tax and customs). If the value of the dispute is under EUR 30 000, extraordinary legal remedy (i.e. contesting the decision in higher instance) is not possible. However, a draft Law on Administrative Court in the Assembly at the time of preparing this analysis would transfer commercial administrative disputes to the Administrative Court and would also remove this restriction.

[56] Article 14 (2) of the Law on Commercial Court. The adoption of the draft Law on Administrative Court (currently in Parliament) would remove this limit.

[57] ECHR, 9 March 1999, S.A. Immeuble Groupe Kosser v. France, No. 38748/97.

cassational interest, e.g. there is no established case law of the highest court in the matter, or the lower courts have not followed the established practice[58]. In Ireland, the grounds are formulated even more generally, the Supreme Court has appellate jurisdiction over the decisions of the Court of Appeal (i.e. the leave of appeal is granted), if 1) the decision involves a matter of general public importance, or 2) in the interests of justice it is necessary that there be an appeal to the Supreme Court. For example, in 2018, the Supreme Court granted leave for 37% of requests[59]. In France, the *Conseil d'État* admitted 24.5% of cassation appeals in 2018[60].

2.4. Chapter summary

The basic preconditions for effective access to administrative justice – apart from long duration of procedures and lack of trust – are relatively well established in the Western Balkans. The laws regulating administrative disputes provide the possibility of turning to court with all main claim types – as a rule – without any disproportional restrictions. However, the deadlines for submitting complaints to court against administrative silence in Albania and North Macedonia can be too short, and the fees for initiating administrative disputes can reduce access in Bosnia and Herzegovina and Kosovo*. In Bosnia and Herzegovina, North Macedonia and Serbia, it is not possible to complain directly against administrative action; the plaintiff first needs to obtain an administrative act refusing the requested action to be able to submit a complaint against this act. This presents an unnecessary bureaucratic step, but is not an insurmountable obstacle to access. Legal aid is available throughout the Western Balkans in administrative disputes, but its quality is problematic in Kosovo*, due to the poor organisation of work by the Agency for Free Legal Aid.

The cost of legal representation and its compensation if the complaint is upheld by the court deserves specific attention in the Western Balkans, when analysing possible challenges related to access to justice. First of all, in Kosovo*, the cost of legal representation is not compensated, regardless of the outcome of the case; the principle that the party that lost the dispute covers court costs will only be introduced in early 2025, when the new Law on Administrative Conflict takes effect. Secondly, the cost of legal representation in Bosnia and Herzegovina, Kosovo*, Montenegro and Serbia – as established by the tariffs adopted by the bar associations – exceeds the fee levels in EU Member States with higher levels of income. The current tariffs are distorting the market for legal representation and are providing monetary incentives to lawyers to abuse the system. Lawyers in Montenegro and Serbia have been producing hundreds and thousands of requests for public information, which the public authorities are not able to respond to in a timely manner, in order to claim the compensation for (excessive) court costs when the court confirms administrative silence. This is causing direct costs for the state and significantly reduces access to justice

[58] Descriptions of filtering systems in Austria, Latvia and Spain are available in the materials of the ACCA. seminar on 'Functions of and Access to Supreme Administrative Courts', Berlin, 13 May 2019: https://www.aca-europe.eu/index.php/en/evenements-en/725-berlin-13-may-2019-seminar-functions-of-and-access-to-supreme-administrative-courts.

[59] Presentation at the Supreme Court of Ireland on "Filter Systems for Appeals to the Supreme Administrative Courts at the ACA Europe Seminar – Functions of and Access to Supreme Administrative Courts", Berlin, 13 May 2019, https://193.191.217.21/images/media_kit/events/0068/pdf/Elizabeth_Dunne_-_Filter_Systems_for_Appeals_to_the_Supreme_Administrative_Courts.pdf.

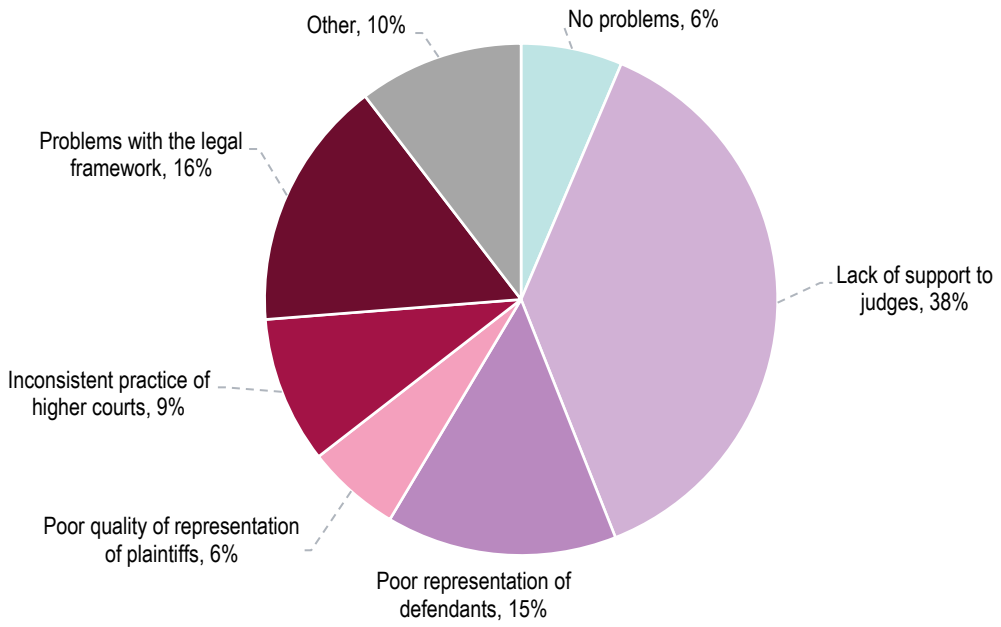
[60] Presentation from the Conseil d'État on "*Le filtrage des pourvois en cassation devant le Conseil d'État*" at ACA Europe Seminar – Functions of and Access to Supreme Administrative Courts, Berlin, 13 May 2019, https://193.191.217.21/images/media_kit/events/0068/pdf/Yves_Gounin_-_Le_filtrage_des_pourvois_en_cassation_devant_le_Conseil_dEtat.pdf.

for all, as the courts are not able to resolve the huge flood of complaints, and the duration of court procedures is further increased.

3 Administrative court process

Administrative court process has to be efficient and effective. Efficiency in this context is not necessarily measured by the number of cases resolved but by the duration of the procedure, as well as the resources spent obtaining the desired result. This can depend on variables such as the size of the judicial panel, the availability of support staff for judges, the number of court instances, but also the judges' level of specialisation. The effectiveness of the court procedure is monitored through the actual impact and consequences of the judgement. This can depend on the mandate and the role of the judge, (again) the level of specialisation and on the level of involvement of the administrative authorities in the administrative court procedure. Attention should be paid to whether the court judgement "settles" the dispute and brings finality and legal clarity to the parties, as well as whether the administrative body in similar cases in future and the administration in general has been positively influenced by the court decision.

Figure 16. Main issues affecting the efficiency of the administrative court process in the Western Balkans



Source: SIGMA data collected through surveys conducted at roundtables held during the preparation of this analysis, with 72 responses from 6 surveys. Judges were asked to select a single answer option.

Western Balkan judges consider lack of support to judges as the main problem affecting the overall efficiency of administrative court proceedings. This was cited as the biggest challenge for judges from Bosnia and Herzegovina, Kosovo*, North Macedonia and Serbia. Lack of support is not only understood as lack of support staff (although that is an important element) but can also mean lack of adequate IT

systems or premises (as highlighted by Kosovo* judges). The second most common problem was related to the legal framework. In Albania, the judges were critical of the quality of material laws, the inconsistency and poor quality of which make the judicial process more difficult and time-consuming. For Serbian judges, the problems with the legal framework are also causing the lack of support for judges. According to the institutional set-up established in the laws, the number of judges is determined by the High Judicial Council, while the number of legal assistants is determined by the executive (the Ministry of Justice and Ministry of Finance) and subsequently, increases in the judicial posts are not always followed by an equal increase in the number of legal assistants. Some Serbian judges were also critical of the restrictions in the Law on Administrative Disputes for initiating extraordinary legal remedies. The third most common challenge reported was the poor quality of representation of the defendants (i.e. public authorities).

This chapter focuses on the availability of support for administrative judges (because this was highlighted as a key challenge in the responses by Western Balkan judges), including the availability of support staff and information and communications technology (ICT), the mandate and the role of the administrative judges in the Western Balkans to handle administrative disputes efficiently and effectively, as well as certain other elements that may influence the efficiency and effectiveness of the court procedure, including the size of the panel, the share of cases decided with a public hearing, specialisation of judges and representation of public authorities in administrative disputes. The selection of elements influencing efficiency and effectiveness is not intended to be exhaustive. Preference is given to elements of importance in resolving the main challenges identified in Chapter 1 (backlogs, length of administrative court process and the ability to hold the executive accountable).

3.1. Support for judges: support staff and ICT

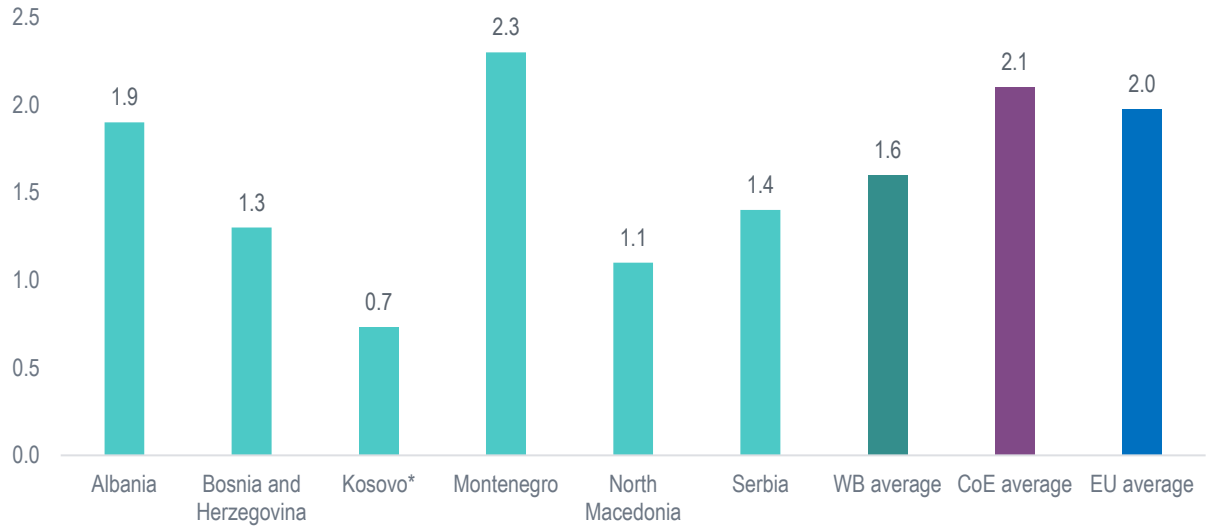
Comprehensive comparative information about the staff specifically supporting administrative judges in EU or Council of Europe Member States is not available, but the CEPEJ has compiled data on the number of staff supporting all judges, including staff supporting judges handling civil, criminal and other cases. Of the categories of staff supporting judges, our main focus is on non-judge (judicial) staff, i.e. staff directly assisting a judge (with assistance during hearings, judicial preparation of a case, judicial assistance in the drafting of the judge's decisions and with legal counselling). These are usually legal advisers or professional associates and different from the administrative and technical staff, as well as from the *Rechtspfleger*[61].

EU Member States and Western Balkan jurisdictions have significant disparities in the number of non-judge (judicial) staff available per judge. Here, too, the averages or medians do not always reflect accurately the full extent of differences between different jurisdictions. For example, Austria has 0.17 non-judge (judicial) staff members for each judge, compared with 5.01 in Ireland and 5.86 in Malta. When making such comparisons, it should be noted that there is apparently no direct correlation between the number of non-judge (judicial) staff per judge and the overall efficiency of the judiciary. According to the EC Justice Scoreboard 2023, the five EU Member State judiciaries with the shortest estimated disposition time in civil, commercial, administrative and other disputes include jurisdictions with very different ratios of support staff per judge – Denmark (0.03 non-judge (judicial) staff per judge), Estonia (2.53), Latvia (1.89),

[61] An independent judicial body according to the tasks that were delegated to him/her by law. Such tasks can be associated with family and guardianship law, the law of succession, land register law, commercial registers, decisions about granting a nationality, criminal law cases, enforcement of sentences, reduced sentencing by way of community service, prosecution in district courts, decisions concerning legal aid, etc. CEPEJ report, p. 52 (https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279).

Slovenia (1.15) and Austria (0.17)[62]. The ratio between the number of judges and non-judge (judicial) staff thus depends on the specificities of the respective judiciary, with no right or wrong ratio. That is not to say that support staff for judges are not important, but simply that the nature of the procedure usually determines the appropriate ratio. In a jurisdiction with a high reliance on public hearings, for example, the need for support staff is probably lower than in a jurisdiction where the procedure is mostly in writing, simply because it is more difficult to delegate hearing-related tasks to non-judicial staff than it is to delegate the preparation of (draft) documents.

Figure 17. Number of non-judge (judicial) staff assisting judges (per judge)



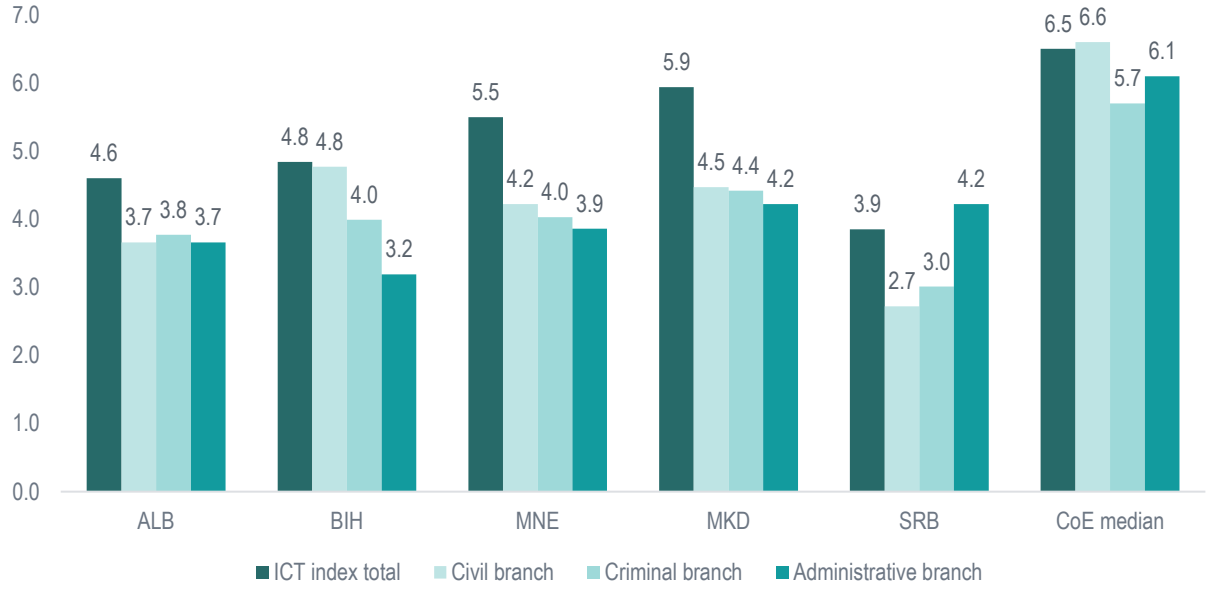
Note: Non-judge (judicial) staff directly assist a judge with judicial support, including assistance during hearings, (judicial) preparation of a case, judicial assistance in the drafting of the decision of the judge, legal counselling (e.g. court registrars). The figure depicts the share for the entire judiciary, not just the administrative branch. According to administrative data provided to SIGMA by Western Balkan judiciaries, there is one legal adviser supporting each first instance administrative judge in Kosovo*, Montenegro, North Macedonia, and 1.1 legal advisers per administrative judge in Serbia (as of 2023). In Albania, there are no legal advisers supporting first instance administrative judges.
Source: CEPEJ 2022

The second key element of support to judges is the availability of relevant ICT tools, e.g. case management systems and databases for searching for relevant judicial practice. The Council of Europe/CEPEJ report on the evaluation of judicial systems notes that the degree of ICT development among Western Balkan judiciaries[63] is below the CoE median level. The CEPEJ measures the ICT Deployment Index, which includes three components: communication with courts, courts and case management, and decision support. Montenegro and North Macedonia perform the best of the Western Balkan judiciaries. The index is also measured separately for the three main branches of the judiciaries: civil, criminal and administrative. It is noteworthy that in all Western Balkan judiciaries except Serbia, the score of the ICT index for the administrative branch is the lowest, which is not the case generally among CoE members.

[62] EC Justice Scoreboard 2023, https://commission.europa.eu/document/download/db44e228-db4e-43f5-99ce-17ca3f2f2933_en?filename=Justice%20Scoreboard%202023_0.pdf.

[63] Kosovo* is not included, as a non-CoE member.

Figure 18. ICT index in Western Balkan and CoE judiciaries



Source: 2022 cycle of the evaluation of judicial systems conducted by the CoE/CEPEJ.

All Western Balkan administrative judiciaries deploy a case management system, but the annual reports on caseloads, for example, are still prepared (at least partially) based on manually collected data in Albania as well as in Kosovo*, which indicates that the data in the case management system may not yet be fully reliable. Only the case management systems in North Macedonia and Serbia contain the functionalities for finding relevant case-law for helping judges to decide on the matter. Elsewhere in the Western Balkans the IT tools are not significantly useful for lowering the workload of judges or their assistants.

Another important aspect of the use of ICT in the judiciary is the online publication of judgements, which are often also the databases used by the judges for identifying relevant judicial practice. Most EU Member States have freely accessible databases available to retrieve previous rulings by the administrative courts (in Belgium, Bulgaria, Croatia, Czechia, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, the Slovak Republic, Slovenia and Spain). Some rulings on manifestly inadmissible or unfounded cases (The Netherlands) or on specific areas of interest (such as immigration in The Netherlands or legislation on foreigners for Belgium) are not published. In some countries, restrictions are placed on the publication of minor disputes (Finland)[64].

[64] General Report of the ACA-Europe Seminar Law, Courts and guidelines for the public administration, Fiesole, Italy, https://193.191.217.21/seminars/2021_Fiesole/2021_Fiesole_General_Report_en.pdf.

Table 6. Publication of judgements online (2023)

	ALB	BIH	XKV	MNE	MKD	SRB
Judgements in first instance administrative disputes published online	8 895 of 9 527[65]	Less than 1% of resolved cases[66]	1 453 of 2 885[67]	3 422 of 7 081[68]	4 083 of 6 184[69]	1 308 of 27 683[70]
Judgements in administrative disputes of the highest court instance published online	2 209 of 2 921[71]	Less than 10% resolved cases	Nearly all (268 of 311)	All (855 judgments)	All (2 311 of 2 315)	32 of 411[72]

Source: Statistics on number of resolved cases obtained from annual reports, number of judgements published verified from court websites and through administrative data provided to SIGMA.

All Western Balkan judiciaries publish some judgements in administrative disputes online, but not always consistently. Judgements of the highest court handling administrative disputes are published on a relatively consistent basis in Albania, Kosovo*, Montenegro and North Macedonia. Bosnia and Herzegovina and Serbia publish judgements in fewer than 10% of cases resolved by the highest court instance. First instance judgements are published consistently only in Albania, more than half of the first instance judgments are also published North Macedonia. As a rule, it is possible to search for decisions by case number, date of the decision and name of the judge, but it is difficult to obtain an overview of relevant administrative case law in a given legal matter or area (e.g. tax, customs, public procurement), because publicly available online search by substance-related criteria is usually not possible, even when cases are classified by substance of the dispute in most case management systems (Bosnia and Herzegovina and Kosovo* are the only exceptions).

The challenges with using the case management systems for the collection of reliable statistics, the lack of functionalities that would offer more support for judges and their assistants as well as inconsistencies in

65 https://www.gjykata.gov.al/gjykata-administrative-e-shkalles-se-pare-tiran%C3%AB/gjykata-administrative-tiran%C3%AB/c%C3%ABshtjet-gjyq%C3%ABsore/c%C3%ABshtjet-administrative/ and https://www.gjykata.gov.al/gjykata-administrative-e-shkalles-se-par%C3%AB-lushnj%C3%AB/gjykata-administrative-lushnje/c%C3%ABshtjet-gjyq%C3%ABsore/c%C3%ABshtjet-administrative/ and https://www.gjykata.gov.al/gjykata-administrative-e-apelit/gjykata-administrative-e-apelit/c%C3%ABshtjet-gjyq%C3%ABsore/c%C3%ABshtjet-administrative/

66 Twenty-five decisions in the Federation of Bosnia and Herzegovina, 14 decisions in the Republika Srpska, 5 in the Brčko District for 2022 (https://csd.pravosudje.ba/).

67 https://www.gjyqesori-rks.org/aktgjykimet.

68 https://sudovi.me/sdvi/odluke.

69 sud.mk.

70 https://www.sudskapraksa.sud.rs/sudska-praksa.

71 http://www.gjykataelarte.gov.al/.

72 https://www.vk.sud.rs/.

the publication of judgements, indicate that the use of ICT is not yet fully embedded in the overall functioning of the majority of administrative judiciaries in the Western Balkans.

3.2. Mandate and role of the judge

The main objective and purpose of the procedure in the administrative court is to protect the fundamental rights of individuals and legal persons against the executive power. The administrative courts must ensure that public authorities respect the law in the exercise of their powers and functions. The constitutional requirement of separation of powers presumes that in controlling the actions of the public authorities, the administrative court does not assume the competence of the executive branch. Administrative courts exercise legal (judicial) control and leave questions of expediency, policy, style, etc., as well as complex economical assessments, to the margin of appreciation of the executive branch (administrative discretion). However, the administrative courts must be fully competent to make decisions related to questions of facts and law (except in exceptional circumstances).

The trial in administrative disputes in EU Member States' administrative judiciaries may be inquisitorial or adversarial in nature. No model is clear-cut, but the tendency towards an inquisitorial approach – where judges are empowered to order investigative measures like visits to the scene, gathering evidence when the parties' submissions are insufficient – is more common[73]. Administrative courts using this approach are not so much silent, passive arbitrators but active investigators and "master" of the proceedings. The more active role of the administrative judge in EU Member States is evident in different stages of the procedure, including when 1) ensuring equality of parties, 2) gathering evidence and 3) deciding on the matter. The following sub-chapter analyses some of the possible reasons why Western Balkan administrative judiciaries have so far applied a less active approach.

3.2.1. Ensuring equality of parties and gathering evidence

The plaintiff in an administrative dispute is usually in a less advantageous position than the defendant (in terms of knowledge and information, resources, etc.). Procedural norms in the inquisitorial model should balance out that inequality, traditionally by conferring on the court a somewhat more active role and extensive tools to resolve the administrative dispute, especially in cases where the plaintiff is not professionally represented. Procedural rules should ensure that the court actively manages the case by ascertaining the practical objective of the plaintiff and relevant legal claims that are necessary and appropriate to achieve that objective (including by helping to formulate the claims, where needed), by ordering the defendant to present the administrative case materials and responses to the plaintiff's claims and allegations.

As a rule, the administrative judges in the EU Member State are bound by the claim and cannot convert one claim/action into another *ex officio*. In some jurisdictions, however, the administrative judge is significantly more active than the civil judge already at the initiation of the procedure. In Germany and Poland, the court is obliged to determine the nature of the claim based on the content of the statements (rather than the type of the claim specified by the plaintiff). In Estonia, the court must explain to applicants how to defend their rights effectively. In Hungary, in exceptional cases, the judge may even change the

[73] "Administrative Justice in Europe", Observatory for Institutional and Legal Changes of the University of Limoges, 2007, p. 55.

cause of action, if it is in the interest of the party. In Portugal, again under certain circumstances, the judge may determine the appropriate type of procedure for the specificities of the case[74].

Nearly all Western Balkan judges, when handling administrative disputes, are bound by the limits of the claim, but not the reasons[75], which allows them a more active role than the civil judge. The only exception is in the Federation of Bosnia and Herzegovina, where the role of judges when deciding in administrative disputes is significantly narrower, as they are bound by the limits of the claim, as well as the reasons[76]. The role of assisting the uninformed party is most explicitly acknowledged in the Kosovo* Law on Administrative Conflicts, which states that "at every stage of the proceedings, the court shall provide the participants of proceedings sufficient and clear explanations to ensure that no claim or evidence necessary to protect their rights or interests remains unknown due to lack of experience in legal affairs and to ensure that any formal shortcomings in the submissions of the participants that would lead to their non-admission are normally completed or clarified"[77]. The other Western Balkan procedural laws do not define as clearly the obligation of the judge to provide assistance, although in Albania, the law explicitly states that the defendant (public authority) has a more extensive burden of proof than the plaintiff[78].

The Western Balkan administrative judiciaries also have the mandate to establish the facts of the case on their own initiative[79], but this is somewhat limited under the procedural laws of Bosnia and Herzegovina, Montenegro and Serbia. First, the court is only allowed to establish facts of the case at the public hearing (i.e. the investigative role of the court depends on whether a hearing is held) and, secondly, only when the court is deciding in full jurisdiction (i.e. the judgement replaces the administrative act in full)[80]. In the Federation of Bosnia and Herzegovina, according to interpretations of the Law on Administrative Disputes, the public hearing can be held only upon the initiative of the parties, not the judge[81]. In practice, holding public hearings is rare in Serbia, and in the Republika Srpska in Bosnia and Herzegovina (where it occurs only in 4%-5% of cases) and deciding in full jurisdiction is even rarer (e.g. in 1% of cases in Montenegro in 2020[82]). This effectively means that in these three jurisdictions, the investigative role of the administrative

[74] Country reports on Germany, Hungary, Poland and Portugal from a seminar organised by the Council of State of Italy and ACA-Europe on "Techniques for the protection of private subjects in contrast with public authorities: Actions and remedies – liability and compliance", https://www.aca-europe.eu/index.php/en/seminars/928-seminar-in-rome-on-23-may-2022.

[75] ALB Article 17 (2), BIH_State Article 35, BIH_RS Article 35, BIH_BD Article 30, MKD Article 35, MNE Article 34, SRB Article 41.

[76] Article 34 of the BIH_FBIH Law on Administrative Disputes.

[77] Article 9 (2).

[78] ALB Article 35.

[79] See Article 50 in the Kosovo* Law on Administrative Conflicts adopted in 2023, and Article 35 of the MKD Law on Administrative Disputes. The 2010 Kosovo* Law on Administrative Conflicts – which remains in force until the end of 2024 – contains the same provisions as the laws of BIH, MNE and SRB (Article 43).

[80] See Article 34 of BIH_State law, Article 33 in BIH_FBIH, Article 29 in BIH_RS and BIH_BD; Article 36 in MNE and Article 33 in SRB.

[81] Predrag Krsmanovic, "Organisation and jurisdiction of administrative courts and administrative disputes with full jurisdiction in Bosnia and Herzegovina", an analysis by the Center for Public Law Foundation, p. 18, www.fcjp.ba/index.php/-95733.

[82] According to the annual report of the court on 2020 (https://sudovi.me/static//uscg/doc/Izvjestaj_o_radu_Upravnog_suda_Crne_Gore_za_2020_godinu.pdf): 7 039 cases

judge is in practice significantly more limited than in the EU Member States and that frequently, disputes end with a cassatorial judgement. That is, the administrative acts are annulled, and the case is returned to the defendant or the first instance authority to be reconsidered.

3.2.2. Deciding on the matter

The court substituting the administrative act with its judgment (the equivalent of deciding "in full jurisdiction" in the Western Balkan context) is possible in the majority of EU Member State judiciaries, with certain limitations, e.g. it can depend on the type of claim or the category of the dispute and is usually not possible in cases where the administration has to apply its discretionary powers[83]. There is, however, a general tendency to reinforce judicial control over the use of discretionary power as well (over the competence of the public organ, procedural rules, correct assessment of the factual situation, respect of the public interest, compliance with general principles, etc.[84]).

Far more common than deciding in full jurisdiction – in terms of the number of cases – is the practice that, when deciding on the dispute and annulling the administrative act, the EU Member State judge dictates provisions the public administration authority must abide by when reconsidering the case[85]. Many European judicial systems have realised that the abolition of an administrative action is often in itself both insufficient and excessive, as it creates a legal void that is difficult to fill. The judge can help to overcome this by pointing the administration to the path to follow and the laws to be applied, and then ordering the action that should be taken. In several countries, the powers of declaration and injunction have been developed for the administrative courts' benefit. These powers permit them to go beyond the annulment of illegal decisions and to help re-establish administrative legality by indicating to the administration how to draw the consequences of abolition[86]. Deciding in substance also precludes conducting possible new administrative and court proceedings on the same administrative matter, reducing the potential costs for the parties brought by opening of new proceedings[87].

The obligation to provide guidance to the administration in the court judgement is explicitly stated in the procedural laws of Kosovo* and North Macedonia[88], not elsewhere in the Western Balkans (but it is also not forbidden). This approach requires investigating the substance of the dispute and examining the case thoroughly, which, based on the available evidence, is not common in the Western Balkans. According to

decided in total, 68 in full jurisdiction. Concrete figures are not available for later years or other jurisdictions, but in Serbia, the share of cases decided in full jurisdiction is considered "negligible" ("Functional Analysis of the Administrative Court", GIZ, p. 88; also White Book of the Foreign Investors Council for 2022, www.fic.org.rs).

[83] See materials from the ACA-Europe seminar "Techniques for the protection of private subjects in contrast with public authorities: Actions and remedies – liability and compliance", https://www.aca-europe.eu/index.php/en/seminars/928-seminar-in-rome-on-23-may-2022. For example, in Cyprus, substituting the administration is allowed in tax and asylum cases; in Greece in social security, tax and election disputes; and in Luxembourg, depending on the type of claim. Substituting the administration is not allowed in Ireland and Romania.

[84] "How to conciliate executive accountability and judicial review?" Jean-Marie Woehrling, presentation delivered at Conference on Public Administration Reform and European Integration Budva, Montenegro, 26-27 March 2009.

[85] In Hungary, Portugal and the Slovak Republic, this approach is not only allowed but one of the court's obligations under the procedural laws. See country responses to the ACA-Europe seminar: https://www.aca-europe.eu/index.php/en/seminars/928-seminar-in-rome-on-23-may-2022.

[86] Ibid.

[87] Rijad Delic, "Administrative Dispute of Full Jurisdiction in Bosnia and Herzegovina and the Countries of the Southeast Europe", https://journal.fu.unsa.ba/index.php/uprava/article/view/158/161.

[88] See Kosovo* law Articles 65 and 66, MKD law Article 62.

the Foreign Investors Council of Serbia, for example, the Administrative Court generally confirms the decision of the administration in tax and competition cases without providing a reasoned explanation, or exceptionally, cancels the contested decision based on procedural grounds and returns the procedure to the second instance administrative body without going into the substance, further prolonging the process[89]. In case of violations of legal norms or incorrect establishment of the factual situation by the public authority, Western Balkan courts tend to annul the administrative act and return the case for reconsideration to the public administration, which is often the start of the ping-pong of the dispute between the administration and the court[90].

3.2.3. Reasons for differences in approach between EU and Western Balkan administrative judges

One of the objective reasons why Western Balkan judges are less inclined to decide in substance than their counterparts in EU Member States could be the caseload, especially where, as in Montenegro and Serbia[91], the number of incoming cases has increased significantly in recent years or where the caseload is simply very high (Albania). It is also important to keep in mind the purely quantitative approach to performance appraisal of judges that is predominant in the Western Balkans. All Western Balkan jurisdictions have adopted norms for annual caseloads, which the judges need to meet to pass the annual performance appraisal successfully. All Western Balkan judges currently succeed in this, except in North Macedonia. Spending additional time on each case to go into the substance of the dispute and to provide guidance to the administration, however, can undermine the ability of the judge to meet the norm.

International bodies do not recommend basing appraisal of judges only or predominantly on quantitative criteria. They highlight the importance of qualitative criteria such as knowledge and professional skills and personal and social competences. When measuring workloads based on the number of cases, a system must be in place to evaluate the weight and difficulty of different files[92]. In North Macedonia, annual norms for cases to be resolved by administrative judges is somewhat differentiated – varying between 18 and 30 cases per month, depending on their complexity (as of 2023). In Kosovo*, the regulation of norms adopted by the Judicial Council in 2023 allows some differentiation between general administrative disputes and

[89] White Book of the Council for 2022, pp. 104, 175 and 182. https://fic.org.rs/wp-content/uploads/2022/11/White-Book-2022.pdf.

[90] For more information on this phenomenon in Kosovo*, see “Administrative Justice in Kosovo*, Law vs. Practice”, Kosovo* Law Institute, 2019, https://kli-ks.org/wpcontent/uploads/2019/09/Drejt%C3%ABsia-Administrative_Final-19.09.2019-BM.pdf; in Montenegro, “Let’s talk about effects! ...or gaps in reporting on public administration reform in Montenegro”; Institut Alternativa, http://media.institut-alternativa.org/2018/06/praznine-uizvjestavanju_eng.pdf, and “Analysis of the Legal Framework and Case-Law of Montenegrin Courts in the Implementation of Effective Remedies in Respect of a Trial within a Reasonable Time” by Mirjana Lazarova Trajkovska, Maja Velimirović, Council of Europe, 2019, https://rm.coe.int/eng-finalna-analiza-duzine-sudskih-postupaka-u-crnoj-gori/1680966dd7; in North Macedonia, see “Strategy for Reform of the Judicial Sector 2017-2022”, Ministry of Justice, http://justice.gov.mk/Upload/Documents/Strategija%20i%20akciski%20plan_ANG-web.pdf; for Serbia, see “Analysis of Causes of Excessive Workload of the Administrative Court and Increase in Case Inflow” by: Aleksandar Stojanović, Biljana Braithwaite, Dobrosav Milovanović, Dušan Protić, Mirjana Lazarova Trajkovska and Vuk Cucić, Belgrade, February 2020.

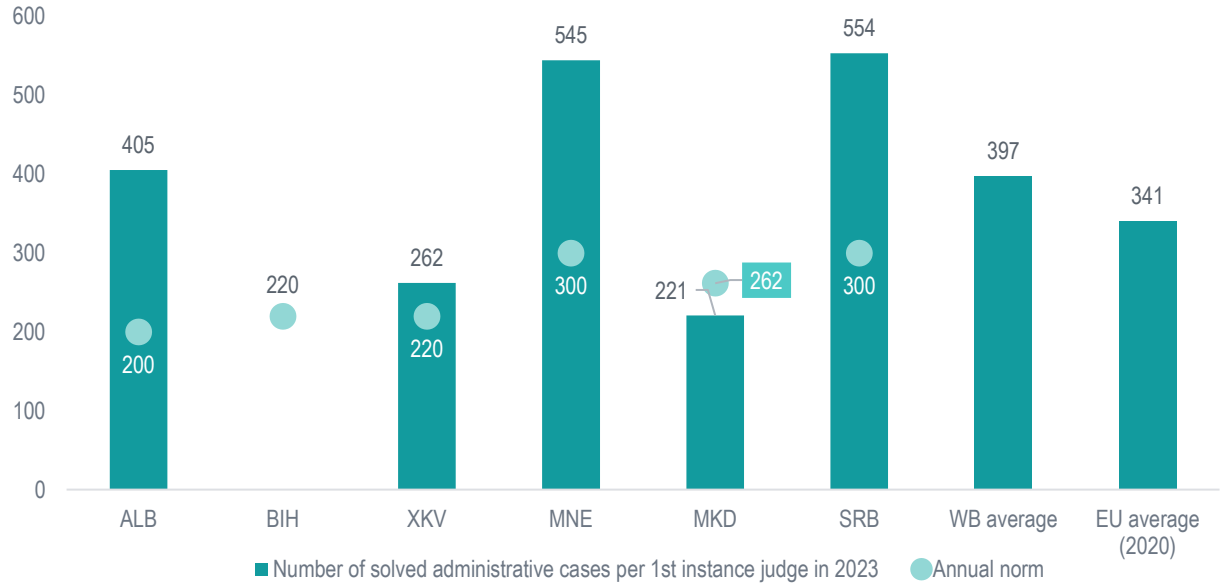
[91] High caseload was mentioned as one of the main reasons for not deciding in full jurisdiction by Serbian judges according to the Functional Analysis of the Administrative Court of Serbia prepared by the GIZ project “Strengthening the Rule of Law in the Republic of Serbia”, pp. 88 and 94.

[92] “Portrait of a Judge, Book I”, p. 12, https://obchod.wolterskluwer.cz/cz/portrait-of-a-judge-book-i-development-of-a-model-of-selection-evaluation-and-promotion-of-judges-principles-selected-comparative-aspects-and-model-of-competences.p7835.html.

complex disputes (on administrative contracts or construction permits). In addition, the Kosovo norm aims to discourage the return of the case to the administration for reconsideration – and instead motivate the judge to adopt a final decision that settles the dispute – as a 50% lower norm is foreseen for all administrative disputes that end with such a judgment[93]. It remains to be seen, how the norm can be applied in practice and what kind of consequences it will have for the judicial practice.

In other Western Balkan administrative judiciaries, this is not yet the case, although caseload quotas for civil as well as criminal cases are already more varied and based on an estimate of actual workload (e.g. in Serbia). This effectively means that current workload measurement systems for administrative judges in the majority of Western Balkan judiciaries discourage specialisation of judges on complex cases like tax, customs, competition, etc.

Figure 19. Cases resolved annually and norms for Western Balkan administrative judges (2023)



Note: Bosnia and Herzegovina judges are not specialised in administrative disputes and it is thus not possible to calculate the annual caseload. The norm for North Macedonia is calculated as a weighted average between the maximum (315) and the minimum (189), taking into account the actual number of cases resolved in each group in 2023. For Kosovo*, 220 is the norm established in 2023 for general administrative disputes (the norm differs for complex cases and can depend on the content of the judgement, since returning the case to administration is valued less).
Source: Annual reports of courts.

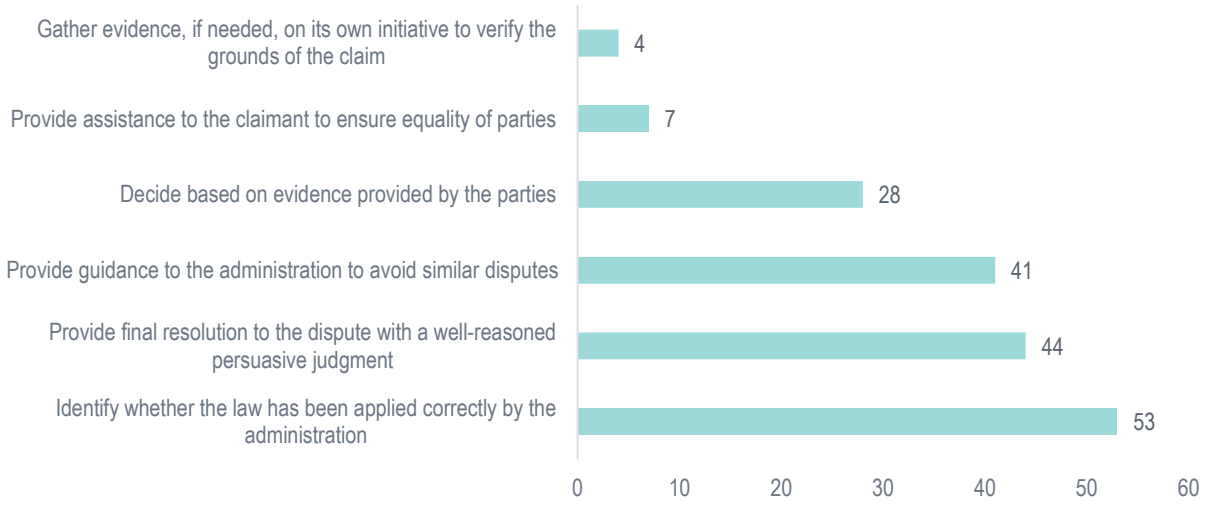
The figures on annual caseload mean that on average a Western Balkan administrative judge decides 1.5 to 2 cases every working day. In addition, in Montenegro, North Macedonia and Serbia, the numbers do not take into account the fact that cases are handled by a panel of three judges, i.e. effectively, the number of cases where one administrative judge is involved is up to three times higher.

The second reason for the less active approach of Western Balkan administrative judges could be the practice or prevailing legal doctrine and on how the Western Balkan judges understand their role. According to surveys of judges conducted at roundtables held during the drafting of this study, the most important role of the administrative judge is to decide whether the law has been applied correctly by the

[93] https://www.gjyqesori-rks.org/wp-content/uploads/lgsl/49162_Rregullore_Nr_03_2023_per_normen_punes_se_gjyqtareve.pdf.

administration. This indicates a slight preference for considering the primary role of the judge as simply to guarantee the correctness of administrative action. The role to provide a final resolution to the dispute with a well-reasoned judgement – characteristic of an administrative judge whose job is to determine what the law calls for in the given situation and what the rights at stake are – was the second most preferred option among Western Balkan judges, but the use of tools and techniques for applying this more active role (e.g. assisting the claimant, gathering evidence) were among the least preferred roles. All the answers to the survey question are correct in principle, and differences in response preferences are not significant, but they can be useful to help explain current judicial practice.

Figure 20. The principal role of Western Balkan administrative judges



Source: SIGMA data collected through surveys conducted at roundtables held during the preparation of this study; 177 responses from six roundtables. Judges were asked to choose up to three answer options.

The fact that Western Balkan judges fear that if they take on a more active role, responsibility for substantive resolution of the matter will be transferred from the authorities to the court[94] can also explain their preference for a less active role. Another example of the preference of Western Balkan administrative judges for a narrower role in the delivery of effective legal remedies is the handling of public liability disputes: although the Western Balkan administrative judges have the legal mandate to decide on the compensation of damages together with confirming state's liability, they usually leave the determination of the appropriate compensation to civil judges.

Kosovo* and North Macedonia, where administrative judges also handle misdemeanour cases, offer another specific example of not deciding in substance. If the court finds the fine imposed in misdemeanour proceedings is not justified, the judge is not permitted to adjust (i.e. lower) the fine but must return the case to the administration for reconsideration. First, such an approach is not efficient from the perspective of

[94] This was cited by Serbian judges as a reason for not deciding in full jurisdiction, according to the Functional Analysis of the Administrative Court of Serbia prepared by the GIZ project "Strengthening the Rule of Law in the Republic of Serbia", p. 88.

spending public resources. EU jurisdictions such as Italy, Lithuania and the Slovak Republic[95], where administrative judges decide on administrative penalties, have the mandate to adjust the amount as well as the type of the sanction and to decide not to impose a sanction at all. Second, such an approach in misdemeanour cases can influence the judges to apply a similar approach in complaints against administrative acts; this is another argument in favor of removing the handling of misdemeanour cases from administrative judges.

3.3. Other elements influencing the efficiency and effectiveness of the procedure

3.3.1. Specialisation of judges

The administrative court controls the actions of government bodies and other public authorities that implement complex public policies and are presumably experts in their field. The administrative court is certainly competent to adjudicate aspects of the cases that deal with general issues of law (especially administrative law) and establishing facts. Some specialisation of judges is, however, usually needed for effective control of the activity of administrative bodies in more complex areas. The judges' experience and competence are essential to manage the case effectively and write a substantive judgement that is authoritative and compelling enough to persuade the parties in the case.

Familiarity with the entirety of law has become impossible, so specialisation among judges appear essential. Of course, the judges making up a jurisdiction/court must first be numerous enough to make this possible. It is also important that specialisation not be pushed to such an extent that a single or a few judges exercise an effective monopoly over certain areas. It is essential to find a middle path between too much and too little specialisation[96].

The experience of several EU Member States, e.g. Slovenia and Estonia, suggest that specialisation in specific categories of administrative disputes offers several benefits: more coherent court practice, a higher quality of judgements, and increased efficiency in handling cases and gaining the respect and trust of specialised professionals in the respective field. The models of specialisation also allow for managing the risks associated with specialisation that is too narrow.

Box 1. Models for specialisation of administrative judges: The example of Slovenia

The Administrative Court of the Republic of Slovenia has just over 30 judges, spread over four locations, with 20 located at the central unit of the Court in Ljubljana. The Law on Administrative Disputes only provides for a rudimentary form of specialisation, stipulating that some specifically listed types of cases (asylum, competition and taxation) be processed at the court's central unit. Some laws regulating individual, relatively narrow, legal fields contain similar provisions (e.g. the Law on Electronic Communication) and the general Law on Courts authorises the presidents of the courts to establish internal departments specialising in individual legal fields (e.g. civil, criminal, enforcement etc.).

[95] Country reports from the seminar held by the Council of State of Italy and ACA-Europe on "Techniques for the protection of private subjects in contrast with public authorities: Actions and remedies – liability and compliance", https://www.aca-europe.eu/index.php/en/seminars/928-seminar-in-rome-on-23-may-2022.

[96] « *Efficacité et qualité de la justice* », Georges Ravarani, president of the administrative court of Luxembourg), p. 14, https://193.191.217.21/seminars/Paris2013/Table2_Ravarani.pdf

Despite this slim legislative and personnel basis, three internal departments were created at the central unit of the Court, based on a decree of the president. Each of the departments specialises in a legal field that covers one of the (previously mentioned) types of cases, which have to be processed at the central unit of the Court, but in reality the rules for specialisation are formulated in a considerably wider manner. They can roughly be described as human rights, economic relations and environment, and public finance. The cases are distributed among the departments following a pre-determined list containing well over 100 types of cases. The rest of the case types (which constitute the majority in the actual quantity of cases) are considered "general" and distributed among all the judges, regardless of their specialisation.

Every judge at the central unit is assigned to one of the departments according to the yearly work schedule. Reassignments to other departments are possible, but rare. The right of parties to a lawfully assigned ("natural") judge is guarded by a separate case distribution system for each legal field and "general" cases, as well as by publication of the work schedule.

Experience has shown that despite the modest resources and effort required for this system to function, the results are excellent, providing most of the benefits expected of judicial specialisation (efficiency, coherent court practice, the respect/trust of specialised professionals in the respective field, etc.). The system is well-liked by the judges, efficient, flexible and adaptable to new circumstances, as demonstrated by the recent and unprecedented influx of asylum cases.

Source: Information from the Slovenian judiciary.

Western Balkan administrative jurisdictions – with the exception of North Macedonia – have not specialised more narrowly on certain categories of cases, although judges from all other jurisdictions expressed interest in this during the roundtables. One of the current obstacles to specialisation is the use of annual caseload norms for performance appraisal, which as a rule do not differentiate between complex and less complex cases. Western Balkan judges who want to specialise in certain complex categories would be voluntarily committing themselves to a higher workload than their colleagues'. A system of case weights that establishes differences in complexity between different case categories would have to be developed and approved by the judges. In some jurisdictions, e.g. Kosovo*, the case management systems must be enhanced and allow registration of data on the case categories (to allocate cases from specific categories to judges who specialise in handling them).

3.3.2. Size of the judicial panel for handling administrative disputes in first instance

Trends in the size of the judicial panel handling administrative disputes in EU Member States lean towards a single judge in first instance, except in cases of particular difficulty, and towards collegiality in higher courts[97]. Bosnia and Herzegovina State level, Montenegro, North Macedonia E and Serbia judiciaries do not follow this trend.

It is noteworthy that under North Macedonia law[98], all disputes of less than EUR 10 000 can be decided by a single judge. The fact that in 80% of the cases this is not so indicates either that the share of disputes with a high monetary value – more than 16 times the average gross monthly salary as of 2023 – is significant; or that the judges prefer to sit in a panel of three for other reasons.

[97] "Administrative Justice in Europe", Observatory for Institutional and Legal Changes of the University of Limoges, 2007, p 54.

[98] Article 16 (2).

Table 7. Size of the judicial panel in first instance administrative disputes in the Western Balkans

ALB	BIH	XKV	MNE	MKD	SRB
Nearly all cases by a single judge, except for complaints in administrative infractions with a sanction of deprivation of liberty	Most disputes at state level with a panel of three Most cases in BIH_FBIH, BIH_RS and BIH_BD by a single judge (three-judge panel possible in complex cases)	Single judge	Most cases by a panel of three judges, except for dismissals of the complaint	According to judges' estimates: 80% of cases by a panel of three judges; 20% by single judge	Most cases by a panel of three judges, except dismissals of the complaint

Source: Laws on handling administrative disputes in the Western Balkans, plus information from judges on actual practice.

Especially in Serbia, but to some extent also in Bosnia and Herzegovina State level and Montenegro, a disparity in the allocation of resources in the administrative judiciary appears to prevail. Handling of cases is resource-intensive in the first instance (given the requirement for the three-judge panel), while the share of cases handled by the second instance (which is also the highest instance) is limited, due to the restrictions for initiating extraordinary legal remedies (in Serbia, only 2% of the first instance cases are handled by the highest instance). It is likely that the two members of the panel spend less time on the case than the presiding judge, but it would nevertheless be possible to increase the throughput of first instance courts significantly (probably by doubling it) in Bosnia and Herzegovina State level, Montenegro, North Macedonia and Serbia, by stipulating that cases be handled by a single judge in the first instance. A majority of first instance cases in Montenegro and Serbia, especially after the recent wave of complaints against administrative silence, are not complex disputes that would require the presence of a three-judge panel. Reducing the size of the judicial panel would – in addition to increasing the throughput of the first instance court – make it possible to allocate more resources to the highest instance and allow wider possibilities for initiating extraordinary legal remedies (especially in Serbia). If more cases reach the highest court instance, it could be beneficial for the development of uniform and final court practice.

3.3.3. Public hearings for handling administrative disputes

Another aspect influencing the efficiency in the handling of administrative disputes is the issue of whether or not a public hearing is mandatory to decide a dispute. Although a public hearing is often seen as an essential guarantee of a fair trial under Article 6 of the European Convention of Human Rights, proportionate restrictions are also considered compatible with the Convention. In deciding on the need for a public hearing, the court would need to consider whether the dispute is purely of legal or factual nature, and also what is at stake for the parties and the overall fairness of the proceedings (Jussila[99], Salomonssen[100] cases).

Considerable differences exist among Western Balkan jurisdictions over the obligation to hold a public hearing to decide on an administrative dispute in the first instance. In Albania, two hearings on average

[99] Judgement available at https://hudoc.echr.coe.int/tur#{%22itemid%22:[%22001-78135%22]}.

[100] Judgement available at https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-60736%22]}.

are held for each administrative dispute, while in Bosnia and Herzegovina and Serbia, only 1%-4% of disputes are resolved with a public hearing.

There are different reasons for this. In Albania and Kosovo*, it seems to be a cultural phenomenon. Plaintiffs are interested in having their day in court and, according to judges, discussing matters at the hearing usually contributes to a better understanding of the case. Differences in the share of cases decided by a public hearing in Bosnia and Herzegovina are explained by the different procedural norms. A public hearing is mandatory in the Federation of Bosnia and Herzegovina if a party requires it, but elsewhere in Bosnia and Herzegovina, it is up to the discretion of the judge (which explains the significantly lower share of hearings in these jurisdictions). Federation of Bosnia and Herzegovina judges confirmed in discussions that they would also like the same level of discretion as the judges in state level courts, and in the Republika Srpska as well as the Brčko District.

Table 8. Share of cases decided with a public hearing in Western Balkan administrative disputes

ALB	BIH	XKV	MNE	MKD	SRB
On average, two hearings per case	In BIH_FBIH, 20%-30%, 5% in BIH_RS, 1% in BIH_BD and State level	Disputes usually solved with a public hearing	50% solved with a public hearing	90% solved with a public hearing	4% solved with a public hearing

Source: Information from annual reports of the courts and discussions with judges.

In North Macedonia, a public hearing is mandatory in first instance administrative disputes unless 1) the plaintiff disputes only the application of substantive law, and not the established factual situation; 2) if the court finds that the contested administrative act contains essential deficiencies that prevent evaluation of the legality of the act, and that it will annul the act; 3) other rarely occurring circumstances[101]. Judges are of the opinion that holding a hearing is usually unnecessary – one or both of the participants often do not even appear – and would like to exercise discretion in deciding whether it is necessity. However, they cannot avoid it, unless they discover essential deficiencies that prevent the evaluation of the legality of the act. No statistics are available to prove this, but it appears that the provisions of the law are encouraging judges to quash the administrative acts due to essential – procedural – deficiencies, rather than focusing on the substance of the dispute. In Montenegro, the high proportion of cases decided at a public hearing can be explained by the provision of the law (which was declared unconstitutional by the Constitutional Court in December 2023) that only in cases where a public hearing has been held can the costs of the procedure be compensated to the plaintiff (if the court upholds the complaint)[102]. A majority of plaintiffs thus ask for a public hearing, which, according to the judges, is often a mere formality, since all the facts in the case are clear.

3.4. Representation of the administration in administrative disputes

The quality of representation – on both sides – must be guaranteed by procedural rules and the actions of a judge in managing the case. Poor representation leads to delays and jeopardises the quality of the judgement and effective protection of fundamental rights and public interests. Poor representation of defendants (the public administration authorities) is the third most common problem influencing the

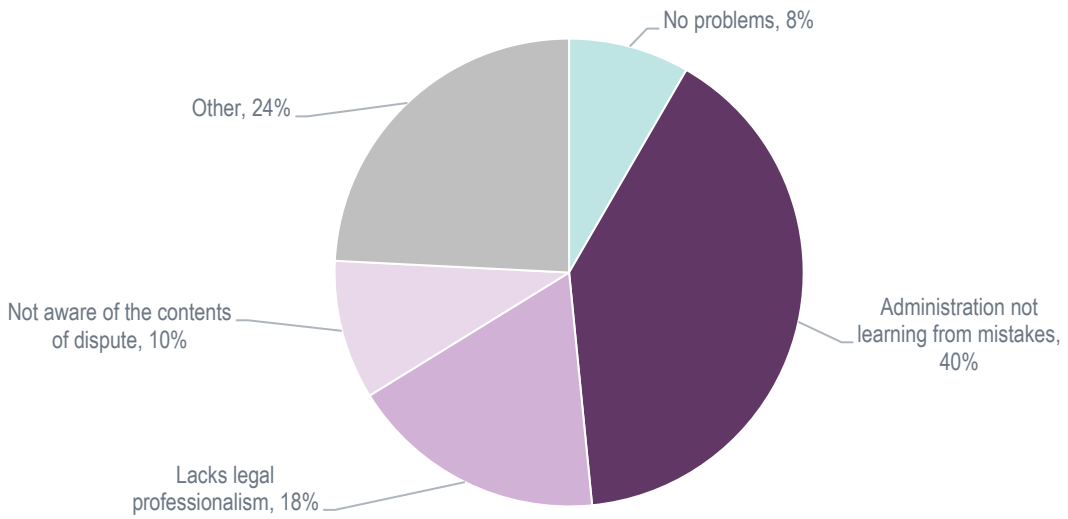
[101] See Article 38.

[102] Article 39 (1)

efficiency of administrative court procedures, according to Western Balkan administrative judges. The way in which this representation is organised thus deserves some attention.

According to the judges, the chief problem with the representation of the administration in court is an inability to ensure that the administration learns from mistakes (40% of Western Balkan judges on average agree on this, including 90% in Albania, 56% in Serbia and 41% in North Macedonia). This seems to be a far more significant problem than the absence of the other preconditions for effective legal representation, such as legal professionalism (18% of judges find this to be the main problem) or being aware of the facts of the case (10%). This appears to be a significant difference from the administrations of the majority of EU Member States, where – according to the results of the surveys conducted by the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU – "the guidelines expressed by the administrative judge, and in particular by the highest administrative court instance, are generally implemented by public administrations, even in the absence of a specific regulatory obligation, in application of the principles of legal certainty and fairness, and this is to avoid acts which potentially may not conform to jurisprudence and become the object of numerous disputes and subsequent annulments"[103].

Figure 21. Main issues in representing the administration in administrative disputes



Source: SIGMA data collected in surveys conducted at roundtables held during the preparation of this analysis; 72 responses collected from six roundtables. The judges were asked to choose a single answer.

As a rule, administrative authorities that have adopted the contested administrative act represent the public administration in administrative disputes. As mandatory administrative appeal is common in the Western Balkan public administrations, this means that the authority representing the public administration in administrative disputes is usually the authority that made the decision in the procedure deciding on the administrative appeal (a higher administrative authority, e.g. a ministry or a specially established appeal

[103] According to the General Report of the ACA-Europe Seminar "Law, Courts and guidelines for the public administration" this applies for Belgium, Czechia, Croatia, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, The Netherlands, Portugal, Romania, Slovak Republic and Slovenia, https://193.191.217.21/seminars/2021_Fiesole/2021_Fiesole_General_Report_en.pdf, p. 19.

commission), the so-called second instance administrative authority. However, some deviations from this rule or specificities influence the functioning of the model.

In some Western Balkan jurisdictions, a centralised authority has been mandated to provide legal representation in administrative disputes to most (the Attorney General in the Republika Srpska in Bosnia and Herzegovina and the State Advocacy Office in Kosovo*) or some of the state level public authorities (the State Bar in Albania and the Protector of Legal and Property Interests in Montenegro). The lawyers of the State Bar in Albania are appointed to either specific ministries (where they effectively work as court lawyers of the relevant ministry and its subordinate bodies) or to regional offices of the Bar (depending on the judicial map). They represent the state in disputes related to material/financial interests. In Montenegro, the Protector of Legal and Property Interests represents all state public authorities that do not have the status of a legal entity[104] (e.g. state agencies and funds are excluded).

The establishment of a centralised authority for legal representation can be seen as ensuring a higher level of legal professionalism than the models where each authority represents itself in court. However, in such models, it is important – especially in cases the state has lost – to ensure the transfer of knowledge from the centralised authority for legal representation to the authorities conducting the administrative procedures (to avoid similar errors and disputes in the future). In addition, it is important to provide adequate resources for the model to function. The Kosovo* State Advocacy Office is a subordinate institution of the Ministry of Justice, with 12 lawyers and three legal advisers (as of April 2023). It is mandated to represent State level public authorities in administrative as well as civil disputes (without any internal specialisation). In 2022, it formally represented the defendant in 680, or about one-third of all administrative disputes before first instance administrative judges (the remaining two-third of disputes probably originated from local self-governments and state agencies not represented by the State Advocacy). However, it lacks the resources to ensure legal representation in a majority of cases under its mandate, and thus prioritises cases of higher financial value. As a consequence, they usually do not attend public hearings in administrative disputes (cases that are usually of lower monetary value) and, according to the judges, the written responses to the complaint usually simply repeat the arguments of the contested administrative act. In consequence, there is effectively no legal representation of public authorities in administrative disputes in Kosovo*, where legal representation is provided by the State Advocacy Office.

The rest of Bosnia and Herzegovina (with the exception of the Republika Srpska), North Macedonia and Serbia have not established such centralised models for legal representation of public authorities, but the non-centralised systems also display differences. For example, North Macedonia has established two appeal commissions that act as second instance authorities in a majority of administrative proceedings. According to North Macedonia administrative judges, these commissions are the defendants in about 90% of administrative disputes (the remaining 10% being represented by line ministries in administrative procedures, where the ministries act as organs of administrative appeal). Subsequently, the North Macedonia model is also a rather centralised representation of state level public authorities. The weakness of this model is that the appeal commissions are institutionally detached from the first instance authorities that adopted the first instance administrative act, as well as from the line ministries that act as the policy makers and are politically accountable for a specific sector/area. As a result – as in the case of the centralised models of legal representation – it is more difficult to ensure a transfer of knowledge from the appeal commission to the first instance authority if the dispute is lost.

[104] Article 53 of the Law on State Property.

3.5. Chapter summary

The administrative court process includes the same or similar steps as in the EU Member States. However, the role of the Western Balkan judges tends to be less active than that of their EU counterparts in providing assistance to the plaintiff (in order to ensure equality of parties) and also in investigating the facts of the case, to resolve the dispute with a well-substantiated final judgement that provides guidance to the administration in the matter at hand and that avoids similar disputes in future. Comprehensive statistics for all Western Balkan jurisdictions are not available, but courts rarely decide disputes in substance – or in full jurisdiction – and tend instead to annul the administrative act with a cassatorial-type judgement that returns the case to administration for reconsideration. There are also some objective reasons for this, including the high caseload and the performance appraisal systems of Western Balkan judges, which only rely on quantitative elements (i.e. the number of cases resolved). This approach does not support spending more time on each case to investigate the substance of the dispute and to provide guidance to the administration, because it can undermine the ability of the judge to meet the caseload norm. As the caseload norms are not differentiated based on the complexity of the dispute (North Macedonia and to some extent Kosovo* are the only exceptions), they have also become obstacles to specialisation of judges, because specialising in more complex disputes (e.g. tax, procurement, customs, planning and construction) would automatically lead to a higher workload.

The efficiency of the court procedure at State level in Bosnia and Herzegovina, and in Montenegro, North Macedonia and Serbia, could be increased by stipulating that in first instance courts, the cases are to be handled by a single judge, rather than the current panel of three. The administrative judiciary in Serbia is especially out of balance, as excessive resources are spent on handling every case with a panel of three in the first instance. At the same time, contesting the first instance decision to a higher instance is significantly restricted (it is possible only if the court decides in full jurisdiction and if no prior administrative appeal procedure has been conducted, i.e. 2% of all first instance judgements are challenged to the Supreme Court).

4 Execution of administrative court decisions

Article 6 § 1 of the European Convention of Human Rights protects the implementation of final, binding judicial decisions as distinct from the implementation of decisions that may be subject to review by a higher court (Ouzounis and Others v. Greece, 2002, § 21). The right to execute such decisions, given by any court, is an integral part of the "right to a court" (Scordino v. Italy (No. 1) [GC], 2006, § 196; Hornsby v. Greece, 1997, § 40). Otherwise, the provisions of Article 6 § 1 would be deprived of all useful effect (Burdov v. Russia, 2002, §§ 34 and 37). An unreasonably long delay in enforcing a binding judgement may therefore breach the Convention (Burdov v. Russia (No. 2), 2009, § 66)[105]. A state that does not ensure the execution of court decisions undermines the authority of the judicial institution and, ultimately, the rule of law[106]. Effective execution mechanisms should thus be in place for administrative court judgements in case the respondent either refuses to comply with the judgement or fails to comply with it fully.

Effective execution of court judgements – both administrative and civil – by the state has been a challenge in the Western Balkans[107]. It is also apparent in the statistics of the European Court of Human Rights– 62% of all confirmed violations by Bosnia and Herzegovina under Article 6, 48% of all confirmed violations by Serbia and 34% of all confirmed violations by Albania[108] are about non-execution. Furthermore, even when executing the judgements of the ECHR, there are often delays in the Western Balkan jurisdictions.

[105] European Court of Human Rights, Guide on Article 6 of the European Convention on Human Rights, https://www.echr.coe.int/documents/d/echr/guide_Art_6_eng.

[106] « Efficacité et qualité de la justice », Georges Ravarani, president of the Administrative Court of Luxembourg), p. 5, https://193.191.217.21/seminars/Paris2013/Table2_Ravarani.pdf.

[107] For example, the annual reports of all ombudspersons in the Western Balkans for 2022 refer to problems associated with the execution of court decisions specifically by the public administration. See also "Enforcement of Administrative Court Decisions in Bosnia and Herzegovina", by Maša Alijević and Derviša Zahirović, p. 175, https://www.prf.unze.ba/Docs/Anali/Anali23god12/8.pdf.

[108] European Court of Human Rights, Violations by Article and by State, https://www.echr.coe.int/documents/d/echr/stats_violation_1959_2022_eng.

Table 9. Execution European Court of Human Rights judgements by the Western Balkans

	Cases awaiting confirmation of payments as of 31/12/22	... including cases awaiting this information for more than six months (beyond the payment deadline)
Albania	16	11
Bosnia and Herzegovina	16	12
Montenegro	1	0
North Macedonia	3	1
Serbia	51	7

Note: Kosovo* is not a party to the European Convention of Human Rights (though the Convention applies as a result of domestic incorporation) and thus has no cases in the European Court of Human Rights.
Source: https://rm.coe.int/annual-report-2022/1680aad12f.

The following chapter analyses the execution of court decisions by the Western Balkan public administrations, the availability of tools for administrative judges for ensuring effective execution in Western Balkan jurisdictions (compared to EU Member States) and provides a short overview of consequences of non-execution, to highlight the importance of addressing this challenge.

4.1. Execution of court decisions by the public administration

In administrative disputes, the execution of the court decision, as a rule, requires the adoption of (another) administrative act or the performance of an administrative action. In claims for damages, the administration may be required to pay financial compensation (e.g. the unpaid salary of an unlawfully dismissed civil servant or compensation in confirmed cases of public liability, etc.). Several elements currently add unnecessary complexities to the execution process by the Western Balkanpublic administrations.

In most administrative procedures in the Western Balkan administrations, administrative appeal is mandatory before turning to court. Subsequently, the authority representing the administration in the administrative dispute is often the appeal body, i.e. the second instance authority, not the authority that adopted the original administrative act or would be responsible for performing the required action (first instance authority)[109]. This means that, if the court upholds the complaint, the authority receiving the court judgement is the appeal body. To execute the court decision, the appeal body must then adopt – as a mere formality – a new administrative act and order the first instance authority that adopted the original administrative act or is responsible for performing the action, to execute the court judgement. This step is particularly futile when the appeal authority is not a superior authority (a ministry). Often it is a specifically designated appeal body (an appeal commission, information commissioner or similar, etc.), that does not have any capacity or mandate to adopt the act or perform the action (e.g. responding to an information request, reinstating an unlawfully dismissed civil servant, etc.) nor any supervisory powers over the first instance authority. An execution procedure within the administration would be simpler, have no unnecessary filters, and quicker, if the court judgement was implemented immediately by the first instance authority.

If the court judgement requires the administration to pay monetary compensation to the plaintiff, execution in all Western Balkan administrations is performed exclusively from the budget of the responsible authority.

[109] In one notable exception, Kosovo*'s new Law on Administrative Conflict, which enters into force in early 2025, specifies that as a rule, the defendant is the first instance authority. Only if the violation occurred in the administrative appeal procedure is the defendant also the appeal body (Article 23 of the Law on Administrative Conflict).

This can be especially problematic if the disputed amounts are significant and exceed the funds available for the day-to-day functioning of the authority. Western Balkan administrations have adopted normative acts[110] that regulate how the execution process should function and establish additional conditions that have to be taken into account. Execution of such court decisions and payment of funds should not jeopardise the daily functioning of the institution (e.g. payments cannot be made at the expense of salaries of officials or daily maintenance costs such as energy, water, etc.). This means effectively that executing judgements can often only be done from an authority's budget line allocated for investments, if any funds are available there. If judgements are not executed voluntarily (e.g. due to lack of funds in the authority's budget), the plaintiff is required to initiate mandatory execution proceedings, which takes time and incurs additional costs for the state (e.g. bailiff's fees, interest payments, etc.).

It is understandable that executing a court decision should not incur negative consequences for other users of the services that a particular authority provides. However, if the arrangements for executing of court decisions by public authorities do not ultimately allow for effective voluntary execution, the arrangements have effectively become obstacles to enforcing court judgements and to the rule of law. If the state does not execute court judgements or delays execution, this can be an impetus for others not to observe the law. The execution arrangements should provide a solution to cover instances when the required funds are not available in the budget of the relevant public authority for immediate and voluntary execution. This would help guarantee the rule of law as well as reasonable handling of state finances, by avoiding additional costs incurred during mandatory execution proceedings. A possible solution applied by selected EU Member States is the establishment of a central budget reserve, which the government can decide to use to cover any unforeseen costs for which specific funds have not been allocated in the annual budget.

Box 2. Government reserve funds in Lithuania

The rules for the establishment and use of the reserve funds in Lithuania are regulated by Article 11 of the Law on the Budget Structure of the Republic of Lithuania. Every year, upon the proposal of the Government, the Parliament approves the size of the Government reserve with the law on the annual state budget for the given year. The size of the Government reserve cannot exceed 1% of the amount of approved state budget allocations. Government reserve funds are distributed by the Government's resolution and can be used among other things for the execution of arbitration or court decisions, which obligate the State of Lithuania to pay certain amounts. In case of need, line ministries can submit proposals requesting the use of funds from the government reserve. This means that all obligations of the state stemming from court judgments are handled in a timely manner – even if the funds are not available in the budget of the institution that is representing the state. At the same time, the day to day functioning of the institutions is not put at risk. Accountability over the use of the reserve is ensured by the Government and by the rule that the size of the annual reserve cannot exceed 1% of the state budget.

4.2. Tools to help administrative judges ensure execution of court judgements

EU Member States have allocated various tools to judges for ensuring effective execution of administrative court judgements, starting with indirect methods, such as sanctions against the non-executing party of the

[110] Usually, the laws on enforcement procedure or the civil procedure code, sometimes sub-legal normative acts regulate the details. In Albania, for example, the Instruction of the Council of Ministers No. 1 of 4 June 2014 governs the Method of Execution of Monetary Obligations of General Government Units.

proceeding (i.e. the public authority), and ending with more direct tools, such as ensuring execution through alternative authorities or with certain measures undertaken by the court itself, where possible. Only a few countries (for example, Finland) report that no special proceedings are provided for execution of administrative court judgements[111], presumably because non-execution by public authorities simply does not occur.

Sanctions against public authorities for non-execution are set up in several EU Member States. In Estonia, the administrative judge can impose a fine of up to EUR 32 000 on the non-executing authority. The fine does not relieve it from executing the judgement and can be applied repeatedly; it is paid to the state budget. In Belgium, half the fine is paid to the state budget and the other half to the party that requested the fine and, in the Netherlands, the full fine can be paid to the other party of the proceeding[112]. In EU Member States, fines are usually imposed on the non-executing authority (institution), although disciplinary as well as criminal proceedings can also be initiated against the official responsible.

In Italy and Luxembourg, the court can also appoint an enforcement commissioner to replace the non-complying authority in executing the court decision. In Luxembourg, the commissioner is usually appointed from among senior civil servants of the ministry supervising the non-enforcing authority[113]. The court may directly replace the administration, and thus take the measures necessary for the proper execution of its decisions, in Belgium, Croatia, Italy, Portugal, Slovenia and Spain. A similar power of direct replacement, limited to specific cases expressly indicated by law, is provided for in the Netherlands and Poland[114]. In the Netherlands, Luxembourg and the Slovak Republic, the court can apply a procedural tool known as the "administrative loop" to ensure execution by the administration. The loop is designed to help avoid repetitive disputes in the same case (i.e. ping-pong between the administration and judiciary), if the administration is unable or unwilling to apply lawful solutions. When applying the loop, the judge suspends the proceeding and gives the administration the instructions and the opportunity to remedy the errors within a specified time period. In the final judgement, the court determines whether the administration has corrected the errors and adopted a lawful decision (i.e. whether to accept the revised decision or not).

Box 3. The 'administrative loop' in the Netherlands

An administration can at times make a series of decisions that are all annulled, which can be frustrating for the parties involved. In 2010, to alleviate this situation, the option of an interlocutory judgement was introduced in Dutch administrative law, often referred to as the "administrative loop" (*bestuurlijke lus*). In such a judgement, the court points out the errors in a decision and gives the administration the opportunity, or orders it, to remedy these errors (e.g. breaches of procedural rules or failure to state reasons). Instructions can also be handed down on how to remedy the errors. In the final judgement, the court decides whether the administration has succeeded in remedying the errors. This instrument relieves the interested party of the burden of challenging new decisions taken by the administrative authority.

[111] Country report from Finland for the ACA-Europe Seminar Law, "Courts and guidelines for the public administration", Fiesole, Italy, https://aca-europe.eu/seminars/2021_Fiesole/Finland.pdf.

[112] General Report of the ACA-Europe Seminar Law, "Courts and guidelines for the public administration", Fiesole, Italy, https://aca-europe.eu/seminars/2021_Fiesole/2021_Fiesole_General_Report_en.pdf.

[113] Country report from Luxembourg for the ACA-Europe Seminar Law, "Courts and guidelines for the public administration", Fiesole, Italy, https://193.191.217.21/seminars/2021_Fiesole/Luxembourg.pdf.

[114] General Report of the ACA-Europe Seminar Law, "Courts and guidelines for the public administration", Fiesole, Italy, https://aca-europe.eu/seminars/2021_Fiesole/2021_Fiesole_General_Report_en.pdf.

If the administration fails to take a (new) decision within the prescribed time limit, it is liable for fixed damages for every day that it has not come to a decision, up to a maximum of 42 days after a party has sent the administration written notification that it has failed to make a decision on time. The administration must take a decision on the amount of damages it has to pay within two weeks after the last day it was liable for damages. This decision can be appealed to the administrative courts. A party can also appeal to the administrative court if the administration has not taken a decision within the prescribed time limit, and the administrative court will order the administration to take a decision within a time limit.

Source: Materials from the seminar organised by the Council of State of Italy and ACA-Europe "Law, Courts and guidelines for the public administration" Fiesole (Firenze), Autumn 2021. Answers to the preparatory questionnaire for the seminar from the Netherlands: https://193.191.217.21/seminars/2021_Fiesole/Netherlands.pdf.

It is worth noting that in nearly all EU Member States, the percentage of administrative court judgements whose implementation is incorrect or incomplete and which require activation of the procedure for enforcement, is very low, less than 2%. This is defined as "extremely rare" in Croatia, Estonia, France, Germany, Greece, Hungary, Ireland, Luxembourg, Portugal and Slovenia. In Italy, the percentage of recourse to execution proceedings is around 15%[115].

Western Balkan judiciaries have many of the tools available to EU Member States at their disposal, e.g. sanctions, as well as the possibility that the court replace the administrative authority and adopt the judgements that replace the administrative act (i.e. deciding in "full jurisdiction"). In one notable difference, none of the Western Balkan jurisdictions provide the possibility of appointing an enforcement officer, and sanctions are usually applied against the responsible official, not the institution.

Table 10. Overview of tools for ensuring execution of administrative court judgments in the Western Balkans

	Authority against whom fines is imposed and amount	Fine imposed by/through	Court is mandated to adopt administrative act (in case of non-execution of judgement)
Albania	Head of the public organ; 20% of minimum salary for every delayed day	Administrative Court	-
Bosnia and Herzegovina	Institution responsible (EUR 750-EUR 2 500) or official/manager responsible (EUR 100-EUR 400)	Misdemeanour proceedings	Yes, at State level, in the BIH_ RS and the BIH_BD, the court is obligated to do so in case of repetitive disputes in the same matter; in BIH_FBIH the court is obligated to do so, if the nature of the matter permits
Kosovo*	50%-100% of the monetary value of the salary coefficient of the responsible official or head of the public organ for every day delayed can be imposed repeatedly.	Administrative Court	Yes, if possible (e.g. in case of non-discretionary decisions, facts are clear or the court can establish the facts itself, issuing the act does not require specialist knowledge on technical conditions)
Montenegro	-	-	Yes, when the nature of the matter permits and in case of repetitive disputes in the same matter
North Macedonia	Up to 20% of the salary of the responsible official	Administrative Court	Yes, the court is obligated to do so in case of repetitive disputes in the same matter
Serbia	Responsible official; EUR 255-EUR 855, can be imposed repeatedly.	Administrative Court	Yes, when the nature of the matter permits and in case of repetitive disputes in the same matter

[115] General Report of the ACA-Europe Seminar Law, "Courts and guidelines for the public administration", Fiesole, Italy, https://aca-europe.eu/seminars/2021_Fiesole/2021_Fiesole_General_Report_en.pdf.

Note: For Kosovo*, the information is based on the Law on Administrative Conflicts, which was adopted in late 2023 and which enters into force in early 2025. The Law on Administrative Conflicts in force until then does not provide any fines in case of non-execution.
Source: The laws regulating administrative court process in the Western Balkans.

Similarly, as in the EU Member States, the Western Balkan judges rarely apply the tools for ensuring execution, but this is not an indication of consistent execution of court judgements by public authorities. It is difficult to pinpoint the main reason for their non-application in the Western Balkans, but based on discussions with the judges and other stakeholders, the following could be among the causes:

1) According to legal doctrine and understanding[116], a court judgement that annuls the administrative act and which refers the case back to the administration to issue a new decision is not the final judgement in the administrative proceedings/dispute that could lead to compulsory execution; the judgement only returns the proceedings to the state, where it was before the contested administrative act was passed, and the administrative procedure continues. The provisions regulating the different measures for ensuring execution – of the final judgment – therefore do not apply in cases where the court simply annulled the contested administrative act.
2) Courts rarely decide in substance, i.e. resolve the dispute with a final, well-reasoned persuasive judgement that provides instructions and guidance to the public authority for adopting the new administrative act after the contested one was annulled. It is therefore difficult to impose a fine on the public authority or official for not following (non-existent) guidance;
3) Courts even more rarely decide in full jurisdiction[117] i.e. replace the administrative authority and adopt the requested administrative act or perform the requested action, in case they uphold the complaint. This is despite the fact that in certain Western Balkan Western Balkan jurisdictions (North Macedonia and selected Bosnia and Herzegovina jurisdictions) deciding in full jurisdiction is mandatory when reviewing a repetitive dispute in the same matter. The judges claim deciding in full jurisdiction is not possible, because usually, the nature of the matter does not allow them to. In addition, the courts are afraid that deciding in full jurisdiction will relieve the administration of its responsibilities and interfere with the separation of powers.
4) Difficulties can ensue in imposing the fines. According to feedback from judges, the courts cannot identify the responsible officials, or their salary, and thus cannot impose sanctions. In addition, in Bosnia and Herzegovina, the application of the fine can be applied only through misdemeanour proceedings, not directly by the court handling the administrative dispute, which adds another layer of complexity.

[116] In BIH, MNE and SRB, this is also stipulated in the respective laws on administrative disputes. See BIH_State Article 62, BIH_FBIH Article 57, BiH_RS Article 50, BIH_BD Article 33, MNE Article 56, SRB Article 69.

[117] Again, separate statistics are not kept comprehensively, but in Montenegro, the Administrative Court decided 1% cases in full jurisdiction in 2020 and in Serbia, the share of cases decided in full jurisdiction is definitely less than 4% (this was the share of cases in 2022 decided with a public hearing, a precondition for deciding in full jurisdiction).

Figure 22. How administrative court judgements could be more effectively executed (according to Western Balkan administrative judges)

Source: Surveys of Western Balkan judges during roundtables; 68 responses collected from six roundtables. Judges were asked to choose a single answer.

According to surveys conducted among judges at roundtables held during the drafting of this analysis, 50% of judges consider sanctioning the bodies (institutions) the most efficient tool to ensure effective execution of administrative court judgements. Sanctioning the institution – and not the responsible official or manager – is currently only possible in Bosnia and Herzegovina, and not in other Western Balkan jurisdictions; so, in this context, amending the legal framework and providing for sanctioning institutions could be considered a solution. However, for example, some judges from Montenegro clarified in subsequent discussions that they would prefer somebody else – not the courts – to impose the sanctions. Furthermore, permitting the sanctioning of institutions would not address the other reasons for not applying tools to ensure more effective execution by the public administration (listed above).

Other popular solutions for ensuring effective execution of court judgements, according to Western Balkan judges, included organising roundtables with officials conducting the administrative procedures (22% of judges), which have been rare until now; and sanctioning the responsible officials (17% of judges), which is possible currently in most Western Balkan jurisdictions, but rarely applied.

4.3. Consequences of Western Balkans administrations' inaction or delay in executing judgments

Numerous direct and indirect consequences ensue from non-execution or delays in executing court judgements in the Western Balkans. It can be difficult to pinpoint the extent of the exact consequences stemming from execution problems in administrative disputes, because the relevant data is not kept for administrative disputes separately; but some of the effects are clear.

Table 11. Costs originating from lost court cases as well as execution delays (2022)

	Principal debt, including litigation cost	Interest cost	Execution cost	Share of costs that could be avoided with timely and voluntary execution	Additional explanation
Albania	EUR 15 million	NA	EUR 4.3 million	28.5%	EUR 13.4 million of the principal debt originates from the disputes involving unfair dismissals of public sector employees (Category 6027400).
Bosnia and Herzegovina	EUR 1.2 million	EUR 300 000	EUR 7 000	25.7%	Data is only available for State level administration, i.e. no data for entity levels and Brčko District, which handle a significant share of administrative activity. The bailiffs' system is not privatised, hence the low execution costs.
Kosovo*	EUR 38.9 million	NA	EUR 7.5 million	19.3%	
Montenegro	EUR 15.2 million			NA	Interest and execution costs are not kept separately. The amount includes only costs associated with cases represented by the Protector of Property and Legal Interests.
North Macedonia	EUR 10 million	EUR 2.4 million	EUR 8.4 million	108.0%	
Serbia	EUR 226.7 million			NA	Interest and execution costs are not kept separately. Costs include payment of monetary fines and penalties pursuant to court decisions (Category 483), as well as compensation of damages caused by state authorities (Category 485).

Source: Administrative data from Western Balkan ministries of finance or Protector of Property and Legal Interests (Montenegro).

The most direct consequence is financial: the additional costs from the state budget stemming from execution costs and interest payments due to delayed and involuntary execution by the public authorities. Data on the amounts is not kept separately for administrative disputes and thus includes the amounts from civil disputes (as well as international arbitration), which are typically more extensive than administrative disputes (due to the nature and size of the claims). As there should be no differences in the administrative authorities' execution based on the nature of the dispute (administrative or civil), it is nevertheless possible to draw conclusions from the available data.

First and foremost, the cost of lost court cases is a significant annual monetary burden for Western Balkan administrations. Interviews with authorities suggest that no systematic approaches appear to be in place to allow for learning from mistakes and to avoid similar costs in the future. At best, the information on costs incurred is accumulated and made available to the government (e.g. through annual reports on execution of the budget and annual reports of authorities representing the state authorities in court). In Montenegro, the Protector of Property and Legal Interests has repeatedly drawn the attention of the Government to the high cost of lost court cases, as well as the problems stemming from lack of timely execution, so far without any significant consequences. Second, the level of cost reduction that would be possible through timely and voluntary execution is remarkable in jurisdictions where such data is kept separately. At least one-fifth of the costs could easily be avoided by all administrations, while in North Macedonia, the execution and interest costs exceed the size of the principal debt. These funds could instead be spent on increasing the number of judicial positions, to help shorten the duration of court procedures. This could be applied even

as a temporary measure until the duration of proceedings is normalised, at which time it would be possible to reduce the number of judges back to normal standards through not filling the vacancies left by retired judges. Anecdotal evidence suggests that voluntary execution of court decisions is often considered an admission of guilt or responsibility by North Macedonian officials; therefore, they prefer compulsory execution through bailiffs, which ultimately results in higher costs. Finally, cases lost before the ECHR also have negative financial consequences for most Western Balkan administrations. Data is not kept separately for damages awarded for violations related to non-execution of administrative court decisions[118], so the true extent of the losses is not known.

Non-execution of decisions can also generate additional disputes and court cases. About 39% of cases handled by administrative judges of the Tirana Administrative Court in 2022 were execution orders (i.e. related not to the adjudication of the initial dispute, but to the execution process of a prior court decision). Such cases include the defendant contesting the execution measures, as well as requests for the adoption of a payment schedule after the substantive decision has been made. It is not known how many of the execution orders were initiated or caused by public authorities (as Albanian administrative judges also handle misdemeanour cases, where the defendant is an individual or a company), but according to judges a significant proportion originates from the public administration. Non-execution can also generate additional court cases and judicial workload, because the same dispute must be repeatedly handled by the court (ping-pong between the administration and the court). No statistics are available on this phenomenon, but examples are available from all Western Balkanjurisdictions[119].

Last, the administration's inability to learn from mistakes can also be seen as a form of non-execution of court decisions. The court decision not only decides an individual dispute, but establishes a precedent for similar disputes. If the court has declared an administrative act unlawful – and provided substantiation for its decision as well as guidance for making a lawful decision in similar matters in future – it is up to the administration to follow this guidance. According to Western Balkan judges, some authorities are able to avoid making the same errors (e.g. tax administrations were usually mentioned), but this is unfortunately not yet the rule. For example, based on estimates by the judges, 25% of administrative disputes in Kosovo* first instance courts originate from social security welfare schemes. According to the Kosovo* State Advocate, one of the reasons for this is that the authorities that determine social benefits simply run out of budget mid-year and reject all subsequent applications (regardless of legal grounds). As a result, the system for granting social benefits has become increasingly costly (owing to the involvement of judges) and the costs could be avoided by better financial planning.

[118] Several ECHR decisions have awarded damages for this type of back-and-forth between the administration and the court, which also qualifies as non-execution. For example: Stanka Mirković and others v. Montenegro. Other recent ECHR decisions regarding non-execution of administrative court decisions from the Western Balkans include Sharxhi and Others v. Albania.

[119] For more information on this phenomenon in Kosovo, see "Administrative Justice in Kosovo, Law vs. Practice", Kosovo Law Institute, 2019, https://kli-ks.org/wpcontent/uploads/2019/09/Drejt%C3%ABsia-Administrative_Final-19.09.2019-BM.pdf; in Montenegro, "Let's talk about effects! ...or gaps in reporting on public administration reform in Montenegro", Institut Alternativa, http://media.institut-alternativa.org/2018/06/praznine-uizvjestavanju_eng.pdf, and "Analysis of the Legal Framework and Case-Law of Montenegrin Courts in the Implementation of Effective Remedies in Respect of a Trial within a Reasonable Time" by Mirjana Lazarova Trajkovska, Maja Velimirović, Council of Europe, 2019, https://rm.coe.int/eng-finalna-analiza-duzine-sudskih-postupaka-u-crnoj-gori/1680966dd7; in North Macedonia, see "Strategy for Reform of the Judicial Sector 2017-2022", Ministry of Justice, http://justice.gov.mk/Upload/Documents/Strategija%20i%20akciski%20plan_ANG-web.pdf; for Serbia, see "Analysis of Causes of Excessive Workload of the Administrative Court and Increase in Case Inflow" by: Aleksandar Stojanović, Biljana Braithwaite, Dobrosav Milovanović, Dušan Protić, Mirjana Lazarova Trajkovska and Vuk Cucić, Belgrade, February 2020.

In conclusion, if the state is generating caseload for the judiciary due to non-execution, it is effectively making the judiciary more expensive, due to the additional resources needed for adjudication of the cases. The additional caseload prolongs the average duration of individual procedures. This can lead to violation of the right to a fair trial within a reasonable time and to subsequent compensation payments. All in all, this limits access to justice and the non-execution of decisions contributes to the high overall cost of administrative judiciary for all parties involved – the plaintiffs as well as the state and taxpayers.

4.4. Chapter summary

Failure to execute court judgements by the public administration is a salient problem in the Western Balkans. This is also one the key elements in the functioning of administrative judiciaries, where the Western Balkan systems differ from the systems in EU Member States. While Western Balkan administrative judges acknowledge the existence of some authorities (usually tax administrations) that execute court judgements, analyse their content and learn from past errors, this is not consistently the case. In executing judgements awarding monetary compensation to plaintiffs, public authorities rarely implement judgements voluntarily. Instead, plaintiffs need to initiate enforcement proceedings by bailiffs, which takes additional time and ultimately causes significant costs to the state. Western Balkan administrations spent more than EUR 20 million on interest payments and execution costs in 2022. Such costs could easily be avoided through voluntary execution and could be spent on hiring additional judges (even as a temporary measure for normalising the duration of court procedure and allowing the judges to take a more active role in the handling of administrative disputes). Consistent, voluntary and timely execution of court judgements would also help to ensure the rule of law. When the public administration does not comply with court judgements, it calls into question the observation of the law for everyone.

5 Recommendations for each Western Balkan jurisdiction and administration

The following chapter provides ten key recommendations for each of the Western Balkan jurisdictions and administrations covered in the analysis. Several of the recommendations, and the challenges, are cross-regional.

Albania

Addressee	Recommendation	Background
Judiciary	Increase the number of judges in the Administrative Court of Appeal (even temporarily) to ensure the backlog is reduced and the average duration of court procedures is normalised as quickly as possible.	Chapter 1.5.
Judiciary	Accelerate the appointment of judges to all vacant positions in the courts with the highest workload, e.g. the Administrative Court of Appeal.	Chapter 1.5.
Judiciary and administration	Increase the support available to judges handling administrative disputes by appointing legal advisers that can prepare draft orders and judgments and thereby reduce the workload of judges	Chapter 3.1.
Administration	Execute court judgements voluntarily and in a timely manner, without the need to initiate enforcement proceedings, in order to reduce the costs spent on bailiffs and interest payments (investing the saved funds in additional judicial posts at least until the length of procedures has been drastically reduced).	Chapter 4.3.
Administration	Establish a system for monitoring the financial consequences of lost court cases by the public authorities, including accountability mechanisms for the heads of authorities that cause significant costs or that are not able to learn from past mistakes.	Chapter 4.3.
Judiciary and administration	Make judicial careers more accessible to experienced lawyers (from among advocates, academia and civil servants) to diversify the background of judges; allow other entry points than through graduation of the School of Magistrates.	Chapter 1.3.
Judiciary	Promote a more active role for the judge in the handling of administrative disputes, and in deciding cases with a well-reasoned final judgement that provides clear instructions for the	Chapter 3.2.

	administration on how to proceed (through training, case-law of the higher courts and by diversifying current performance appraisal systems that rely too heavily on quantitative criteria).	
Judiciary and administration	Establish a regular practice of organising roundtables between administrative judges and representatives of the authorities that are defendants in the highest number of cases, in order to discuss and agree on options for changing current practices, to avoid similar disputes in the future.	Chapter 4.2.
Judiciary and administration	Reform the mechanism for ensuring the right to trial within a reasonable time, so that it provides an accessible and effective possibility to claim for compensation in case the right has been violated.	Chapter 1.5.
Judiciary	Improve access to case-law by enabling online search options for judgments of all court instances according to the subject matter of the dispute or keywords.	Chapter 3.1.

Bosnia and Herzegovina

Addressee	Recommendation	Background
Administration	Execute court judgements voluntarily and in a timely manner, without the need to initiate enforcement proceedings. .	Chapter 4.3.
Administration	Establish a system for monitoring the financial consequences of lost court cases by the public authorities, including accountability mechanisms for the heads of authorities that cause significant costs or are not able to learn from past mistakes.	
Judiciary	Reduce the time needed for handling administrative disputes in the courts with the highest backlog – Mostar, Sarajevo (if necessary by reallocating resources within the judiciary).	Chapter 1.5.
Judiciary and administration	Establish a regular practice of organising roundtables between administrative judges and representatives of authorities that are defendants in the highest number of cases, in order to discuss and agree on options for changing current practices for avoiding similar disputes in the future.	Chapter 4.2.
Judiciary	Promote a more active role for the judge in the handling of administrative disputes and in deciding cases with a well-reasoned final judgement that provides clear instructions for administration on how to proceed (through training, the case-law of the higher courts and by diversifying current performance appraisal systems that rely too heavily on quantitative criteria).	Chapter 3.2.
Judiciary and administration	Remove all obstacles from the procedural laws that limit the right of judges to establish facts on their own initiative.	Chapter 3.2.
Judiciary and administration	Establish a rule that administrative disputes in the Court of BIH be handled by a single judge (exemptions can be made for complex disputes, e.g. upon the proposal of the court president or presiding judge).	Chapter 3.3.2.

Judiciary and administration	Find a common balance for deciding cases in public hearings throughout the country (reduce current differences in practice as well as in the legal framework). Consider organising public hearings to increase public trust in the judiciary.	Chapter 3.3.3.
Judiciary and administration	Establish the mechanisms for ensuring the right to trial within a reasonable time in FBIH, including an effective possibility to claim for compensation in case the right has been violated.	Chapter 1.5.
Judiciary and administration	Once the average duration of administrative disputes is normalised throughout the country, consider the establishment of specialised administrative courts (in fewer physical locations than the current basic court system, but with a higher level of specialisation).	Chapter 1.5.

Kosovo*

Addressee	Recommendation	Background
Judiciary and administration	Increase the number of judges handling administrative disputes, in order to reduce the backlog and reduce the average duration for handling administrative disputes.	Chapter 1.5.
Administration	Execute court judgements in a timely manner and voluntarily, without the need to initiate enforcement proceedings, to reduce the costs spent on bailiffs and interest payments (and invest the funds saved in additional judicial posts).	Chapter 4.3.
Administration	Establish a system for monitoring the financial consequences of lost court cases by the public authorities, including accountability mechanisms for the heads of authorities that cause significant costs or that are not able to learn from past mistakes.	Chapter 4.3.
Judiciary and administration	Establish a regular practice of organising roundtables between administrative judges and representatives of authorities that are defendants in the highest number of cases, to discuss and agree on options for changing current practices in order to avoid similar disputes in the future.	Chapter 4.2.
Administration	Reform the system for representing the state in court. If the State Advocate does not have the resources to represent all the state authorities in court in a centralised manner, limit its competences, align them with its capacity and allow the other state authorities to represent themselves.	Chapter 3.4.
Administration	Consider introducing the requirement for prior Government approval for the adoption of advocate's tariffs in order to ensure their proportionality.	
Administration	Reorganise the system for providing legal aid. Allow the official of the Agency for Free Legal Aid to represent clients in court and to ensure continuity in the provision of the legal aid to one client throughout an ongoing dispute.	Chapter 2.2.
Judiciary	Encourage judges to take a more active role in handling administrative disputes and deciding cases, with a well-reasoned final judgement that provides clear instructions for the administration on how to proceed (through training, the case-law of the higher courts and by diversifying current performance appraisal systems that rely too heavily on quantitative criteria).	Chapter 3.2.

Judiciary and administration	Establish the mechanisms for ensuring the right to trial within a reasonable time, including an effective possibility to claim for compensation in case the right has been violated.	Chapter 1.5.
Judiciary	Increase the level of specialisation of judges on administrative disputes by removing the handling of minor offences from the competence of administrative judges and establish a separate chamber for administrative disputes at Supreme Court level.	Chapter 1.1., 3.3.1, 3.2.3.

Montenegro

Addressee	Recommendation	Background
Judiciary and administration	Take steps to drastically reduce the duration of administrative court proceedings, incl. the measures proposed below, but also consider temporary increase in the number of judges until the other necessary measures (e.g. handling cases by a single judge, adjusting advocate's fees, etc.) take effect.	Chapter 1.4., 1.5.
Judiciary and administration	Reduce the advocates' fees or differentiate them, to enhance access to justice and remove the incentive for generating simple administrative disputes for the sole purpose of claiming compensation of court costs.	Chapter 2.2.
Judiciary and administration	Establish a rule that administrative disputes in the Administrative Court be handled by a single judge (exemptions can be made for complex disputes, e.g. upon the proposal of the court president or presiding judge).	Chapter 3.3.2.
Judiciary and administration	Remove all obstacles from the procedural laws that limit the right of judges to establish facts on their own initiative	Chapter 3.2.
Judiciary	Allow public authorities to contest the decisions of the Administrative Court in the Supreme Court.	Chapter 2.3.
Judiciary and administration	Establish a regular practice of organising roundtables between administrative judges and representatives of authorities that are defendants in the highest number of cases, to discuss and agree on options for changing current practices, in order to avoid similar disputes in the future.	Chapter 4.2.
Judiciary	Promote a more active role for the judge in the handling of administrative disputes and deciding cases, with a well-reasoned final judgement that provides clear instructions for administration on how to proceed (through training, the case-law of the higher courts and by diversifying current performance appraisal systems that rely too heavily on quantitative criteria).	Chapter 3.2.
Administration	Execute court judgements in a timely manner and voluntarily, without the need to initiate enforcement proceedings, to reduce the costs spent on bailiffs and interest payments.	Chapter 4.3.
Administration and judiciary	Amend the Law on Administrative Disputes and foresee the possibility to sanction administrative authorities or the responsible officials in case they fail to execute court judgments and orders	Chapter 4.2.

Administration	Ensure that there is follow-up on the information provided by the Protector of Legal and Property Interests of the State on the financial consequences of lost court cases, for example, by establishing accountability mechanisms for the heads of authorities that cause significant costs or that are not able to learn from past mistakes.	Chapter 4.3.

North Macedonia

Addressee	Recommendation	Background
Administration	Establish a system for monitoring the financial consequences of lost court cases by the public authorities, including accountability mechanisms for the heads of authorities that cause significant costs or that are not able to learn from past mistakes.	Chapter 4.3.
Judiciary	Allow public authorities to contest the decisions of the Administrative Court in the Higher Administrative Court.	Chapter 2.3.
Judiciary and administration	Establish a regular practice of organising roundtables between administrative judges and representatives of authorities that are defendants in the highest number of cases, in order to discuss and agree on options for changing current practices in order to avoid similar disputes in the future.	Chapter 4.2.
Judiciary and administration	Make judicial careers more accessible to experienced administrative lawyers (from among advocates and academics, as well as civil servants), in order to diversify the background of judges; allow entry points other than the Academy of Judges and the courts of general jurisdiction. In addition, consider increasing judges' salaries, in order to make a judicial career the pinnacle of the legal profession.	Chapter 1.3.
Judiciary and administration	Establish a rule that administrative disputes in the Administrative Court be handled by a single judge (exemptions can be made for complex disputes, e.g. upon the proposal of the court president or presiding judge, but not on the value of the dispute).	Chapter 3.3.2.
Judiciary and administration	Consider introducing a rule that a public hearing is not required unless both parties request it.	Chapter 3.3.3.
Judiciary	Promote a more active role for the judge in the handling of administrative disputes and deciding cases, with a well-reasoned final judgement that provides clear instructions for the administration on how to proceed (through training, the case-law of the higher courts and by diversifying current performance appraisal systems that rely too heavily on quantitative criteria).	Chapter 3.2.
Judiciary	Improve access to case-law by enabling online search options for judgments of all court instances according to the subject matter of the dispute or keywords.	Chapter 3.1.
Administration	Consider reforming the system for administrative appeal by enabling the responsible line ministries to act as appeal organs in majority of administrative procedures, thereby enabling the ministries to have a better overview of the functioning of their area of responsibility and increasing the effectiveness of the system of legal remedies.	Chapter 3.4.

Judiciary and administration	Improve access to justice by increasing the deadlines for complaining against administrative silence and allowing complaints to court against administrative action.	Chapter 2.1.

Serbia

Addressee	Recommendation	Background
Judiciary and administration	Take steps to drastically reduce the duration of administrative court proceedings, including the measures proposed below, but also consider a temporary increase in the number of judges until the other necessary measures (e.g. handling cases by a single judge, adjusting advocate's fees, etc.) take effect.	Chapter 1.4., chapter 1.5.
Judiciary and administration	Reduce the advocates' fees or differentiate them, to remove the incentive for generating simple administrative disputes for the sole purpose of claiming the compensation of court costs.	Chapter 2.2.
Judiciary and administration	Establish a rule that administrative disputes in the Administrative Court be handled by a single judge (exemptions can be made for complex disputes, e.g. upon the proposal of the court president or presiding judge).	Chapter 3.3.2.
Judiciary and administration	Remove all obstacles from the procedural laws that limit the right of judges to establish facts on their own initiative.	Chapter 3.2.
Judiciary	Significantly widen the possibilities for contesting decisions of the Administrative Court in the highest court instance (including by the public authorities) in order to establish an effective 2-instance administrative judiciary.	Chapter 2.3.
Administration	Establish a system for monitoring the financial consequences of lost court cases by the public authorities, including accountability mechanisms for the heads of authorities that incur significant costs or that are not able to learn from past mistakes.	Chapter 4.3.
Judiciary and administration	Establish a regular practice of organising roundtables between administrative judges and representatives of authorities that are defendants in the highest number of cases, in order to discuss and agree on options for changing current practices for avoiding similar disputes in the future.	Chapter 4.2.
Judiciary	Promote a more active role for the judge in the handling of administrative disputes and in deciding cases, with a well-reasoned final judgement that provides clear instructions for the administration on how to proceed (through training, the case-law of the higher courts and by diversifying current performance appraisal systems that rely too heavily on quantitative criteria).	Chapter 3.2.
Judiciary	Consider increasing the share of cases decided at a public hearing as well as the share of judgments published online, as a way of increasing transparency of the judiciary and for generating higher level of public trust in the judiciary.	Chapter 3.1., 3.3.3., chapter 1.6.
Judiciary	After widening the possibilities for contesting decisions of the Administrative Court in the highest court instance, establish a specialised chamber for handling administrative disputes at Supreme Court.	Chapter 1.1.