JUDICIAL PROTECTION OF TIMELY DECISION-MAKING IN ADMINISTRATIVE MATTERS IN THE LIGHT OF EUROPEAN CONVENTION ON HUMAN RIGHTS IN SLOVENIA AND CROATIA

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Abstract:
The purpose of administrative procedure is to resolve conflicts between public and private interests, in particular when pursuing parties’ rights of positive status. Contrary to civil matters, parties need to firstly enforce their rights before the administrative authority of first instance; furthermore they can file an appeal to the second instance. Exhaustion of the appeal is in most legal systems procedural prerequisite to file court action, meaning there will elapse some time before receiving final and enforceable act to exercise rights. Parties have in administrative matters a right to access to the court and fair trial in reasonable time-limits as defined in constitutions, envisaging judicial procedure, in majority of states before specialised Administrative Court in accordance with Articles 6 and 13 of the European Convention on Human Rights (ECHR). Taking the comparative approach with supra- and national normative and European Court of Human Rights case law analysis, paper provides insight to which extent administrative matters can be revised in administrative dispute, legal remedies available to parties, especially when authorities violate time-limits, focusing on conformity of the states’ regulation with the ECHR standards in Slovenia and Croatia. The findings can serve as a ground for other (Eastern European) countries with similar legal tradition and regulation.

Key words: Administrative Matter, Administrative Procedure, Administrative Dispute, Effectiveness, European Convention on Human Rights, Reasonable Time, Administrative Silence, Slovenia, Croatia.

1. Introduction

In terms of good governance the aim of legal regulation and conduct of administrative procedures (APs) is to resolve conflicts between public and private interests, with emphasis on restricting absolute power and encouraging the efficiency of public policies arising within APs. With the development of the rule of law AP and administrative-judicial control of individual administrative acts evolved into a basic procedural tool intended to protect fundamental human (HR) and other rights of the parties. In accordance with Article 6 of the European Convention on Human Rights (ECHR) everyone is entitled to a fair and public hearing within a reasonable time, in administrative matters as well. Furthermore, Article 13 of the ECHR demands effective remedy on national level for all the rights as ensured by ECHR (more on ECHR content and impact in Auburn et al., 2013: 43, etc.). Slovenia and Croatia both ratified the ECHR, being directed applied in national legal systems.

Republic of Slovenia and Republic of Croatia have common historical background, being legal successors of former Yugoslavian regulation, becoming independent in 1991. Since they used to be part of common former state in the past and are again under same supranational authority, with Slovenia joining EU in 2004 and Croatia following in July 2013, we carried out comparative normative research, focusing on effectiveness of judicial review in administrative matters with regard to timely decision-making. Based on the facts that both countries are post-partition states with similar geopolitical position, obliged with common EU regulation and being contracting parties to the ECHR, we analysed their general laws on AP (G/APA or LGAP) and administrative dispute/s (ADA or LAD), decisive for administrative decision-making, in the light of Articles 6 and 13 of the ECHR and national constitutions from 1991, as follows:

- **Zakon o splošnem upravnem postopku**, the Slovene APA (Official Gazette No. 80/99 and amendments);
- **Zakon o upravnem sporu**, the Slovene ADA (Official Gazette No. 105/2006 and amendments);
- **Zakon o opčem upravnem postopku**, the Croatian APA (Official Gazette No. 47/09);
- **Zakon o upravnim sporovima**, the Croatian ADA (Official Gazette No. 143/12 and amendments).

Hence, Slovenia and Croatia have a long legal tradition of administrative relations’ regulation over 80 years, with Germanic and socialist roots. Common to both states is the heritage of Austrian model. Austria adopted its law on administrative procedure already in 1925, being followed by Kingdom of Yugoslavia in 1930. In 1946 the first law on general administrative procedure in Yugoslavia was abolished, and new federal law was enacted in 1956 (Koprič, 2005: 2), which was during its more than 40 year’s validity period amended only four times (1965, 1977, 1978, and 1986). In 1952 Yugoslavian Administrative Dispute Act was accepted (with three amendments following, the latest in 1977).

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Slovenia and Croatia declared independence in 1991 taking over Yugoslavian regulation to the extent which was in accordance with the new state regime until enacting their new regulation. However, also the new APAs and ADAs were based on former Yugoslavian laws (Koprić, 2005a: 5). Furthermore both countries became legally bounded by the ECHR, Slovenia ratifying it in 1994 and Croatia in 1997.

In APs parties in respective countries pursue rights of positive status, being dependent on administrative authorities’ decision-making. Contrary to civil matters, parties need to firstly enforce their rights before the administrative authority of first instance; furthermore they can file an appeal to the second instance. Exhaustion of the appeal is procedural prerequisite to file lawsuit, meaning there will elapse some time before receiving final and enforceable act to exercise rights. Parties have in administrative matters a right to access to the court and fair trial in reasonable time-limits defined already by constitutions, envisaging judicial procedure before specialised Administrative Court (principle of separation of powers). Only in limited cases competent Administrative Court, both in Slovenia and Croatia, decides on the merits to efficiently protect the parties’ rights; otherwise the decisions will be only abolished and returned to administrative authority to decide again.

Slovenia has a slightly longer tradition on new administrative dispute regulation (enforced in January 2007), Croatia on the other hand, enforced the new law in 2012, therefore authors research whether the institutes assigned to fasten the proceedings and lower the costs, follow the European standards of decision-making in reasonable time-limits and effective legal remedy as fundamental HRs by analysing also pilot judgments of the European Court of Human Rights (ECHR), and compare countries’ legislative system. It is significant for Croatia that the right to appeal has been reinforced thus enabling one to appeal as a part of a regular legal remedy against administrative court verdicts. The objective is to balance the citizens’ right application efficiency with the necessity for overseeing legal verdicts as a way of preventing the “ping-pong” or “jo-jo” effect occurrence between public authorities and administrative courts.

The research aimed at identifying the trends of regulation and implementation of administrative decision-making in both countries to establish good practices and make further recommendations based on the obtained results. Main methods used were normative, comparative and historical, analysis of ECHR case law of respective countries and connected cases, finally presenting axiological-deontological evaluation of the state of the art and necessary trends in these countries and other parts of Eastern Europe.

2. The significance and scope of judicial protection in administrative matters

2.1 General

Parties in administrative relations are pursuing rights of positive status, meaning they cannot receive certain substantive right (for example public scholarship) unless they submit an application to the respective administrative authority. Their private interests in administrative relations are in subordinated position towards public interest, the latter always prevailing when the conflict arises. The development trends of administrative law go in direction of global administrative law, as a consequence of global governance expansion, which demands performing administrative and regulatory functions in a global context in different ways, such as issuing binding decisions by international organisations (for example OECD, World Bank etc.) or non-binding agreements in intergovernmental networks and also national administrative authorities deciding on the matters of administrative nature beyond the borders. This leads us to conclusion that the meaning of administrative procedural law is growing and expanding through time. The latter confirms also EU’s efforts to enact Administrative Procedure Act on supranational level with European Parliament resolution of 15 January 2013 on a Law of Administrative Procedure of the European Union.2

Since the administrative decision-making is affecting every EU citizens’ life almost on daily basis or at least a few times per year (for example each year every citizen is subject to assessment of taxes, issuing of vehicle registration certificate, obligatory public health insurance scheme etc.), it is very important these decisions are issued in reasonable time and lawful, which is ensured also thorough effective supervision. In administrative matters the supervision is usually performed in two phases: (1) administrative and (usually only consequent) (2) judicial. Executive branch of power is competent for first phase, conducting administrative procedures in accordance with the APA. First instance decisions can be subject to hierarchic instance supervision, also performed by executive branch of power, i.e. second instance (usually the line ministry). Moreover, to ensure legal and correct decision-making, external, judicial review of the issued administrative decisions is required. The administrative matter so far becomes judicial matter, upon which is decided in administrative dispute. Parties however cannot overlap individual phase, since the preliminary phase is

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2 For example access to foreign products in national market, see Krisch & Kingsbury, 2006: 2–3.
prerequisite for the next one. Therefore the promptness of each phase is of extreme importance for parties’ rights enforcement.

Historically the administrative dispute developed as an institute of bourgeois legal theory at the beginning of 19th century and was established as a legal remedy to protect objective legality and individuals’ subjective rights. Special judicial review has roots in France as a result of distrust in regular courts when deciding on disputes between public authorities and individuals. Gradually “Conseil d’Etat” was developed as a special administrative court. Contrary to French system in Anglo-American system supervision of administrative acts is performed by ordinary courts (Androjna & Kerševan, 2006: 636–637). Main difference between the two systems is in use of procedural rules, civil courts applying adversarial procedure and administrative courts applying more “inquisitorial” procedure. Nowadays, according to Woehrling (2009: 4–5), both systems are approaching, however certain particularities still arise. Overall in European territory we can distinguish three judicial review families:

a) common law countries (despite inclusion of judicial review of administration in regular courts, certain degree of specialisation is needed due to increasing complexity of regulation);

b) countries, inspired by French model, following objective legality and extending locus standi (meaning also legitimate interest suffices) and

c) countries influenced by German tradition (the control is based on the concept of subjective rights: protection of individual against the administration; more in Woehrling, 2009: 4–5, and 2005: 8).

Another way of distinguishing characteristics of judicial review in European space is courts concentrating either on “procedural correctness” of administrative action (i.e. decision was taken based on fair and equitable procedure, respecting parties’ right to be heard) or extending judicial control to the substance of the decision, meaning the procedural rules are only instruments to establish “right solution” (“legal truth”). As exposed by Woehrling (2009: 5) majority of the new democracies in Central and Eastern Europe were inspired by German model, which applies also for Slovene and Croatian administrative justice system.

2.2 ECHR as a convergence framework for (national) judicial protection in administrative matters

Certain degree of convergence of administrative procedures as well as administrative justice was introduced also with development of European Administrative Space, particularly through basic principles, such as the rule of law, openness, transparency, accountability, efficiency and effectiveness (Koprić, 2005a: 7). Mentioned principles are to be followed through all procedural phases of decision-making in administrative matters. Finally the effectiveness of administrative justice is promoted also by the ECHR, as regional instrument defining minimal human rights’ protection standards. Its interpretation, uniform application and respect in contracting countries are in domain of ECHR. As defined by Article 1 of the ECHR all contracting parties have positive duties to secure everyone within their jurisdiction rights and freedoms as established by Convention. States choose by themselves remedies and manners of exercising Convention rights. The ECHR cannot abrogate national decisions, but only establish the ECHR violation and award compensation. However if there are repetitive complaints, addressing the same question or problem, reflecting structural or systemic deficiencies in national law or practice the ECHR can issue pilot judgments, which can define in abstract way the solution to the problem. Until issuing of pilot judgment all similar applications are adjourned.4 Pilot judgment procedure was introduced to ensure more effective procedures of the ECHR, which also started to encounter the problem of backlogs, especially after Councils of Europe enlargement in the 90ties, which contributed to the enlargement of the ECHR workload.5 State’s obligation is to establish effective remedy, which enables parties to apply to competent national authority (principle of subsidiarity of the Convention system). Additionally, there are several Council of Europe recommendations to be taken into account, in particular the Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies (12 May 2004), the Recommendation Rec(2004)20 of the Committee of Ministers to member states on judicial review of administrative acts (15 December 2004) and also the Recommendation CM/Rec(2007)7of the Committee of Ministers to member states on good administration (20 June 2007, see Article 22 of the Code in the appendix). If so the Court strikes out the adjourned applications. However, even when cases are adjourned they can still be examined if the interests of justice require so.6

Since justice delayed can lead to justice denied, it is important all instances are conducted in reasonable time, which is one of the fundamental principles of good administration and good governance.7 As derives from ECHR case-law when establishing the relevant period and its (un)reasonable length in administrative matters the period to be taken in

4 First such judgment was issued in case Broniowski v. Poland (no. 31443/96, 22 June 2004) on the subject of properties beyond the Bug River (entitlement to compensatory property because of the repatriation), which concerned around 80,000 people.

5 More on pilot judgments see Leach et al., 2010.


consideration starts when dispute arises, that is with lodging an appeal to second instance if the latter is prerequisite to file lawsuit against administrative act. Limiting the decision making process within reasonable time frames is one of the most important commitments for both the administrative authorities and administrative courts. It is not only determined by the constitutional and conventional standards but it is also regulated by the European Union law as well as by national legislature of individual member states.

As defined by Article 6 § 1 of the ECHR: “in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”. Furthermore, based on the growing number of complaints regarding violation of bringing decisions in reasonable time, the ECtHR took new approach in Kudla case regarding interpretation of Article 13, defining states’ obligation to provide an effective remedy on national level in case of violation of Article 6 § 1 (see Kudla v. Poland, no. 30210/96, 26 October 2000, par. 157). Convention is a living instrument, being interpreted by the ECtHR, which took broad definition of the civil rights and criminal charges concepts. These concepts are autonomous, meaning they are not dependant on national legal systems. For a matter to be defined as criminal, the ECtHR uses substantive approach. The decisive criterion as regards the beginning of a relevant period is the official communication to the individual about criminal charges (presumption of committing a criminal offence). If a matter is defined as criminal by national law, the ECtHR takes the same approach, otherwise it asserts it in accordance with developed criterions in Engel v. Netherlands case (no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, 8 June 1976), it checks: a) whether national provisions are part of criminal law or disciplinary proceedings or both; 2) nature of act/prohibition and 3) severity of penalty. Furthermore the ECtHR examines the national law of other contracting countries and whether the rule is valid only for certain group of people (for example army, prisoners etc.) or the whole population. Matters, being defined as public (administrative) matter in national law, which the ECtHR included in definition of criminal charge in accordance with Article 6 § 1 of the ECHR are particularly: tax penalties; tax surcharges; customs law; disciplinary measures; administrative sanctions and misdemeanour. Similar approach was taken in interpreting “civil rights” concept. The ECtHR took broad approach in its interpretation, meaning the concept covers all procedures decisive for private rights and obligations, also when dispute is between individual and public authority and despite national law, status of parties and nature of authorities. Civil rights and obligations must be the object or one of the objects of the dispute and the result of the proceedings must be directly decisive for such right. The dispute must be genuine and of a serious nature, giving it a substantive rather than formal/technical meaning. Based on such broad definition the ECtHR included in concept of a “civil right” in accordance with Article 6 § 1 of the ECHR also matters, defined as public (administrative) in national law of contracting parties, such as: issuing licences/concessions, permits to perform certain activity (for example authorisation to run a medical clinic), building permits; expropriation; denationalisation; consolidation; social security rights etc. Overall we can conclude the ECHR standards of fair trial and respect of human rights apply also to administrative justice systems of Slovenia and Croatia.

3. Judicial protection of parties’ rights in administrative matters in reasonable time

3.1 Decision-making in administrative matters in reasonable time and its legal protection – case of Slovenia

With the development of the rule of law administrative procedure and administrative judicial control evolved into a basic procedural tools intended to protect fundamental human and other rights of the parties. Deciding on administrative matter is the object of administrative relations, which are being established, changed or abolished through administrative procedure.

Main goal of democratic state, governed by the rule of law is the legality of performing duties and decision-making by state administration, local self-government authorities and public powers holders. All three are possible competent bodies to conduct administrative procedures when deciding on administrative matters by Slovene General Administrative Procedure Act (Article 1). In case of violation of procedural or substantive law or deficiencies when establishing facts of the case parties are entitled to legal remedies already during administrative procedure, upon which executive branch of power decides (appeal as the only ordinary legal remedy and also five extraordinary legal remedies). Further on in accordance with the ECHR and Council of Europe Recommendations administrative acts are

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9 See Article 41 and Article 47of the EU Charter of Fundamental Rights of the EU (2010/C 83/02). More on EU law with regard to judicial review and European Court of Justice in Auburn et al., 2013: 81–105.
12 Jussila v. Finland, no. 73053/01, 27 November 2006.
15 König v. Germany, no. 6232/73, 28 June 1978.
subject to judicial review to ensure legality and protection of human rights. In accordance with Articles 23 of Slovene Constitution everyone is entitled to a judicial review without undue delay by independent, impartial court, established by law. Administrative acts are subject to judicial review in administrative dispute in accordance with Articles 120 and 157 of Slovene Constitution. The administrative dispute is regulated by Administrative Dispute Act (the Slovene ADA). Slovene administrative justice is a mixture of objective and subjective model, approaching more to the latter.\textsuperscript{18} As derives from constitutional principle of separation of powers main function of administrative dispute is supervision of executive branch performance, only in limited cases the court will decide on the merits (dispute of full jurisdiction). Administrative dispute is independent judicial proceeding; however it can in certain circumstances “substitute” parties’ appeal against first instance administrative decisions (when appeal is excluded). Namely parties can enforce before court all reasons as in case of appeal (such as wrong use of law, material violation of the procedural provisions and incomplete finding of facts).\textsuperscript{19} Parties can file a lawsuit to administrative court in 30 days since service of final administrative decision. Administrative court decides as a rule in councils of three judges, exceptionally only by single judge (see Article 13 of the Slovene ADA). Exhaustion of the right to administrative dispute is prerequisite for constitutional complaint.

The Slovene APA sets general instructive time-limits to issue an administrative decision: two months in special declaratory proceeding and one month in summary proceeding (see Article 222 of the APA). If proceedings are suspended, time-limits do not run. In case of administrative silence the Slovene APA regulates two possibilities: devolution of competence to second instance and parties’ right to appeal (Articles 18 and 222). Deficiency as regards devolution is that the latter is obligatory only when life, health, natural environment or properties are in danger. Otherwise taking over the competence is left to discretion of second instance. The latter in the case of time-limits’ violation first warns head of first instance and sets up new instructive time-limit. If afterwards the decision is still not issued, second instance can take over competence (decision on that is left to its discretion). Parties however cannot demand devolution of competence. In case of delay party’s claim is deemed dismissed (negative fiction) (see Article 222 of the APA). After the expiry of the time-limit party is entitled to file an appeal anytime until issuing of the decision. Second instance checks whether the reasons for delay were justified or not. If reasons were not justified it can take over the matter and decide on the merits in two months (only instructive time-limit). When first instance had justified reasons for delay or when reasons were on the party’s side, second instance prolongs time-limit to issue a decision for the period of delay (but not longer than one month). If the matter is not resolved in prolonged time-limit and party files a new appeal, then the second instance is obliged to take it over and decide on the merits.

Main deficiencies with analysed regulation is putting a large proportion of the burden on the parties, meaning they have to be active by themselves to receive rights; otherwise procedures may stay for years. Namely we have to bear in mind that in administrative procedures parties are laic and legal representation is not obligatory. With negative fiction defined by law, violation of time-limits in administrative matters is legalised, even though it is evidently malpractice, infringing principles of good administration. The latter is more than just legality of performance; moreover administrative decision-making should follow also principles of quality and efficiency. We find the regulation is too much “in favour” of first instance authority, giving most of the responsibility to the parties, therefore we prefer higher level of responsibility to be given to second instance and its substantive decision-making in case of first instance’s delays.

Further on if second instance does not issue a decision in prescribed time-limit, parties are entitled to administrative dispute (see Articles 5 and 28 of the ADA), but only after lodging urgency to second instance to issue a decision in the following seven days. Only when administrative silence was unjustified and the lawsuit itself is justifiable the court can decide on the merits, providing that the following conditions are fulfilled: request of the plaintiff to decide on the merits; substantive decision-making is in accordance with the nature of the matter; the court has the necessary data or establishes the relevant facts by itself at the oral hearing. If deciding on the merits is not possible, the court instructs issuing of administrative decision to administrative authority. The administrative authority can again not issue a decision, putting the burden to complain back to the party. As we can see although in the case of administrative silence no act is issued and party’s claim is deemed dismissed (negative fiction), the court will refuse a lawsuit as unfounded if concluding the plaintiff’s application was justifiably dismissed. Such approach can lead to legalisation of inaction of administrative authorities as well as legalisation of the content of the administrative act, which actually does not exist.

In accordance with the principle of subsidiarity (Article 3 of the Slovene APA) sectoral legislation can regulate also positive fiction in case of administrative silence. Such trend was encouraged also by EU Directive 2006/123/EC of the European Parliament and the Council 12 December 2006 on services in the internal market.\textsuperscript{20} Slovene sectoral legislation foresees such possibility for certain rights, however there are problems with finality and executability of the decision since there is no materialised document and unclear date of taking effect. Therefore additional proving has to be provided, such as confirmation of receipt of the request, etc. (Kovač, 2012: 86–87).

\textsuperscript{20} Official Journal of the European Union L 376/36, 27 December 2006.
It has to be concluded that legal remedies in case of administrative silence cannot prevent returning cases to lower authorities and repeating the whole procedure, putting most of the burden on the party, which has to repeat lodging new appeals/lawsuits, otherwise the procedures can stay for a longer period of time (also a few years). Moreover administrative silence remedies as regulated now cannot compensate delays which have already occurred. The efficiency of such regulation is therefore under question, also in the light of the very low amount of such appeals in practice. Moreover the Slovene ADA defines as final time-limit to issue a final administrative act three years, regardless of the use of legal remedies. Such rule was set to prevent returning of the cases to lower instances, although we think that three years is a rather long period for the parties to receive enforceable rights. Therefore “reasonableness” of such time-limit is under question.

Another “remedy” for the party in case of delays in administrative procedure is also possibility to inform administrative inspection about violation of time-limits. Number of found violations of instructive time-limits is among the highest (in comparison to other violations of the APA rules). Inspection will start procedure ex officio if petition is well founded. Unfortunately inspection does not have many powers to affect the course of proceedings, except giving instructions to issue decisions in reasonable time and possibility to instruct passing of professional exam about administrative procedure.

Judicial proceedings itself have also certain deficiencies which can affect the right to a fair trial within reasonable time-limit. The Slovene ADA namely does not define the time-limit to issue a judgment. Article 22 of the ADA defines mutatis mutandis application of Civil Procedure Act (CPA) also in administrative dispute. CPA introduces general principle of economy and acceleration of proceeding, which is valid also for administrative dispute, but it, does not define time-limit to issue a judgment. The Slovene ADA and CPA are more specific only when the court performed oral hearing, in which case the judgment is declared immediately after the oral hearing is finished. However exact time-limits are defined in certain administrative fields by sectoral legislation (for example International Protection Act). Moreover executive act “Court Rules” defines maximum time frame, not to be exceeded, otherwise judicial procedure is counted as a backlog. For administrative dispute maximum time frame is six months. As deriving from yearly reports of the courts’ statistics, in 2012 the Administrative Court managed to solve more cases (altogether 3.991) than received (3.588), however, procedure before administrative court lasted in 2012 in average almost 8 months, which is in accordance with the Court Rules a backlog. In 2013 court continued with the positive trend of resolving more cases (altogether 4.229) than received (4.116), but the procedures lasted in average 6.9 months, meaning they still took longer than the maximum time frame as set by the Court Rules (i.e. 6 months). As agreed between Government of Republic of Slovenia and Supreme Court in June 2013 the average time of administrative court’s procedures will have to be improved up to maximum 6 months by the 1st of June 2014. According to decreasing time trends of last years, we think this is an achievable goal.

In the light of accelerating judicial proceedings the Slovene ADA in 2006 limited the right to appeal against the first instance judgment. Namely the right to judicial review in administrative matters is meant as supervision of administrative authorities by the court and not checking decisions of the judge. The right to appeal in judicial proceedings is in accordance with Article 73 of the Slovene ADA limited only to cases when the court itself examined the facts of the dispute and issued different decision or when it decided on legality of acts, prejudicing human rights (see Articles 4 & 66 of the Slovene ADA). Further on parties are entitled also to two extraordinary legal remedies: reopening of the case and revision (limited to the cases about important legal questions or when first instance judgment deviates from the Supreme Court’s case-law/or when there is lack of unity, and the Supreme Court did not decide on these legal questions). The competent body to decide on appeal and revision is the Supreme Court. Procedures before it are faster than first instance and lasted in 2012 in average 4.7 months and 3.5 months in 2013, with also positive trend of resolving more cases than received (e.g. in 2013 Supreme Court received 954 cases and solved 992 cases). However the overall duration of procedures is still too long (bearing in mind two instances in administrative procedure and possible two instances before courts).

21 See Kovač, 2012: 101. As two main reasons for low use of this institute is unawareness of the possibility or viewing it as senseless, giving preference to addressing first instance directly.
22 Official Gazette, no. 26/1999 and amendments. Pursuant to Article 51 of CPA the court must decide in three (3) working days.
24 Official Gazette, no. 17/1995 and amendments. See Article 50 of the Court Rules.
27 See yearly reports of Supreme Court at http://www.sodisce.si/sodna_uprava/statistika_in_letna_porocila/ (accessed 2.4.2014).
The problem of court backlogs in Slovenia was already assessed by the ECtHR in 2005. Slovenia was convicted because of excessive length of proceedings in a pilot judgment (case of Lukenda v. Slovenia, no. 23032/02, 6 October 2005). The ECtHR established systemic problem in judicial system and violations of Articles 6 § 1 (right to a fair hearing within a reasonable time) and 13 of the ECHR (right to an effective remedy). Although judgment does not use term pilot judgment, it is regarded as “quasi-pilot” judgment, since it imposed obligations of abstract nature to the state to improve systemic problem (either to regulate existing remedies in effective way or to regulate new legal remedies). Slovenia decided for second option and in 2006 launched “Protection of Right to Trial without Undue Delay Act” (PRTUDA), which has been applied from 1 of January 2007 on. With this act the procedural right to decision-making in reasonable time became also substantive right (cf. Galligan et al., 1998: 29). Main purpose of PRTUDA is to establish violation of right to a trial without undue delay and allocation of appropriate satisfaction. In case of delays in court’s proceedings, parties are entitled to use two acceleratory remedies, firstly supervisory appeal and then motion for deadline (exhaustion of supervisory appeal is prerequisite for motion for deadline). The exhaustion of the two is prerequisite for the compensatory remedy (i.e. monetary compensation, state’s attorney statement and publication of judgment). This new system, introduced by PRTUDA, is somehow effective, following the same criterions as the ECtHR’s case-law, when estimating reasonableness of the length of the proceedings, that is: the complexity of the case, the conduct of the party and the conduct of the state, as well as what was at stake for the party (see Article 4 of PRTUDA). However certain problems are still arising, such as obligatory exhaustion of acceleratory remedies to be entitled to compensatory remedy, obligation to submit proposal for settlement in 9 months since service of final judgment and definition of the highest possible amount of the monetary compensation already by PRTUDA (i.e. 5,000 euros) (see the ECtHR judgment W. v. Slovenia, no. 24125/06, 23 January 2014). In last three years Slovenia was still convicted because of violation of right to a fair trial in reasonable time and non-effective remedies. For the period of 2010–2012 altogether 20 judgments were issued as regards length of proceedings and 24 as regards effective legal remedy. In year 2013 out of 25 judgments altogether, there were 24 judgments finding at least 1 violation of the ECHR, 20 of which were issued because of violations of Articles 6 and 13 of the ECHR. Regulation of PRTUDA is valid also for the Administrative Court, meaning the parties can in the case of delay of judicial proceedings lodge legal remedies in accordance with PRTUDA. However with already possible two/three instances beforehand new remedies for the parties mean additional burden for them delaying enforcement of their rights.

3.2 Decision-making in administrative matters in reasonable time and its judicial protection – case of Croatia

By adopting the new ADA in 2010 (the Croatian administrative dispute has been finally harmonized with the developed European procedural standards, fundamental legislative principles and conventional guarantees. The fundamental base for encouraging further changes has been formed as well as the positive influence for expanding the area intended for applying the Act at hand. This has enabled legal protection when assessing the legitimacy against not only individual decisions reached by the administrative authority (final administrative acts) but also against the procedure and its lack on behalf of the administrative authority, as well as against forming, breaking and fulfilling administrative contracts including “the administrative silence”.

By the new ADA the matter of the administrative dispute is being broadened and legal protection with every administrative procedure ensured (Article 3 of the ADA). The important novelty refers to the introduction of the objective administrative dispute and general acts being put under the jurisdiction of the High Administrative Court. Croatia has made its “backup” in the entire matter which refers to the Article 6 of the ECHR by which it is obligated to organize oral hearings before reaching the decisions on administrative disputes on public sessions. The Administrative Court has so far been reaching its decisions on non-public sessions (as a set rule) thus diminishing the subject's adequate and complete rights and legal interests protection which should actually be considered the primary goal of the administrative dispute. The lack of oral and contradictory hearing has imposed a limitation on the Administrative Court's influence to prevent and reduce errors in the administrative procedure. This particularly refers to

28 Second pilot judgment was issued in case of Kurić and others v. Slovenia (no. 26928/06, 26 June 2012), where the ECtHR found violation of Articles 8, 13 and 14, since Slovenia failed to remedy comprehensively the situation of “erased” (former nationals of Socialist Federal Republic of Yugoslavia, who lost their status as permanent residents).

29 The Croatian model and organisation of the Administrative Court has up to the year 2010 been criticized for its numerous disadvantages with the aim of imposing/demanding the entire model to be modernized and set to the European standards. By doing so, emphasis has been put on the concept of accepting the European legal/administrative standards and guarantees established by the ECHR and acquis communautaire while at the same time approaching the European model of judicial review of administration (more in Koprić, 2006: 58). Until the ratification of the ECHR in Croatia in 1997 there were no developed rules within the legal system which would protect the citizens from stalling of judicial processes (Sikić, 2009: 356).

30 The Constitutional Court of the Republic of Croatia has formed its decision, no. U-1-745/1999, 8 November 2000, on whether or not can Administrative Court be referred to as the High Court referring to the Article 6, Paragraph 1 of the ECHR. The decision has directly affected the Constitution of the Republic of Croatia changing the Article 29 in the year 2000. Article 29, Paragraph 1, of the Constitution of the Republic of Croatia (OG, 85/10): “Everyone is entitled to have their rights and obligations as well as possible allegations or felony accusations timely and justly determined by a legitimate, independent and unbiased court”. Up until then regulations proscribing timely resolution of legal matters did not exist within the Constitution. More in Omejec, 2006: 10–12. See also Article 4 of the Law on Courts (LC; OG 28/13).
the dispute on the administrative acts legitimacy whereby the court has reached its decisions based on the procedures held by the administrative authority. Hence the verdicts reached in the legitimacy dispute do not solve real life problems but only limit themselves on solving abstract-legal matters of legitimacy thus attaining formalistic features (Britvić Vetma, 2011: 390). Taking all of the alleged into account, the question that poses itself is whether or not the Administrative Court can guarantee the fulfilling of procedural-legislativ demands of the ECHR referring to the Article 6.

The ECHR has insisted changes be made as a part of the reform and oral hearings be introduced in the disputes of complete jurisdiction whereby the Court itself determines the factual state by analysing the evidence; as well as to add an additional instance to the Administrative Courts and possible surveillance over the decisions reached by the First Instance Administrative Court. First, both the administrative procedure and the Administrative Court had to undergo an extensive reform in order to enable the balance forming in making the procedures faster and simpler while at the same time efficiently providing the protection for both citizens and public interest. By doing so the basic guarantee for protection of fundamental human rights and freedoms of the citizens has been ensured all within the framework of modern Administrative Courts. At the same time confidence in the system and institutions continues to grow; basic values of legislative order are being widely spread; support is given to the legislative rule and legal safety and public interests are being protected. The court jurisdiction and composition (Article 2 of the ADA and 7 of the LC) is for the administrative disputes set in a matter that individual judges preside and reach decisions on the Administrative Court as well as the High Administrative Court where there are up to three judges.\footnote{Having reformed both procedural and organisational processes, the Second Instance Court has been introduced in a way that there are now four different First Instance Courts; in Zagreb, Rijeka, Split and Osijek and in Zagreb there is also the High Administrative Court. The High Administrative Court being the first instance court has the right to exceptionally reach a decision based on the attitudes of five judges when it comes to determining the legitimacy of general acts and it is standardized in the separate, sixth section of the Law (Articles 83–88 of the ADA).} Prior to the changes of the ADA in 2013, lawsuits had been decided upon by a council comprised of three judges whereas an individual judge could have done the same if in accordance with the Act (simple cases were presented as such an exception), the legislator, having had previous experience in the matter, had in such cases reached the decision that individual judges were to handle the cases in question in front of the First Instance Administrative Court.\footnote{The explanation of The Final Proposition of the Act on Changes and Amendments of the Administrative Dispute Act (November 2012) states this as an efficiency enhancement with First Instance Administrative Courts. The proposition was supported by the statistical data referring to the solved matters pointing out the similarities in the procedural actions. Additional support has been provided by the fact that out of the total number of resolved disputes (2472), 95 of them – 3.84% have been resolved by an individual judge where Council has presided the rest of the cases (2377). After analysing the presented data the conclusion is that it supports the proposition at hand. Judges of the High Administrative Court have also expressed their opinions (Business no. 2 SU 316/12 21 March 2012) not supporting the proposed changes to the ADA.} The German example shows that an individual judge can on the First Instance Court handle approximately 80% of the cases (2008: 573). We find that this legislative solution under “pressure” and “pretence” of efficiency enhancement has actually been a step backwards (Rostaš-Beroš, 2013: 475, Britvić Vetma, 2012: 402). The complexity of each individual matter that had to undergo serious preparations before reaching legislative decisions was by doing so neglected as well as the necessary competence of the administrative judges in various administrative areas.\footnote{Britvić Vetma points out that administrative judge faces numerous challenges, especially those regarding the continuously growing role of rights and judicial practise of the European Union in the matters of national law and stronger connection to the international law (Britvić Vetma, 2011: 382).} Great attention of the scientific public has been drawn by the notion of an exemplary dispute. The notion has been treated as a novelty in the Croatian administrative dispute introduced with the aim of unifying judicial practice. Its main purpose is to expedite the dispute which greatly resembles the system of benchmarks characteristic of the Anglo-Saxon system. Some authors consider the notion will cause numerous dilemmas and disputes but also dwellings within the judicial practice (Derdò & Šikić; 2012: 55). Not one administrative matter has sadly been resolved by applying the institute of the exemplary dispute so far.

One of the greatest problems of the Croatian legal system in general is not resolving individual judicial and administrative matters within reasonable time frames. For administrative-judicial protection is of the utmost relevance to be complete, timely and efficient. The basic principles of the administrative dispute have been then standardized by ADA as to set the priorities which are the commitment of applying oral, immediate and public dispute,\footnote{The ADA proclaims five principles (Articles 5–9). One of the fundamental principles is the oral dispute principle. The decision-making process on a public session is a regulated rule and an obligation of the court unless proscribed differently (Article 36 of the ADA). In the ADA Proposition, PZE no. 378 on June 15th 2009 it was suggested that the principle to a fair trial and decision-making process within a reasonable time frame be accepted, however the suggestion was sadly given up on.} along with the efficiency principle and limiting the decision making process within a reasonable time frame. In order to accomplish individual principles to be applied, relatively short deadlines have been set during which the court and the parties are to process the matter in question. The novelties have first and foremost been accepted due to the efficiency enhancement referring to the court, in particular its jurisdiction to establish facts in disputes and to reach verdicts. Ljubanović considers this to be the hardest and by far the most important task every judge has to fulfil which simultaneously causes the biggest difficulty when performing the judicial function (Ljubanović, 2014: 161). Another novelty contributing to more efficient decision-making process ensured by the Administrative Disputes Act is the reformation system. The
form that is being returned to the administrative body to reach the decision. This then causes the dispute to become insufficient as the instrument protecting the rights that is ensuring the legitimacy of administrative work. By arranging detailed and clear instructions as to what an individual lawsuit should apply to, the parties can file correctly formed suits which then only enable the court protection to be applied sooner. Less time will be wasted to correct the irregularities in the suit which are often case the reason why courts are prevented from working properly.

The party is given the possibility to choose the way to secure their legal protection either by filing a complaint or a lawsuit after their original case has been denied; this presents the basis for legal protection against silence of administration in the Republic of Croatia frequently referred to as the system of negative fiction (Šikić, 2008a: 150). When administrative authority does not complete the administrative procedure within the regulated deadline (30 or 60 days), the party is given the right to complain as if their case has been denied. Whether the party will file a lawsuit or start a new administrative dispute due to the lack of the former being unsolved depends on the authority which was assigned to the first case that is whether a first or second instance authority has reached the decision. When filing a complaint in the case of administrative silence the second instance authority is obligated to investigate the reasons which led to the untimely decision by asking for a written notification. However there are neither regulations set as to when should the notification be asked for (unless there was no delay) nor which steps to undertake in the case when the first instance authority does not give such a notification. If the reason for that is determined as being justified, the first instance authority will be set with a new deadline no longer than 30 days; if the reasons for “the silence” are however unjustified, the authority can either resolve the matter completely or ask for a resolution within 15 days from the first instance authority. The conclusion to be drawn is that not every silence is illegal. The second instance authority has to make its resolution and deliver it to the party as soon as possible, no longer than 60 days from the day the complaint has been filed. It is important that second instance authorities deal with the administrative procedures themselves with the purpose of avoiding stalling which then causes damage to the party. The General Administrative Procedure Act (OG 47/09) regulates one exception to the administrative silence and that is the case where the party’s demands are presumed to be accepted, if in accordance with other regulations (as an example of positive legal fiction). If, however, the double silence occurs, the parties are entitled to start an administrative dispute.

By filing a lawsuit one can, amongst other things, demand the individual decision to be nullified; the same applies to an untimely reached decision. The party can in those two cases, at the same time; demand the court reaches a reformation verdict. The basic rule is that when the court finds the individual decision either against the law or not reached within the prescribed time frames, it accepts the prosecution demand and reaches the verdict itself. The law proscribes two exceptions to this rule. The first one is when the court cannot reach a decision because of the nature of

35According to the data provided by the Ministry of Justice in 2012, there is a significant increase of 44,68% in the number of the resolved cases, especially those held at the High Administrative Court (HAC). Over the year 2012 Administrative Courts received 12,011 cases (4,936 of which have so far been resolved, 7,075 have not) and is thus considered they do not resolve as many cases as they receive. To resolve a particular case it takes them on average 523 days (according to the CR indicator) whereas HAC take only 382 days. See the Statistical overview for 2012, the Ministry of Justice, Zagreb, May 2013: 33–35.

36 The right to file a complaint is a constitutional guarantee (Article 18, Constitution of the Republic of Croatia), but it is also prescribed as one of the fundamental rights within the administrative procedure (Article 101, Article 105–121 of the General Administrative Procedure Act – GAPA) justified by the parties’ right to a legal remedy (Article 12).

37 The EU laws have also regulated the rule according to which an official is to ensure the decision reaching within a reasonable time frame and without any delays, but not later than 2 months from the day the claim has been filed. If the entire matter is not possible to achieve within a legal time frame, the party is to be notified as soon as possible. See Derda, 2012: 158. The Croatian ADA (Article 155) enables the interested party to receive a notification from the administrative authority, on their own demand, describing the conditions, manner and procedure of realizing either their legal protection or legal interest within a particular administrative matter. The authority is obligated to give out the written notification within 15 days, if it denies doing so or fails to give the notification out; the interested party has the right to file for an appeal within 8 days.

38 Article 102 of the ADA. The rule is that the ADA uses the notion of negative fiction to ensure legal protection of the party in the case when the first instance authority has either not reached or delivered the decision and an appeal is legally acceptable. More in Šikić: 2008: 493–499.

39 According to the former system of the administrative dispute (Article 26 and 42, Paragraph 5 of Administrative Disputes Act, OG 53/91, 9/92, 77/92), if the party has filed a complaint due to the double silence, the court could have either deny the complaint or accepted it with the obligation of determining the manner at which the resolution is to be made or simply reach the decision itself. The matters were mostly returned to the administrative procedures. The verdict is obligatory which means that the authorities are bound by legal interpretations and remarks presented in the verdict. Direct consequences were high expenses for the parties at hand, violations of decision-making within a reasonable time frame and stalling of the procedures. The new system differs from the former one by the changes made in procedural and jurisdictional steps of the Administrative Court regulated by the ADA in 1992.

40 Different deadlines have been regulated for each of these lawsuits, for the first example the lawsuit is to be formed within 30 days from the decision reaching and for the second example at the earliest 8 days after the deadline for decision reaching has passed (Article 24, Paragraph 1 and 2. of the ADA).

41 The Court reaches its decisions within the limits of the prosecution claim and is not bound by the reasons for which the suit has been formed. Non-applicability and jurisdiction are monitored ex offio. Therefore even if the party does not directly ask the court to reach the decision, we consider the court to be obligated, even though the party has not asked, to reach a reformation verdict (since it is a case of complete jurisdiction; more in Vezmar Barlek, 2012: 489).
the dispute and the other is when the administrative authority gives its assessment. The court is obligated to form its verdict and thereby solve the administrative matter (complete jurisdiction dispute)\textsuperscript{42} while at the same time prevents the possibility of a “ping-pong” (or “jo-jo”) effect between administrative courts and administrative authorities. This is of utter importance if taken into account that an average administrative dispute took three years and four months\textsuperscript{43}. After demonstrating one of the possible scenarios a party could go through, there is another possibility the Court itself does not reach a decision within reasonable time frames, so what do the parties do then to ensure legal protection. Since there are no regulations proscribing the time frame for Court to reach its decisions (they are only instructive), it is extremely important Courts reach their decisions within reasonable time. Another possibility in the case of extraordinary legal remedies within the administrative dispute, but only after the European Court has reached its final decision, is applying the proposition for the dispute renewal (Article 76 of the ADA). However, the final and key role in the entire supervision process belongs to the Supreme Court of the Republic of Croatia, to which every party doubting the legitimacy of the legal verdicts reached by the Administrative and High Administrative Court\textsuperscript{44} can contact for advice. The answer to the dilemma as to which of the two legal remedies has the stronger effect on balancing the entire practice and law application in Croatia as well as the additional surveillance over the court's decisions should be provided by the administrative-judicial practice and the Supreme Court practice (more in Aviani & Đerđa, 2012: 369–394). In conclusion, if taken all matters into account, the novelties introduced by the ADA due to fulfilling all the rights guaranteed by the Convention have been referred to as positive. The principal advantage of emphasized dispute of full jurisdiction lies in the fact that more clearly, quickly and thoroughly resolve the administrative matter.

The Croatian system responsible for detecting and avoiding violation of rights in the process of trial has suffered severe but justified criticism by the ECtHR.\textsuperscript{45} The criticism is not to be interpreted as a punishment for the country, but rather as a form of guidelines (individual or general measures) to improve the legal system. Many violations of the ECHR have been indicated regarding mostly the violation of the reasonable time frame proscribed for administrative procedure and dispute. Great majority of cases were those where the right to a fair trial has been violated (Stažnik, 2014: 124). The key problem arises when the moment for determining the beginning of the period significant for reasonable appraisal is not the one at which the administrative dispute had started, but when the complaint has been filed within the administrative procedure (the moment when the “dispute” is actually formed by the Article 6 of the ECHR). In 2007 this caused a significant change in the practice of the Constitutional Court\textsuperscript{46} of the Republic of Croatia as well as obligation to harmonize with the expressed understandings of the ECtHR. This is considered a turning-point towards enhancement of the efficiency of legal protection. The changes introduced by the Law on Courts\textsuperscript{47} have however considerably influence the regulation of the concept of trial within reasonable time. The matter could cause confusion with citizens who now have the possibility to seek legal protection by filing a constitutional complaint in front of the Constitutional Court and/or Supreme Court.

The question remains whether or not would this Croatian system be again questioned by the ECtHR. The background of many changes refers to a decrease of the number of court procedures, to unburdening the courts, to paying out the financial compensation as an exception and to limiting the adequate financial compensation amount. Since the decision-

\textsuperscript{42} Article 58 of the ADA refers to standardized jurisdiction when receiving the prosecution claim. If the party in question files a lawsuit, the court can apply several legal remedies to reach either a verdict or a solution: to drop the charges, to deny the charges, to dismiss and completely end the dispute, to reach the final verdict after or even without holding an oral hearing or apply the exemplary dispute.

\textsuperscript{43} The Supreme Court of the Republic of Croatia considers a four-year period for regular and a three-year period for urgent cases to be far too long to be considered a reasonable time frame. The reasonable time for reaching decisions in administrative matters is violated if overstepping a three-year period. The results are supported by the fact that the courts are overburdened, which is by the way not seen as a justification by the European Court (more in Lukanović-Ivanšišević, 2014: 152).

\textsuperscript{44} By applying a request for extraordinary questioning of the legality of a non-appealable verdict - Article 78 of the ADA.

\textsuperscript{45} See verdicts Rajak v. Croatia (28 June 2001), Horvat v. Croatia (26 July 2001). In the Republic of Croatia in 2012, the court has reached 463 verdicts, 20 of which were in the area of administrative dispute. The system has been standardised by the Article 29, Paragraph 1, of the Constitution of the Republic of Croatia, by Article 63 of the Constitutional Law on the Constitutional Court (OG 99/99, 29/02, 49/02) and by Articles 63–70 of the new Law on Courts (OG 28/13).

\textsuperscript{46} The Decision and Resolution of the Constitutional Court, no. U-III–4885/2005, 20 June 2007. The Constitutional Court considered the time of forming the lawsuit to the Administrative Court as the beginning of the deadline which was against legal interpretations and the European Court practice. It has demonstrated that administrative procedures are repetitiously returned to administrative disputes which prolongs the deadlines beyond any reasonable time frame and is as such seen as a disadvantage of the former administrative and judicial administrative system. This was also applicable to the matter of administrative silence which was correctable only by changing legal regulations and acts. See the European Court verdicts - Počuča v. Croatia (26 June 2006), Božić v. Croatia (29 June 2006), Vajagić v. Croatia (27 July 2006), Smoje v. Croatia (11 November 2007), Stokalo et al. v. Croatia (16 October 2008).

\textsuperscript{47} The Law on Courts (OG 28/13) allows two new legal remedies: a) forming a claim for legal protection on trial within reasonable time, b) claim for adequate financial compensation. The claim is submitted to the court leading the trial. Should the matter not be resolved within the proscribed deadline, the party is entitled to form a claim for adequate financial compensation due to overstepping the reasonable trial period to a higher instance court within a six month period. If the verdict is reached by the High Administrative Court, the party can ask for protection from the Croatian Supreme Court. This makes the Supreme Court of the Republic of Croatia the highest instance by replacing the Constitutional Court of the Republic of Croatia.
making process is “lowered” to the court which at the same time is handling the procedure itself and since it favours the strengthening of the position of an individual judge, one would not agree that the goal is to change the law and end procedures within reasonable time. The ECtHR reached 23 verdicts in 2012, 18 of which were in favour of the prosecutor, pointing to the increase in the compensation payments.\textsuperscript{48} The number of cases citizens versus Croatia has increased (in 2012) for 45% and in 2013 the increase rose even more significantly reaching 78%. Such a huge increase in the number of cases regarding the violation of rights to a trial within reasonable time indicates an alarming situation, one that must be seriously dealt with. One of the reasons lies among other things in the reflection of Croatian reality and lack of confidence on behalf of the citizens in unbiased and professional judicial processes. Further increase of lawsuits is expected to arrive to the ECtHR; the latest verdicts support the statement.\textsuperscript{49} In order to allow the ECtHR to “defend” itself from numerous citizens’ lawsuits, certain changes have been introduced in 2014 (according to the changed Rule 47 of the Rules of Procedure) regarding strict rules about the proscribed contents of the claim as well as the deadlines regulated for its filing.

4. **Comparative analysis - lessons to be learned**

It is considered that the international and constitutional-judicial practice has had a positive influence on the legislators in the process of creating an institute to expedite resolving administrative matters while at the same time achieving the European standards of judicial decision questioning. To synthesise, the key procedural principles and rules to be taken into account as a ground to challenge administrative acts in front of the court, if violated, include according to ECtHR and national (constitutional and administrative) case law in particular the following ones (Auburn et al., 2013: 109-274, cf. Statkontoret, 2005): impartiality and equivalence; adversary procedure with participation, cooperation and consultation; decision reasoning; legal protection, in particular judicial review; and reasonable timing, no excessive length of administrative and judicial procedures. The latter present through time more and more important human right as a basic ground for due process or fair trial \textit{(ibidem, 236)}. Effective administrative justice and APs, especially by timely decisions, are in fact influencing the whole society - striving for legality, transparency, proportionality, as within public administration also in business, in relations to NGOs, etc. (cf. Woehrling, 2009).

The ECtHR case law is important in several aspects in particular for Eastern Europe, mainly on the issues of the scope of the ECtHR also in administrative matters (König 1978, Deweer 1980, Le Compte 1981, Sporrong & Lönnroth 1982/Öztürk 1984, Benitim 1985, etc.), and with regard to pilot judgments (Broniowski 2004, Kurić et al. 2012). Furthermore, it is of great importance to acknowledge judgments on authority and fair trial such as full jurisdiction also when evidence in administrative file (Zumbotel’ 1993, etc.), access to court, public hearing, right to be heard, etc. (Jussila 2006, Yukos 2009, Poirót 2011, Jačimović, Pruško, Kečo, Aleksić, 2013 etc.). With regard to questions of legal remedies and timing it is significant that the state ensures ECtHR's standards by effective whole domestic prevention and compensations schemes (Kudla 1996, Poćuča 2006, Mandić 2011) and reduce length before court, not prior AP (Kveder 2006), but also appellate APs and execution included (König 1978, Hornsby 1997, Janssen 2001, Božić 2006, Rajak, Horvat, 2013, Habić 2013), following the criteria and evaluation on case by case basis.

When comparing Slovenia and Croatia, several divergences and commonalities can be established. Both countries have developed their system of judicial protection in general and with regard to timely decision-making in administrative matters especially by the APA and eventually ADA tool. But both countries have had or still face with a problem of excessive length of procedures on national level, however Slovenia seem to improve the state of the art and Croatia still having respective systems problem, even deepening. Furthermore, one can observe significantly more stable and with ECtHR compliant system in Slovenia as in Croatia, as a result of several factors. First, the regulation is more stabilised (no ADA amendments in this respect since 2006 in Slovenia, but constant recent changes in Croatia). Second, adversary procedures are guaranteed in Slovenia by subsidiary use of civil procedure, on contrary lack of such reference observed in Croatia. Third, new Slovene ADA from 2006 introduced several economy institutes (as limiting an appeal). Fourth and fifth, Slovenia is coping lawsuits by one tier Administrative Court while Croatia rather transferring problems to Higher Court instead resolving problems by organisational besides legal measures. And rather most important issue: Slovenia is diminishing almost all traces of former objective concept of administrative dispute, while Croatia is even broadening this type of judicial review for general administrative acts (even though preserving the test of their constitutionality still outside administrative dispute).

However, Slovenia and Croatia share the systems applied in majority of countries, both in terms of organisation of administrative judiciary and the scope of administrative dispute verdicts if administrative acts found illegal. Both respective countries have regulated their systems by specialised administrative courts (as French Conseil d'État),

\textsuperscript{48} According to the Report on the Republic of Croatia Office Representatives in front of the European Court for Human Rights (1 January 2012- 31 December 2013), Zagreb: 2013, Croatia has paid 325.950 € to its citizens as compensation (70% more than in 2011).

\textsuperscript{49} Jačimović v. Croatia (31 October 2013), Peruško v. Croatia (15 January 2013), Kečo v. Croatia and Aleksić v. Croatia (5 December 2013) point out the procedural mistakes made by administrative bodies, the Administrative Court, the High Administrative Court and the Constitutional Court.
regulating more inquisitorial principles as litigation like adversary institutes, but harmonising judicial review by fair trial guarantees and even dispute resolution methods. If we compare normative landscape of the ADA in the respective countries in compliance with Council of Europe recommendation on judicial review in administrative matters (Rec(2004)20) we can conclude the following:

- any violation (substantive law, procedural error or established facts) by different types of administrative acts is subjected to administrative dispute as an independent form of judicial review establishing effective division of powers in practice;
- access to impartial (in relation to the executive) administrative court is guaranteed despite an obligatory prior exhaustion of an administrative appeal before a court action can be filed (differing completeness and finality of administrative decisions);
- fair trial adversary guarantees are installed by the ADA, such as: oral hearing, examination of all legal and factual issues, publicity, reasoning and subjectivity to higher tribunal with two tired judicial review within administrative dispute or by constitutional court, etc.;
- effectiveness of judicial review is normatively protected and increasing in practice by possible (even if exceptional) merit reformation authority of the court (not only cassation), awarding costs, effective execution, provisional measures, etc.;
- different measures of more speedy procedures are introduced by national ADAs, such as time-limits, grounding a court action in case of an administrative silence, exemplary procedures, non/suspensory effects, etc.;
- besides the ADA there are other measures, legal and organisational, to further speed up timely final and hence effective decision-making in administrative matters.

Several (even though rather significant) differences of the Slovene ADA compared to the Croatian ADA seem in consequence - if and when ECtHR and other European standards followed - of minor importance. We believe that even system’s breaches as found by the ECtHR in Slovene and Croatian cases are more a result of general political and administrative system as regulation itself, hence the overall culture and maturity of transition processes. However (as in particular in Croatia), changing the legislation regarding guarantees to a fair trial has caused the entire process to repeatedly move “back and forth”. Hence, the manner in which domestic courts’ interpret the guaranteed rights supported by the conventional principles, will determine the degree of their consistent and efficient application with the aim of attaining efficient legal protection of the citizens.

At last, but not least, let us emphasise that administrative dispute is consequent legal protection, only following complete administrative decision. As such (national) APA and ADA should be regulated acknowledging that they are dealing with the same life event of an individual party or plaintiff. One would expect that policy makers would regulate both procedures and laws with hand in hand, from contextual and also timing aspects. Unfortunately, this praxis is hardly the case in Eastern Europe as opposed to such an approach in (Western) EU. The experiences prove that part of the APA’s rules are in a function of compensating lack of guarantees by the ADA – and even more vice versa (Künnecke, 2007: 152, Androjna & Kerševan, 2006: 640). As presented, major findings arising from theory and jurisprudence emphasize the necessary connection of the APA and the ADA in particular in terms of effective protection of parties’ rights and even the public interest. The relation between the APA and the ADA is supposed to interactively cover different ratio of both procedures, namely AP pursuing primarily public policies implementation and (a subjective) judicial review guaranteeing (human) right of parties against abuse of power by administrative authorities. At least four issues in this respect deserve special attention, namely:

- (broader) scope of AP and administrative-judicial dispute: all administrative acts to be challenged and on all possible violations/reasons with full investigation allowed;
- tiers of legal protection in administrative matters and further judicial review (all together, but at least two-tiered administrative judiciary with (even if limited) an appeal within administrative dispute);
- courts’ mandate to (not) act upon (illegal) administrative acts as a merit verdict (reformatio mandate);
- reasonable timing also in administrative dispute and other forms of administrative justice, not purely or even primarily within AP itself – and when violation evidenced proper individual compensation and systems correction measures introduced.

50 Cassation as main alternative approach is acceptable of course in selected cases (cf. Koprž et al., 2014), such as administrative silence, if merit decision-making is not appropriate to the nature of the matter and/or there are the discretionary public administration powers in question (not allowing only one legal solution to in principle to legality bound administration). One must also be aware of pros and contras of in principle required merit system, since it is indeed speeding-up effective protection of the parties (no “jo-jo” effect as in the cassation system) – if combining the authority with broader reasons, but there are threats such as judiciary taking over executive branch (division of powers principle!) and a problem of sufficient number and (specific) competences and/or organisation of administrative judges and courts. Cf. Article 65 of the Slovene ADA: “The court may decide on the matter if this is permitted by the nature of the matter and if the data on the procedure provide reliable foundation/facts established at hearing, particularly if” 1. removal of contested administrative, act and the new procedure would cause damage for the plaintiff which would be difficult to redress; 2. After the adm. act removed, the PA issues a new act, which is contrary to the legal opinion of the court; 3. Administrative silence (on second instance or in 30 days after removal); 4. Necessary for protection of constitutional rights.

If the ADA would ensure proper protection, APs would have no more a role of a court-like system, hence can and should concentrate on problem-solving and good administration within sound public governance (Koprić et al., 2014). Namely to realise as recommended by Council of Europe: state/authorities should balance legal and even other legitimate interests v. effective public administration and APs.

5. Conclusion

Main issue constituting contemporary fair trial seems to be when analysing ECtHR case law - in general and in Eastern Europe in particular - effective protection of parties’ rights in time scale. Justice delayed, justice denied is proven to be most focal point of today’s actions. The logic consequence for national authorities, being primarily responsible and accountable for effective protection of legal interests set by legislation is therefore to effectively change laws on AP and judicial protection over timely decision-making in administrative matters. Even more, reasonably fast APs conduct is also important for effective protection of public interest and public policies in general.

With special attention to effective administrative justice all countries should enhance especially adversary institutes, regardless of introducing objective or subjective concept of administrative-judicial review, independent administrative or general courts’ protection. Mainly parties from APs have to have the opportunity to effectively realise their substantive right or its merit denial and further legal protection. All possible types of acts and violations must be covered, right to be heard and oral hearing, reasoning and legal remedies ensured.

The awareness on necessary interplay between APA and ADA is of crucial importance in modern administrative relations, since AP major function is primarily effective realisation of parties’ (constitutional and substantive) rights and public interest. On contrary, administrative dispute or administrative justice in general, has to function as a reserve net, guaranteeing effective legal remedy for breach of basic procedural principles within APs to parties affected in concreto. Legal novelties introduced should in final effect therefore guarantee effective implementation of substantive law in first place. Additional necessary organisational adjustments are to be prepared since only law cannot address all problems in particular on the field of unreasonable long procedures. Finally, just compensation has to be available for persons affected by excessive length of procedures on national level. If no systemic changes are introduced, but only minor legal amendments as so far in most Eastern countries, one can speak of only window dressing of good administration to please international observers. Merely all aspects mentioned, put together, can significantly contribute to systemic judicial review and finally the state governed by law that we strive for.

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