Hrvatska i komparativna javna uprava

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Strategy of Administrative Reform in Serbia in the Context of European Integration

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The dominant orientation today is towards a »good« administration. Administrative models in the developed countries are based on the social functions of the state and its role in the realization of general interests of society and social benefit (*bono publico*). The administrative legislation in Serbia has departed from the concept that sees administrative actions as instruments of repression, and has widened the scope of administrative activities to areas such as participation in defining public policy, monitoring the conditions in particular social fields, public services, development activities, etc. Current administrative reform encompasses decentralization, professionalization and depoliticization, rationalization, coordination of public policies, control mechanisms, e-government, and modernization of public administration. In the 2010 Serbia Progress Report, the European Commission assed that the capacity of the

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Serbian administration is good, but that the »dynamics of reform in this area are slow and uneven«.

Key words: Strategy of administrative reform – Serbia, European integration

1. The Significance of Administrative Reform

In many countries of the world, there is an ongoing debate on the role and significance of public administration in modern societies. There can be noticed an ever-growing tendency of departing from the abstract normative approach to administrative activity (as an assortment of legal norms which regulate administrative authority), and a stronger orientation towards a pragmatic approach which is based on a practically verifiable principle that a »good« administration is the administration which can be assessed as successful (Lilić, 1997). In this context, a successful administration is an administration which achieves its tasks in the most efficient, economic and rational manner, bearing strictly in mind that the main task of administrative activity is, on one hand, the realization and protection of human rights, and on the other, achieving the best interests and benefits of society as a whole. As pointed out, »The legal state is a national strategic development project which is before us. (...) The legal state today is not possible without a rational, highly professional, speedy and cheep public administration« (Marković, 1998).

In contemporary conditions, the significance of public administration, *inter alia*, is reflected in the following premises.

Establishing fair relations between the public administration and the citizens (Kavran, 1996; 1997; 1998; 2003) means the right of citizens to address public administration whenever their interests are an issue. However, this also means the right of citizens to address other authorities (e.g. courts and administrative tribunals).

Introducing correctness and transparency into administrative procedures means that at all times, the party can establish who and when adopted an administrative decision, as well as that each administrative decision must be grounded on facts of the case.

Efficiency of administrative action is a modern request that refers to economy and rationalism in administrative action and administrative decision-making. Efficiency is a contemporary standard that implies a special

cost-benefit relation, which, on one hand takes into account the requirements of procedural economy, and on the other, the political imperative of human rights protection in the achievement of administrative goals.

Legitimacy of administrative action means that public administration must conduct its action not only legally (i.e. grounded in valid laws and regulations), but also legitimately (i.e. respecting certain value principles as justification of a specific administrative action).

In addition, the pragmatic approach to public administration includes a number of policy issues of administrative reform (Vukašinović, Stojanović, 2003; Dujić, Marković, 2003). In this sense, one of the most important tasks is how to initiate and conduct administrative reform (Caiden, 1969). Administrative reform, as a complex, controlled social process (managed administrative reform), contributes to the development and social stability of the country – overcoming the insufficient capacities of government and political structures (Šević, Vukašinović, 1997). Thus, today one of the most important questions related to public administration is how to reform it by contemporary standards (Caiden, 1991).

2. The Rule of Law, Legality and Legitimacy of Administrative Action

The concept of the legal state (Rechtsstaat) and the principle of the rule of law are great achievements of the European and global legal civilization (Lord Lloyd of Hampstead, Freedman, 1985). In relation to public administration, the rule of law has special significance as it provides legitimacy and legality to administrative decisions. Not adhering to the rule of law is inconceivable to any modern administrative system (Lilić, 1999).

As a concept of the 19th century, the concept of the legal state implies a normative model of organization of social relations, according to which legal norms, embodied in laws and other general legal documents (e.g. statutes, decrees, regulations etc.), prescribe the rules of institutional and social conduct. Based on general legal norms, individual legal norms are embodied in individual legal acts (e.g. court rulings and administrative decisions), which directly influence the behaviour of citizens.

However, the concept of the legal state in its original form, meaning that an act of government is justified solely because it is legal, i.e. in accordance with a legal regulation, today cannot be achieved without endangering

the general democratic heritage (as was the case of the Nazi and racist regimes) (Selection, 1989). The realization of the concept of legality today cannot be the only goal, as it is a prerequisite for implementing the values contained in the principles of the rule of law, constitutionality, justice, and fairness (Marković, 1939; Basta, Mueller, 1991; Vasiljević, 1990).

In contrast to the traditional normative concept of government (administrative) action in the legal state model, the modern concept of government (administrative) action in the rule of law model rests on the premise that in exercising government (administrative) authority, not only the requirement for legality, but also for legitimacy must be observed. Consequently, respective procedures (e.g. legislation, regulations, individual court and administrative decisions) do not become legitimate simply because they are conducted legally by a government (administrative) authority, as the justification of each particular act must be assessed on the basis of the decisions' value content (Rawls, 1998).

In relation to public administration, this means that administrative action does not become legitimate (justified) simply because the administration is done legally: it also needs to be legitimate and appropriate. Today, it is considered that the concept of pure legality of administrative action must give way to the concept of legitimacy (and legality) of administrative action. As pointed out, the legitimacy of administrative power can no longer be found in its origins, but in its action. This inverted order of observation not only placed the traditional legal aspects regarding the relationship between legality and administrative action under great suspicions, but also significantly changed the general view of public administration. In this sense the administration ceases to be a servant of the existing legal order and becomes the driving force of social development, in which it plays an important, if not the most important role (Mescheriakoff, 1990).

2.1. »State Administration« Model

The model of state administration, which originated in Germany in the second half of the 19th century, was based on legalistic positivism and normative dogmatism. In this model, administrative action is seen as a function of state power, in which coercive enforcement of laws by administrative acts and administrative measures plays the key role. This model of state administration has been abandoned as obsolete for more than a century in Germany and other developed countries. However, when state administration was placed within the framework of the »class essence of

state and law« doctrine in the Soviet Union and other European socialist countries (during the late 1930s and after the Second World War) (Collins, 1982; Stalin, 1924/1940), it received specific repressive features. For example, the tasks of public administration, as defined by the prominent Soviet authors, consist of »... tax collection, political repression (banishment and exile, arrest), management and organization of the military, espionage and counterintelligence, protection of the social order and national security, etc.« (Denisov, 1949: 165).

In Serbia, this doctrine was represented for decades by Soviet-influenced public and administrative law professors (e.g. R. Lukić and his followers).[1]

2.2. »Public Service« Model

In contrast to the state and class models of administrative action, the predominant concept of administration prevailing in the developed countries (especially European) today, derives from the concept of the social function of the state and public administration and their role in the achievement of general interest and social welfare (*bono publico*). The concept of the social function and social role of the administration assumes that the performance of administrative activities of the state cannot be reduced solely to the exercise of state power (in terms of issuing orders and carrying out acts of coercion). In this context, carrying out administrative activities primarily involves the performance of public services, i.e. activities that create and provide conditions essential to citizens in their everyday lives and which contribute to the overall development and progress of society in general. According to this view, in conditions of cultural and social development, state power is transformed into public services (L. Duguit), with a mission to provide the conditions necessary for development and social progress in education, social policy, health care, scientific research, environmental protection, economic development etc. (Duguit, 1913/1929). This derives from understanding the state (i.e. public administration) as

[1] Thus: »... the state is an organization of the ruling class to protect class interests through the monopoly of force ...«, while »the administration is created to (besides performing various material acts which are in the jurisdiction of the state, first of all acts of violence) adopt individual acts which determine dispositions.« ... »Therefore we can conclude that the state is defined as an organization that has the strongest apparatus for physical coercion in a given society, or in other words, as an organization with a monopoly of physical coercion« (Lukić, 1973: 56; Lukić, 1993: 43).

an organization with social functions, not an organization of repressive authority and coercive power (Lilić, 1998). Thus, »contemporary constitutional and administrative systems rest on the concept of the state as an organization that provides public services« (Rosenbloom, 1982: 3–4).

3. Public Administration in the 1990 Constitution

The tasks of the state administration in the 1990 Constitution of Serbia (the so-called Milošević Constitution) and in the laws based on it were defined solely as a »function of government power«. This can be clearly seen from the summary analysis of the relevant constitutional and statutory provisions.

The 1990 Serbian Constitution prescribes (Article 94) that the ministry:

- applies laws, regulations and by-laws of the National Assembly and Government, as well as the general acts of the President of the Republic;
- deals with administrative matters;
- carries out administrative supervision;
- performs other administrative duties established by law.

Provisions of the 1992 Constitution were elaborated by the Law on the State Administration (1992), with subsequent amendments, which determined the »affairs of the state administration« (Article 8). Thus, the ministry:

- directly applies laws, regulations and by-laws by adopting administrative and other acts, undertakes administrative and other measures, and performs administrative and other actions;
- ensures the enforcement of laws, decrees and by-laws by enacting regulations and conducting administrative supervision, and cares for their timely and lawful execution;
- deals with administrative matters regarding the rights, obligations and legal interests of citizens, legal persons or other parties;
- carries out administrative supervision: a) supervision of the legality of the activity of enterprises, institutions and other organizations, b) supervision of the legality of acts of enterprises, institutions and other organizations when, in accordance with the law, they deal with the rights, obligations and legal interests of citizens and other legal entities, c) conducts inspection;

– prepares laws and other regulations and general acts within its jurisdiction, in accordance with its responsibilities;
– performs tasks related to development, programming, organizing and promoting activity in the area of their competence;
– performs other duties specified by law.

4. Strategy for Administrative Reform in Serbia (2004)

The previously existing authoritative legal models of public administration, as well as the constitutional and legal consequences that were derived from them, were an obstacle to Serbia's social and economic recovery. This is clear from a document of the Serbian Government titled *Public Administration Reform Strategy in Serbia* (2004), in which, *inter alia*, it is stated that regarding public administration there are »trends that cannot be avoided«. This specifically includes »changing views« in the sense that public administration should not be viewed solely as »an instrument of government«, but rather as a system performing public services.

According to this Strategy, »Public administration reform is a complex and long-term process, particularly in countries in transition, in which the administration, at both central and local levels, is generally weak, plagued by a number of problems accumulated over many decades. (...) Generally, reform processes ongoing in other countries have shown some obvious trends that cannot be avoided, and which concern the following processes:

– changes in understanding the position of the public sector in society and the search for the optimal level of its regulation from the aspect of public interest;
– understanding public administration as a service to citizens, not as a powerful tool of government;
– devolution of public administration at the central level, the delegation of competences from the central to lower levels and decentralization, as a transmission of power to the lower levels, with the aim of bringing public services closer to the citizens ...« (Government of Serbia, 2004).

5. Serbian Public Administration in the Current Constitutional System (2006)

In 2005, a new Law on the Serbian Administration was adopted based on the Strategy. The Law has discarded the model of the state administration reduced to exercising power and coercion, which was prescribed in the 1990 Constitution, and the 1992 Law on Public Administration. In the new Law, it is immediately obvious that the affairs of state administration include a much wider range of activities, both in quantitative and in qualitative terms. In particular, it should be noted that the first priority is not the execution of laws and regulations, but the professional and political function of participating in shaping government policy.[2]

According to the Law on Public Administration of Serbia (2005), the ministries, organizations within the ministries and special organizations, perform the following tasks of public administration (Art. 12–21):

- *Participating in the shaping of Government policy*. The administration prepares draft laws, other regulations and general acts for the Government and proposes development strategies and other measures to shape Government policy.
- *Monitoring*. State administration authorities monitor and assess local conditions in areas within their jurisdiction, examine the consequences of established measures and take measures themselves or propose regulations and measures for which they are authorized.

[2] As pointed out: »Starting from the traditional understanding of public administration in the 1992 Law in which emphasis was put on tasks of authoritative enforcement of laws by making administrative decisions and taking administrative actions, the new Law on Public Administration does not deny or ignore this, as it is still an important aspect of administrative power, but takes into account contemporary models of administrative action derived from the concept of social functions of the state in which the administrative functions are modified, as far greater importance is put on services to citizens. By providing public services that create and provide conditions for the daily lives of citizens, and thereby contributing to the overall development of society, public administration becomes a significant regulator of social processes, rather than an instrument of government. Hence, one of the significant innovations in the Law is reflected in the definition of the state administration, emphasizing the role of its agencies in supporting the Government in designing and managing policies, on one hand, and preparing documents for the Government, and on the other, as well as control and monitoring of conditions in areas within its scope, by taking measures and proposing to the Government to adopt certain regulations and to take certain measures within its jurisdiction« (Lončar, 2005: 10–11).

– *Execution of laws, regulations and by-laws*. State administration authorities enforce laws, decrees and by-laws of the National Assembly and the Government by adopting regulations, deal with administrative matters, keep records, issue public documents and take administrative actions (executive tasks).
– *Inspection*. By inspection, the state administration examines the implementation of laws and other regulations by direct insight into the operations and handling of physical and legal persons and, depending on the results of supervision, imposes measures.
– *Monitoring public services*. State administration authorities shall ensure that public services are carried out under the law.
– *Development activities*. State administration authorities encourage direct development in areas within their jurisdiction, according to Government policies
– *Other professional activities*. State administration authorities collect and analyze data in areas within its jurisdiction, elaborate analysis, reports, information and other materials and perform other tasks that contribute to the development of areas within its jurisdiction.

The new Constitution of Serbia (2006) contains relevant provisions on public administration. According to the new Constitution, the competence of the Government is »the activity of state administration and supervision of its work« (Article 123/5).

The Government is accountable to Parliament for the policy of the Republic of Serbia, for the enforcement of laws and other general acts of the National Assembly, and for the functioning of state administration (Article 124).

Under the heading »Public Administration« (Articles 136–138), the Constitution contains provisions relating to the position of public administration, delegation of public authority, public services and the Citizens' Protector (ombudsman):

– Public administration is independent, bound by the Constitution and law, and accountable to the Government for its work. The state administration tasks are performed by the ministries and other bodies of state administration as prescribed by law. The state administration and the number of ministries shall be regulated by law. The internal organization of ministries and other public administration bodies and organizations shall be regulated by the Government (Article 136).

– In the interest of efficient and rational exercise of the rights and obligations of citizens and of meeting their needs and interests to life and work, certain tasks may, by law, be entrusted to be performed by the autonomous province or local governments. Particular public powers may, by law, be delegated to enterprises, institutions, organizations and individuals. Public powers may be delegated by law to specific bodies when they perform regulatory functions in certain areas. The Republic of Serbia, autonomous provinces and local governments may establish public services. Activities and duties for which public services are established; their organization and operation shall be prescribed by law (Article 137).
– The Citizens' Protector (ombudsman) is an independent government body that protects the rights of citizens and monitors the work of the state administration, the authority responsible for the legal protection of property rights and interests of the Republic of Serbia, as well as other agencies and organizations, enterprises and institutions entrusted with public powers (Article 138).
– Under the headline »The Legality of the Administration« (Art. 198), the Constitution contains the following provision: Individual acts and actions of state bodies, organizations with public powers, bodies of autonomous provinces and local self-government must be based on the law. The legality of final individual acts that concern the rights, obligations or lawful interests may be argued before the court in administrative dispute proceedings, if in a particular case the law has not provided different judicial protection.

Based on this, we can conclude that the affairs of the state administration in the legislation of Serbia (i.e. 2005 the Law on State Administration and the Constitution) is normatively defined by contemporary standards in this area. In this sense, the 2005 Law departs from the concept by which the affairs of public administration are defined merely as an authoritative activity (i.e. enforcement of laws, resolving administrative matters and administrative supervision) and expands the content of administrative action in the areas (functions) that are consistent with the real role and position of a modern administration (e.g. participation in the shaping of government policy, monitoring in the respective fields, monitoring public services, developmental activities, etc.).

However, it remains to be seen to what extent the implementation of laws and constitutional provisions on the role, status and tasks of the state

administration is to be in the actual function of the transformation of the state administration from an instrument of government into a public service which is to achieve the general welfare of society and the increase in the quality of life for the citizens of Serbia.

6. Action Plan for Implementation of Administrative Reform in Serbia (2009–2012)

In July 2009, the Serbian Government adopted an *Action Plan for the Implementation of the Public Administration in Serbia for the 2009–2012 Period*, in which it indicated the expected results and planned activities in key areas of the reform: decentralization, depoliticization and professionalization, rationalization, policy coordination, control mechanisms, e-government and modernization of public administration. In addition, the main objectives of the reform are the establishment of a democratic state based on the rule of law, accountability, efficiency and effectiveness of public administration that provides high quality services at reasonable cost.

A World Bank Analysis points out that Serbia's public administration reform rests on the principles of organization and function of public administration in the EU and the experiences of other countries in transition (especially those that have recently joined the European Union). The document further states that, when talking about the present state of the public administration in Serbia and the analysis of recognized international institutions, the tradition of the Serbian public administration (which is also true for other countries of the former Yugoslavia) is based on comprehensive legal regulation. In the period following the adoption of the 1990 Constitution, Serbia embraced traditional (such as centralization rather than decentralization) and political voluntarism (rather than legalism). The difficult economic situation in the 1990s resulted in a number of capable, professional and experienced personnel leaving the civil service. In addition to low wages, career advancement based on professional qualities and skills was extremely difficult. All this resulted in the decline of the quality of public services and lack of motivation among employees. The democratic changes in 2000, found public administration in bad shape, without skilled and experienced personnel, especially without young civil servants. There was also a negative image of government as a parasitic part of society that does not create, but only spends national income and public resources (WB, 2004).

7. Conclusion

As stated in the *European Commission's Serbia 2010 Progress Report* on the rule of law: »Some progress was observed in adopting new legislation in line with the *acquis*. However, preparation and implementation of the laws are sometimes slow and uneven. In addition, legal enforcement is weak due to technical and personnel shortcomings in the courts and administrative bodies. Inconsistent implementation of laws and very lengthy procedures, which frequently exceed the deadlines set by law, hinder investment. *Overall*, weaknesses in the rule of law and prevalent corruption continued to limit legal predictability and undermined trust in the legal system among economic operators, in particular as regards effective enforcement of property rights« (EC, 2010). In the chapter »Democracy and the Rule of Law« (2.1.), the Report gives special attention to the public administration in Serbia.[3]

The road to this goal will be neither easy nor quick, especially given the existing situation and the fact that due to a number of circumstances there is significant delay in Serbia's reforms in this area. However, Serbia has an obligation to its citizens to take steps towards the achievement of European standards and values in the conduct of administrative reform by implementing the standards and principles such as the rule of law and legal certainty (reliability and predictability), transparency, accountabili-

[3] »There has been some progress in public administration reform. The law on administrative disputes, which regulates judicial scrutiny of administrative acts and the work of the Administrative Court, was adopted in December 2009. As part of an arrangement with the International Monetary Fund (IMF) to reduce the fiscal deficit, a law was adopted on reducing the number of employees in public administration by 10 per cent. The overall level of staff effectively employed in the field of European integration has been maintained. Changes to the law on civil servants from December 2009 introduced quarterly appraisal of the work of civil servants instead of an annual appraisal. The Law on Ratification of the Agreement Establishing the Regional School of Public Administration was adopted in June 2010. However, the legislative framework remains incomplete. The law on administrative procedures has not been adopted yet. The law on administrative disputes is not fully in line with European standards. Further efforts are needed to introduce a merit-based career system and effective human resources management. The capacity of public administration in certain sectors is weak and coordination is not fully ensured. In view of an intensification of the EU integration process in the coming years, Serbia needs to strengthen the capacity of EU integration further, in particular the central coordination between the General Secretariat, the Serbian EU Integration Office and in Ministry of Finance. (...) *Overall*, the capacity of public administration is good but reform in this area is advancing at a slow and uneven pace. Further improvement of the legislative framework and a stronger commitment to respect the mandate of independent regulatory bodies and provide them with adequate resources are needed.«

ty, efficiency and effectiveness. »These are the steps that lead to European and international integration, to which Serbia and its citizens aspire.« (Government of Serbia: Action Plan).

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STRATEGY OF ADMINISTRATIVE REFORM IN SERBIA IN THE CONTEXT OF EUROPEAN INTEGRATION

Summary

*The dominant orientation today is towards a pragmatic approach that a »good« administration is the one that proves successful in fulfilling public interests. This approach deals with numerous issues of administrative reform strategies. Administrative models in the developed countries (particularly in Europe) are based on the social functions of the state and public administration and their role in the realization of general interests of society and social benefit (*bono publico*). Administrative tasks in the administrative legislation of Serbia (Law on Public Administration) are normatively defined in compliance with contemporary standards in this field. In this context, the administrative legislation in Serbia has departed from the concept that sees administrative action as an instrument of repression, and has widened the scope of administrative activities to areas such as participating in defining public policy, monitoring the conditions in particular social fields, public services, development activities, etc. The Serbian Government adopted an* Action Plan for Implementing Administrative Reform for 2009–2012*, in which planned activities have been set in the key areas of administrative reform including decentralization, professionalization and depoliticization, rationalization, coordination of public policies, control mechanisms, e-government and modernization of public administration. In the* 2010 Serbia Progress Report*, the European Commission assed that the capacity of the Serbian administration is good, but that the »dynamics of reform in this area are slow and uneven«. Within the context of European integrative processes, Serbia has the obligation towards its citizens and concluded agreements to take steps in achieving European standards and values in its administrative reform efforts by efficiently conducting public policies, implementing values and principles of the rule of law, reliability and predictability, transparency, accountability, economy, efficiency and effectiveness.*

Key words: *Strategy of administrative reform – Serbia, European integration*

STRATEGIJA UPRAVNE REFORME U SRBIJI U KONTEKSTU EUROPSKE INTEGRACIJE

Sažetak

*U suvremeno doba prevladava pragmatični pristup koji kaže da je dobra uprava ona koja se pokaže uspješnom u ostvarenju javnog interesa. Taj se pristup bavi brojnim pitanjima strategija upravne reforme. Upravni modeli u razvijenim zemljama (posebno u Europi) temelje se na socijalnim funkcijama države i javne uprave i njihovoj ulozi u ostvarivanju općih interesa društva i društvenog dobra (*bono publico*). Upravni poslovi u upravnom zakonodavstvu Srbije (Zakon o javnoj upravi) normativno su definirani u skladu sa suvremenim standardima toga područja. U tom smislu, upravno se zakonodavstvo u Srbiji odmaknulo od koncepta prema kojem je upravno djelovanje instrument represije te je proširilo raspon upravnog djelovanja na područja poput sudjelovanja u utvrđivanju javnih politika, praćenja uvjeta u određenim područjima društva, javnih službi, razvojnih aktivnosti, i slično. Srbijanska je vlada usvojila* Akcijski plan za provedbu upravne reforme za 2009–2012*, u kojem su planirane aktivnosti smještene u ključna područja upravne reforme uključujući decentralizaciju, profesionalizaciju i depolitizaciju, racionalizaciju, koordinaciju javnih politika, mehanizme nadzora, e-upravu i modernizaciju javne uprave. U* Izvještaju o napretku Srbije za 2010. *Europska je komisija ocijenila da je kapacitet srbijanske uprave dobar, ali da je »dinamika reforme u tom području spora i nejednaka«. U okviru procesa europske integracije Srbija ima obvezu prema svojim građanima i prema sporazumima koje je potpisala poduzeti korake kako bi se postigli europski standardi i vrijednosti pri provođenju upravnih reformi tako da se učinkovito provode javne politike, primjenjuju vrijednosti i načela vladavine prava, pouzdanosti i predvidivosti, transparentnosti, odgovornosti, ekonomičnosti, učinkovitosti i efektivnosti.*

Ključne riječi: *Strategija upravne reforme – Srbija, europska integracija*