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PUBLIC ADMINISTRATION IN DEMOCRATIC SOCIETY: THIRTY YEARS OF DEMOCRATIC TRANSITION IN EUROPE

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The Development of the Administrative Courts' System in Transitional Countries and its Role in Democratic, Economic and Social Transition

1. Main features of the transition process and its reflection on the administrative courts' system

Public administration in general, as well as the organization of administrative courts have undergone certain tremendous changes in the last decade of the 20th century as a response to the transition process in post-communist European countries. Generally, transition denotes downfall of the socialist regime and the adoption of the democratic structures, but the term can also be used in the fields of economy, liberal market, etc. (Dung, 2003: 5). In general, public opinion on courts in socialist regimes was at a very low level because of judicial corruption and since judges usually had 'directives' they had to follow when solving the case. Additionally, judges were in those circumstances used to strictly follow the norm, without any teleological interpretation (Matzak, Benze, Kühn, 2010: 81). Public administration was, similarly as courts, in the function of the autocratic state. Citizens could not challenge decisions of corrupted employees of administrative state bodies before an independent administrative court. 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: 8, 9) and to a deep distrust in public administration and state in general (Hein, 2005: 6). „Liberal democracy arose from a distrust of traditional political institutions and distrust was mingled with fear (Markova, year: 45). „Such countries have the legacy of an omnipresent and omni powerful state, rotten from within with corruption and clientelist

networks. Therefore, while the principle of government organization and functioning is that of a Rechtsstaat, in practice government power is constrained by corruption and inefficiency“ (EC Report Bulgaria, 2018: 88). Transition was characterised by far-reaching changes in all segments of the state. 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 independent judges and court and functioning of the state in general, as in some transitional countries public trust is still at very low level. While political and economic changes can have fast effect, social changes need more time (Markova, year: 45).

Administrative courts have an important role of determining whether administrative bodies (state, regional, local) have reached a legal and an independent decision. Of course, if discretionary powers of administration in concrete administrative procedure exist, the court is not permitted to control decision of administrative bodies, except to determine whether the decision was lawful and within the margins of administrative powers (Krbek, 1937: 143, Krbek, 1955: 173-174). During the formation of judicial control of administration in transitional countries, one of the issues was whether to form judicial control of administration in one or in two levels, then some technical details regarding recruitment of administrative judges, their salaries, etc., since in the socialist countries judges were not well paid (Dung, 2003:8). Differences between transitional countries arise from the method of realisation and performance of transition process. Conditions in various countries were different, such as specific historical circumstances, tradition or war for example. It might be hard to imagine that a country dealing with war situation (for example. Croatia) would be capable of forming an administrative court system that will last for years or achieve a high level of the protection of human rights and freedoms.

The first phase of the development of the administrative courts' system was ongoing together with the creation of the new parliamentary democracies. This was characterised by forming new political parties, instituting free elections, building new institutions, and adoption of new constitutions with the proclamation of the rule of law as a basic principle (Matczak, Bencze, Kühn, 2010: 83). Principle of the separation of power between three branches, legislative, judicial and executive is a principle which restrains and at the same time constitutes political power (Omejec, 2015: 2). It is also a precondition for judicial independence which was guaranteed in constitutions of transition countries (Dung, 2003: 3). The judiciary should be independent (Matczak, Bencze, Kühn, 2010: 85) and judicial independence is also a precondition of judicial control of administration. New democracies

were based on principles of constitutionality, legality, all joined in the highest principle – the rule of law. Rule of law is known as the basic principle of the functioning of public administration and is also one of the main principles of European Administrative Space (Kovač, 2017: 9). The new role of the courts included protection of human rights and freedoms from illegal procedures of the public administration. „The role of the judiciary is increasingly significant and recognized as a key tool for building the rule of law, human rights protection and economic reform“ (Dung, 2003:6).

Administrative courts were, and still are, playing an important role in the economic transition from autocratic to liberal market. Constitutions of transitional countries guarantee business liberties, principle of proportionality, and ban on monopolies. Administrative bodies are issuing all kinds of licenses and permission regarding investments, so their control must be efficient, performed in a reasonable timeframe and independent of all external influences. “Hence, the judiciary's attitude towards the new institutional framework is crucial to successful institutional change: if the judges put general principles into practice, they will work; if not, they will remain dead letter“ (Matczak, Bencze, Kühn, 2010: 84). Administrative courts are entitled to control decisions in the area of telecommunications, decisions of agencies in charge for competition (for example Croatian Competition Agency), spatial plans, building and location permits which are preconditions of investments in certain location, decisions in the field of agriculture (in Croatia, for example, this is dealt with by the Paying agency for agriculture), agencies in the field of energetics, decisions issued by public bodies in health system, education system, etc. Building roads with following infrastructure and connected activities such as expropriation, concessions, and environmental law are also under the observance of administrative courts. State administrative bodies, for example ministries dealing with taxes are issuing decisions affecting the rights and obligation of the citizens, and those decision are also controlled by administrative courts. Broad area which is under the control of administrative courts is arising some other questions such as education of judges, specialization of administrative courts, etc.

2. Origins of judicial control of administration

Judicial control over administration was created as a mechanism for the restriction of administrative action by impartial courts. Administrative dispute as a form of the control over the administration was created in 19th century in France (Braibant, 1992: 403, Gaudement, 2001: 520, Borković, 2002: 483, Đerđa, 2008: 2, Tratar, 2002: 84. – 103) and France is still

the role model in the area of judicial control of administration (Britvić-Vetma, 2014: 227-241). The goal of judicial control of administration in the form of administrative dispute, as of the procedure before administrative courts, was the sanction for illegal actions of administration, but it has preventive character as well. The aim was also the protection of the rights and interests of the citizens by an independent tribunal. Administrative dispute was present in early stages of the development of modern countries and their administrative law, such as in Germany (Leisner, Piras, Stipo, 1997: 149 – 155) and German administrative law today is “one of Germany's most successful export articles” (Hein, 2005: 6).

Control over administration has two basic models. In common law system the control over administration is performed by ordinary courts or tribunals (Denmark, United Kingdom, United States of America). Some countries have special sections in their ordinary courts dealing with administrative law (Netherlands, Spain) (OSCE Handbook, 2013: 30). Continental type of control of administration is performed by special administrative courts (France, Germany, Austria and most of transitional 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 Handbook, 2013: 30). In continental system of specialized administrative courts administrative dispute is organised in one, two or even three levels, depending on constitutional arrangement of the country. Due to process of European integration and modernisation of public administration in European countries, 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 social changes. „The international economic, social and political interdependence has led to the emergence of transnational laws and structures“ (Krzemińska-Vamvaka, 2017: 197). Today administrative courts in their decision making process should consult not only domestic laws and regulation but also international documents as well as the EU law. Characterised by process of the EU integration, some new terms and standards are evolving such as Europeanisation, good governance, harmonisation and modernisation of public administration and European administrative space. Whole process of Europeanisation is characterized by “creation of a common core of administrative principles, rules and practices” (Koprić, Musa, Lalić Novak, 2011: 1517). Koprić describes it as more traditional approach focused on similarities of European countries which is focused on results, and not so much on driving forces and mechanisms of convergence (Koprić, 2017: 32).

For the purposes of the paper, analysis is divided into three chapters: formation of democratic institutions (during the 1990's), public administration reform phase (during the 2000's) and evaluation phase (after 2015).

3. Formation of democratic institutions and establishment of administrative courts

Development of administrative courts' system in transitional countries¹ has in most countries three stages. All transition countries in the late 1980's and the early 1990's left the socialist structure and the structure of the administrative courts that existed there (whether it was special courts or just departments in the supreme courts of certain countries (Yugoslavia). After the fall of the "iron curtain" the process of transition in the early 1990's was characterised by the formation of independent administrative courts' systems. Some of the countries have specialised administrative courts such as Croatia, Slovenia, Latvia, Poland, etc., other had at least specialised administrative divisions in ordinary courts, but all of them have noticed and recognized the importance of the judicial control of administration in the process of democratization (Hein, 2005: 6). The second phase in administrative courts' development or a reform phase is Europeanisation and modernisation of public administration and administrative courts' organisation. International standards set by the European Convention on Human Rights and Freedoms (hereinafter: ECHR) and European standards set by the Court of Justice of European Union (hereinafter: CJEU) have great influence on reform of administrative structures in post-communist countries. The third phase can be called evaluation phase. Countries evaluate their administrative courts' systems, notice disadvantages by themselves or through the input of the European Commission Reports. They are moving forward by amendments of basic administrative disputes' acts and some of them are even preparing new reforms of the system.

3.1. Formation phase in the former Yugoslavian countries

Legal situation in all successful transitional countries, as well as in those and those less successful (see division in Zajc, 2000: 128) during 1990's, was characterised by a conceptual confusion. There was no pattern for the transition process since it is connected with the tradition and the mentality of a particular country facing this process (Omejec, 2015: 13, Merusk, 2004: 53).

¹Romania and Slovakia did not introduce separate administrative courts' system, so they are not analyzed in special chapters. (ACA Slovakia, 1; ACA Romania). In supreme Court, there is special division in Supreme Court of Slovakia dealing with the administrative cases.

Croatia and Slovenia took over basic laws regulating administrative courts' organisation from the socialist Yugoslavia. Administrative Disputes Act (hereinafter: ADA) from 1977 as a basic act regulating administrative dispute was taken into Croatian and Slovenian system with minor changes (Medvedović, 2003: 351).² Judicial control of unlawful acts is guaranteed in Croatian constitution (Art. 19/2 of the Constitution of the Republic of Croatia). Administrative Court in Zagreb which was founded in 1977 was renamed into Administrative Court of Croatia. (Art. 5 of the ADA from 1991) It was the only administrative court in the Republic of Croatia and procedure before administrative court was organised in one level, without possibility of an appeal for the judgements of that court. Scope of its jurisdiction was control of legality of an administrative act, which is in theory also known as the subjective administrative dispute (More on types of the administrative dispute in: Borković 2002: 491, Krbek 2003: 230, 231, Đerđa, Šikić, 2012: 303), Ljubanović, Britvić-Vetma, 2011: 753-772.).

In *Slovenia* federal Yugoslav administrative disputes act from 1977 was also in force till 1998 when new Administrative Disputes Act was enacted (ADA, OG no. 50/97). ADA in Art. 5 regulated foundation of the Administrative Court of the Republic of Slovenia in accordance with the Art. 97/2 of Courts Act. Administrative dispute was then regulated on two levels. First instance cases were brought before Administrative Court of the Republic of Slovenia and it was possible to lodge an appeal to Supreme Court of the Republic of Slovenia (ADA art. 5/2, Grafenauer, Breznik, 2009: 655).

In *Bosnia and Herzegovina* administrative dispute is organized on multiple levels. On the state level administrative disputes act was enacted in 2002, applied also in regard to district Brčko. In Federation of Bosnia and Herzegovina two administrative disputes acts were adopted, one in 1998 and another in 2005. Administrative dispute was organized before administrative courts in cantons and there was no possibility to lodge an appeal to second instance administrative court (Koprić, 2006: 228-229). In the Republic of Srpska Administrative Disputes Act was enacted in 1994. Administrative disputes were conducted before Supreme Court of the Republic of Srpska, higher courts and Supreme Military Court (Art. 18.). An appeal could be provided by special laws (Art. 19). Jurisdiction of the courts is provided by general clause with negative enumeration. Control of the legality of

²Administrative Disputes Act which was taken into Croatian legal system was amended twice during 1992 (Official Gazette of the Republic of Croatia, (hereinafter: OG), 53/1991, 9/1992, 77/1992).

administrative act is in focus of the administrative dispute and dispute can start on the initiative of the public prosecutor and public ombudsman as well (Koprić, 2006: 229).

In *Federal Republic of Yugoslavia* Administrative Disputes Act from 1977 was in use till 1996. Courts which were applying Administrative Disputes Act from 1996 were courts in member states of FRY, Serbia and Montenegro (Koprić 2006: 230). The same act continued to be applied later in Serbia. Montenegro adopted a new Administrative Disputes Act in 2003. In State Union of Serbia and Montenegro in 2003, administrative control of legality of administrative acts was regulated in the Act on Courts of Serbia and Montenegro from 2003. In Courts Act from 2001 establishment of Administrative Court was provided for the whole territory of Serbia. In Montenegro administrative disputes were in jurisdiction of Supreme Court, and since 2005 Administrative Court of Montenegro exists (Koprić, 2006: 230).

Acts regulating judicial control of administration were adopted during the 2000's in *Federation of Bosnia and Herzegovina* (Law on the Court of Bosnia and Herzegovina 2000,³ Trlin, 2016: 595), *Macedonia* (ADA 2006, Russel-Einhorn, Chlebny (year:26) and in *Montenegro* (2003)⁴. Kosovo adopted anglo-saxon system of judicial control of administration provided in Law on Regular Courts (Mućaj, Gruda, 2016: 75).

3.2. Formation phase in successful transitional countries

Czech Republic and Poland had similar arrangement of administrative courts during the period between WWI and WWII. Both countries established administrative courts' system as it was in the Austro-Hungarian Empire. Czech Republic had organisation of administrative courts in one level, and the Supreme administrative court (*Nejvyšší správní soud*) with its seat in Prague was the only administrative court entitled for the whole country. In 1952 administrative jurisdiction was abolished (Đerđa, Kryška, 2018: 94, 96) and again presented in 1992 (Matczak, Bencze, Kühn, 2010: 88) since the Constitution of the Czech Republic from 1992 predicted establishment of the Supreme Administrative Court. Till then, judicial review 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, Czech Republic, 1).

³ Art. 14 of the Law on the Court of Bosnia and Herzegovina, regulates jurisdiction of the Court in administrative issues, OG no. 29/00, 16/02, 24/02, 3/03, 37/03, 42/03, 4/04, 9/04, 35/04, 61/04, 32/07.

⁴ Administrative Dispute Act, OG 60/2005 (published in 2003).

Although Poland had along tradition of administrative justice, during the communist period there were certain opinions deeming administrative courts not necessary (Skoczylas, Swora, 2007: 116-117). Administrative Justice was enacted again in Poland in 1980 with the establishment of the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) by the Law on Supreme Administrative Court which was amending Code on Administrative Procedure. Formation of administrative courts during the period of the late 1980's is a form of democratisation, since control over administration was reestablished (Turłukowski, 2016: 131, 150). 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 reception of the earlier, historical Austrian pattern from the Austro-Hungarian Empire. (OECD, 1997: 37, 104; Derda, Kryska, 2018: 95, 96; Skoczylas, Swora, 2007: 117, Turłukowski, 2016: 131; Biernat, Wiszniewska, year: 2).⁵ Although Supreme Administrative Court in Warsaw was the only administrative court in the country despite its name, ten regional offices were created during 1995 (OECD, 1997: 104, Biernat, Wiszniewska, ? : 2). There is no possibility to lodge an appeal to the higher court (OECD, 1997: 104, Skoczylas, Swora, 2007: 117).

During the early 1990's Estonian Parliament (*Riigikogu*) adopted the decision⁶, according to which the acts in force should be in accordance with the acts in force prior to the 1940. Numerous meetings and conferences were organised for the preparation of the reform, and all of them emphasised connection between real life and written act, as well as taking into account the legal culture of the Estonia and the Estonian context in general. It was emphasized that legal system should be based on German and Austrian model, but not by copying acts, but it should take in account all relevant circumstances: historical background, democratic and cultural differences, traditions, etc. One act which is efficient in one country may not be necessarily efficient in another (Merusk, 2004: 53). Activities of the government were characterised by legal reforms, adoption of the new regulations and their implementation with an aim of becoming democratic state relying on the rule of law (Merusk, 2004: 52). Specialized administrative courts were established by the *Administrative Courts' Procedure Act* (in effect since 1993) in two levels (ACA, Estonia, 1). According to the *Administrative Courts' Procedure Act*, any person with an interest may challenge an individual administrative act, meaning that the normative acts cannot be the subject of the administrative dispute. An

⁵For historical overview see in Skoczylas, Swora, 2007: 116, 117.

⁶Decision from 1992 (Merusk, 2004: 52).

appeal can be lodged to the Supreme Court. In some cases, the procedure can be brought directly to the Supreme Court which has an Administrative Law Chamber (OECD, 1997, 120-121).

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 first step, the decree restricting the contestability of certain decisions was annulled by the Constitutional Court. Act XXVI of 1991 allows for a judicial review in all cases (ACA, Hungary, 1). Basis for the judicial review of administration is Article 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 the first instance and Hungarian Supreme Court could change or overturn decision in the procedure started with extraordinary remedy (Matczak, Bencze, Kühn, 2010: 88).

Development of the Administrative Courts' system started after *Latvia* regained its independence and functioning of the state was established on democratic principles. Firstly, there was no separate law regulating administrative procedure and administrative dispute. Protection of citizens' rights was regulated by the Civil Procedure Code in section 24-A, according to which people could bring actions against the State officials and local government officials. This regulation was in force till 2004 when Administrative Procedure Act entered into force.

Similarly as *Latvia*, *Lithuania* did not have specialized administrative courts during the first decade after gaining independence. Ordinary courts were dealing with the protection of citizens' rights in administrative matters. In constitutional provisions from 1999 specialized courts were predicted and administrative courts as well. According to the Law on Establishment of Administrative Courts, 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 omission. The system of administrative courts consisted of 5 regional administrative courts, the Higher Administrative Court and the Administrative Division of the Court of Appeals of Lithuania (ACA, Lithuania 1, 2).

3.3. *Formation phase in less successful countries*

During the first years of transition in *Albania*, the focus was mainly on building the key institutions for functioning of the state such as parliament, government, judiciary based

on democratic models as well as on basic economic reforms (macroeconomic, banking, privatisation, etc. (Hoxa, Gurraj, year: 196). Constitutional Court was established in 1992 and was entitled for the review on administrative acts. Draft of the Constitution predicted specialised administrative courts (OECD, 1997: 126) but they were established in 2012. Albanian Constitution was adopted in 1998 and in its Article 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 an aim to protect constitutional and legal rights, freedoms, and interests. Constitution also in article 43 regulates that everyone has the right to appeal a judicial decision to a higher court, except when the Constitution provides otherwise. Administrative law in Albania has changed significantly especially during the 1990's with the abandoning of socio-communist system and due to the process of the Europeanisation, with strong influence of the EU law as well as ECHR standards (Meça, 2014: 183). Process of the transition in Albania was relatively slow due to historic circumstances, succession of different laws, a change of trust regarding institutions, etc.

Judicial supervision of administration in *Bulgaria* was established in the beginning of the 20th century and was based on French model. After 1947, judicial control of administration was abolished, and during the 1990's there was again mentioning on judicial control exercised by administrative courts (OECD, 1997: 115). Creation of specialised administrative courts, namely 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. Till its establishment, the Supreme Court was entitled for the review of administrative act and action (OECD, 1997: 49, 111, 112). In reality, the Supreme Administrative Court has started functioning in 1996 (ACA, Bulgaria, 1).

Ukraine gained its independence in 1991. Prior to that, it was under communist regime for more than seven decades (<http://reformsguide.org.ua/analytics/public-administration-reform-2/>). After the fall of the soviet regime, Ukraine started to develop democratic society, multi-party system, market economy, etc. All reforms in the early 1990's were connected with the socio-economic and political changes that took place in the society as a result of gaining the independence by Ukraine (Bilkiewicz, 2017: 117). Constitution of Ukraine from 1996 based on the principles of the protection of human rights and freedoms was legal basis for all the other acts and for establishing separate administrative courts. Creation of specialised administrative courts emerged from the need of better protection of the citizens'

rights and freedoms in administrative cases, as well as long-lasting procedures concerning administrative matters, not taking into account specificities of administrative cases by ordinary courts, low efficiency, increasing cases of administrative dispute before ordinary courts, and lack of quality of the cases solved before ordinary courts (Bilkiewicz, 2017: 116-117). Administrative courts were a necessity for effective public administration. Decree of the President “On Measures Necessary for the Introduction of the Concept of Administrative Reform in Ukraine” from 1998, introduced the judicial control of administration by specialized administrative courts (Bilkiewicz, 2017: 118).

4. Reform phase and influence of Europeanization on administrative courts’ development

4.1. Reform of administrative courts’ system in Croatia and Slovenia

Reform phase in transitional countries is characterized by the accession process into the EU which can be observed as a catalyst pushing transitional countries to reform their public administration systems. Institutions were built during the 1990’s and in the beginning of 2000’s process of Europeanisation and modernization is getting stronger. Process of Europeanisation can be noticed especially in the transitional countries (Koprić, 2014: 4). Countries are exposed to the influences of the EU (Koprić, 2011: 437) such as principles of the rule of law, good governance, openness, accountability, efficiency, professionalism which are the main principles of the European administrative space (Koprić, 2011: 438, Kovač, 2017: 10) with the main aim of the protection of citizens. Differences in approach towards the reform as well as reform results are interdependent with the tradition and legacy of the countries as well as war condition during the 1990’s.

Europeanisation process is responsible for the creation of core administrative principles, and process of democratic transition and economic transformation are correlated with the Europeanisation (Koprić, Musa, Lalić Novak, 2011: 1518)

European standards of the judicial control of administration are set by ECHR and EU.⁷ At the first place they include two-tier system of the administrative dispute. Slovenia introduced it even in the first phase of the development of the administrative courts, but in Croatia this process has started at the beginning of the 2000’s and was finished in 2010 with

⁷Although other organisations such as SIGMA had great influence on the process of the accession of the countries into the EU through their reports describing common European principles and administrative capacity (Koprić, 2014: 4).

the adoption of the new Administrative Disputes Act.⁸ The reform in Croatia was prepared by visits of foreign experts, expert analysis of the administrative dispute, and preparation of the draft versions of the Administrative Disputes act (CARDS 2004 programme and related documents).⁹ Experts concluded that administrative dispute in Croatia was facing three great problems: procedural rules were not harmonised with the *acqui*, long lasting procedures before administrative courts and great number of unsolved cases. Although the reform was well prepared, implementation of the reform had some flaws, and maybe the major was lack of competent judges for the new functions (Šikić, 2013: 990, Koprić, 2014: 11). One of the reasons is certainly lack of education of the judges for new functions. In socialism and in 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 environment in which judges had an opportunity to carefully study the case, interpret all the relevant circumstances and the pertinent regulations, and reach the best lawful decision taking into account the rights of the citizens (Matczak, Bencze, Kühn, 2010: 82).

During 2010 new and two-tier administrative courts' system was introduced, with four first instance administrative Courts situated in Zagreb, Rijeka, Osijek and Split, and the High Administrative Court of the Republic of Croatia situated in Zagreb (Art. 13a of the Courts Act,¹⁰ Art. 6 of the Act on areas and headquarters of the courts,¹¹ ADA, art. 12).

High level of the protection of rights and freedoms of the citizens 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 ADA. Among others characteristics of administrative dispute, subject of the administrative dispute has widened, and normative by-laws can be challenged before High administrative courts which is in accordance with the recommendation Rec(2004)20¹².

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 is evaluated by experts as having mostly formalistic approach which together with

⁸Administrative Disputes Act, OG no. 20/10.

⁹ More on CARDS programme in Croatia and documents on the reform of administrative courts' system: <http://vusrh.hr/o-visokom-upravnom-sudu-rh/cards-2004/>, accessed 27 August 2019.

¹⁰Courts Act, OG no. 122/2010.

¹¹Act on areas and headquarters of the courts, OG, no. 144/2010.

¹²Point 1a of the Recommendation Rec(2004)20 of the Committee of Ministers to Member States on judicial review of administrative acts.

the administrative dispute organised in two levels caused inflow of cases and backlog with dealing with them (Jerovšek, 2006: 64). Similarly as in Croatia, certain problems could have been detected in Slovenia such as overloaded administrative courts, the extent of judicial protection, administrative dispute was conducted against procedural decisions of administrative bodies, which lead to length of the proceedings as a major problem (Androjna, Kerševan, 2006: 241). Altogether was taken into account in procedure on legality of ADA before Constitutional Court of the Republic of Slovenia. It decided positively on unconstitutionality of Slovenian ADA in 2005.¹³ Reform took place in 2006 when new ADA was adopted (ADA-1).

Today, new ADA-1 was amended in 2010 (ADA-1A) and in 2012 (ADA-1B),¹⁴ and organization of administrative judiciary is regulated in Art. 9 of ADA-1. Administrative court is organised in two levels. Administrative court with its seat in Ljubljana is the first instance court together with its departments in Celje, Maribor and Nova Gorica. Supreme Court of Slovenia has jurisdiction to decide on legality of acts of electoral bodies for the parliament and State council, as well as for election of the president of the state (Art. 12 of ADA-1). Slovenian administrative dispute is now in accordance with the European standards.

4.2. *Reform phase in successful countries*

In *Czech Republic*, under the influence of the Europeanisation process, especially through standards of ECHR and EU standards, different principles were introduced, such as principles of speedy and economic proceedings were introduced, public hearing, etc. (Article 49 of the Code on Administrative Justice and Staša, Tomášek, 2012: 63). Supreme Administrative Court was established in Brno in 2003.¹⁵ Administrative Courts' system in Czech Republic is organised on one level, through ordinary courts and Supreme Administrative Court (*Nejvyšší správní soud*). In the first and only instance administrative disputes are conducted before specialised court councils and specialised judges in eight ordinary district courts (*krajský soud*). There is no possibility to lodge an appeal, but procedure before Supreme Administrative Court can be initiated by an extraordinary remedy cassation complaint (Đerđa, Kryška, 2018: 89-99). According to the Article 4 of the Code of the Administrative Justice, Courts of administrative justice decide on complaints against

¹³Decision of the Constitutional Court of the Republic of Slovenia, no. U-I-65/05-12 od 22. rujna 2005.

¹⁴www.uradnilist.si.

¹⁵Act No. 150/2002 Coll., Code of Administrative Justice as amended by Act. No. 192/2003 Coll., Act. No. 22/2004 Coll., Act No. 235/2004 Coll., with effect from May 1, 2004

administrative authority, protection against the inactivity of an administrative authority and competence complaints. Democratic role of Courts of administrative justice is presented in their jurisdiction in election matters and in the matters of a local referendum, matters concerning political parties and political movements. The Supreme Administrative Court decides about a dissolution or suspension of a political party or about the renewal of its activities. It also conducts the proceedings on the competence actions between a state administration authority and a local government authority, or between individual and local government authorities (for example 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 (ACA, Czech Republic, 3). 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 (Public Administration in the Czech Republic, 2004: 20).

Basis for the organisation of the administrative courts' system in two levels in *Poland* can be found in Constitution in Article 176/1.¹⁶ Polish Administrative Courts' system is organized in two levels since 2004 (Skoczylas, Swora, 2007: 117). Basic acts regulating administrative courts' system are adopted after reform in 2002, namely, Act on the system of administrative courts and Law on proceedings before administrative courts (Skoczylas, Swora, 2007: 117). On the first level there are 16 administrative courts of voivodship¹⁷ (pol. *wojewódzkie sądy administracyjne*), and on the second level Supreme Administrative Court with its seat in Warsaw (pol. *Naczelny Sąd Administracyjny*) is divided into three chambers: the Financial Chamber, the Commercial Chamber and the General Administrative Chamber (Law on the System of Administrative Courts, Art. 2; Skoczylas, Swora, 2007: 118).

According to the Article 3 of the Law on the proceedings before administrative courts¹⁸ Administrative courts have a broad jurisdiction, and that may affect the efficiency of the courts (Skoczylas, Swora, 2007: 117).¹⁹ Supreme Administrative Court has jurisdiction regarding appeals against first instance administrative courts' decisions, solving abstract or concrete legal issues that cause doubts in courts' practice and resolving conflicts of jurisdiction between the bodies of different units of local self-government or bodies of local

¹⁶The Constitution of the Republic of Poland of 2nd April, 1997 as published in *dziennikustaw* no. 78, item 483.

¹⁷On territorial division in Poland see: Crnković, 2010.

¹⁸THE ACT of 30th August 2002 LAW ON PROCEEDINGS BEFORE ADMINISTRATIVE COURTS (Consolidated text *Dziennik Ustaw* of 2017 item 1369; as amended by: *Dziennik Ustaw* of 2017 item 1370).

¹⁹For the excluded issues from administrative dispute see in Turłukowski, 2016: 138.

self-government units and state administration bodies (Đerđa, Kryska, 2018: 97). Pursuant to article 186 of the Polish Constitution The Supreme Administrative Court and other administrative courts may exercise, to the extent specified by statute, control over the performance of public administration. Such control may also extend to judgments on the conformity to statute of resolutions of organs of local government and normative acts of territorial organs of government administration.

It should be noted that administrative dispute now relies on principles derived for the principle of good administration such as principle of two-level administrative dispute, principle of legality, public hearing, speediness and efficiency, access to court, the effectiveness of the enforcement of judgments of the court, etc. (Turłukowski, 2016: 142-143).

Judicial reform in *Hungary* took place in 2012. As a result, there are 20 administrative and labor courts, and they operate at the seats of county courts. They are entitled to control administrative decision at the first level. This structure is based on Act CLXI of 2011 on the Organisation and Administration of the Courts. 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 reform is characterised by systematic approach. Firstly, there were studies on preparation of the reform, foreign experts were engaged in steering groups for PA reform, but also domestic experts, judges, etc. were included. The administrative courts with their case law had an important role in PA reform. Public administration reform in Estonia has its grounds in the Estonian Constitution,²⁰ 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: 55, section 15/1 of the Constitution). During the accession process into the EU, Estonia paid much attention to the European regulations as well as German legal systems due to its general influence on Estonian legal system (Merusk, 2004: 56). Some basic values which were taken as 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: 62).

²⁰The Constitution of the Republic of Estonia, Passed 28.06.1992, RT 1992, 26, 349. Entry into force 03.07.1992. [RT I 2007, 33, 210 - entry into force 21.07.2007].

Basic act regulating Administrative Courts' system titled Code on Administrative Court Procedure was adopted in 1999²¹ and entered into force in 2000. New Administrative Procedure Act which is closely connected with Administrative dispute and procedure before administrative courts is based on the principle of protection of fundamental rights, which is derived from the section 14 of the Constitution, and also on principle of the legality and principle of the proportionality. One new principle which should be respected in all procedures regarding public administration is the principle of good administration (Merusk, 2004: 58). Code on Administrative Court Procedure adopted in 2011 and entering into force in 2012 is currently is in force.

Administrative decisions in Estonia are controlled by courts in three level system, administrative and county courts, circuit courts and The Estonian Supreme Court (ACA, Estonia, 1). Administrative acts in Estonia are reviewed by ordinary (county) and special administrative courts. In ordinary courts special councils dealing with the administrative subjects exist. Two administrative courts of first instance are situated in Tallin and Tartu, with additional courthouses in other cities.²² The decision of those courts can be reviewed by courts of the appeal in their administrative law chambers (circuit courts).²³ 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 the 19 justices of the Supreme Court) (ACA, Estonia, 2). Jurisdiction of the administrative court is regulated in § 37 of the Code of Administrative Court Procedure.²⁴

Principles for conducting administrative disputes are derived from national legislation as well as international and European law, especially respecting standards set by ECHR and Charter on Fundamental Rights of the EU, and case law of the ECtHR and ECJ. Some of them are right to participate in the court hearing (and know the panel of the court hearing the matter), right to the defence/the right to a fair hearing, right to submit petitions of challenge and applications, right to a hear the matter within reasonable time and obligation to exercise one's procedural rights in good faith. The principle of a public hearing also exists, except for the cases when the applicant asks the court to declare it closed (ACA, Estonia, 18-19).

²¹Code on Administrative Court Procedure, R I 1999, 31, 425; 2003, 13, 67.

²²The Tallinn administrative court has two courthouses: Tallinna with 16 judges and Pärnu with 2 judges. The Tartu administrative court has the Tartu courthouse with 6 judges and the Jõhvi courthouse with 3 judges (<https://www.lawyersestonia.com/a-guide-to-estonian-courts>, accessed 29 August, 2019).

²³<https://www.lawyersestonia.com/a-guide-to-estonian-courts>, accessed 29 August, 2019.

²⁴Code on Administrative Court Procedure, 2012.

Administrative dispute in *Latvia* is regulated in ADA in articles 102 -384. (ACA, Latvia, 1). On the first instance there is the District Administrative Court (*Administratīvārajonaltiesa*), on the second the Regional Administrative Court (*Administratīvāapgabaltiesa*) and on the third the Administrative Affairs Division of the Supreme Court Senate (*AugstākāstiesasSenātaAdministratīvolietudepartaments*). 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. one each in Riga, Jelgava, Rēzekne, Valmiera and Liepāja. (E-justice, Latvia).

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. (ACA, Latvia, 2). Administrative dispute is conducted in first level before first instance courts, and parties have a possibility to lodge an appeal to the second instance court. Supreme Court in its administrative division decides only as 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. (ACA, Latvia, 3, 19). Supreme Court in its administrative division adjudicates as the court of first instance regarding Central Election Commission's decision to refuse registration of bills and amendment to the Constitution. Under Immigration Law person may lodge application against the decision regarding including of an alien in the list of those persons, to whom the entry in the Republic of Latvia is prohibited (taken by the Minister of Interior). In that case the Department of Administrative Cases of the Supreme Court also is the court of first instance (ACA, Latvia, 19).

Procedure before administrative courts is based on following principles: principle of observance of the rights of private persons, the principle of equality the rule of law reasonable application of the norms of law, the principle of not allowing arbitrariness, legality of actions, the principle of democratic structure, the principle of proportionality, the principle of priority of laws and the principle of procedural equity (ACA, Latvia, 12). Regarding scope of jurisdiction of administrative courts, the administrative courts in Latvia decide on all types of cases, which arise from administrative legal relations (ACA, Latvia, 4).

Supreme Administrative Court of *Lithuania* was created in 2001, representing final and full separation of administrative courts from the system of courts of general jurisdiction. Presently, the system of administrative courts of Lithuania is organised in two levels. It consists of 5 regional administrative courts and the Supreme Administrative Court of Lithuania (ACA, Lithuania 2). 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 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 decisions of district courts (COE, Lithuania, 2).

4.3. *Reform phase in less successful countries*

Albania is moving slowly in developing institutions of judicial and non-judicial supervision of administration (OECD, 1997: 126). It has started formal accession process into the EU by ratification of the Law No 9509 of 27.07.2006 on the ratification of the Stabilisation and Association Agreement. Objectives of the impact of the EU law and ECHR standards were introducing principle of equality of the parties in procedures as well as increasing efficiency of the administrative courts (Meça, 2014: 183, 184). Albanian Government initiated creation of the specialised administrative court with an aim of resolving of the legal conflicts between business and state administration (Meça, 2014: 184). As a result of the initiative, Administrative Courts Act was adopted in 2012 with 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: 185). As a result of the reform, Albania in 2012 adopted Law on the organization and functioning of administrative courts and the judgment of administrative conflicts (Law No.49/2012, Date: 03.05.2012, Dt.of Approval: 03.05.2012, Official Bulletin No.53, page 53)

Law on Administrative Courts and in support of Decree no. 8349 (Decree no. 8349 date 14.10.2013 of the President of the Republic “On the beginning of the functioning of the Administrative Court”) on November 4, 2013 started the administrative courts operation. Currently, Albania has two-tier system of administrative dispute. On the first instance there is the administrative court, and on second instance Administrative Court of the Appeal.

Competences are regulated in Law on Organisation and functioning of the Administrative Courts and judgement of the administrative Disputes. The Administrative Courts in Albania, according to the article 7 of Law No. 49/ 2012. "On Organisation and Functioning of Administrative Courts and Judgment of Administrative Disputes" (amended by Law No. 100/2014). Disputes arising from normative acts are expressly excluded from the functional competence of the court of first instance (Hoxha, 2014: 87).

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 a reviewer after adjudicating these cases in the second instance. The second group of cases comprises cases of 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, 2014: 87).

Administrative Courts' 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 a Supreme Administrative Court (E-justice, Bulgaria). The administrative court comprises judges and at the head of it is the chairman. Specialised in different matters departments may be established at the administrative court according to the decision of the General Assembly of the judges of the administrative court and these departments are managed by the chairman or his deputies. The administrative cases in the administrative courts are considered by one judge, except in the cases when the law provides anything else. The Supreme Administrative Court has jurisdiction over the whole territory of the Republic of Bulgaria and has its seat in Sofia. It consists of judges and is managed by a chairman. The Supreme Administrative Court comprises two colleges, in which there are divisions. The Supreme Administrative Court sits in chambers of three, five, seven judges or General Assembly of the colleges (ACA Bulgaria, 5). Supreme Administrative Court deals with complaints and protests 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 a statute. Also, it adjudicates on contestations of the 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. (E-justice, Bulgaria).

The individual administrative acts may be challenged within 14 days from their notification, and normative by-law acts can be challenged without time limit (ACA, Bulgaria, 12). For the comparison, in Croatia there is very short deadline, only 30 days since the delivery of an administrative decision relying on the normative by-law. (Article 83 of the ADA).

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, and where the said seat is located abroad, by the Sofia City Administrative Court. Any administrative acts, whereby the national foreign, defense and security policy are immediately implemented, shall not be subject to judicial appeal, save as otherwise provided for in a law.

The legal establishment of the court-administrative system for the first time since *Ukraine* gained the 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 of a system of administrative courts (Bilkiewicz, 2017: 119). The first administrative court was the Higher Administrative Court of Ukraine. During 2005 administrative provincial courts were created as courts of the first instance and administrative appeals courts as courts of appeals.²⁵ Functioning of the Administrative courts in Ukraine is regulated by the Code of Court-Administrative Procedure of Ukraine which entered into force on 1 September 2005. This is a legal act that regulates jurisdiction, administrative courts’ powers in the matter of handling administrative cases, prosecution and principles of implementation of court-administrative proceedings (Bilkiewicz, 2017: 119).

Administrative dispute is regulated in Ukraine by Code on Administrative Proceeding from 2005. All administrative decisions can be appealed to the administrative courts, except those which fall under jurisdiction of Constitutional court or other courts (Abstract of the Code of Administrative Proceedings, Ukraine).

²⁵DecreeofthePresidentofUkraineof
theEstablishmentofLocalandAppealsAdministrativeCourts,
andtheQuantitativeCompositionoftheJudges.

5. Evaluation phase– in certain countries

In the third phase of the development administrative courts, successful countries evaluate their regulation and case law, and some of them have already found some disadvantages of the system. They improved it mostly through amendments of the basic regulation of administrative dispute (Croatia has amended its ADA several times since its adoption in 2010).²⁶

Amendments in 2015 has broadened jurisdiction of the administrative courts in *Poland*. They are entitled to adjudicate the case itself, if public authorities failed to do so, which is not always unanimously accepted since it is considered that court is interfering into administrative jurisdiction, and it is considered as breach of the discretionary powers of administration (Jackowski, 2017: 64-65)

Estonia is example of the country where administrative courts are functioning on the highest level (Rigikohus, Court website, 2019).

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. (EC Report Albania, 2019: 18).

6. Conclusion

6.1. The role of administrative courts in democratic and economic transition

Transition in post-communist countries is characterised by changes from autocratic state to democratic institutions, from planned economy to market economy and from fear of citizens from the state into their trust in institutions. In parliamentary democracies, separation of powers was a precondition for judicial independence, judicial control of administration and creation or reinforcement of administrative courts' system with the rule of law as the basic

²⁶Administrative Dispute Act in Croatia, OG 20/10, 143/12, 152/14, 94/16, 29/17.

principle. Administrative courts are strengthening the principle of the rule of law through their decisions based on the principles adopted in their acts regulating administrative dispute. The rule of law principle is even more emphasized in the second stage of the administrative courts' development during the 2000's when most of the transitional countries in Europe had reformed their administrative justice in accordance with the European standards set by the ECHR and EU with an aim of the protection of human rights and freedoms.

Analysis shows us that most of transitional countries have met those standards including organisation of administrative courts in at least two –tiers with a possibility to lodge an appeal to higher court, oral and contradictory hearing. Also, subject of the dispute has been widened, normative by-law acts are contested before administrative courts, etc.

Administrative courts have their role in control of state elections, referendums, competition agencies, etc. Economic development of the transitional countries is in connection with political and democratic development of the country, such as rule of law, efficient judiciary and government (Teodorović, 2002: 1088). Administrative courts undoubtedly have a role of a progress force in the process of economic transition.

6.2. The role of courts in social transition

Society is changing constantly, and administrative law and administration in general should follow social changes. Even strong parliamentary democracies with long tradition based on the firm rule of law culture had reforms regarding administrative courts' system after long period of time (such as Austria). Legislations should also follow "the pulse" of the society. Recent wave of migration in Europe has influenced countries in transition in the field of administrative law, as they adopted new legislation regarding foreigners and regulating procedures on detaining illegal migrants. Administrative courts are entitled to control administrative authorities' decisions in that area in speed, efficient procedure respecting human rights and freedoms of migrants.

6.3. Models of administrative courts in the process of transition

Due to all features analysed in the paper, transitional countries have undergone through process of transition in four main models of developing administrative courts' system. Models are based on four main points: territorial accommodation, tradition, political situation (especially date of EU accession), and public administration reform process which resulted in new administrative courts' organisation, different from the first established one.

First model is characterised by dissolution of Yugoslavia as a political moment. Countries on former Yugoslav territory were facing all above mentioned features of the transition, but in special circumstances created by war condition. They had tradition of administrative judiciary which was established in 1952. Administrative dispute was conducted before specialised divisions in ordinary courts. New ADA was adopted in 1977. After gaining independence, Croatia and Slovenia took over ADA from 1977 into their legal systems. Slovenia was faster in the adoption of its own ADA in 1997, while Croatia did it in the second phase of the administrative courts development. Other countries of former Yugoslavia had different development of the administrative courts' system. In both countries, Croatia and Slovenia, the Europeanisation process was gradually getting stronger during the 2000's and was characterised by accepting and implementing ECHR and EU standards. Slovenia entered into the EU in 2004, and the main reform of the administrative courts system was introduced in 2006 when current ADA entered into the force. In Croatia, reform was concluded in 2010, but ADA entered into force in 2012, only a year prior to the EU accession. Both acts, Croatian and Slovenian ADA were since then amended several times. Basic characteristics of the first model are an early introduction of administrative courts' system, already in 1991, a long period of the adjustment to European standards and a relatively late reform with an aim of implementing European standards.

Second model consists of Czech Republic, Poland and Hungary. Poland had the earliest introduction of administrative courts' system, already in 1980, it was followed by Hungary in 1991, Czech Republic in 1992. All of them entered into the EU in 2004 and reforms of administrative courts system were as follows: Czech Republic had reform of administrative courts in 2003 when Supreme administrative court was established. Administrative dispute is organised in one level which is deviation from ECHR standard on at least two-tier system. In Poland reform started in 2002 and was finished in 2004 and two tier system of administrative courts' was introduced. Hungary had reform quite late, in 2012.

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

Main features of the countries in the fourth model are strong socialist heritage, internal political problems, and other problematic circumstances which present burden for new countries, and consequently some of them are still under the observance of international organisations such as SIGMA (for example, Ukraine). Although Albanian constitution predicted creation of the administrative court during the 1990's, Albania adopted ADA quite late (2012) in comparison with other transitional countries when other transitional countries already had finished second phase of the development of the administrative courts' system (Croatia, Slovenia, Poland, Czech Republic, Hungary, Estonia, Latvia, Lithuania). In Bulgaria Supreme Administrative Court has started functioning in 1996. Reform took place in 2006 when administrative courts' system was organized in two levels. Although the reform presented a step forward, it is still on a satisfactory level: "Reform in public administration has shown some improvements in terms of reducing red tape, decentralising, and introducing greater openness and transparency. Nevertheless, legacies and cultural traditions counter such efforts and progress is slow." (EC Report, Bulgaria, 2018). Romania doesn't have administrative courts' system at all.

General conclusion is that there is no general recipe for a successful transition process. Success depends on the tradition of certain countries, legacy, inherited structures and institutions, readiness of government for the reform, and mentality of the citizens. Creation and strengthening of the administrative courts, control of the decisions and procedures of administrative and public bodies, definitively have strengthened the position of the rule of law. During the 1990's newly formed democracies had to handle all kinds of problems, such as distrust of the citizens into institutions, inflation and other economic problems, war, etc. New administrative courts found themselves in an unenviable position while deciding on citizens' rights and obligations towards state, and citizens had a minimum trust in both of them, if they had any at all. This affected economy as well, since administrative courts have a right to control different types of decisions, permits, licenses, etc. issued by state or local government bodies towards investors. In addition, investments that did happen were mostly financial, and not greenfield investments which are usually much more valuable. (Haramija, Njavro, 2016: 525).

Development of the Administrative Courts' system in the process of democratic transition has strengthened the rule of law through judgements and decision which are based on the law and principles set by ECHR and EU. Administrative Courts have a direct role in democratic transition through its judgements in administrative matters, elections, control of

political parties, etc. In economic transition they had role of encouraging investments into countries what made them “wheel of the economic progress” in transitional countries. Altogether they influenced a gradual increase of the people’s trust into administrative courts as guardians of the citizens’ rights and freedoms regarding unlawful administrative decisions.

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