Review paper

INSTITUTIONAL SOLUTIONS OF ADMINISTRATIVE DECISION- MAKING "DE LEGE FERENDA" WITH EUROPEAN STANDARDS

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Abstract: *In order to conduct a comprehensive examination, this paper requires the establishment of the following basic hypotheses: (1) factual change of the law on the administrative procedure is an inevitable phenomenon, even in a system with a constitution as it is in Bosnia and Herzegovina, which for a long time indubitably requires thorough changes; (2) factual legal change is more common in constitutional systems that in practice are characterized by exceptional strength, which is particularly the case in countries with a complex state structure, divided society and a fragmented political scene, such as in Bosnia and Herzegovina; (3) Bosnia and Herzegovina, despite its constitutional rigidity, has undergone numerous factual constitutional changes that have had different manifestations and that, therefore, require new provisions to the law on administrative space in order to bring it into line with the European administrative space and provisions based on European standards of the so-called "good governance". Based on this set of hypotheses, research questions arise: (1) identification of different forms of factual legal change in the theory and practice of administrative law; (2) precise determination of the manner in which the law on the administrative procedure would undergo factual changes; (3) harmonization of factual legal changes in comparative administrative law, specifically the law of the European Union and its member states; (4) how the legal-theoretical conceptualization of this issue was carried out in the theory of administrative systems of other countries. In order to reach relevant insights, it is necessary to ponder in detail the theoretical considerations of the phenomenon of factual changes in the law on administrative procedure. Given this issue has largely been neglected in domestic literature for numerous reasons, which are mostly denoted in the numerous published works, round tables, and conferences, this issue will require an insight into the literature outside the administrative area of Bosnia and Herzegovina, especially from countries where the phenomenon was already present and where the theory and practice of administrative law had to face it more directly. Following the classification of these manifestations, it will be necessary to approach their individual detailed analysis, both in order to better understand the phenomenon at hand in general and in order to more precisely apply general understandings and knowledge to a specific example of Bosnian administrative procedural law.*

Keywords: Administrative Procedure, Law, Good governance, Administrative law

1. INTRODUCTION

Every constitution, law, or other normative act addressing issues in any country, including Bosnia and Herzegovina, should not merely adopt solutions from other countries without critical consideration. These should be *sui generis*—unique creations influenced by numerous factors such as traditions, standards of democracy and human rights, and the political and economic circumstances that shape such normative interventions. Therefore, recommendations to the BiH legislator(s) on the manner of transposing the European principles into the Law on General Administrative Procedure must be based on positive regulations in this area that are in force in the member states of the European Union. These solutions are rooted in the continental European administrative tradition and draw on the experiences of the European Union member states, including both current members and those states with candidate status or those applying for membership. Furthermore, a rigorous normative approach to developing the law on administrative procedure, *de lege ferenda*, necessitates well-defined, realistic goals. This goal must be realistic and encompass several key respects: (1) A high level of protection of legality to ensure both individual rights and the public interest, as well as the proportionality of administrative decisions;
(2) A high level of public transparency in administrative proceedings, including a system to inform citizens about the services that authorities provide; (3) The efficient and responsible functioning of administrative bodies to increase citizens' trust in administration; (4) Transformation of the administration into a developmental factor for the state, rather than a hindrance, as currently observed in Bosnia and Herzegovina; (5) Support for effective and ethically based behavior among civil servants involved in decision-making; (6) Economic effectiveness and efficiency guiding the administration's decision-making process for the benefit of all parties; (7) Integration of modern information and communication technologies in service delivery (e-administration); (8) A high level of decision-making based on strict adherence to the law, with minimal discretionary powers; (9) Establishment of a General Administrative Procedure Law that minimizes special administrative procedures, applies universally, and effectively supports goal achievement..

Therefore, in addition to everything stated thus far, the intention and goals to be achieved by new administrative procedures—aimed at harmonizing with the European administrative space and considering transparency, predictability, and legitimate expectations for legal certainty in decision- making—demand that modern legal standards of good legislation support a coherent and unified system of administrative procedures with a minimal number of special procedures. This is an enormous problem in Bosnia and Herzegovina, to the extent that only the growing number of so-called "special administrative procedures" would make it necessary to enact a completely new law on administrative procedures. Few law-regulated institutions in any area of social life exist that do not operate organizationally and functionally under their own laws, which often deviate significantly from the general administrative procedure law. It is often overlooked that special administrative procedures significantly increase administrative costs, slow down decision-making, and diminish both the effectiveness and efficiency of the administration, as well as the satisfaction derived from administrative justice. It is indisputable that it is of great benefit to citizens and state bodies that all administrative procedures are

contained in the same procedural law, which can be used to make decisions in accordance with the material regulation from a particular administrative area. Therefore, special administrative procedures must be subject to very serious, careful, and, above all, professional consideration, so as to reduce their number to a minimum.

Previous experiences with special administrative procedures give us the right to assert in this paper that the need for special administrative tasks exists in a very limited number of administrative areas such as defense and security, inspection bodies, as well as some areas that, in accordance with international standards, require special proceeding. Such is the case with the field of intellectual property protection. It is indisputable, and the past experiences in the work and decision-making of administrative bodies have confirmed that, as the Law on General Administrative Procedure enables a greater number of administrative procedures to be conducted in different administrative areas, the greater the probability that the procedures will be known and that they will be respected. Institutions proposing the adoption of special administrative procedures should bear the burden of proving the need for such procedures.

Adopting a new modern law on administrative procedure in Bosnia and Herzegovina is an imperative and one of the conditions for the implementation of reform in the field of administration. This view stems from the late 20th-century expansion in administrative scope, driven by technical and technological innovations, cultural shifts, and new economic trends that introduced fresh challenges to public administration.. All this required a new approach to the administrative procedures that introduced new administrative actions into the decision-making system and a new approach to communication between administrative bodies and citizens in order to ensure the full protection of citizens' rights and the protection of public interest through the full application of the rule of law in the sphere of the greatest possible reduction of subordination and the establishment of a completely new horizontal system of relations between administration and citizens. From the point of view of administrative practice, this implies that the field of application of the law on administrative procedure is wide enough and that it ensures effective legal protection against all illegal forms of activity and administrative actions of administrative bodies. This applies in particular to all stages of decision-making and adoption of an administrative act, the administrative contracts and other forms of the so-called "real actions" related to providing the best possible forms of informing citizens, providing information, issuing warnings, publishing expert opinions, obtaining scientific opinions, etc.

2. INDIVIDUAL ADMINISTRATIVE ACT

In many administrative jurisdictions of continental Europe, an individual administrative act is defined as a legal act of administration that authoritatively resolves a specific subject of administrative proceedings, i.e., an administrative matter. Therefore, the individual administrative act, according to tradition, is still the most important instrument of the public administration body by which the body decides on an administrative matter.[1] The precise

[1] In French: *acte administratif*; in Slavic languages and in the former: *upravni akt*; in Albanian: *akti administrative*; in German: *Verwaltungsakt*; the origin of the administrative act leads to the French concept acte administrative The authoritativeness of an individual administrative act is an expression of the stronger will of the state administrative body in relation to any subject. This is about exposing the internal sovereignty of the state through a state organ to a specific case, that

definition of an administrative act may differ in certain details depending on the legal tradition of the country enforcing the act itself.

However, there is a general understanding that the term administrative act is used to denote an individual unilateral decision of a public administration body in the field of administrative law that is aimed at affecting the rights, obligations, and legal interests of citizens and legal entities. Therefore, the instrument of the administrative act is applied in cases in which the public administration authority imposes prohibitions, issues orders, grants rights (e.g., construction permit), rejects a request claiming a certain right, or changes the legal relationship (e.g., cancellation of a permit). The significance of the legal instrument of the administrative act stems from its four basic functions:

1) An administrative act is a legal act of the administration that represents an instrument for the application of rights and obligations regulated by substantive administrative law (e.g., construction law) to a specific individual case (Đelmo, 2007). It prescribes in a legally binding manner what is legal for citizens regardless of their national, religious, political, and other determinations. This way, an administrative act has a normative effect (Veladžić, Selimić, 2017): it can, for example, represent a legal basis for citizens' complaints against a public administration body (e.g., an administrative act approving a subsidy) or it can represent a legal basis for a public administration body in a lawsuit against citizens.
2) The administrative act aims to achieve administrative finality as an expression of legal certainty in the legal order. When the legal deadline for submitting a legal remedy against an administrative act expires, the party, as a rule, can no longer challenge the administrative act, regardless of whether it is legal or not.
3) The use of the instrument of the administrative act for administrative affairs determines which procedural law is applied or, in other words, which procedural steps the public administration body should take. Harmonization of each administrative act with the same procedural rules ensures the equality of the state administration in its treatment of all citizens and legal entities.
4) The disposition of the administrative act represents the required rule of conduct of subjects in terms of rights, obligations, or protection of public interest.
5) The execution of an administrative act requires that the obligation that is the subject of execution be defined in the corresponding administrative act. It is strongly recommended that the Law on General Administrative Procedure contain a definition of an administrative act.

3. THE IMPORTANCE OF ADMINISTRATIVE CONTRACTS IN THEIR EPISTEMIC FUNCTION

There are numerous administrative actions that ensure the way to acquire a right or protect an interest, i.e., to impose an obligation, as well as protect the public interest, which is basically achieved by issuing an individual administrative act. Ultimately, that act is an expression of the authoritative will of the administrative body in relation to another one or multiple subjects. However, there exists another form of exercise of rights and protection of legal interest, which is achieved by an individual administrative act. The issuance of this act is, however, not an

expression of the authoritative will of the administrative body, but rather an expression of the consent of the body and another subject. In the right case, it is legitimate coercion for the attainment of a goal achieved by an individual administrative act, and in the other case, it is a legal matter. Transparent cooperation between administrative bodies and citizens requires, in comparison with an administrative act, the existence of participatory methods of administrative actions that enable them to provide citizen-oriented services (Đelmo, Selimić, 2012).

This especially applies to those administrative issues where cooperation between citizens and the administration is in the interest of the acting authority on the one hand, and the citizen on the other, either as an individual or a legal entity. The modern Law on General Administrative Procedure should set rules for adopting consensus-based solutions for administrative problems that allow the administrative body to flexibly harmonize some public interest that exists in an administrative matter with the interests of parties that also have a specific interest (Krijan, 2010).

Very often, the consensus-based approach and its higher degree of flexibility not only give more adequate results, but at the same time increase the social acceptance of administrative decisions. Such an instrument that is used in the consensus-based approach is the administrative contract, which has proven to be a very good way to achieve set goals in many administrative areas in many European public administrations. The position of European scholarship and doctrine is that every time the question of reforming the system of administrative procedures comes up on the agenda, it is necessary to consider the option of introducing the legal institute of the administrative contract, which uses the freedom of contract to perform public tasks governed by administrative law. In the majority of cases, an administrative contract is concluded between a public administration body and a private person, but it is also possible for it to be concluded between two or more public administration bodies (e.g., two political-territorial communities reach an agreement on the ways of functioning of a joint school transport system).

By definition, an administrative contract concluded with another party represents an instrument where the public administration body would otherwise be authorized to issue an administrative act. From this, it can be inferred that the contractual solution of an administrative issue is allowed only if the law leaves the possibility for the administrative body to decide on an issue based on discretion.

The introduction of legal provisions regulating administrative contract issues is certainly important for more efficient administration, but it should be borne in mind that an administrative contract can only be concluded in the execution of an administrative act, as well as if this possibility is prescribed by a special law, but not beyond that. Many theoreticians of administrative law believe that apart from the above, in fact, the administrative contract is harmful, even counterproductive, that is, it is unnecessary because it can lead to the prolongation of procedures and their additional complications without speeding up and improving the legal position of citizens. (Koprić, Nikšić, 2010)

Also, the French conception of the administrative contract has a critical attitude towards this type of legal act that is passed by the administration under certain conditions. (Breban, 2002) Only in such a case is there room for agreements and compromises, and only within the limits of legally defined discretion. It should be emphasized that it is necessary to distinguish the administrative contract from the contract concluded by the administrative body based on the

provisions of the law on real rights (construction based on real rights). A contract for the supply of office supplies or a contract for the performance of services with a service that provides room cleaning services remain contracts based on civil law and are not subject to the provisions of the law on general administrative procedure.

4. FACTUAL SIGNIFICANCE OF ADMINISTRATIVE ACTIONS IN ADMINISTRATIVE PROCEEDINGS

The Law on General Administrative Procedure, which ensures full legal protection to all legal or natural persons, includes the so-called "real administrative actions" that aim to achieve real results, and not just to cause legal consequences arising from an administrative act or an administrative contract. Modern public administration carries out numerous and various real actions related to the affairs of administration in relations with citizens, so if they have consequences for the rights and obligations and legal interests of citizens, then the law takes them into account as legally relevant. Real administrative actions are classified as actions that are:

a) explanatory and
b) actions that are in the form of factual functions (Selimić, 2018).

Actions such as providing information, warnings, reporting, publishing expert opinions, or acting on citizen complaints fall into the first category, while the second category includes actions such as payments of monetary amounts or giving protective vaccines. If such actions fall under the provisions of administrative law or carry out those functions assigned by administrative law, then administrative procedures should ensure legal protection in cases where such actions affect the rights or legal interests of citizens.

5. PUBLIC INTEREST PROTECTION

The inclusion of the provision of "services of general importance" in the Law on General Administrative procedure aims to ensure effective and economical protection of service users even in cases where the service providers are persons under civil law. It is true that with such provisions in the law on administrative procedure, the legislator is venturing into a new area of administrative law. However, this kind of innovation is recommended with the aim of responding to newly emerging needs. In the past, vital public services to meet the needs of citizens were provided exclusively by the public sector. Meanwhile, this paradigm has changed. In recent years, the administration has increasingly transferred the authority to provide "services of general interest" to the private sector. The European Union describes "services of general interest" as "services that meet basic daily needs in areas such as energy, telecommunications, transport, radio and television, postal services, education, health, social services, etc." According to the legislation of the European Union, the Union and the member states are obligated to ensure that these services function in accordance with the common values of the Union. These common values include particularly high quality, safety, economical prices, equality, and promotion of universal access for users of a right.[2]

[2] Cf. Communication from the Commission of the European Parliament, the Council, the

In principle, these values derived from public law are also valid in circumstances where services are provided by the private sector as a result of "privatization". The public administration body that engages the public sector, regardless of whether it is a ministry or a regulatory agency, is the one responsible for ensuring the provision of services from the public sector respecting common values from the public law of the European Union. The competent public administration body is responsible, among other things, for exercising its responsibility through the implementation of supervision and control measures concerning service providers from the private sector. Such arrangements between the public and private sectors also have the legal consequence of the fact that direct relations between service providers and service user citizens are based on a contract based on civil law. However, through the application of contracts based on civil law, the citizen as an individual or as a legal entity loses his effective legal protection guaranteed by public law (administrative legal remedies, judicial review of administrative disputes) and is limited to a relatively weak legal position as "consumer" who can exercise their rights exclusively through very expensive and time-consuming civil disputes. To a certain extent, the Law on General Administrative Procedure can compensate for such shortcomings by creating a relationship based on the law on administrative procedure between the citizen (user of the service) and the supervisory body. Such a relationship based on public law would enable access to legal remedies regulated by the Law on General Administrative Procedure. As a result, the user would acquire the right to demand the implementation of supervisory measures by the competent public administration body if he proves that there is a well-founded suspicion that the provision of services by the private sector is not in accordance with the values of the European Union, such as high quality, safety, economy, equality, universality or transparency of procedures.

6. EFFECTIVE RESOLUTION OF ADMINISTRATIVE MATTERS

A good law on general administrative procedure should simplify administrative procedures to the greatest extent possible. Generally speaking, the administrative procedure is not limited by any specific form. It should be as efficient and as quick as possible. If the rights or obligations of the parties are based on the same or similar factual situation and the same legal basis, and if the authority conducting the proceedings in respect of all cases is competent, a single proceeding can be initiated and conducted even in the case where the rights and obligations of several parties are in question. The most common error that can occur when merging things into one procedure is neglecting the fact that the conditions for merging into one procedure are set in the law cumulatively, not alternatively, so for merging into one procedure, all three conditions must be met, and not only two or one. If the first and second conditions are not met, different multi-party administrative matters are actually at hand, and if the third condition is not met, there may be a violation of substantive jurisdiction in some of the administrative matters and the decision may be declared null and void. (Đelmo, Selimić, Čelik, 2020) Procedures that are formalized

European Economic and Social Committee, and the Committee of the Regions, attached to the communication on "The Single Market for the Europe of the 21st Century" – Services of general interest, including social protection services of general interest: a new European obligation {COM(2007) 724 final} {SEC(2007) 1514} {SEC(2007) 1515} {SEC(2007) 1516} Article 14 of the Treaty on the Functioning of the European Union and Article 1 of the Protocol (No. 26) to the Treaty on the European Union.

to a greater extent are valid only in cases prescribed by law.

One of the adequate instruments of efficient public administration is the legal institute of "administrative assistance." This institute ensures non-bureaucratic cooperation and mutual assistance and support between administrative bodies based on coordination and cooperation. This institute also exists in other procedural branches of law and without it, the authorities would practically be isolated and very often powerless to realize the tasks entrusted to them. In a situation where one authority requests another authority to provide it with certain data or to undertake a certain action, which constitutes a request, the requested authority is obligated to provide the requested data or perform the requested action within a set period, usually 15 days.

7. OBLIGATION OF THE AUTHORITY TO DETERMINE ALL THE FACTS THAT ARE RELEVANT FOR THE RESOLUTION OF THE ADMINISTRATIVE MATTER

State administration bodies, as well as institutions with public powers, are not limited in terms of presenting evidence and establishing facts, but they are limited by the deadlines by which they must resolve the administrative matter and issue a decision (Đelmo, 2009).

The administrative body is obligated to examine all relevant facts for making a decision *ex officio*. This obligation stems from the principle of the rule of law, especially the principle of legality, and contributes to the realization of the security and reliability of the law and public trust in public administration bodies.

8. PROVISION OF LEGAL ASSISTANCE IN THE FORM OF NOTIFICATIONS AND INFORMATION

The provision of legal assistance to an ignorant party is a principle that represents an expression of humanity by which an ignorant party or a party who, due to illness, age, lack of education, or for other reasons, is prevented from participating in the proceedings and defending their rights and legal interests, has the opportunity to participate in the proceedings. In such cases, the administrative body, i.e., an official, is obligated to provide a certain type of legal assistance that will not overstep legal boundaries. Namely, the official person may not become a party's legal advisor or its representative, i.e., a proxy, but is obligated to warn the party if the party would endanger some of its rights or legal interests with some action or proposal. It is indisputable that the provision of legal assistance, as well as the provision of the necessary notifications to the party, is an instrument that stems from the principle of democracy as well as the right to an adequate procedure. Considering that not every citizen is familiar with administrative law and the law on administrative procedure, the administrative body is obligated to inform the party about his rights and obligations in the procedure and to state the legal consequences of taking certain actions or omitting them. The authority will enable the delivery or correction of statements or requests in cases where it is clear that they are not incorrect due to an error or lack of notification. It is an obligation to submit a notice of the administrative act and to provide a written explanation and instructions on legal remedies.

An administrative act can enter into force only after the party is informed about the act, i.e., from the moment when the act is delivered to the party to whom the act is intended and who is affected by the act. As a rule, the written administrative act must necessarily be accompanied by an explanation and statements about the basic material and legal grounds on

the basis of which the administrative body made the decision. Both requirements, notification and stating the grounds, are essential elements of the system of protection of citizens' rights. Furthermore, the administrative act must necessarily state the appropriate instruction on the legal remedy, i.e., on judicial or administrative protection. Only such a clear statement justifies relatively short deadlines (e.g., 15 days for an appeal, i.e., 30 days for a lawsuit and initiation of an administrative dispute).

9. INSTITUTE OF SILENCE OF THE ADMINISTRATION

The tradition of the existence of the institute of "silent administration" in laws on administrative procedures in Bosnia and Herzegovina, but also in the territory of the former Yugoslavia, is very long. Why this controversial institute has remained so long in the legal orders in the area of Yugoslavia, one could speculate or research, but what is indisputable is that this institute is an expression of centralist management in Yugoslavia and a rigid system of administration in which bureaucratic structures imposed the protection of ruling structures and their absolution from liability for negligence (Koprić, 2009).

We believe that Bosnia and Herzegovina has inherited this institute from the previous system, but we are closer to the conclusion that it is still present in all laws on administrative procedures in Bosnia and Herzegovina for the reason that there was no departure from the previous system when it comes to bureaucracy. All attempts to replace the "silence of the administration" with the mandatory adoption of a decision satisfying the party's request, unless otherwise prescribed for by a special regulation, were met with resistance and obstruction. This was justified by the fact that in case the deadline for issuing an administrative act expires, the non-existent act will mean that a positive individual administrative act has been issued that granted the party's request and that this will cause negative consequences in the form of irreparable damage, i.e., endangering the public interest. The fact that the party's request will be deemed to have been adopted if the administrative body in the procedure initiated at the proper request of the party in which it is competent does not directly resolve the administrative matter, i.e., does not issue a decision within the prescribed period, was not an expression of protection against possible negative consequences, but an expression of the strength of the bureaucracy and the protection of their interests, i.e., the protection of the inaction of civil servants, i.e., above all, the inaction of administrative bodies.

Respecting all democratic principles, and especially those incorporated into the law of the European Union[3], and the European Convention for the Protection of Human Rights and

[3] Directive 2006/123/EC of the European Parliament and Council from December 12, 2006, prescribes in Article 13, paragraphs 3 and 4, the provision on the silence of the administration. In stating the rationale for the adoption of this Directive (see Preamble, paragraph no. 43), it is explained that one of the main difficulties for the party in relations with the public administration… is precisely the complexity, length, and legal uncertainty of the administrative procedure. For this reason, following the example of initiatives for modernization and the introduction of good administrative practice at the level of the Community and the level of the member states, it is necessary to establish the principles of simplifying administration, among other things by (…) introducing the principle of tacit approval of requests by the competent authority after the expiry of the established time limit. The text of Article 13, paragraphs 3 and 4 of the Directive reads: "3. Authorisation procedures and formalities shall provide applicants

Fundamental Freedoms, it is indisputable that the party has the right to request that the administrative body issue a decision establishing that the party's request has been adopted and in that case is obligated to issue a decision to him within eight days from the day of the party's request. This is certainly justified because the legislator is obligated to protect the party when the administration is silent. Therefore, we believe that there are numerous reasons in favor of including as many provisions as possible from the Services Directive in the Law on General Administrative Procedure, including the provision on the rule in case of the silent administration:

a) First, it better guarantees the full implementation of the Services Directive. However, there is also a minor risk in terms of legal gaps: given that the scope of the Directive is very broad, there is a serious risk of overlooking some specific acts that need to be amended.
b) Secondly, the inclusion of required national regulations in the Law on General Administrative Procedure guarantees the standardization and harmonization of laws, while changes or adoption of special laws may lead to badly prescribed or different regulations.
c) Thirdly, quite many provisions of this Directive refer to important principles, forms, and instruments of the existing system of administrative law, which are stated in the general Law.
d) d) Fourth, not least, the Law on General Administrative Procedure will lead to a greater degree of awareness of the Services Directive and will facilitate and motivate its practical implementation.

It is true that the four arguments mentioned above refer mainly to the adequate transposition of the Services Directive. However, as the text of the Directive states the principle of adopting the request in the case of silence of the administration by the competent authority after the expiration of a certain time, it follows the example of certain initiatives for modernization and the introduction of good administrative practice at the community and national levels (Koprić, 2003), which also sets a request for the establishment of the principle

with a guarantee that their application will be processed as quickly as possible and, in any event, within a reasonable period which is fixed and made public in advance. The period shall run only from the time when all documentation has been submitted. When justified by the complexity of the issue, the time period may be extended once, by the competent authority, for a limited time. The extension and its duration shall be duly motivated and shall be notified to the applicant before the original period has expired." 4. Failing a response within the time period set or extended in accordance with paragraph 3, authorisation shall be deemed to have been granted. Different arrangements may nevertheless be put in place, where justified by overriding reasons relating to the public interest, including a legitimate interest of third parties. At the same time, the law can solve the silence of the administration in two ways: positively, namely that the request of the party is adopted, or negatively, that is. that the party's request is rejected. In the first case, it is presumed that the administration's silence means acceptance of the party's request (the so-called positive or affirmative presumption as a consequence of silence), and in the second that silence means the rejection of the request (the so-called negative presumption as a consequence of silence)."

of simplifying the administrative resolution in the administrative procedure. Therefore, it is obvious that here it is dealt with a general principle of good administration whose scope goes beyond the limited field of application of the Services Directive. On the other hand, if the legislator decides to include this principle, as well as other principles, in the law on administrative procedure, then the law should ensure a well-balanced system of various instruments that, on the one hand, will protect the interests of the public administration at its disposal enough time to consider and investigate the facts, to comprehensively consider the legal situation and make an appropriate decision and, on the other hand, the interest of the party and the right to receive an answer to his request within a reasonable time. Additionally, the interpretation of such a provision must necessarily take into account the public interest that is brought to legal certainty and finally, but not least important, the interests of third parties involved in the procedure or who may be affected by the procedure. Other than this, it is necessary to take into account and consider the possible effects, positive and negative, that tacit approval in case of silence of the administration can have on corruption.

10. ADMINISTRATIVE-LEGAL AND ADMINISTRATIVE-JUDICIAL CONTROL OF THE WORK OF THE ADMINISTRATION

The work of administrative bodies and their activities are subject to a number of forms of supervision and control, such as internal supervision by the heads of organizational units, by the head of the body, through instanced supervision, upon appeal by a higher body than the one that adopted the administrative act, then by the right of supervision through the application of extraordinary legal means, administrative-judicial control of the legality of acts of administrative bodies and parliamentary, i.e., through reporting by representative body. However, the legal control of administrative actions falls primarily under the jurisdiction of administrative courts in the process of resolving administrative matters in an administrative dispute. Therefore, the law on administrative procedure must ensure a system of both internal and external procedures of administrative bodies for legal remedies that are carried out before the involved parties file lawsuits with the administrative court. It should be borne in mind that the control system also includes the responsibility of officials, i.e., administrative bodies of political-territorial communities for damage caused to third parties by their negligent or illegal work. Political and material responsibility can be classified there as well. It is necessary that the scope of both administrative remedies and judicial control correspond to the broad field of application of the law on administrative procedure and the overall concept of administrative actions.

The Law on Administrative Procedure envisages an appeal as a form of instanced supervision that controls the legality of an individual administrative act. It is the only legal remedy in the administrative procedure in which a higher authority than the authority that passed the first-instance administrative act that is disputed by appeal decides on the appeal of the party who is dissatisfied with the first-instance decision.

Also, the law on administrative procedure provides for an administrative-legal form of control and supervision of the legality of the work of administrative bodies when resolving administrative matters, through extraordinary legal remedies. However, it should be borne in

mind that an appeal can only be filed against first-instance acts of an administrative authority or an institution with public powers, i.e., filing an appeal is possible only before the institution of finality of an individual administrative act. On the other hand, the use of extraordinary legal means is allowed only against final, or in some cases against legally binding administrative acts. Therefore, extraordinary legal remedies cannot be considered as a regular administrative-legal control mechanism for the protection of parties in administrative proceedings.

As we can see, the main purpose of legal remedies from the law on administrative procedure is to establish an effective, simple, and economically profitable means of protecting the legal rights of the parties before filing a claim in the administrative court.

Something that would significantly contribute to the greater efficiency of administrative procedures in the process of applying legal means of protection is giving the administrative authorities the opportunity and obligation to carry out control only at the administrative authority level. In this way, the administrative courts would focus on complex administrative matters that are the subject of an administrative dispute, while the administrative body would be empowered to resolve cases within the framework of internal procedures for legal remedies.[4] As a rule, procedural decisions should not be challenged separately, but only in the context of a lawsuit against a substantive administrative decision, i.e., final decisions (e.g. a lawsuit against a final administrative act) deciding the issue in question. This would significantly simplify and shorten the administrative procedure and avoid legal situations in which lawsuits against procedural decisions lead to postponements of the administrative decision without improving the legal protection of citizens on material issues. Also, we believe that administrative-legal remedies as well as actions before the court in an administrative dispute should have the effect of delaying the execution of the administrative act, without a request to delay the execution until the end of the proceedings in the administrative dispute. Thus, the disputed administrative act could be executed only after it has become legally binding, except when the substantive regulation stipulates that an appeal, including a lawsuit, does not prevent the execution of an administrative act. This is necessary in order to avoid the situation in which the execution of an illegal administrative act causes a fait accompli, and in certain cases also causes irreparable damage. Our position is that the first-instance authority has the authority to resolve simple administrative matters and cases that can be contested for formal-legal reasons.

11. NOTICE AND DELIVERY

Providing the necessary information at all stages of the administrative procedure must be an obligation of the administrative body that arose from the European Convention for the Protection of Human Rights and Fundamental Freedoms, i.e. the Constitution of Bosnia and Herzegovina, of which it is an integral part (Đelmo, Selimić, 2011). The position of the European Convention on Human Rights in the constitutional system of Bosnia and Herzegovina

[4] First-instance administrative bodies, when resolving cases in administrative matters, have meritorious and non- meritorious powers to act on appeals filed against first-instance decisions. However, their jurisdiction is limited by the fact that each act they pass, i.e., the decision on a reported appeal cannot become final, so the party always has the option to re-submit the appeal to the second-instance authority, which is the only competent authority to make a final decision on the appeal. (See: Article 223-226. Law on Administrative Procedure BiH).

is determined by the understanding of the provision of the Constitution of Bosnia and Herzegovina which stipulates that this instrument for the protection of human rights will have *priority over all other law*.[5] A simple textual interpretation of the said provision points us to the usual understanding of the term - namely "right", a concept in the broadest sense of the word. (Martin, 2003) The European Union Services Directive must be incorporated into the Law on Administrative Procedure to ensure the electronic distribution of information for citizens, as well as electronic communication between administrative bodies and citizens as parties in administrative procedures. This is a technical possibility that will be an integral part of the law on administrative procedure, which must be available to citizens through a portal that provides access to public information of interest to citizens.

12. COSTS OF AN ADMINISTRATIVE PROCEEDING

Every work causes some kind of cost, including energy, materials, money, etc. However, not all costs have to arise as a result of work, i.e., human activity. Some costs may be caused by force majeure or an accessory action. What is important for the costs arising from administrative proceedings is certainly the obligation to determine (calculate) and pay them. Also, it must be borne in mind that the costs in the administrative procedure are exclusively related to the conduct of the administrative procedure and that they do not include costs such as expenses related to the existence of administrative bodies (employee salaries, maintenance of premises, overhead costs, etc.). Focusing on the conduct of the administrative procedure and the fact that it causes costs, the legislator had in mind that the costs must not burden any party in the procedure unevenly or disproportionately, but they must be within the limits of cost-effectiveness.

We call the costs in the form of expenses incurred by the authority conducting the procedure, then by the party participating in the procedure, as well as by other persons who participate in various capacities in the actions of the administrative body, special costs of the administrative procedure. They arise from conducting an administrative procedure in a specific administrative matter (expenditures for travel expenses of officials participating in the procedure, expenses for witnesses, experts, interpreters, advertising costs, etc.).

The rule in administrative proceedings is that each party bears its costs caused by the proceedings, such as the costs of attending the hearing, compensation for time lost due to absence from work, expenses for fees, expenses and fees for legal representation and professional assistance. The costs of the party and other person in the procedure caused by the procedure initiated *ex officio* or in the public interest, which the party or other person in the procedure did not cause by their own behavior, shall be borne by the authority that initiated the procedure.

With regard to expert witnesses, i.e., expert testimony in administrative proceedings, the rule is that the party bears the incurred costs when the proceedings are initiated at the party's request, except in cases where the costs are caused by the expert's fault and misconduct. When the procedure is initiated *ex officio* or in the public interest, all costs, including expert costs, are borne by the authority that initiated the procedure.

[5] Član 2, stav 2 Ustav BiH ("…ima prednost nad svim [X]").

The basic criteria for determining the cost of the administrative procedure are the benefit of conducting the procedure, the criterion of liability, and the criterion of success. According to the criterion of success, the costs are borne by the party to whose detriment the procedure was terminated. When two or more parties with opposing interests participate in the administrative procedure, the party that initiated the procedure, and to whose detriment the procedure was resolved, is obligated to compensate the opposing party for justified expenses incurred by the party by participating in the procedure. Concerning the criterion of liability due to fault for the occurrence of costs, the costs are borne by each person who participated in the procedure. Regardless of the role they had in it, each person is obligated to bear all costs caused by guilt or misconduct in the proceedings. These are always the costs of individual actions in the procedure, and not the costs of the procedure in its entirety, because they are borne by the party who initiated the entire procedure, and to whose detriment the procedure concluded. Concerning the criterion of benefits of conducting the proceedings, all costs in one-party administrative matters are borne by the party at whose request the proceedings are conducted and in whose interest the proceedings are concluded. In case the administrative matter ends with a settlement, each party bears its own costs of the procedure, unless the parties agree otherwise. Regarding the submission of a request for reimbursement of expenses and for a reward (expert, interpreter), the time is not precisely determined for the party, while in relation to witnesses, experts, and interpreters, it is determined that the request for reimbursement of expenses should be submitted during the hearing itself. The party may be exempted from paying the costs in whole or in part, provided that he is unable to bear them. A decision on costs can lead to an illegal act only in respect of the dispositive (relating to costs – whether the official estimated the costs incorrectly or did not estimate them at all). The cost is influenced by: investigation, expertise, and proof.

13. CONCLUSION

It is known that the true professional civil service is the one that represents a meaningful state and social activity and that manifests itself in the management of processes and relations between the state and citizens, either as individuals, natural or legal persons, through authoritative action in order to exercise rights as subjective powers, fulfilling obligations and protection of public interest. Administration is therefore always viewed as a public service in the context and interaction of internal relations, internal law, and administrative affairs (Selimić, 2022).

The modern democratic management of today has led to the transformation of the role of both the state and citizens so that citizens no longer have a passive role and are no longer perceived as subjects over whom a state authority performs some functions. A citizen is viewed as a subject who, as a bearer of rights and obligations in legal activities, becomes an active actor, i.e., a partner who can contribute to general well-being. Citizens' contribution, cooperation, and involvement are encouraged and become a necessary prerequisite for democratic and effective administration and economic development of the country. In this altered context, it is necessary to adapt the way of making administrative decisions and providing state administration services. This includes a new place that is assigned to values, such as transparency, simplicity and clarity, willingness to participate that enable the administration to respond to the needs of citizens and

its effect to be aimed at citizens.

The issue of administrative decision-making is certainly a central issue in the reform of administration in any modern and democratic state, and of course also in Bosnia and Herzegovina, which after the aggression tried to connect with the states of the former Yugoslavia. During that time, the member states of the European Union used a large number of legal principles of administration, such as the principle of the rule of law, the principle of legitimate expectations, proportionality, transparency, impartiality, and equality before the law. These principles are embedded in institutions and administrative procedures and reflect the concept of a "single European administrative area". In such a system of administrative decision-making, the focus is put on: reducing the arbitrariness of the bureaucracy to ensure the efficiency and predictability of public administration in providing services to citizens.

I believe that this work will contribute to reaching European standards of administrative decision- making. Therefore, I appreciate that it is necessary, before considering the recommendations for harmonizing the administrative procedure in Bosnia and Herzegovina with the European administrative area, to carry out the following activities:

- Carry out a comprehensive analysis of the existing situation and potential in the area of distribution of administrative competencies and application of modern forms of organization and operation of public administration in Bosnia and Herzegovina as a transition country. This kind of analysis has so far been carried out only to a limited extent and only in certain segments;
- Emphasize the advantages of the reform of administrative competencies in several segments, such as financial results, economic development, efficiency and effectiveness of administrative decision-making, transparent and responsible administrative action, increase in user satisfaction and the level of overall social development, global competitiveness and integrativeness of subjects of social regulation, and similar;
- Determine the criteria and propose one or more models for the inclusive and optimal distribution of administrative responsibilities in social regulation systems, with special reference to countries in transition, i.e., Bosnia and Herzegovina;
- To answer the question of whether it is possible to create a universal and permanent model of optimal distribution of administrative competencies in the system of social regulation;
- To determine the optimal forms of organization and action in order to realize the role of administrative bodies in the system of social regulation;
- To determine the extent to which it is possible to delegate and allocate administrative responsibilities in relation to the fundamental principles of the state, constitutionality, sovereignty and the rule of law;
- Anticipate trends in the over-composition of the role of different branches of government and the potential takeover of authority in favor of public administration bodies;
- To predict trends in the development of competencies and relationships between different forms of socio-political organization and the constituent elements of those forms, such as international organizations, states, sub-state political-territorial communities, public authorities, public and private legal and natural persons exercising public powers and

other stakeholders group of public importance.

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