

The Topic of the Issue

HIGHEST INSTANCE IN ADMINISTRATIVE MATTERS

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With the establishment of the Administrative Court as a court in the first instance, the Supreme Court would become the higher and final instance

The administrative dispute is the basic form in which the legality of the work of administrative bodies is controlled. In an administrative dispute the Administrative Department of the Supreme Court of Serbia is executing court control of the legality of the state administration's work by investigating the legality of final administrative acts issued by the executive power, and these are the Government of Serbia, all its ministries, many organs of the republic and organs of local self-government.

- You deal with administrative law from your very birth all the way to your death, during your entire life, since the entry in the birth registry until the entry in the death registry. For instance, if the newborn is registered by the husband of the mother as the father, and later, for instance, in a paternity procedure it is established that the father is a third person, then the personal data related to the child must be changed. A failure in the entry related to the date of birth can be significant for the retirement. If someone wants to change the name, he/she must attach various certificates to prove that he/she has not been convicted, not under investigation and so on. There are very many situations in life that fall within administrative law. Here are the retirement cases and those dealing with invalids, building permits, expropriations ... – says for Pravda u tranziciji judge Milena Savatic, President of the Administrative Department of the Supreme Court of Serbia.

Election rights, too

According to Article 1 of the Law on Administrative disputes, the courts decide on the legality of acts by which state organs and enterprises or other organizations, which perform public authorities, decide on rights and duties of natural persons, legal persons or other parties in individual administrative matters.

Administrative disputes fall within the jurisdiction of district courts and the Supreme Court, with the biggest part of this jurisdiction being with the Supreme Court. Namely, district courts decide only "on the legality of final administrative acts of the fund for retirement and disablement insurance, and of final administrative acts which are not within jurisdiction of the Supreme Court", whilst the Supreme Court "decides on the legality of final administrative acts of the organs of the republic."

The Law on Administrative Disputes and the Law on General Administrative Procedure are already at first glance rather dull, but in practice all these are very lively issues. The fields in which the court is examining legality of final administrative acts in an administrative dispute are numerous and various. These are taxes, duties, tariffs and other forms of public income, customs, regional planning, construction, agricultural and forest land, expropriation, land consolidation and regrouping, construction of objects, communal services, housing, pension, disablement and health insurance, children's and social security, custody, adoption, registration of citizens' associations, political organizations and trade unions, the privatization of firms, control over flow of goods, registration of vehicles, withdrawing licenses from banks and insurance organizations, registration of economic subjects, and so on.

The Supreme Court decides, for instance, on charges against decisions related to dismissal of schools' and health centers' directors, it investigates decisions of the Bar Association of Serbia on the entry and removing lawyers from its registers and decisions on banning a person to perform the duties of an attorney.

In the case of competitions and auctions, the Administrative Department investigates the legality of the implemented procedures upon charges of participants.

- We got under our jurisdiction also the investigation of the final administrative act of the agency for the registration of economic subjects, and from the next half of this year we shall decide in all administrative disputes stemming from the Civil Service Law, because this law assigns the jurisdiction to the court – says the President of the Administrative Department of the Supreme Court of Serbia.

The Administrative Department of the Supreme Court of Serbia deals also with all disputes related to

elections, i.e. protection of election rights.

Because of such a big jurisdiction and a really impressive number of administrative disputes, the establishment of the Administrative Court is one of the priority tasks of the reform of the judiciary in Serbia. It is little known, namely, that in the administrative matters there is now no higher instance that would reexamine the Supreme Court's decisions, and at the same time this court is also the first instance in the majority of administrative disputes. With the establishment of the Administrative Court as the court in the first instance, the Supreme Court would be the higher and final instance.

- This is a very big and difficult field, and the Administrative Department of the Supreme Court has 18 judges now. The High Judicial Council has suggested that the future Administrative Court, which will take over the jurisdiction of this Department, has 40 judges, but this was before we got the expanded jurisdiction – says Milena Savatic.

- We examine the final administrative acts upon charges, and upon extraordinary legal remedies we examine the decisions of district courts. Hence, in the biggest part of this field the Supreme Court is at the same time both the first and the last instance. We take a final decision. However, once the Administrative Court is established, its decisions upon extraordinary legal remedies will be examined by the Supreme Court. When the laws were passed, attention was focused upon the reform of the judiciary and it was expected that the establishment of the Administrative Court will be sooner accomplished. Against the decisions of the Supreme Court in administrative disputes there is no possibility for reexamination in front of another court, and if the party was not satisfied – the only higher instance is the Court for Human Rights in Strasbourg. This is so because there is no more the Federal Court, which controlled our decisions, and the Court of Serbia and Montenegro, according to the Constitutional Charter, has now institutional jurisdiction to examine our decisions upon extraordinary legal remedies. The military court was also abolished and there was no decision on who is in charge of their disputes – explains Savatic.

New Year's trial

- When there are elections, we are obliged to decide and expedite the decision of the court within 48 hours and we are continually in the court till late in the night. On New Year's eve, on December 31, 2001, we were deciding on a case until nine o'clock in the evening. We decide on everything that seems to be controversial, from the candidature all the way till the publishing of the election results. Hence, we decide also the final election results if there are objections – says Milena Savatic.

For a separate administrative judiciary

The Administrative Department of the Supreme Court of Serbia has six chambers with three judges each. Hence, the decisions on charges are taken in chambers with three judges, and in case of appeals and extraordinary legal remedy the decision is brought by chambers of five members.

Apart from trials, all judges of the Administrative Departments are in session when a decision has to be made on some controversial legal issue, in case that two chambers in similar cases have two completely different opinions. Likewise, when a new legal situation emerges, the Department is in session, it takes a legal opinion and publishes excerpts with legal opinion which then become binding.

- In 2005 we had a total of 18,900 cases in work, out of which 10,700 are new ones. We solved about 7,400 cases. Only since September last year our Department has 18 judges, prior to that there were 12. Generally, a judge should have 20 cases per month, and our judges were working on 50 to 60 cases per month, says Milena Savatic.

The administrative dispute is of a specific nature. It has two phases – the preliminary procedure and the trial procedure. When the charge is filed in the registry, it is undergoing a preliminary procedure which establishes whether there are procedural presuppositions for initiating and conducting an administrative dispute. Then the charge is transferred to the charged organ, which is to give an answer, with the request for transmitting documents in the administrative case. Within a period of time established by law, the charged organ is to reply to the charge. If it does not act upon the first request, the court is obliged to repeat the request to the charged organ. When the response reaches the court, the preliminary procedure is ended and the sitting chamber can decide in regard to the charge.

If the court establishes that the organ's act was legal, the charge is rejected, and if it establishes it is not legal, the charge is accepted and the controversial act is annulled; the remarks and the legal opinion of the court presented in the decision are binding for the charged organ.

- The problem is that there is no court which would examine our decisions in the first instance upon

extraordinary legal remedies. It is possible to file an appeal on a certain matter (military invalids) or an extraordinary legal remedy – the request for protection of legality, but then, too, it is we who decide, the Supreme Court of Serbia in a chamber of five. Therefore the citizens are insufficiently protected and are not equal in regard to court protection which they enjoy in civil and criminal matters. In comparative legislation there are higher instances in administrative disputes, for instance Germany has the Federal Administrative Court. I support the existence of a separate administrative judiciary in which for administrative matters there will be the court in the first instance, the second instance and the Cassation Court – says at the end judge Milena Savatic.