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ADMINISTRATIVE ADJUDICATION IN BOSNIA AND HERZEGOVINA BETWEEN TRADITION AND EUROPEAN MODERNIZATION

Abstract:

Starting from the assumption that the rule of law and the right to a fair trial before an independent and impartial tribunal established by law are one of the most important principles of every democratic state, in the context of administrative law, the existence of effective mechanisms of administrative judicial control of public administration is of particular importance. Administrative courts play an important institutional role in modern states. They are part of the system of control over the work of public administration and broader legal protection of citizens in administrative matters. The existence of special administrative courts in parallel or separately from the regular court structures is common in many countries of the world. In legal theory, specialization in resolving administrative disputes is a generally accepted trend in many European countries. In addition, the tendency towards a common European model of administrative adjudication, which is organized at least in two levels, is also evident. Bosnia and Herzegovina, like other countries of the Western Balkans, has a long tradition of administrative adjudication. However, today, the complexity of its constitutional arrangement and the administrative-legal tradition, which remained insufficient to follow the necessary Europeanization of the administrative court system, leave an increasingly strong impression on the efficiency and functionality of this mechanism. The aim of this paper, through a scientific description of the research topic, is to point out the shortcomings of the existing normative solutions of administrative adjudication in Bosnia and Herzegovina, and ultimately to try to determine the direction of the reform that is necessary in the process of accession to the European Union.

Keywords: *administrative adjudication, administrative dispute, administrative courts, specialization, public administration*

1. INTRODUCTION

Today, the principle of the rule of law, whose roots go back centuries, is a condition *sine qua non* of every modern democratic state. One of the basic pillars of such a state is its public administration and judiciary. In this context, the rule of law must imply the responsibility of the government towards its citizens and a public administration that is limited by law and offers equality before the law, quick and efficient justice, and respects fundamental human rights. In addition, an adequate administrative supervision mechanism is a crucial condition for achieving full legal protection in administrative matters. As relations in the administration changed over time, so did the system of administration supervision, starting with the supervision of people and work processes, all the way to the supervision of the legality of acts passed by the public administration.¹ The importance of supervision in the administration should not be debated. However, we must emphasize the role of external supervision of the administration by entities that are not part of the administrative body over which supervision is performed. One such example is the judicial supervision. The development of the idea of judicial supervision of administrative activity is mainly identified with the emergence of administrative disputes in France in the 19th century, primarily to sanction the illegal work of public administration and protect the rights and interests of citizens by an independent court.² Judicial supervision of the administration, or as it is also called supervision through an administrative dispute, i.e. administrative adjudication, is an important topic that deserves more scientific attention than it receives today. The outcome of most administrative disputes is not of any great importance for the administrative bodies, but each of them is of particular importance for the party that initiated the dispute against that body or its administrative act.

Undoubtedly, scientific research on this topic should create the foundations for policymakers to develop ideas for the practical transformation and improvement of administrative adjudication, and thus the entire judiciary. In European law, this is necessary because the integration process into the European Union assumes that the future member state has a functioning judiciary capable of respecting the rule of law on which the Union's order is based. Bosnia and Herzegovina, which is getting closer to becoming a full member of the European Union, faces a challenging job in reforming the judiciary. The complexity of its constitutional arrangement

¹ Pusić, E. (2002), *Nauka o upravi - XII. izmijenjeno i dopunjeno izdanje*. Zagreb: Školska knjiga, p. 346.-347.

² Held, M. (2022), The Development of the Administrative Court Systems in Transition Countries and Their Role in Democratic, Economic and Societal Transition. *Hrvatska i komparativna javna uprava: časopis za teoriju i praksu javne uprave*, 22(2), p. 212.

undoubtedly reflects on the judicial system. It is completely undeniable that the judicial system in Bosnia and Herzegovina is burdened with several serious problems. This calls into question the efficiency of resolving administrative disputes. Of course, this is not the only problem. The existence of high-quality legislation is another condition for sanctioning illegal activity of the public administration and ensuring full judicial supervision. Precisely for these reasons, this paper will point to the contemporary trends in the development of administrative adjudication in Europe, analyze the shortcomings of the normative regulation of administrative adjudication in Bosnia and Herzegovina, look back at the fairly long Bosnian-Herzegovinian tradition of resolving administrative disputes, and ultimately indicate the necessity of modernizing it. Assuming that the administrative adjudication in Bosnia and Herzegovina does not meet the standard of the rule of law, we will put forward a hypothesis in this research and say that the current system creates procedural prerequisites for the violation of the right to a fair trial and an effective legal remedy guaranteed by the European Convention on Human Rights. To carry out this research, which is mainly based on a theoretical (but to a certain extent practical) approach to the problem, a combination of several scientific and research methods will be used: historical, normative, comparative, inductive, and deductive, as well as methods of analysis and synthesis.

2. MODERN TENDENCIES IN THE DEVELOPMENT OF ADMINISTRATIVE ADJUDICATION IN EUROPEAN COMPARATIVE LAW

The discussion about the effectiveness of the judiciary and the achievement of the "optimum" efficiency must be started by taking into account the historical identity of each country, its legal culture, and its constitutional arrangement. At a moment when Bosnia and Herzegovina, a small country in the heart of Europe, strives to become a full member of the European Union, we must first ask the question: What we are ready to change in our legal system, and what Europe will recognize as permanent common values inherent to all member states? Within the European Union, great importance is given to the organization of the judiciary, and thus to administrative adjudication, even though the member states have national autonomy in this area. This is not surprising if we bear in mind that the fundamental European values lie in the legal protection of public interest and human rights and that administrative law is of particular importance for the realization of human rights. In this regard, it is quite logical that the standards of an efficient administrative

adjudication system are derived from the European Convention on Human Rights, primarily from the right to a fair trial and an effective legal remedy.³

In Europe, several countries have embarked on extensive reforms of the administrative adjudication system in recent years. Thus, Slovenia today has a two-instance system, where the Supreme Court of the Republic of Slovenia rules in the second instance, while Austria, which had a single-instance system of administrative adjudication until 2012, after the reform set it up in two instances, where administrative disputes are resolved in the first instance by a single judge if the federal or state law does not prescribe that it be decided in a council.⁴ Also, with the reform of the administrative dispute, the Republic of Croatia organized it in two instances while maintaining the two-instance administrative procedure, in contrast to Austria, which conducts the administrative procedure in one instance, with certain exceptions, all for the reason of reducing the duration of the entire procedure.⁵ Analyzing administrative adjudication in European comparative law, several tendencies are evident:⁶

- There is a tendency to extend protection in administrative proceedings against administrative acts to all forms of administrative (in)action, which must also be reflected in judicial protection;
- By expanding the jurisdiction of the court to determine facts and apply the law, the traditional decisions of settling solely on the facts determined in the administrative procedure would be abandoned;
- By Article 6 of the European Convention on Human Rights, mandatory public oral hearings (at least before the court of first instance) should be introduced into administrative adjudication, and exceptions should be prescribed by law;
- To achieve the efficiency of the court procedure in terms of decision-making, there is an evident tendency to replace cassation (annulling the administrative act and returning it to the administrative body for re-decision) with reformation (resolving the merits without returning the case to the administrative body for re-decision);

³ European Convention on Human Rights, Art.6 and Art.13.

Retrieved from: https://www.echr.coe.int/documents/d/echr/convention_ENG (1 July 2024)

⁴ Held, M. (2019), *Neka važna pitanja uređenja i reformi upravnog sudovanja u europskim zemljama*, Zbornik Pravnog fakulteta u Zagrebu, 69(4), p.579.

⁵ *Ibidem*.

⁶ Pičuljan, Z. (2014), *Novi upravni postupak i upravni spor – oblikovanje propisa, kontinuitet i diskontinuitet pravne regulacije*, In: Koprić I. (Editor), *Europeizacija hrvatske javne uprave*, Zagreb: Pravni fakultet Sveučilišta u Zagrebu, p. 668. and 690.

- Finally, administrative adjudication is becoming more and more specialized and separated from the regular judiciary, and due to the specificity of this area, its procedural rules are also regulated separately.

In legal theory, there are different views on the issue of comparing the value of resolving administrative disputes before courts of general jurisdiction and specialized administrative courts. Certain theoreticians who are against the establishment of specialized administrative courts believe that courts that specialize in a certain area of law can apply the law more narrowly and have fewer skills in applying provisions from another area of law.⁷ On the other hand, specialization could make responsibility more difficult, because a good knowledge of administrative law becomes a special asset and human capital for administrative judges, so they could depend more on the state government itself, become biased, and make decisions in favor of the state.⁸ However, many authors, in theory, give preference to the system of specialized administrative courts, due to the greater specialization of judges, and more complete resolution of disputes from the aspect of decision-making, bearing in mind the important role of administrative courts in the creation and development of administrative law.⁹ It is considered that much stronger and stricter supervision of legality over the work of public bodies is achieved through specialized administrative courts than it would be achieved through courts of general jurisdiction.¹⁰ Essentially, many theoreticians conclude that the establishment of administrative courts as specialized institutions for resolving administrative disputes increases the legitimacy, effectiveness, and responsibility of administration, and this contributes to strengthening the protection of human rights.¹¹ Therefore, we can rightfully say that specialization in the resolution of administrative disputes is present as a generally accepted trend.

3. BOSNIAN TRADITION OF RESOLVING ADMINISTRATIVE DISPUTES

In the territory of Bosnia and Herzegovina, until the creation of the Kingdom of Serbs, Croats, and Slovenes (SHS), there was no judicial supervision of public administration. According to the Vidovdan Constitution from 1922, the State Council

⁷ Amaral-Garcia, S. (2019), Administrative Courts, In: Marciano A. and Ramello G.B. (Editors), *Encyclopedia of Law and Economics*, Springer: New York, p.30.

⁸ Dari-Mattiacci, G., Garoupa, N., Gómez-Pomar, F. (2010), *State Liability*, European Review of Private Law, Vol. 18, p. 28.

⁹ Đerđa, D., Kryška, D. (2018), *Neka rješenja upravnog spora u usporednom pravu: kako unaprijediti hrvatski upravni spor?*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, 39(1), p. 99.-100.

¹⁰ *Ibidem*.

¹¹ Rustemi, A., Zendeli, F., Memeti, M. (2012), *Judicial Control over Public Administration*, Acta Universitatis Danubius. Juridica, Iss. 2, p. 100.

of the Kingdom of SHS was the organ of the supreme state administration and the supreme administrative court.¹² According to the Law on the State Council and Administrative Courts from 1922, administrative courts were formed in Belgrade, Zagreb, Celje, Sarajevo, Skopje, and Dubrovnik for the first instance supervision of the administration.¹³ With the introduction of the king's dictatorship on January 6, 1929, and the change of the name of the state (Kingdom of Yugoslavia), the Law on the State Council and Administrative Courts was amended twice, and the Law on Business Procedures in the State Council and Administrative Courts was adopted, which kept almost the same organization and jurisdiction of the State Council and administrative courts.¹⁴ The administrative dispute was a dispute about the legality of administrative acts.¹⁵ With the establishment of the Banovina of Croatia in 1939, which also included part of the territory of today's Bosnia and Herzegovina, a separate system of administrative courts and judicial supervision of administrative acts was established. Administrative disputes in matters under the jurisdiction of the Banovina of Croatia were resolved by the Administrative Court in Zagreb.¹⁶ After the declaration of the Independent State of Croatia (NDH), the Administrative Court in Sarajevo continued to operate according to the provisions of the Law on the State Council and Administrative Courts from 1929 until 1942, when the Administrative Court in Zagreb was established by the Administrative Court Law as the only administrative court of general jurisdiction in the country, and at the same time the Administrative Court in Sarajevo was abolished, whose affairs, cases, files and movables were taken over by the newly established Administrative Court in Zagreb.¹⁷ In addition to the Administrative Court in Zagreb, as an administrative court of general jurisdiction and at the same time the supreme administrative court, other special administrative courts, along with the Accounts Court in Zagreb, the Supreme Invalidity Court in Zagreb and the Supreme Court of Workers' Insurance operated in the NDH.¹⁸ After the end of World War II and the establishment of the new Yugoslav state, administrative courts and judicial supervision of the administration disappeared, motivated by the negative assessment of the Soviet legal doctrine on administrative justice and judicial supervision of the administration as a bourgeois fabrication incompatible with the socialist state.¹⁹ In 1952 the National Assembly of

¹² Medvedović, D. (2014), Razvoj upravnog sudovanja u Hrvatskoj, In: Koprić I., *et.al.* (Editor). *Europeizacija upravnog sudovanja u Hrvatskoj*, Zagreb: Institut za javnu upravu, p. 59.

¹³ Koprić, I. (2006), Upravno sudovanje na području bivše Jugoslavije. *Hrvatska i komparativna javna uprava: časopis za teoriju i praksu javne uprave*, 6(1), p. 226.-227.

¹⁴ Medvedović, D. *op.cit.*, p. 59.

¹⁵ Koprić, I. *op.cit.*, p. 227.

¹⁶ Medvedović, D. *op.cit.*, p. 59.-60.

¹⁷ *Ibid.*, p. 60.

¹⁸ *Ibid.*, p. 61.

¹⁹ *Ibidem.*

the Federal People's Republic of Yugoslavia (FNRJ) passed the Law on Administrative Disputes, which was later amended in 1965.²⁰ Administrative disputes were resolved, as a rule, by regular courts, i.e. the supreme courts of the republics, the Supreme Court of Yugoslavia, and the Supreme Military Court.²¹ Administrative disputes from the exclusive jurisdiction of the republics, as well as disputes against the decisions of federal bodies, were resolved in a single-instance procedure, while disputes against the decisions of non-federal authorities in which the federal regulation was applied were resolved in two instances.²² The Constitution of the Socialist Federal Republic of Yugoslavia (SFRJ) from 1974 left the organization of the judiciary to the republics.²³ First-instance administrative disputes were resolved before the supreme courts in Montenegro, Macedonia, Slovenia, and Kosovo, and before the administrative courts in Bosnia and Herzegovina and Croatia.²⁴ The Administrative Court in Bosnia and Herzegovina was abolished in 1986, and first-instance jurisdiction in administrative disputes was divided between the district courts and the Supreme Court.²⁵ In 1977, the new Law on Administrative Disputes entered into force, which narrowed the list of acts that are exempt from control, and judicial protection was extended beyond administrative disputes (dispute for the protection of constitutional rights violated by the public action, and judicial protection of constitutional rights and the freedom of those violated by the individual final act).²⁶ After the dissolution of the SFRJ, the new states took over the Law from 1977, to gradually change it to a greater or lesser extent, supplement it, or adopt a new law with similar or completely new and different content.²⁷

4. NORMATIVE REGULATION OF THE ADMINISTRATIVE DISPUTE IN POST-DAYTON BOSNIA AND HERZEGOVINA

Today, as a consequence of its constitutional arrangement, there are several legal systems of administrative adjudication in Bosnia and Herzegovina: at the state level, at the entity level (in the Federation of Bosnia and Herzegovina and the Republic of Srpska), and the level of Brčko District of Bosnia and Herzegovina. At the state level, the Court of Bosnia and Herzegovina is competent to decide on lawsuits against final administrative acts adopted in the exercise of public powers of

²⁰ Ibidem.

²¹ Koprić, I. op.cit. p. 227.

²² Ibidem.

²³ Ibid., p. 228.

²⁴ Ibidem.

²⁵ Ibidem.

²⁶ Ibidem.

²⁷ Delić, R. (2020), Upravni spor pune jurisdikcije u Bosni i Hercegovini i državama Jugoistočne Evrope, Uprava - Časopis za upravu i upravno pravo, No. 23, p. 82.

the institutions of Bosnia and Herzegovina and its bodies, public agencies, public corporations, institutions of the Brčko District of Bosnia and Herzegovina and other organizations determined by the law of the state.²⁸ Disputes are resolved by the Administrative Department of the Court of Bosnia and Herzegovina.²⁹ In the Federation of Bosnia and Herzegovina, the judiciary consists of municipal courts that are established for the area of one or more municipalities in a canton, cantonal courts that are established for the area of one canton, and the Supreme Court of the Federation as the highest court of appeal in the Federation.³⁰ Cantonal courts in first-instance decide on all administrative disputes, as well as on requests for the protection of freedoms and rights established by the constitution if such freedoms and rights are violated by a final individual act or by the action of an official in an administrative body, i.e. a responsible person in a company, institution or other legal entity, when no other judicial protection is provided.³¹ A request for an extraordinary review of the court decision can be filed against a final decision of the cantonal court made in an administrative dispute, for which the cantonal court is again competent (in case the request is submitted due to a violation of the cantonal law or other cantonal regulations or due to a violation of the rules of the federal law on the procedure that could have an impact on the resolution of the matter) or the Supreme Court of the Federation (in case the request is submitted due to a violation of the federal law or another federal regulation or due to a violation of the rules of the federal law on the procedure that could have an impact on the resolution of the matter through the cantonal court).³² Judicial authority in the Republic of Srpska is exercised by courts of general jurisdiction (basic courts, district courts, and the Supreme Court) and courts of special jurisdiction (district commercial courts and the Higher Commercial Court).³³ District courts are competent to decide in the first instance in all administrative disputes according to the seat of the first-instance administrative body, as well as on requests for the protection of freedoms and rights established by the constitution, if such freedoms and rights are violated by a final individual act or by the action of an official in an administrative body, i.e. a responsible person in a company, institution or other legal entity, when no other judicial protection is

²⁸ Law on the Court of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, No. 49/09 – refined text, 74/09 – correction and 97/09, art. 8.

²⁹ Law on administrative disputes, Official Gazette of Bosnia and Herzegovina, No. 19/02, 83/08 and 74/10, art. 5.

³⁰ Law on Courts in the Federation of Bosnia and Herzegovina, Official Journal of Federation of Bosnia and Herzegovina, No. 38/05, 22/06, 63/10, 72/10 – correction, 7/13, 52/14 and 85/21, art. 16. – 18.

³¹ Ibid., art. 28, par. (1) point d)

³² Law on administrative disputes, Official Journal of Federation of Bosnia and Herzegovina, No. 9/05, art. 41.

³³ Law on Courts of the Republic of Srpska, Official Gazette of the Republic of Srpska, No. 37/12, 14/14 – Constitutional Court decision, 44/15, 39/16 – Constitutional Court decision and 100/17, art. 17.

provided.³⁴ The Supreme Court of the Republic of Srpska is competent to resolve the request for an extraordinary review of the final decision of the district court made in an administrative dispute.³⁵ In Brčko District of Bosnia and Herzegovina, judicial authority is exercised by the Basic Court of Brčko District and the Court of Appeal of Brčko District.³⁶ The Basic Court resolves administrative disputes in the first instance.³⁷

Administrative disputes in Bosnia and Herzegovina are single-instance proceedings without the possibility of filing an appeal as a regular legal remedy. Exceptionally, the Law on administrative disputes of the Republic of Srpska allows the filing of an appeal when it is determined by a special law.³⁸ The Law on administrative disputes of Brčko District is somewhat more flexible. Provisions of the Law on civil procedure apply accordingly to the administrative dispute for legal remedies and other procedural issues that are not determined by law, except for the provisions related to audit.³⁹ In that case, as the right to appeal is guaranteed in civil proceedings, an appeal can also be filed in an administrative dispute by analogous application of such a provision.⁴⁰ Article 13 of the European Convention on Human Rights guarantees an effective legal remedy at the national level, to anyone whose rights and freedoms, recognized by the Convention, are violated, bearing in mind that it must be "effective" both in law and in practice.⁴¹ Therefore, we can conclude that in administrative disputes at the level of Bosnia and Herzegovina, the Federation, and the Republic of Srpska, the right to an effective legal remedy has been infringed, so judicial control of the administration remains in the context of insufficient legal protection of the rights and interests of the parties violated by acts or actions of administrative bodies.

Courts in Bosnia and Herzegovina have cassation and reformation powers in administrative disputes. At the state level and in Brčko District, the court can annul the *final*⁴² administrative act with a judgment and return the case to the competent

³⁴ *Ibid.*, art. 31. par. (1) point g)

³⁵ Law on administrative disputes, *Official Gazette of the Republic of Srpska*, No. 109/05 and 63/11, art. 35. par. (1)

³⁶ Law on Courts of Brčko District of Bosnia and Herzegovina, *Official Gazette of Brčko District of Bosnia and Herzegovina*, No. 18/20 – refined text, art. 2.

³⁷ *Ibid.*, art. 21. par. (3) indent 3.

³⁸ Law on administrative disputes (RS), art. 34.

³⁹ Law on administrative disputes, *Official Gazette of Brčko District of Bosnia and Herzegovina*, No. 4/00 and 1/01, art. 32.

⁴⁰ Law on civil procedure of Brčko District of Bosnia and Herzegovina, *Official Gazette of Brčko District of Bosnia and Herzegovina*, No. 28/18 and 6/21, art. 323.

⁴¹ See *Kudla v. Poland*, Application no. 30210/96 (ECtHR 26 July 2000), *İlhan v. Turkey*, Application no. 22277/93, (ECtHR 27 June 2000)

⁴² The Law on administrative disputes of Bosnia and Herzegovina stipulated that only the *final administrative act* can be annulled by a judgment. Laws at other levels standardize the term *administrative act*.

authority for re-decision if it is found that the dispute cannot be discussed based on the facts established in the administrative procedure because there is a contradiction in the files, facts are incompletely established in important points, there is an incorrect conclusion drawn from the established facts, or it is found that the administrative procedure did not take into account the rules of the procedure that would have an impact on the resolution of the matter, and in other cases provided by this law.⁴³ On the other hand, the court can annul the *final* administrative act by judgment, determine the factual situation itself and resolve the administrative matter, if the annulment and re-conduct of the procedure before the competent authority would cause damage to the party that would be difficult to repair, or if it is obvious based on case evidence that the factual situation is different from the one established in the administrative procedure, or if the administrative act has already been annulled before in the same administrative dispute, or especially if the competent authority has not fully implemented the judgment, and in other cases provided by law.⁴⁴ In the entities, competent courts similarly exercise reformation powers. Thus, when the court at the hearing establishes a different factual situation compared to the factual situation established in the administrative procedure, and when it removes violations of the administrative procedure rules, it will annul the final administrative act and the first-instance administrative act if it also contained the same defects, and resolve the administrative matter itself (dispute of full jurisdiction).⁴⁵ In cases where the courts act in a dispute of full jurisdiction, delivered judgment completely replaces the annulled act. When an administrative dispute is conducted as a result of the "silence of the administration", there are different legal solutions. At the state and District level, if the court finds that the lawsuit is justified, it will accept it with a judgment, annul the administrative act, and determine in what sense the competent authority will make a decision or it will resolve the administrative matter itself.⁴⁶ In the Federation, the court will accept the justified lawsuit with a judgment and determine in what sense the competent authority will make a decision, while the court in the Republic of Srpska will also accept the lawsuit and order the competent authority to make an appropriate decision within a period that cannot be longer than 30 days from the date of delivery of the judgment.⁴⁷ It can be concluded that in cases of the "silence

⁴³ Law on administrative disputes (BH), art. 37. par. 3., Law on administrative disputes (BD), art. 31. par. 3.

⁴⁴ Law on administrative disputes (BH), art. 37. par. 4., Law on administrative disputes (BD), art. 31. par. 4.

⁴⁵ Law on administrative disputes (RS), art. 29. par. 2., Law on administrative disputes (Federal), art. 33. par. 2.

⁴⁶ Law on administrative disputes (BiH), art. 37. par. 6., Law on administrative disputes (BD), art. 31. par. 5.

⁴⁷ Law on administrative disputes (Federal), art. 36. par. 4., Law on administrative disputes (RS), art. 31. par. 4.

of the administration" courts at the state and District level have both cassation and reformation powers, while at the entity level, there is no dispute of full jurisdiction. In theory, when analyzing the difference between disputes of legality and disputes of full jurisdiction, it can be noted that in recent years, under the influence of European Court of Human Rights practice, there has been an evident increase in conducting disputes of full jurisdiction, to meet the requirements of efficiency, effectiveness, and speed of dispute resolution.⁴⁸ This is indeed the meaning of judicial supervision of the administration, which should be sought in the idea that the administration cannot be the final judge in its own matter.⁴⁹

Laws on administrative disputes at all levels in Bosnia and Herzegovina stipulate that competent courts resolve administrative disputes in closed session. Exceptionally, in certain cases, the courts can order the holding of an oral public hearing, e.g. due to the complexity of the matter, for better clarification of the situation or at the suggestion of the party.⁵⁰ However, such legal solutions do not follow the internationally recognized procedural principle of a fair and public hearing within a reasonable time before an independent and impartial court established by law, provided by Article 6 of the European Convention and through the practice of the European Court of Human Rights.⁵¹ A review of the literature shows a tendency towards narrowing the right to an oral hearing, while some authors also indicate that a hearing could sometimes be difficult for the court and could result in a prolonged judgment or higher costs.⁵² This finding contrasts with other studies that have shown that both very quick and very lenient judicial decision-making processes produce more uncertainty for both the parties and the general, and omitting the right to an oral hearing, especially without providing written justification, could ultimately lead to more detrimental and longer outcomes.⁵³

⁴⁸ Britvić Vetma, B., Malenica, I. (2023), *Upravnosudska praksa - instrument kontrole kvalitete pravne norme*, Zbornik radova Pravnog fakulteta u Splitu, 60(2), p. 356.

⁴⁹ Staničić, F., Britvić Vetma, B., Horvat, B. (2017), *Komentar Zakona o upravnim sporovima*, Zagreb: Narodne novine, p.14.

⁵⁰ Law on administrative disputes (BH), art. 29., Law on administrative disputes (Federal), art. 28., Law on administrative disputes (RS), art. 25., Law on administrative disputes (BD), art. 27.

⁵¹ See *Scarth v. The United Kingdom*, Application no. 33745/96 (ECtHR, 22 July 1999), *Fischer v. Austria*, Application no. 16922/90 (ECtHR, 26 April 1995)

⁵² Rašić, M. (2023), *Absence of an Oral Hearing in Administrative Disputes: A Comparative Analysis of Slovenia and Croatia*, Central European Public Administration Review, 21(2), p. 159.

⁵³ *Ibid.* p.159.-160.

5. CONCLUSION

There are numerous shortcomings in the judicial system in Bosnia and Herzegovina, which is why we witness daily criticism and citizens' distrust of its work. This is a consequence, largely due to the complex constitutional structure and the lack of coordination between numerous levels of government. Administrative adjudication, as part of the entire judicial system, undoubtedly requires a legislative framework that will ensure speed in resolving administrative disputes, and ensure the fundamental rights of individuals. I want to emphasize that it is very important that the Convention's guarantee of a fair trial is applied in administrative court proceedings in Bosnia and Herzegovina. This improves the protection of the human rights of all citizens in relation to administrative bodies, and on the other hand, the quality of administrative adjudication. Today, more than ever before, that is imperative, because efficient administrative justice is of exceptional legal and political importance for modern Bosnian-Herzegovinian society.

One century-old tradition of administrative adjudication in Bosnia and Herzegovina indicates that this system functioned successfully through courts of general jurisdiction and special administrative courts as well, including disputes of legality and disputes of full jurisdiction in one or two instances. Although the positive legislation in some way foresees an administrative dispute of full jurisdiction, it is necessary to expand the cases of its conduct. On the other hand, at the entity level, there is no possibility of a meritorious resolution in cases of the "silence of the administration". Therefore, courts must have the chance, whenever they deem it necessary, to resolve the matter on the merits. It is also necessary to harmonize the legal solutions in Bosnia and Herzegovina in such a way that an oral public hearing in an administrative dispute is an obligation, not an exception. Of course, exceptions to the mandatory oral hearing should be determined, but by the exceptions provided by the European Convention on Human Rights, such as cases of protection of the interests of morality, public order or national security, protection of minors, the privacy of parties, etc. This would greatly contribute to the fairness of the administrative dispute, where the parties have the opportunity to be heard and to be familiar with the judicial process. Furthermore, an extremely important mechanism of legal protection for all citizens is the standardization of appeal as a regular legal remedy in administrative disputes at all government levels. I perceive that it is high time to abandon the long-standing one-instance concept of administrative adjudication in Bosnia and Herzegovina and foresee the possibility of filing an appeal, or at least determining exceptions to first-instance judgments against which it would not be possible to file an appeal.

Do we need specialized administrative courts? Undeniably, there are many arguments in theory that the specialization of the judiciary directly contributes to better, faster, and easier administrative adjudication. It is difficult to assess how the system of specialized administrative courts would function in a complex country such as Bosnia and Herzegovina. Such an undertaking would require the amendment of many substantive national laws, starting with those on the organization of the judiciary, up to the laws on administrative disputes, on the method of appointing judges, on financing the work of the courts, etc. However, I believe that precisely this complexity of the Bosnian-Herzegovinian political system opens up many possibilities for the organization of administrative adjudication. I will offer several solutions. The first solution is the establishment of special first-instance administrative courts according to the seat of the current cantonal courts in the Federation of Bosnia and Herzegovina and district courts in the Republic of Srpska, and one court each that would take over the jurisdiction of the Court of Bosnia and Herzegovina and the Basic Court in Brčko District. As the last administrative-judicial instance, one supreme administrative court should be established with jurisdiction for the whole country, or one supreme administrative court in each entity, at the level of Bosnia and Herzegovina and in Brčko District. Another solution is the establishment of several first and second-instance administrative courts that would "cover" larger regional centers in Bosnia and Herzegovina, with different levels of jurisdiction. The third solution is the establishment of only one administrative court - the Administrative Court of Bosnia and Herzegovina with several divisions for different levels of jurisdiction, which would resolve all administrative disputes in the first instance. Legal remedies against his decisions would be submitted to the newly established Supreme Court of Bosnia and Herzegovina. The question of the need for the Supreme Court of Bosnia and Herzegovina and the existence of a legal basis for its establishment has been the subject of numerous discussions and debates in recent years, which often remain within the political framework. Conflicting views are evident in the legal literature, where some believe that establishing the Supreme Court requires an amendment to the Constitution of Bosnia and Herzegovina, which does not explicitly regulate the judicial power at the state level. On the other hand, we come across opinions that the legal basis for establishing the Supreme Court can be found in an adequate interpretation of the Constitution. It is based on strengthening the legal security of citizens, ensuring compliance with the principles of the European Convention, and maintaining the rule of law and Bosnia and Herzegovina as a legal state. Therefore, to be able to talk about the reorganization of administrative adjudication in Bosnia and Herzegovina through the establishment of the Supreme Court, it is first necessary to put aside political preferences and stay within the legal framework, respecting legal positions and arguments.

Based on the research carried out in this paper, we can confirm without a doubt the hypothesis that the administrative adjudication in Bosnia and Herzegovina creates procedural prerequisites for the violation of the Convention's right to a fair trial and an effective legal remedy. To harmonize the legislation with the *acquis communautaire*, the administrative adjudication in Bosnia and Herzegovina requires radical changes. Depending on the challenges that will be put before the reform of the judiciary in the following years, the extent of improvement of the administrative adjudication will be different. Quality solutions to administrative disputes should consequently lead to greater legal protection and create a stable environment in Bosnia and Herzegovina that all its citizens deserve.

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UPRAVNO SUDOVANJE U BOSNI I HERCEGOVINI IZMEĐU TRADICIJE I EVROPSKE MODERNIZACIJE

Abstrakt:

Polazeći od pretpostavke da su vladavina prava i pravo građana na pravično suđenje pred nezavisnim, nepristrasnim i zakonom ustanovljenim sudom jedni od najvažnijih principa svake demokratske države, u kontekstu upravnog prava od posebnog značaja je postojanje efikasnih mehanizama upravnosudske kontrole javne uprave. Upravni sudovi igraju važnu institucionalnu ulogu u modernim državama i dio su sistema kontrole rada javne uprave i šire pravne zaštite građana u upravnim stvarima. Djelovanje posebnih upravnih sudova paralelno ili odvojeno od redovnih sudskih struktura nerijetka je pojava u mnogim državama svijeta. U pravnoj teoriji specijalizacija u rješavanju upravnih sporova izražena je kao općeprihvaćeni trend u mnogim evropskim državama. Osim toga, evidentna je i tendencija prema svojevrsnom zajedničkom evropskom modelu upravnog sudovanja koji je organiziran najmanje dvostepeno. Bosna i Hercegovina kao i druge zemlje Zapadnog Balkana ima dugu tradiciju upravnog sudovanja. No, danas, kompleksnost njenog ustavnog uređenja i upravno-pravna tradicija koja je ostala na nedostatnom nivou da prati nužnu evropeizaciju sistema upravnog sudovanja, ostavljaju sve jači pečat na efikasnost i funkcionalnost ovog mehanizma. Ovaj rad ima za cilj kroz naučnu deskripciju teme istraživanja, ukazati na nedostatke postojećih normativnih rješenja upravnog sudovanja u Bosni i Hercegovini, te u konačnici pokušati odrediti pravce reforme koja je neophodna u procesu pristupanja Evropskoj uniji.

Ključne riječi: *upravno sudovanje, upravni spor, upravni sudovi, specijalizacija, javna uprava*

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