The Development of the Administrative Court Systems in Transition Countries and Their Role in Democratic, Economic and Societal Transition

Mateja Held[*]

UDK: 347.998.85(4-11)(4-12)
35.077.2:342.922.924(4-11)(4-12)
https://doi.org/10.31297/hkju.22.2.5
Review paper / pregledni znanstveni rad
Received / primljeno: 17. 12. 2021.
Accepted / prihvaćeno: 4. 6. 2022.

The paper analyses the origins of judicial control of administration and the development of the administrative court system in European transition countries which have undergone three phases – the formation of democratic institutions and establishment of administrative courts, the reform phase under the influence of the Europeanisation process on administrative courts' development, and the evaluation phase. After the formation of the administrative court system, transition countries that formed specialised administrative courts in the second half of the 20th century were under the process of Europeanisation, while in countries which formed their specialised administrative courts

[*] Mateja Held, Associate Professor, Faculty of Law, University of Zagreb, Croatia (izvanredna profesorica na Katedri za upravno pravo Pravnog fakulteta Sveučilišta u Zagrebu, e-mail: mateja.held@pravo.hr).

ORCID: https://orcid.org/0000-0001-7713-7767

later, this development is observed with some delay. The analysis aims to discover the connection between the development of administrative court systems and their role in democratic, economic and societal transition.

Keywords: administrative courts, transition countries, judicial review, democratic, economic and societal transition

1. Main Features of the Transition Process and its Reflection on the Administrative Court System

Public administration in general, as well as the organisation of administrative courts in post-communist European countries have undergone tremendous changes in the last decade of the 20th century in response to the requirements of the transition process. Generally, transition denotes the downfall of the socialist regime and the adoption of democratic structures, but the term can also be used in the fields of economy (Dung, 2003). In general, public opinion on courts in socialist regimes was at a very low level because of judicial corruption and judges usually having political directives, or strictly following the norm, without any teleological interpretation while solving cases (Matczak, Bencze & Kühn, 2010). Public administration was, similar to the courts, in the function of the autocratic state. In most of those countries, citizens could not challenge decisions of (corrupt) employees of administrative state bodies before independent administrative courts. All of this led to a loss of confidence in judges and courts as the guardians of the constitution and the rule of law itself as a core of every democratic system (Dung, 2003), and to a deep distrust of public administration and state in general (Hien, 2005). "Such countries have the legacy of an omnipresent and omni powerful state, rotten from within with corruption and clientelist networks" (European Commission, 2018, p. 88). Transition was characterised by far-reaching changes in all segments of the state. The new role of the courts and trust in them had to be built up from the basis, or bottom-up. It might take years for citizens to gain trust in judges and their independence, courts and functioning of the state in general, as in some transition countries public trust is still at a very low level. "While political, social and economic changes may take place relatively quickly, psychological changes could be very slow" (Markova, 2004, p. 19).

Administrative courts have an important role in determining whether administrative bodies (state, regional, local) have reached a lawful and inde-

pendent decision. If discretionary powers of administration are in question, the court can determine whether the decision was lawful and within the margins of discretionary powers (Krbek, 1937; Krbek, 1955). During the formation of judicial control of administration, one of the issues was whether to form judicial control of administration in one or in two levels, followed by some technical details regarding recruitment of administrative judges, their salaries, etc., since in socialist countries, judges were not well paid (Dung, 2003). The conditions in various countries were different, due to the specific context, i.e. historical circumstances, tradition or war.

The first phase of the development of the administrative court system took place in parallel with the creation of new parliamentary democracies (forming of new political parties, instituting free elections, and adopting new constitutions with the proclamation of the rule of law as the basic principle (Matczak, Bencze & Kühn, 2010)). The principle of the separation of powers between three branches, legislative, judicial and executive, is a principle which restrains and at the same time constitutes political power (Omejec, 2015). It is also a precondition for judicial independence, which was guaranteed in the constitutions of transition countries. New democracies were based on the principles of constitutionality, legality, all joined in the highest principle – the rule of law – known as the basic principle of the functioning of public administration and also one of the main principles of the European Administrative Space (EAS) (Kovač, 2017). The new role of the courts included the protection of human rights and freedoms from illegal activities and decisions of the public administration.

Administrative courts have been playing an important role in the economic transition from planned to market economy. Constitutions of transition countries guarantee business liberties, the principle of proportionality, and ban on monopolies. Administrative bodies issue all kinds of licenses and permits regarding investments, so their control must be efficient, performed in a reasonable time, and independent of all external influences. Administrative courts are entitled to control decisions in the area of telecommunications, decisions of agencies in charge of competition and those of sectoral jurisdiction, spatial plans, decisions in tax law, building and location permits which are the preconditions of investments in a certain location, decisions in the field of agriculture, decisions issued by public authorities in the healthcare system, education system, etc. Building roads with accompanying infrastructure and associated activities such as expropriation, concessions, and environmental law are also under the observance of administrative courts. The multitude of areas which are under the control of administrative courts gives rise to some questions on the education of judges and specialisation of administrative courts, *inter alia*.

2. Origins of Judicial Control of Administration

Judicial control of administration was created as a mechanism for the restriction of administrative action by impartial courts. Administrative dispute as a form of control over the administration was created in the 19th century in France (Braibant, 1992; Gaudement, 2001; Borković, 2002; Đerda, 2008), and France is still a role model in the area of judicial control of administration (Britvić Vetma, 2014). The goal of judicial control of administration in the form of administrative dispute has been to sanction the illegal actions of administration, but it has had a preventive character as well. The aim was also to protect the rights and interests of the citizens by an independent tribunal. Administrative dispute was present in the early stages of the development of modern countries and their administrative law, such as in Germany. German administrative law today is considered as "one of Germany's most successful export articles" (Hien, 2005, p. 6).

According to Koprić (2006), judicial control over administration has two basic models.[1] In the common law system, the control over administration is performed by ordinary courts or tribunals (e.g. in Denmark, United Kingdom, and United States of America). Some countries have special sections in their ordinary courts dealing with administrative law (Netherlands, Spain). The continental type of control of administration is performed by special administrative courts (France, Germany, Austria and most of transition countries). There are also systems where quasi-judicial bodies and tribunals other than courts, such as independent commissions or councils, may exercise administrative justice on certain thematic issues such as environmental law (OSCE, 2013). In the continental system of specialised administrative courts, administrative dispute is organised in one, two or even three levels, depending on the constitutional and legislative arrangements of the country. Due to the process of European integration and modernisation of public administration, it can be noticed that one common model of judicial control of administration is emerging (Woehrling, 2006). Administrative law is a living organism and it follows societal changes. Today, administrative courts in their decision-making process should consult not only domestic laws and regulations, but also international documents as well as EU law. The whole process of Europeanisation is characterised by the a "creation of a common core of administrative principles, rules and practic-

[1] There are other concepts of judicial control over administration. According to Woehrling (2009), Europe has three models of judicial control – continental, French and German model.

es" (Koprić et. al., 2011, p. 1517). Koprić describes it as a more traditional approach focused on the similarities between European countries which is focused on the results, and not so much on the driving forces and mechanisms of convergence (Koprić, 2017). The COVID-19 pandemic influences the judicial system as well, but even in times of emergency, the rule-of-law principles should be ensured (OSCE, 2020).

The following analysis is based on the three stages in the development of the administrative courts systems in transition countries: 1) formation of democratic institutions (during the 1990s); 2) public administration reform phase (during the 2000s), and 3) evaluation phase (after 2015). The paper is focused on the first two stages, while the latter will not be elaborated separately since it is still ongoing and since this phase deserves a broader analysis which exceeds the space limitations of this paper. In the late 1980s and early 1990s, all transition countries abandoned the socialist structures of administrative courts (whether specialised courts or departments in the supreme courts of certain countries (e.g. Yugoslavia).[2] After the fall of the Iron Curtain, the process of transition in the early 1990s was characterised by the formation of independent administrative court systems. Some of the countries already had specialised administrative courts, such as Croatia, Slovenia and Poland, while others had at least specialised administrative divisions in ordinary courts, but all of them noticed and recognised the importance of judicial control of administration in the process of democratisation (Hien, 2005). The second (or reform) phase in administrative courts' development is Europeanisation and modernisation of public administration and administrative courts' organisation. International standards set by the European Convention on Human Rights (ECHR) and standards set by the Court of Justice of European Union (CJEU) have had a decisive influence on the reform of administrative structures in post-communist countries. In the evaluation phase, countries evaluate their administrative court systems, noticing shortcomings by themselves or through the input of the European Commission reports. They move forward by amendments to the basic administrative disputes' acts and some of them are even preparing new reforms of the system.

[2] Except Poland which had the same court established in 1980.

3. Formation of Democratic Institutions and the Establishment of Administrative Courts

3.1. The Formation Phase in the Countries of Former Yugoslavia

The legal situation in all transition countries during the 1990s was characterised by a conceptual confusion. There was no general template for the transition process since the particularities in the tradition and mentality of each country facing this process play a major role (Omejec, 2015; Merusk, 2004).

Croatia and Slovenia took over the basic laws regulating administrative courts' organisation from the socialist Yugoslavia. The Administrative Disputes Act (ADA) from 1977 was incorporated into the Croatian and Slovenian legal systems with minor changes. Judicial control of administrative acts is guaranteed by the Croatian Constitution (Art. 19 of the Constitution of the Republic of Croatia). The Administrative Court in Zagreb, which was founded in 1977, was the sole administrative court in the Republic of Croatia and administrative disputes were organised as one-level proceedings without the possibility of an appeal against first-instance judgements. The scope of its jurisdiction was control of the lawfulness of administrative acts, which is in theory also known as the subjective administrative dispute.[3]

The Yugoslav ADA from 1977 was in force in Slovenia until 1998, when new legislation was adopted. Administrative dispute was then regulated on two levels by the new Slovenian ADA. First instance cases were brought before the Administrative Court of the Republic of Slovenia and it was possible to file an appeal with the Supreme Court of the Republic of Slovenia[4] (ADA Art. 5/2, Grafenauer & Breznik, 2009).

In Bosnia and Herzegovina, administrative dispute is organised on multiple levels. On the national level, the act on administrative disputes was adopted in 2002. In the Federation of Bosnia and Herzegovina, two administrative disputes acts were adopted, one in 1998 and another in 2005. Administrative dispute was organised before administrative courts

[3] More on the types of the administrative disputes in: Borković (2002); Đerđa and Šikić (2012); Ljubanović and Britvić Vetma (2011).

[4] See article 106 of the Courts Act for jurisdiction of the Supreme Court of Slovenia as the first instance court.

in cantons and there was no possibility to lodge an appeal with a second instance administrative court. In the Republic of Srpska, the Administrative Disputes Act was enacted in 1994. Administrative disputes were conducted before the Supreme Court of the Republic of Srpska, higher courts, and the Supreme Military Court (Art. 18). Jurisdiction of the courts is provided by general clause with negative enumeration. Control of the legality of an administrative act is the focus of the administrative dispute, and the dispute can start on the initiative of the public prosecutor and public ombudsman as well (Koprić, 2006).

In the Federal Republic of Yugoslavia, the Administrative Disputes Act from 1977 was in use until 1996. Courts which were applying the Administrative Disputes Act from 1996 were the courts in member states of FRY, Serbia and Montenegro. The same act continued to be applied later in Serbia. Montenegro adopted a new Administrative Disputes Act in 2003. In the State Union of Serbia and Montenegro in 2003, administrative control of the legality of administrative acts was regulated by the Act on the Courts of Serbia and Montenegro from 2003. In the Courts Act from 2001, the establishment of the Administrative Court was provided for the whole territory of Serbia. In Montenegro, administrative disputes were under the jurisdiction of the Supreme Court, and the Administrative Court of Montenegro has existed since 2005 (Koprić, 2006).

Acts regulating judicial control of administration were adopted during the 2000s in the Federation of Bosnia and Herzegovina (Trlin, 2016), Macedonia (Russel-Einhorn & Chlebny 2006), and in Montenegro (2003). Kosovo adopted the Anglo-Saxon system of judicial control of administration provided in the Regular Courts Act (Muçaj & Gruda, 2016).

3.2. The Formation Phase in Transition Countries that Formed Specialised Administrative Courts in the Second Half of the 20th Century[5]

Czech Republic and Poland had similar arrangements of administrative courts during the period between World War I and World War II. Both countries established administrative court systems that were based on the model of the Administrative Court in Vienna from 1876 (Köhler, 2015).

[5] The division overlaps with division of countries in terms of the Human Development Index value in 2019, retrieved form https://hdr.undp.org/en/content/latest-human-development-index-ranking.

Czech Republic had organised administrative courts in one level, and the Supreme Administrative Court (*Nejvyšší správní soud*) with its seat in Prague was the only administrative court competent for the whole country. In 1952, administrative court was abolished and re-introduced in 1992 (Đerđa & Kryska, 2018; Matczak, Bencze & Kühn, 2010). Until then, judicial review of public administration activities was performed according to a special part of the civil procedural regulations in the framework of the general judicial system, but not in full jurisdiction (ACA, 2014).

Although Poland had a long tradition of administrative justice, during the communist period there were certain opinions deeming administrative courts not necessary (Skocylazs & Swora, 2007). Administrative justice was introduced again in Poland in 1980 with the establishment of the Supreme Administrative Court (*Naczelny Sąd Administracyjny*). Administrative justice has its basis in the Polish Constitution (Art. 174, 175, 177). The Supreme Administrative Court was competent for the whole country. Regarding procedure and judicial powers, the new Polish concept represented the adoption of the earlier, historical Austrian pattern from the Austro-Hungarian Empire (OECD, 1997; Đerđa & Kryska, 2018; Skoczylas & Swora, 2007; Turłukowski, 2016).[6] Although the Supreme Administrative Court in Warsaw was the only administrative court in the country, ten regional offices were created during 1995. There was no possibility to lodge an appeal with the higher court; however, extraordinary revision by the Supreme Court existed (Skoczylas & Swora, 2007).

In 1992, the Estonian Parliament (*Rigiikogu*) adopted the decision according to which the acts in force should be in accordance with the acts in force prior to 1940. Activities of the government included legal reforms, adoption of the new regulations and their implementation with the aim of Estonia becoming a democratic state relying on the rule of law (Merusk, 2004). Specialised administrative courts were established by the Administrative Courts' Procedure Act from 1993 in two levels (ACA, 2014a). According to its provisions, any person with an interest may challenge an individual administrative decision. An appeal can be lodged with the Supreme Court. In some cases, the procedure can be brought directly before the Supreme Court which has an Administrative Law Chamber (OECD, 1997).

In Hungary, the 1989–90 regime change created a rule of law state in Hungary and gave rise to a gradually evolving reform in the judiciary. As a

[6] For historical overview, see: Skoczylas and Swora (2007).

first step, the decree restricting the contestability of certain decisions was annulled by the Constitutional Court. The basis for judicial control of the administration is Art. 50/2 of the Constitution which provides that the courts shall review the legality of the decisions of public administration. There are county courts as the courts of first instance and the Hungarian Supreme Court could change or overturn their decision in the procedure initiated with extraordinary remedy (Matczak, Bencze & Kühn, 2010).

The development of the administrative court system in Latvia started after the country regained its independence and the functioning of the state was established on democratic principles. Firstly, there was no separate law regulating administrative procedure and administrative dispute. The protection of citizens' rights was regulated by the Civil Procedure Code, according to which people could bring actions against state officials and local government officials. This regulation was in force until 2004, when the Administrative Procedure Act entered into force.

Similar to Latvia, Lithuania did not have specialised administrative courts during the first decade after gaining independence. Ordinary courts dealt with the protection of citizens' rights in administrative matters. In the constitutional provisions from 1999, both specialised courts and administrative courts were foreseen. According to the Establishment of Administrative Courts Act, specialised administrative courts were established for considering complaints (applications) against administrative enactments adopted by the entities of public and internal administration and their acts or omissions. The system of administrative courts consisted of five regional administrative courts, the Higher Administrative Court, and the Administrative Division of the Court of Appeals of Lithuania (ACA, 2014b).

3.3. The Formation Phase in the Countries which Established Specialised Administrative Courts in Late 20th and Early 21st Century

Administrative law in Albania changed significantly during the 1990s with the abandoning of the communist system and due to the process of Europeanisation, with a strong influence of EU law as well as ECHR standards (Meça, 2014). The process of transition in Albania was relatively slow due to historic circumstances, succession of different laws and a low level of public trust towards institutions. During the first years of transition in Albania, the focus was mainly on building the key institutions for the

functioning of the state, such as the parliament, government, judiciary based on democratic models, as well as on basic economic reforms, the banking system and privatisation. (Hoxa & Gurraj, 2001, p. 196). The Constitutional Court was established in 1992 and was entitled to review administrative acts. The draft of the Constitution provided for specialised administrative courts (OECD, 1997), but they were established only in 2012. The Albanian Constitution was adopted in 1998 and in its Art. 42 regulates that everyone has the right to a fair and public trial within a reasonable time, by an independent and impartial court specified by law with the aim of protecting constitutional and legal rights, freedoms, and interests. The Constitution also regulates in Art. 43 that everyone has the right to appeal a judicial decision before a higher court, except when the Constitution provides otherwise.

Judicial supervision of administration in Bulgaria was established in the beginning of the 20th century and was based on the French model. After 1947, judicial control of administration was abolished, and during the 1990s there was again mention of judicial control exercised by administrative courts (OECD, 1997). The creation of specialised administrative courts, namely the Supreme Administrative Court, was provided in the Constitution from 1991 and in the Judicial System Act from 1994. This court was to be competent for the review of individual and normative administrative acts. Until its establishment, the Supreme Court was entitled to review administrative acts and actions (OECD, 1997). In reality, the Supreme Administrative Court started functioning in 1996 (ACA, 2016).

Ukraine gained its independence in 1991. After the fall of the Soviet regime, Ukraine started to develop a democratic society, multi-party system and market economy. All reforms in the early 1990s were associated with the socio-economic and political changes that took place in the society as a result of gaining independence (Bilkiewicz, 2017). The Ukrainian Constitution from 1996, based on the principles of the protection of human rights and freedoms, was the legal basis for establishing separate administrative courts. The creation of specialised administrative courts emerged from the need for better protection of the citizens' rights in administrative cases, as well as long-lasting procedures concerning administrative matters, specificities of administrative cases not being considered by ordinary courts, low efficiency, increasing number of cases of administrative dispute before ordinary courts, and lack of quality in the cases solved before ordinary courts. Administrative courts were a necessity for effective public administration. Judicial control of administration by specialised administrative courts was introduced in 1998 by the President's decree (Bilkiewicz, 2017).

4. Reform Phase and Influence of Europeanisation on Administrative Courts' Development

4.1. Reform of the Administrative Court System in Croatia and Slovenia

The reform phase in transition countries is characterised by the process of accession to the European Union, which is regarded as a catalyst for the reform public administration systems (Koprić, 2014). The countries are exposed to the influences of the EU such as principles of the rule of law, good governance, openness, accountability, efficiency, professionalism, which are the main principles of the EAS with the main aim of protecting the citizens (Koprić, 2011; Kovač, 2017). Differences in the approach towards the reform as well as reform results are interdependent with the tradition and legacy of the countries as well as the war conditions during the 1990s. The Europeanisation process is responsible for the creation of core administrative principles, and the processes of democratic transition and economic transformation are correlated with Europeanisation (Koprić et al., 2011).

European standards of judicial control of administration are set by the ECHR and EU. In the first place, they include a two-tier system of administrative dispute. Slovenia had introduced it already in the first phase of the development of administrative courts, but in Croatia this process started only at the beginning of the 2000s and was finished in 2010 with the adoption of the new ADA. The preparatory steps for the Croatian reform included visits of foreign experts, expert analysis of the administrative dispute, and the preparation of draft versions of the ADA (CARDS 2004).[7] Experts concluded that administrative dispute in Croatia was facing three major problems: 1) procedural rules were not harmonised with the *acquis*, 2) long lasting procedures, and 3) a great number of unsolved cases. Although the reform was well prepared, the implementation of the reform had some flaws, the major one being a lack of competent judges for the new functions. In socialism and during the first years of transition, judges did not use any interpretation in their decisions, strictly and uncritically following the norm instead. Those circumstances and the increasing inflow of cases to the administrative courts was certainly not the

[7] More on the CARDS programme in Croatia and documents on the reform of the administrative court system: http://vusrh.hr/o-visokom-upravnom-sudu-rh/cards-2004/

environment in which judges had an opportunity to carefully study the case, interpret all the relevant circumstances and pertinent regulations, and reach the best lawful decision considering the rights of the citizens.

During 2010, a new two-tier administrative court system was introduced,[8] with four first instance administrative courts located in Zagreb, Rijeka, Osijek and Split, and the High Administrative Court of the Republic of Croatia in Zagreb. A high level of the protection of citizens' rights and freedoms is hardly imaginable without oral and contradictory hearing, which is another European standard transition countries have to meet. In Croatia, it is guaranteed in Art. 7 of the ADA. The subject of the administrative dispute has been widened, and normative by-laws can be challenged before high administrative courts, which is in accordance with the Council of Europe's recommendation (2004)20.

Slovenia had a system of the protection of human rights and freedoms before administrative courts, and thus was one step ahead in relation to its prior organisation. However, it was evaluated by experts as having a mostly formalistic approach which, together with the administrative dispute organised in two levels, caused an inflow of cases and backlog in dealing with them, resulting in overloaded administrative courts (Jerovšek, 2006). All of this was taken into account in the procedure of establishing the legality of the ADA before the Constitutional Court of the Republic of Slovenia. It decided positively on unconstitutionality of the Slovenian ADA on 22 September 2005. The reform took place in 2006 when the new ADA was adopted and it was amended in 2010 and in 2012. Administrative dispute is organised in two levels. The administrative court with its seat in Ljubljana is the first instance court together with its departments in Celje, Maribor and Nova Gorica. The Supreme Court of Slovenia is the second instance court in the administrative dispute and decides on the matters from Art. 12 of the ADA, for example it has jurisdiction to decide on the legality of acts of electoral bodies regarding the rliament and State Council, as well as the election of the president of the state. Slovenian administrative dispute is now in accordance with the European standards.

[8] The division into specialised administrative courts and the High Administrative Court of the Republic of Croatia was introduced with the Courts Act in 2010 (Art 13a).

4.2. The Reform Phase in Transition Countries that Formed Specialised Administrative Courts in the Second Half of the 20th Century

In Czech Republic, under the influence of the Europeanisation process, different principles were introduced, such as the principles of speedy and economic proceedings and public hearing. (Staša & Tomášek, 2012). The Supreme Administrative Court was established in Brno in 2003. The administrative court system in Czech Republic is organised in two levels, through ordinary courts and the Supreme Administrative Court. In the first instance, administrative disputes are conducted before specialised court councils and specialised judges in eight ordinary regional courts. Proceedings before the Supreme Administrative Court can be initiated by an extraordinary remedy cassation complaint (Đerđa & Kryska, 2018). According to Art. 4 of the Code of Administrative Justice, courts of administrative justice decide on complaints against an administrative authority, protection against the inactivity of an administrative authority, and competence complaints. The democratic role of courts of administrative justice is contained in their jurisdiction in election matters and in the matters of local referendums, matters concerning political parties and political movements. The Supreme Administrative Court decides on the dissolution or suspension of a political party or on the renewal of its activities. It also conducts proceedings on the competence actions between a state administration authority and a local government authority, or between individual and local government authorities (e.g., between the authority of a village and that of a region), and between individual central administrative bodies with regard to who should issue a resolution in a specific matter. Since 2008, it has become a disciplinary court for all judges and prosecuting attorneys, and since 2009 for enforcement agents (ACA, 2014). Exceptionally, the Supreme Administrative Court decides in further matters defined by law. The Supreme Court and the Supreme Administrative Court issue opinions to ensure uniform judicial decision-making (Bureš et al. 2004).

The basis for the organisation of the administrative court system in two levels in Poland can be found in the 1997 Constitution in Art.176/1, and in ECHR standards. The Polish administrative court system has been organised in two levels since 2004. The basic acts regulating the administrative court system were adopted after the reform in 2002, by the Act on the System of Administrative Courts and the Act on Proceedings before Administrative Courts. On the first level, there are 16 administrative courts

of voivodship (Art. 2 of the Act on the System of Administrative Courts), and on the second level, the Supreme Administrative Court with its seat in Warsaw is divided into three chambers: Financial Chamber, Commercial Chamber, and General Administrative Chamber. According to Art. 3 of the Act on Proceedings before Administrative Courts, administrative courts have a broad jurisdiction, and that may affect their efficiency (Skoczylasz & Swora, 2007).[9] The Supreme Administrative Court has jurisdiction regarding appeals against first instance administrative courts' decisions, solving abstract or concrete legal issues that cause doubts in court practice, and resolving conflicts of jurisdiction between the bodies of different units of local self-government or bodies of local self-government units and state administration bodies (Đerđa & Kryska, 2018, p. 97). Pursuant to Art. 186 of the Polish Constitution, the Supreme Administrative Court and other administrative courts may exercise, to the extent specified by the statute, control over the performance of public administration. Such control may also extend to judgments on the conformity to the statute of resolutions of bodies of local government and normative acts of territorial bodies of government administration. It should be noted that administrative dispute now relies on the principles derived from the principle of good administration, such as the principle of two-level administrative dispute, principle of legality, public hearing, speediness and efficiency, access to court, and the effectiveness of the enforcement of judgments of the court (Turłukowski, 2016).

Judicial reform in Hungary took place in 2012. As a result, there are 20 administrative and labour courts, and they operate at the seats of county courts. They are entitled to control administrative decisions at the first level. This structure is based on the Organiation and Administration of the Courts Act. It is important to mention that there is no special law regulating administrative dispute, as the rules for it are provided in Chapter XX of the Code of Civil Procedure.

Estonian public administration (PA) reform is characterised by a systematic approach. Firstly, there were studies on the preparation of the reform, foreign experts were engaged in steering groups for PA reform, but also domestic experts and judges were included. The administrative courts with their case law had an important role in the PA reform. The public administration reform in Estonia has its grounds in the Estonian Consti-

[9] For the issues excluded from administrative dispute, see Turłukowski, (2016, p. 138).

tution, especially regarding judicial control of administration derived from Section 15 of the Estonian Constitution, according to which everyone whose rights and freedoms are violated has right of recourse to the courts (Merusk, 2004). During the accession process to the EU, Estonia paid much attention to the European regulations as well as the German legal system due to its general influence on the Estonian legal system. Some basic values which were taken as the basis for the reform were "efficiency, speed, simplicity of administration which is organically related to the principles of protection of persons' rights and good administration" (Merusk, 2004, p. 62). The basic act regulating the administrative court system titled Code on Administrative Court Procedure was adopted in 1999 and entered into force in 2000. The new Administrative Procedure Act which is closely connected to administrative dispute and procedure before administrative courts is based on the principle of protection of fundamental rights, which is derived from Section 14 of the Constitution,[10] and also on the principles of legality and proportionality. One new principle which should be observed in all procedures regarding public administration is the principle of good administration. The Code on Administrative Court Procedure was adopted in 2011 and has been implemented ever since. Administrative decisions in Estonia are controlled by courts in a three-level system, administrative and county courts, circuit courts, and the Estonian Supreme Court (ACA, 2014a). Administrative acts in Estonia are reviewed by ordinary (county) and special administrative courts. In ordinary courts, special councils exist that deal with administrative subjects. Two administrative courts of first instance are situated in Tallinn and Tartu, with additional courthouses in other cities.[11] The decision of those courts can be reviewed by courts of appeal in their administrative law chambers (circuit courts). An administrative act can be also contested before the Supreme Court by the Administrative Law Chamber sitting as a panel of at least three members, by the Special Panel (panel composed of justices of different chambers), or by the Supreme Court *en banc* (composed of all 19 justices of the Supreme Court) (ACA, 2014a). The jurisdiction of the administrative court is regulated in § 37 of the Code of Administrative Court Procedure. The principles for conducting administrative disputes

[10] Article 14 of the Estonian Constitution: "The guarantee of rights and freedoms is the duty of the legislative, executive and judicial powers, and of local governments."

[11] The Tallinn administrative court has two courthouses: Tallinn with 16 judges and Pärnu with one judge. The Tartu administrative court has the Tartu courthouse with five judges and the Jøhvi courthouse with three judges.

are derived from the national legislation as well as from international and European law, especially in compliance with the standards set by the ECHR and Charter on Fundamental Rights of the EU, and with the case law of the ECHR and CJEU.

Administrative dispute in Latvia is regulated in the ADA in rt. 102–384 (ADA, 2018). In the first instance there are district administrative courts, in the second regional administrative courts, and in the third, the Administrative Affairs Division of the Supreme Court Senate**.** The territorial jurisdiction of the District Administrative Court and the Regional Administrative Court covers the entire administrative territory of Latvia in each case. The District Administrative Court has five courthouses, one in each judicial region, i.e. Riga, Jelgava, Rēzekne, Valmiera and Liepāja. Administrative courts in Latvia have exclusive jurisdiction regarding review of administrative acts, namely individual acts, normative acts and bilateral acts such as contracts governed by public law. Administrative dispute is conducted at the first level before first instance courts, and parties have a possibility to lodge an appeal with the second instance court. The Supreme Court in its administrative division decides only as a cassation court, meaning the court examines the lawfulness of the existing judgment in the appealed part thereof in relation to a party to the administrative proceedings who has appealed against the judgment or joined in a cassation complaint, and also the arguments which are referred to in a cassation complaint. The Supreme Court in its administrative division adjudicates as the court of first instance regarding the Central Election Commission's decision to refuse the registration of bills and amendments to the Constitution (ACA, 2018).

The Supreme Administrative Court of Lithuania was established in 2001, representing the final and full separation of administrative courts from the system of courts of general jurisdiction. Currently, the system of administrative courts of Lithuania is organised in two levels. It consists of five regional administrative courts and the Supreme Administrative Court of Lithuania (ACA, 2014b). Regional administrative courts are established for hearing complaints (petitions) in respect of administrative acts and acts of commission or omission (failure to perform duties) by entities of public and internal administration. The Supreme Administrative Court is the first and final instance for administrative cases assigned to its jurisdiction by law. It is the appeal instance for cases concerning decisions, rulings and orders of regional administrative courts, as well as for cases involving administrative offences from the decisions of district courts (CoE, p. 2).

4.3. The Reform Phase in Countries which Established Specialised Administrative Courts in Late 20th and Early 21st Century

Albania is moving slowly in terms of developing institutions of judicial and non-judicial supervision of administration (OECD, 1997, p. 126). It started the formal process of accession to the EU in 2006 by ratifying the Stabilisation and Association Agreement. The influence of EU law and ECHR standards was expected to introduce the principle of equality of the parties in procedures as well as to increase the efficiency of administrative courts (Meça, 2014). Albanian Government initiated the establishment of a specialised administrative court with the aim of resolving legal conflicts between the business community and state administration. As a result of this initiative, the Administrative Courts Act was adopted in 2012[12], providing "an independent judicial review that will allow for the courts' scrutiny of any legal infringement by an administrative body, including lack of competence, procedural impropriety and abuse of power" (Meça, 2014, p. 185). Currently, Albania has a two-tier system of administrative dispute. In the first instance there is the administrative court, and in the second instance the Administrative Court of Appeal. Review of the lawfulness of normative acts is explicitly excluded from the functional competence of the first instance administrative courts. The Administrative Court of Appeal has in its functional jurisdiction two sets of different types of cases. The first group includes appeals against decisions of the first instance court of law; in this case the function is that of a reviewer after adjudicating these cases in the second instance. The second group of cases comprises cases falling under the initial jurisdiction of the Administrative Court of Appeals, including disagreements over normative acts and other cases provided by law. The latter also include a first instance trial of special requirements, which the law permits to surface at any stage of the trial (claims to challenge judicial jurisdiction) (Hoxha, 2019).

The administrative court system in Bulgaria is organised in two levels. According to the Code of Administrative Procedure from 2006, the administrative justice system consists of 28 administrative courts at district level and the Supreme Administrative Court. Specialised departments may be established at the administrative court according to the decision of the

[12] The full name of the Act was 'Law no. 49/2012 on Organisation and Functioning of Administrative Courts and the Adjudication of Administrative Disputes'.

General Assembly of the judges of an administrative court. Administrative cases in the administrative courts are decided by one judge, except in the cases when the law prescribes differently. The Supreme Administrative Court has jurisdiction over the whole territory of the Republic of Bulgaria and has its seat in Sofia. The Supreme Administrative Court comprises two colleges, in which there are divisions. The Supreme Administrative Court sits in chambers of three, five and seven judges or General Assembly of the colleges. The Supreme Administrative Court deals with complaints against acts of the Council of Ministers, Prime Minister, Deputy Prime Minister, ministers, heads of other institutions directly subordinate to the Council of Ministers, acts of the Supreme Judicial Council, acts of the Bulgarian National Bank, acts of district governors and other acts established by the statute. Also, it adjudicates on contestations of statutory instruments of secondary legislation, as a cassation instance it examines judicial acts, adjudicates in administrative cases and examines motions for reversal of effective judicial acts on administrative cases. Individual administrative acts may be challenged within 14 days of their notification, and normative by-laws can be challenged without a time limit (ACA, 2016)[13]. The cases are examined by the administrative court within whose geographical jurisdiction the seat of the authority which issued the contested administrative act is located. Any administrative acts whereby the national, foreign, defence and security policy are immediately implemented, shall not be subject to judicial appeal, save as otherwise provided for by law.

The establishment of the administrative courts system, for the first time since Ukraine gained independence, took place on 7 February 2002, when the Supreme Council of Ukraine approved the Act on the Judicature in Ukraine, which set a three-year deadline for establishing a system of administrative courts. The first administrative court was the Higher Administrative Court of Ukraine. During 2005, administrative provincial courts were created as courts of first instance and administrative appeal courts as courts of appeal. Administrative dispute is regulated in Ukraine by the Code on Administrative Proceeding from 2005. All administrative decisions can be appealed to administrative courts, except those which fall under the jurisdiction of the Constitutional Court or other courts (Bilkiewicz, 2017).

[13] For comparison, in Croatia there is a very short deadline, only 30 days from the delivery of an administrative decision relying on the normative by-law.

5. Conclusion

The period of democratic transition in post-communist countries is characterised by changes from autocratic regimes to democratic institutions, from planned economy to market economy, and from citizens' fear of the state to their trust in institutions. The analysis throughout the paper has indicated that most transition countries have met the required standards, including the organisation of administrative courts in at least two tiers with the possibility of lodging an appeal with a higher court, and of oral and contradictory hearing. Also, the matter of the dispute has been widened with normative by-laws being contested before administrative courts. Administrative courts have their role in the control of state elections, referendums, competition agencies, etc. The economic development of transition countries is associated with the political and democratic development of the country, including elements such as the rule of law, efficient judiciary and government. The society is changing constantly, and administrative law and administration in general should follow the changes in the society. Even strong parliamentary democracies with long traditions of a firm rule of law culture implemented reforms regarding administrative court system after a long period of time, such as Austria (Held, 2019). According to the various features analysed in the paper, transition countries that have undergone the process of administrative courts' reforms can be categorised into four main models, varying according to four different criteria: geographical position, tradition, political situation (especially date of EU accession), and nature of public administration reforms.

The first model is characteristic of the countries of former Yugoslavia. They were facing all of the above-mentioned features of the transition, but in special circumstances created by war conditions. They had a tradition of administrative judiciary which was renewed in 1952. Administrative disputes were conducted before specialised divisions in ordinary courts. The basic characteristics of the first model in democratic countries (Croatia and Slovenia) are an early introduction of the administrative court system, already in 1991, a long period of adjustment to European standards, and a relatively late reform with the aim of implementing European standards.

The second model is present in Czech Republic, Poland and Hungary. Poland had the earliest introduction of the administrative court system, already in 1980, Hungary in 1991, and Czech Republic in 1992. All of them became members of the EU in 2004, and the reforms of the ad-

ministrative court systems occurred as follows: Czech Republic in 2003, Poland in 2002–2004, and Hungary had the reform quite late, in 2012.[14]

The third model is present in the countries that prepared well for the introduction of new institutions (Estonia, Latvia and Lithuania). The governments of those countries prepared studies, analyses, and strategies for the implementation of the administrative court system on their territory. They introduced the new administrative court system only when everything was ready. Those countries have the most efficient judicial systems today.

The main features of the countries in the fourth model (Ukraine, Albania and Bulgaria) are strong socialist heritage, internal political problems, and other problematic circumstances which represent a burden for new countries, and consequently some of them are still under the observance of international organisations such as SIGMA (Ukraine). In Bulgaria, the Supreme Administrative Court started functioning in 1996. Although the reform in 2006 signified a step forward, it is still on a non-satisfactory level (European Commission, 2018).

As already announced in the chapter on origins of judicial control of administration, transition countries underwent three phases of development of the administrative court system. The first two phases were analysed in detail in the previous chapters, while for the third phase – the evaluation phase – it can only be said that it has its specific features for each of the analysed countries. The evaluation phase includes also the impact of COVID 19 on administrative courts. Countries evaluate their regulations and case law, and some of them have already identified the shortcomings of the existing systems. They improved it mostly through amendments to the basic regulation of administrative dispute (Croatia has amended its ADA several times since its adoption in 2010). According to CEPEJ (2020) evaluation, the administrative court in Slovenia is dealing with a new increase in cases due to the implementation of the ECHR judgement 60642/08, which accounts for almost a quarter of all cases before administrative courts. The amendments in 2015 broadened the jurisdiction of administrative courts in Poland. They are entitled to adjudicate the case itself, if public authorities have failed to do so, which is not always unanimously accepted since it is considered that the court is interfering with administrative jurisdiction, and it is considered as breach of the discretionary powers of administration (Jackowski, 2017). Estonia is an ex-

[14] Years refer to the years when the main laws in the area of administrative courts entered into the force.

ample of a country where administrative courts are functioning on the highest level.

Some transition countries are facing major problems despite their efforts. According to the European Commission Report on Albania from 2019, judicial proceedings before administrative court are still not efficient enough, proceedings are too lengthy, clearance rate is too low, and the number of pending cases at all court levels including the Constitutional Court is too high. The clearance rate is lowest for the appeal courts, particularly for the Appeal Administrative Court (37%). According to the EC report, this is due to a high number of appeals and the low number of judges allocated to the Court, since Albania has only one second instance court (European Commission, 2019).

The general conclusion is that there is no universal recipe for a successful transition process. Success depends on the tradition of certain countries, legacies, inherited structures and institutions, readiness and dedication of the government to the reform, and mentality of the citizens. The creation and strengthening of administrative courts, control of the decisions and procedures of administrative and public bodies, have definitely strengthened the rule of law. Nowadays, administrative courts have once again found themselves in an unenviable position. They have at least one new function – control of the government measures regarding the pandemic (in cases where constitutional courts are not entitled to control the legality of this type of measures on the local level). Citizens' trust in institutions is decreasing again. And courts do not have unique and clear regulations and guidelines. This has affected the economy as well, since administrative courts have a right to control different types of decisions, permits or licenses issued by state or local government bodies to investors. Administrative courts have a direct role in the democratic transition through their judgements in administrative matters, elections, control of political parties, and other politically important issues. In the economic transition, they had the role of encouraging investments into countries, which made them the drivers of economic progress in transition countries. Altogether they influenced a gradual increase of people's trust in administrative courts as the guardians of citizens' rights regarding unlawful administrative decisions, but it seems that the pandemic could result in matters taking the opposite direction. For the prevention of violation of citizens' rights, administrative courts together with all actors in the judiciary system at the national level, should protect the rule of law as the highest principle. At the international level, organisations should continue

the good practice of supporting national systems with clear guidelines for further action.

References

Association of the Councils of State and Supreme Administrative Jurisdiction (ACA) (2014). Czech Republic. Retrieved from http://www.aca-europe.eu/index.php/en/tour-d-europe-en?page=detail&countryid=25

Association of the Councils of State and Supreme Administrative Jurisdiction (ACA) (2014a). Estonia. Retrieved from http://www.aca-europe.eu/index.php/en/tour-d-europe-en?page=detail&countryid=8

Association of the Councils of State and Supreme Administrative Jurisdiction (ACA) (2014b). Lithuania. Retrieved from https://www.aca-europe.eu//index.php/en/tour-d-europe-en?page=detail&countryid=15

Association of the Councils of State and Supreme Administrative Jurisdiction (ACA) (2016). Bulgaria. Retrieved from http://www.aca-europe.eu/index.php/en/tour-d-europe-en?page=detail&countryid=27

Association of the Councils of State and Supreme Administrative Jurisdiction (ACA) (2018). Latvia. Retrieved from: http://www.aca-europe.eu/index.php/en/tour-d-europe-en?page=detail&countryid=15

Bilkiewicz, T. (2017). Administrative courts in Ukraine: Formation and functioning in the modern conditions. *Annuals of the Administration and Law*, *17*(1), 115–127.

Borković, I. (2002). *Upravno pravo* [*Administrative law*]. Zagreb, Croatia: Narodne novine.

Braibant, G. (1992). *Le droit Administratif Français* [*French administrative law*]. Paris, France: Presse de la fondation nationale des sciences politiques & Dalloz.

Britvić Vetma, B. (2014). Upravno sudovanje u Francuskoj – što možemo naučiti [Administrative justice in France – What can we learn]. In I. Koprić (Ed.), *Europeizacija upravnog sudovanja* [*Europeanization of administrative justice*] (pp. 227–241). Zagreb, Croatia: Institut za javnu upravu.

Bureš, P. et al. (2004). *Public administration in Czech Republic*. Prague. Czech Republic: Ministry of Interior Czech Republic, Tiskárna Ministerstva vnitra.

Council of Europe (CoE) (2014). Recommendation (2004)20 of the Committee of Ministers to member states on judicial review of administrative acts.

Council of Europe (CoE). Judicial system of the Republic of Lithuania. Retrieved from https://rm.coe.int/judicial-system-of-the-republic-of-lithuania/1680790293

European Commission for the Efficiency of Justice (CEPEJ) (2020) Evaluation of the Judicial Systems (2018 - 2020) Slovenia. Retrieved form: https://rm.coe.int/en-slovenia-2018/16809fe2d7

Dung, L. T. (2003). Judicial independence in transitional countries. Retrieved from: http://www.albacharia.ma/xmlui/bitstream/handle/123456789/30543/0291Judicial%20Independence%20in%20Transitional%20Countries.pdf?sequence=1

Đerđa, D. (2008). Upravni spor u Hrvatskoj: sadašnje stanje i pravci reforme [Administrative dispute in Croatia: current state and reform directions]. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, *29*(1), 1–38.

Đerđa, D., & Šikić, M. (2012). *Komentar Zakona o upravnim sporovima* [Administrative Disputes Act commentary]. Zagreb, Croatia: Narodne novine.

Đerđa, D. & Kryska, D. (2018) Neka rješenja upravnog spora u usporednom pravu: kako unaprijediti hrvatski upravni spor [Some solutions for administrative dispute in comparative law: How to improve Croatian administrative dispute]. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci, 39*(1), 91–126, https://doi.org/10.30925/zpfsr.39.1.3

European Commission (EC) (2019). Albania 2019 report. Retrieved from https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/20190529-albania-report.pdf

European Commission (EC) (2018). Public administration characteristics and performance in EU28: Bulgaria. Retrieved from https://op.europa.eu/en/publication-detail/-/publication/e0ad3cfd-9606-11e8-8bc1-01aa75ed71a1/language-en/format-PDF/source-259249814

Gaudement, Y. (2001). *Droit admnistratif general [Opće upravno pravo].* Paris, France: LGDJ.

Grafenauer, B., & Breznik, J. (2009). *Upravno pravo procesni del – upravni postopek in upravni spor [Administrative law procedural part – administrative procedure and administrative dispute].* Ljubljana, Slovenia: GV Založba.

Hien, E. (2005). The role of the administrative jurisdiction in society and in the development of the European Union. Retrieved from https://www.kho.fi/material/attachments/kho/hallintotuomioistuimet/hallintotuomioistuinpaivat/hallintotuomioistuinpaivat2010/6JQn2QI0N/The_Role_of_the_Administrative_Jurisdiction_in_Society.pdf

Held, M. (2019). Neka važna pitanja uređenja i reformi upravnog sudovanja u europskim zemljama [Some important issues regarding the organization and reforms of judicial review in European countries]. *Zbornik Pravnog fakulteta u Zagrebu*, *69*(4), 553–587, https://doi.org/10.3935/zpfz.69.4.04

Hoxha, A. (2019). Subject-matter competences of administrative courts of the European Union countries: A comparative view of legislation and judicial practice. *Athens Journal of Law*, *5*(1), 81–97, https://doi=10.30958/ajl.5-1-6

Hoxa, A., & Gurraj, A. (2001). Local self-government and decentralization: Case of Albania. History, reforms and challenges. *Local Self Government and Decentralization in South – East Europe*. In: *Proceedings of the workshop held in 6 April, 2001* (pp. 194-224) Zagreb, Croatia: Friedrich Ebert Stiftung.

Jackowski, M. (2017). Judicial review of public power in Poland. In: R. Arnold, & J. I. Martinez-Estay (Eds.), *Rule of law, human rights and judicial control of pow-*

er (pp. 53–66). Cham, Switzerland: Springer, https://doi.org/10.1007/978-3-319-55186-9_3

Jerovšek, T. (2006). Iskustva Slovenije u upravnom sudovanju i konceptualne promjene u regulaciji upravnog spora [Slovenian experience in administrative court proceedings and conceptual changes in regulation of administrative dispute]. In J. Barbić (Ed.), *Reforma upravnog sudstva i postupanja* (pp. 64–80). Zagreb, Croatia: Hrvatska akademija znanosti i umjetnosti.

Koprić, I. (2006). Upravno sudovanje na području bivše Jugoslavije [Administrative justice in the territory of the former Yugoslavia]. *Hrvatska javna uprava*, *6*(1), 223–239.

Koprić, I. (2011). Administrative technology and general administrative procedure: Challenges and changes in South- Eastern Europe. *Hrvatska i komparativna javna uprava*, *11*(1), 435–454.

Koprić, I., Musa, A, & Lalić Novak, G. (2011). Good administration as a ticket to the European administrative space. *Zbornik Pravnog fakulteta u Zgrebu, 61*(5), 1515–1560.

Koprić, I. (2014). Europski standardi i modernizacija upravnog sudovanja u Hrvatskoj [European Standards and Modernization of Administrative Justice in Croatia]. In I. Koprić (Ed.), *Europeizacija upravnog sudovanja u Hrvatskoj* [*Europeanization of the Administrative Justice in Croatia*] (pp. 1–20). Zagreb, Croatia: Institut za javnu upravu.

Koprić, I. (2017). European administrative space – myth, reality, and hopes. In I. Koprić & P. Kovač (Eds.), *European administrative space: Spreading standards, building capacities* (pp. 31–54). Bratislava, Slovakia: NISPAcee.

Kovač, P. (2017). Introduction to European administrative space as a base for spreading standards and building capacities. In I. Koprić & P. Kovač (Eds.), *European administrative space: Spreading standards, building capacities* (pp. 9–18). Bratislava, Slovakia: NISPAcee.

Köhler, M. (2015). The reform of the administrative jurisdiction in Austria – theoretical background and main features of the system. *Public Security and Public Order, 14*(4), 31 – 63.

Krbek, I. (1937). *Diskreciona ocjena* [*Discretionary assessment*]. Jugoslavenska akademija znanosti i umjetnosti. Zagreb, Croatia: Tisak Nadbiskupske tiskare.

Krbek, I. (1955). *Upravno pravo FNRJ, I. knjiga* [*Administrative Law in FNRJ, Volume I*]. Beograd, Serbia: Biro za izradu obrazaca izdavačko – štamparsko preduzeće.

Ljubanović, B., & Britvić Vetma, B. (2011). Vrste upravnih sporova [Types of Administrative Disputes]. *Hrvatska i komparativna javna uprava, 11*(3), 753–772.

Markova, I. (2004). Introduction: Trust/risk and trust/fear. In I. Markova (Ed.), *Trust and democratic transition in post-communist Europe* (pp. 1–23). Oxford, UK: Oxford University Press, https://doi.org/10.5871/bacad/9780197263136.003.0001

Matczak, M., Bencze, M., & Kühn, Z. (2010). Constitutions, EU law and judicial strategies in the Czech Republic, Hungary and Poland. *Journal of Public Policy*, *30*(1), 81–99, https://doi.org/10.1017/s0143814x09990195

Meça, M. (2014). The evolution of administrative law in Albania and the impact of the decisions of the European Court of Justice in the Albanian legal reforms in administrative justice. *Juridical Tribune*, *4*(2), 182–194.

Merusk, K. (2004). Administrative law reform in Estonia: Legal policy choices and their implementation. *Juridica international*. IX/2004, 52–62.

Muçaj, F., & Gruda, P. (2016). Judicial control of administrative activity and advantages of reorganization of the juridical system in the Republic of Kosovo. *Academicus International Scientific Journal,* 13, 66–88, https://doi.org/10.7336/academicus.2016.13.05

Organisation for Economic Co-operation and Development (OECD) (1997). Administrative procedures and the supervision of administration in Hungary, Poland, Bulgaria, Estonia and Albania. Paris: France: OECD Publishing.

Omejec, J. (2015). *Principle of the separation of powers and the constitutional justice system.* Retrieved from https://www.bib.irb.hr/785200/download/785200.Omejec_-_Separation_of_Powers_and_Constitutional_Judiciary_-_Strasbourg_28.10.pdf

Organization for Security and Co-operation in Europe (OSCE) (2013). *Handbook for monitoring administrative justice*. Warsaw, Poland: OSCE's Office for Democratic Institutions and Human Rights (ODIHR).

Organization for Security and Co-operation in Europe (OSCE) (2020). The functioning of the courts in the COVID 19 Pandemic. Retrieved from https://www.osce.org/files/f/documents/5/5/469170.pdf

Russel-Einhorn, M., & Chlebny, J. (2006). *Assessment of the administrative justice system in Macedonia – the World Bank legal and judicial enforcement project*. Retrieved from https://www.legislationline.org/download/id/3446/file/fYROM-Administrative%20Justice%20Report%20rev%203-10-06.pdf

Skoczylas, A., & Swora, M. (2007). Administrative judiciary in Poland – in search for fairness and efficiency – an overview. *Transylvanian Review of Administrative Sciences*, *19* E/2007, 116–125.

Staša, J., & Tomášek, M. (2012). Codification of administrative procedure. *The Lawyer Quarterly* (2), 59–68.

Trlin, D. (2016). Sudska kontrola uprave u Bosni i Hercegovini i pravna država [Judicial control of the public administration in Bosnia and Herzegovina and the rule of law]. *Hrvatska i komparativna javna uprava*, *16*(3), 587–608.

Turłukowski, J. (2016). Administrative Justice in Poland, *BRICS Law Journal 3*(2), 124–152, https://doi.org/10.21684/2412-2343-2016-3-2-124-152

Woehrling, J-M. (2006). Judicial control of administrative authorities in Europe: Toward a common model. *Hrvatska javna uprava, 6*(3), 35–56.

Woehrling, J-M. (2009). Protecting legality: Public administration and judiciary in EU countries. How to conciliate executive accountability and judicial review? Retrieved from https://www.sigmaweb.org/publications/42755351.pdf

Legal sources

Constitution of the Republic of Albania, 1998. Retrieved from https://www.osce.org/files/f/documents/3/2/41888.pdf

Constitution of the Republic of Croatia, Official Gazette, 56/90, 135/97, 08/98 , 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14

Constitution of the Republic of Estonia**,** 1992. Retrieved from https://www.constituteproject.org/constitution/Estonia_2015.pdf?lang=en

Constitution of the Republic of Poland, 1997. Retrieved from https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm

Act on the System of Administrative Courts, 2002 (Poland). Retrieved from: https://www.global-regulation.com/translation/poland/2986223/the-act-of-25-july-2002%252c-the-law-on-administrative-courts.html

Act on Proceedings Before Administrative Courts Act, 2002 (Poland). Retrieved from https://rm.coe.int/poland-reponse-questionnaire-annexe-2-administrative-justice-in-poland/168093193f

Administrative Disputes Act (Croatia), OG 53/1991, 9/1992, 77/1992

Administrative Disputes Act (Croatia), OG 20/10, 143/12, 152/16, 96/16, 29/17, 110/21

Administrative Disputes Act (Montenegro) OG 60/2003.

Administrative Disputes Act (Slovenia), OG 50/97.

Code on Administrative Court Procedure (Estonia), Retrieved from https://www.riigiteataja.ee/en/eli/527012014001/consolide

Courts Act (Croatia), OG 122/2010

Courts Act (Slovenia), OG 18/94.

Law no. 49/2012 on Organisation and Functioning of Administrative Courts and the Adjudication of Administrative Disputes (Albania). Retrieved from https://unece.org/fileadmin/DAM/env/pp/compliance/C2019-171_Albania/frCommAlbania_29.04.2019/frCommAlb_29.04.2019_att2.pdf

Decision of the Constitutional Court of the Republic of Slovenia, no. U-I-65/05-12, 22 September 2005.

THE DEVELOPMENT OF ADMINISTRATIVE COURT SYSTEMS IN TRANSITION COUNTRIES AND THEIR ROLE IN DEMOCRATIC, ECONOMIC AND SOCIETAL TRANSITION

Summary

The paper analyses the formation of democratic institutions and establishment of administrative court systems during 1990s in transition countries, namely in Croatia, Slovenia, Poland, Czech Republic, Hungary, Estonia, Latvia, Lithuania, Albania, Bulgaria and Ukraine. Further changes in the national legislations of transition countries were affected by the standards of international organisations, such as the CoE, SIGMA and OECD, as well as by the process of accession to the EU and harmonisation of the national legislation with acquis communautaire. The process of accession to the EU was characterised by a series of documents and strategies resulting in serious reforms in administration, which is in theory generally known as Europeanisation and modernisation of public administration. They all had the same goal – protecting the rights of citizens from unlawful decisions issued by administrative bodies and protection from unlawful procedures conducted before administrative bodies. The main goals were to enable appeals to a higher instance court and lessen the duration of the proceedings in general. Nowadays, administrative courts' procedures in most European countries are characterised by a number of common features in the organisation of judicial control of administration, but with some differences according to which transition countries can be grouped into four models. Countries also became aware of the disadvantages of their administrative court systems by themselves or through the input of European institutions, and are now entering the evaluation phase. The aim of the paper is to examine and analyse to what extent the development of the new administrative court systems in transition countries and subsequent reforms have affected the rights of citizens and what their role is in the democratic, economic and societal transition.

Keywords: *administrative courts, transition countries, judicial review, democratic, economic, societal transition*

RAZVOJ SUSTAVA UPRAVNIH SUDOVA U TRANZICIJSKIM ZEMLJAMA I NJIHOVA ULOGA U DEMOKRATSKOJ, EKONOMSKOJ I DRUŠTVENOJ TRANZICIJI

Sažetak

U radu se analizira formiranje demokratskih institucija i ustrojavanje upravnih sudova tijekom 1990-ih u tranzicijskim zemljama – Hrvatskoj, Sloveniji, Poljskoj, Češkoj, Mađarskoj, Estoniji, Latviji, Litvi, Albaniji, Bugarskoj i Ukrajini. Daljnje promjene u nacionalnim zakonodavstvima bile su potaknute standardima europskih organizacija kao što su Vijeće Europe, SIGMA i OECD kao i pristupnim procesima Europskoj uniji i harmonizacijom nacionalnog zakonodavstva s acquis communautaire. Postupak stupanja u članstvo EU-a obilježavaju brojni dokumenti i strategije koje su rezultirale ozbiljnim reformama u upravi, što je u teoriji poznato pod nazivom europeizacija i modernizacija javne uprave. Sve su zemlje imale isti cilj koji je bio zaštita građana od nezakonitih odluka i postupaka pred javnopravnim tijelima. Glavni ciljevi obuhvaćali su omogućivanje izjavljivanja žalbe na viši stupanj i skraćivanje duljine postupaka. Danas upravnosudske postupke obilježavaju neke zajedničke organizacijske karakteristike s određenim razlikama u skladu s kojima se analizirane zemlje mogu svrstati u četiri modela. Zemlje postaju svjesne i nedostataka upravnog sudovanja bilo samostalno bilo zbog upozorenja s međunarodne razine te ulaze u fazu vrednovanja. Cilj je rada ispitati i analizirati koliko su razvoj novog sustava upravnih sudova u tranzicijskim zemljama i provedene reforme utjecali na prava građana i koja je njihova uloga u demokratskoj, ekonomskoj i socijalnoj tranziciji.

Ključne riječi: *upravni sudovi, tranzicijske zemlje, sudski nadzor, demokratska, ekonomska, društvena tranzicija*