BUDVANSKI PRAVNIČKI DANI

AKTUELNA PITANJA SAVREMENOG ZAKONODAVSTVA

- Naknada ugovorne i deliktne štete – savremene tendencije
- Svojinski odnosi – socijalna tržišna privreda
- Lokalna samouprava i centralna uprava
- Efikasnost i racionalnost u državnoj upravi i oblici kontrole
- Nevladine organizacije
- Fleksibilne forme zapošljavanja i uloga sindikata
- Pravo Evropske Unije
- Pravna zaštita potrošača
- Nova rešenja u izvršnom postupku

Zbornik radova sa Savetovanja pravnika
5–9. jun 2000.
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UDRUŽENJE PRAVNIKA JUGOSLAVIJE

BUDVANSKI PRAVNIČKI DANI
Savetovanje pravnika
AKTUELNA PITANJA SAVREMENOG ZAKONODAVSTVA
Budva, 5–9. jun 2000.

Organizacioni odbor:

Prof. dr Slobodan Perović	Predsednik Udruženja pravnika Jugoslavije
Prof. dr Stevan Lilić	Generalni sekretar Udruženja pravnika Jugoslavije
Prof. dr Miodrag Orlić	Predsednik Udruženja pravnika Srbije
Dr Dragan Radinović	Predsednik Udruženja pravnika Crne Gore
Dr Čedomir Bogićević	Potpredsednik Udruženja pravnika Crne Gore
Dr Đorđije Blažić	Član Uprave Udruženja pravnika Crne Gore

Glavni i odgovorni urednik
Prof. dr Slobodan Perović

Tiraž: 500 primeraka

Štampa: »Intergraf – MM«, Beograd

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Naknada ugovorne i deliktne štete – savremene tendencije

tencijal. To su organizacije koje omogućavaju prave i trajne, a ne simulirane promene. Oni koji mogu – i žele – da se usavršavaju i neprekidno uče – treba da dobiju šanse za brže napredovanje i povećani uticaj na poslove.

Najzad, čeka naš veliki posao proučavanja »Acquis Communautaire-a« korpusa Evropskog Prava koje je naraslo na preko 100.000 stranica. Nakon toga otvoriće se proces harmonizacije i obrazovanja za primenu.

Uslov za uspeh je trajan povoljan stav političkog vrha prema promenama koji za sada postoji samo u Crnoj Gori.

Ostaje pitanje ima li sa stanovišta nacionalnih interesa, razumnih razloga da se okleva sa reformom javne uprave i sudstva i lokalne samouprave u Srbiji i Jugoslaviji?

STEVAN LILIĆ

THE GENERAL CONTEXT OF BUSINESS-ORIENTED PUBLIC ADMINISTRATION IN POST-COMMUNIST TRANSITION[1]

Administrative reform and reorganization of existing administrative systems in post-communist European countries must move in the direction of strengthening democratic control over state administration, increasing its accountability to democratic elected bodies, de-centralizing and de-concentrating the central government structures while maintaining the administrative system under the strict principles of the rule of law and protection of human rights.[2]

The need to modernize the administrative systems of post-communist countries in Europe goes much beyond subjecting it to provisions of legal documents: »The challenge with which public administration is faced in Central and Eastern Europe is to redefine even its role in society, or, more concretely, its relations with politics, the economy and civil community. It is, therefore, worthwhile to recall that the dynamics of administrative transformation are intimately linked to changes in the political, legal, social and economic environment in which public institutions operate and on whose material and immaterial inputs they crucially depend. Legitimacy, authority, legality, acceptance and finance are amongst the most important resources required for effective administrative activity and they cannot be generated

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Dr Stevan Lilić, Professor of Administrative Law and Public Administration, Belgrade University Law School, Law School University of Montenegro, Podgorica.

[1] Introductory paper delivered at the *International Seminar on Business-Oriented Public Administration,* Law School University of Montenegro, Podgorica, March 18, 2000.

[2] Istvan Pogany (Ed), *Human Rights in Eastern Europe,* Edward Elgar, Brookfield, Vermont, 1995.

by the public administration itself. Accordingly, the outcome of politics aimed at public sector reform is decisively shaped albeit predetermined, by political, legal, social and economic developments.«[3]

The countries of Central and Eastern Europe are currently undergoing fundamental changes affecting the very foundations of their social, political and economic life and legal order. Although the extent of the transformation processes so far differ considerably from country to country, it is possible to identify a number of common features. These features, *inter alia,* include: a) the transition from one-party rule (in which the leading role of the communist party was dominant in all sections of society) to multi-party parliamentary systems with accountable governments; b) the abandoning of »democratic centralism« as the basic organizational principle, in favor of far-reaching de-centralization and de-concentration of decision-making authority; c) the separation of the political from the and economic system, and d) the implementation of economic reforms focused on privatization and de-nationalization, as a means of depriving the state of its enormous economic competence and legal possession of property.[4]

Modern concepts of the administrative system rest on models of the administration as a complex and dynamic system of human inter-action.[5] In this model the administration is projected as a complex and dynamic »relatively closed« system of structures and procedures within itself, as well as an »open system« that communicates with other systems (e.g. the political and economic system) active in the social environment surrounding it. As a system of human inter-action that derives from the fact that individuals in society achieve their interests either through mutual cooperation, or through mutual conflict, the main social function of the administrative system, actively integrated into various patters and forms of human behavior, is to regulate social processes. As realization of individual or group interests can either be achieved by domination or by compromise, the function of social regulation of an administrative system plays a essential role in *neutralizing contingency* effects of illegitimate social behavior or conflict.[6]

The concept of the administration as a public service originated at the turn of the century in conditions of social, cultural and economic development of highly industrialized nations of Western Europe. Administrative activity is now perceived, not as a function of state power, but as an activity focused on the realization of the welfare of society. This lead to the concept that the essence of administrative

[3] Joachim Jens Hesse (Ed), *Administrative Transformation in Central and Eastern Europe: Towards Public Sector Reform in Post-Communist Societies,* Blackwell Publishers, Oxford, 1993.

[4] Ibid.

[5] Eugen Pusić, *Upravni sistemi I* (Administrative Systems I), Zagreb, 1985, p. 9–11.

[6] Niklas Luhmann, *Soziale Systeme, Grundriss einer allgemeinen Theorie,* Suhrkamp, Frankfurt am Main, 1984.

activity is to render public service, i.e. activities that play a »vital« role in the everyday life and work of individuals (e.g. education, medical care, etc.) and society as a whole (e.g. transportation, communication, etc.).[7] According to this model of the administration, in conditions of developed social structures and functions, the state administration undergoes a substantial transformation: no longer does administrative activity represent a specific legal instrument of government. Administrative activity is now a product of a complex administrative system charged with rendering public services with the goal of undertaking actions aimed at securing the welfare of its citizens, as well as the cultural development and economic progress of society.[8]

Western European integration and transition processes in Central and Eastern European post-communist cannot be interpreted only as compulsory responses to economic and technological competition and pressures.[9] Integration in Europe is also the result of autonomous development patters of both economic and administrative systems in this region.

The developed countries in Europe have achieved the level of social, human rights and technological development, that sets them within the general framework of post-industrial[10] and information societies.[11]

On the other hand, post-communist countries in Europe still on levels of mid and late industrial development, as well as those in early stages of high technology developments, will doubtlessly need to consider present European integration tendencies, not only in respect to their general social and economic development strategies, but also in regard to their administrative systems as well. Within this dynamic social and economic environment, the recognition of the need of the administrative systems of European post-communist countries to adapt to integration processes is prerequisite for the active participation, cooperation and integration of these systems into European integration processes. In this context, administrative legislation reforms and administrative system compatibility in Central and East European post-communist countries to West European integration processes should be the basis for the future transformation of the respective post-communist administrative systems and their organizational and functional development

[7] Leon Diuit, *Preobražaji javnog prava* (The Transformations of Public Law, 1913), Geca Kon, Beograd, 1929.

[8] David Rosenbloom, *Public Administration and Law,* New York/Basel, 1982.

[9] Randal Baker, Julie Bivin Raadschelders, *Reshaping the Old Order – The European Community, The United States and the New Century,* International Review of Administrative Sciences, Volume 56, No. 2, June 1990.

[10] John Kenneth Galbreith, *The Affluent Society* (3rd, revised edition), Penguin Books, Harmondsworth, 1979.

[11] Daniel Bell, *The Coming of The Post-Industrial Society,* Basic Books, New York, 1973.

towards business-oriented public administration.[12] Comparatively speaking,[13] the transformation of administrative systems should also be aimed at undertaking functional and organizational,[14] as well as technological[15] and personnel[16] reforms that are in line with achieving higher standards of administrative efficiency and human rights protection, particularly in regard to the issues of privacy[17] and data protection[18] and service-rendering standards of economic and business management.[19]

Due to the need of efficient regulation of social, economic and technological processes, modern administrative systems show a general tendency towards substituting traditional authoritative instruments of administrative power, with higher forms of achieving micro and macro level social regulation.[20] *Grosso modo,* it may be concluded that the use of administrative force is counter-proportional to the level of general social and economic development.[21] It can be said that administrative repression today is a feature of underdeveloped social and economic systems, and leads to the phenomena of »vicious bureaucratic circles« (once applied, repression leads to more repression, which agitates the problem even more, then more repression is applied, and so on).[22] Thus, the development of modern administrative systems is less and less oriented toward the use of power and force, as there is objectively less possibility of compulsory social regulation.

A specific question to be addressed in the context of administrative system reform is the issue of the efficiency of administrative systems. Generally speaking, the more there are technological factors present in administrative systems, the higher the level of the efficiency of the system. Nevertheless, particularly in countries that

[12] Stevan Lilić, *European Integration, Administrative Legislation Reform and Administrative System Compatibility* (Report), International Institute of Administration Sciences, International Conference: »Administrative Implication of Regional Economic Integration«, Madrid, November 1990.

[13] Gerard Timsit, *Administrations et des états: étude comparé,* Presses Universitaires de France, Paris, 1987.

[14] James Emery (Ed), *Organizational Planning and Control Systems – Theory and Technology,* Columbia University, Collier-Macmillan Limited, London, 1969.

[15] Jean-Paul Baquiast, *Nouvelles Technologies et Reforme Administrative,* Revue Français d'Administration Publique, No. 37, Paris, 1986.

[16] Heinrich Reinemann, *Organization and Information Management,* in »New Technologies and Management – Training The Public Service For Information Management«, IIAS, Brussels, 1987.

[17] James Michael, *Privacy and Human Rights: An International and Comparative Study with Special References to Developed Information Technology,* Dartmouth, UNESCO Publishing, Hampshire, 1994.

[18] Colin Bennet, *Regulating Privacy: Data Protection and Public Policy in Europe and the United States,* Cornell University Press, Ithaca/London, 1992.

[19] Stevan Lilić, Petar Kunić, Predrag Dimitrijević, Milan Marković, *Upravno pravo* (Administrative Law), Beograd, 1999.

[20] Eugen Pusić, *Upravni sistemi I* (Administrative Systems I), Zagreb, 1985, p. 9–11.

[21] V. V. Moharir, *Administration Without Bureaucratization – What Alternatives,* International Review of Administrative Sciences, Volume 55, No. 2, June 1989.

[22] Michel Crozier, *The Bureaucratic Phenomenon,* University Press, Chicago, 1963.

are experiencing political and social »turbulence«, an opposite tendency in the development of administrative systems can be detected. Times of crisis generate a tendency of extensive »administrating«, primarily due to the general inefficiency of the social and economic system. Inefficiency gives rise to the need of more authority, but authority itself does not resolve the problem. This model, logically, requires an authoritative administrative system, as authoritative administrative decisions can only be implemented by means of political force and repression. Consequently, authoritative administrative systems cannot substantiate and resolve economic, social turbulence by mere »authoritative administrative efficiency«. Such situations, particularly receiving active political support, can easily become the main obstacle for general social, economic and administrative reform.