UDC.347.91(497.5)
Original research paper

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THE SIGNIFICANCE OF THE REQUEST FOR EXTRAORDINARY REVIEW OF VALIDITY OF THE FINAL VERDICT IN THE PROTECTION OF SUBJECTIVE RIGHTS OF THE PARTIES IN ADMINISTRATIVE DISPUTE

Abstract

Since 2010 extraordinary legal remedy has been used in the Croatian system of administrative adjudication known as the request for extraordinary review of legality of the final verdicts. Through the grammatical, logical and teleological methods of interpretation, the paper analyzes the provisions of the Administrative Disputes Act from 2010 regulating this remedy. Changes of the norms of the remedy made in accordance with the amendments of the Administrative Dispute Act from 2012 and 2014 are briefly mentioned. The specificities of submitting legal remedy are especially emphasized in terms of its reasons, applicants, deadlines and contents of the request, grounds for review and the authorities of the Supreme Court of the Republic of Croatia in deciding on the submitted applications. Furthermore, there are indications of certain imprecision and lack of legal regulation. Statistical data of the State Attorney Office of the Republic of Croatia and the court practice of the Supreme Court of the Republic of Croatia in the period from 2012 to 2017 in reference with the submitted requests which are analyzed based on casuistic methods. A special chapter is devoted to a brief review of the normative regulation of legal remedy in Serbia, Bosnia and Herzegovina and Montenegro, using a comparative method and in conclusion final considerations of the scientific issues are presented.

***Key words**: extraordinary (legal) remedy, request for extraordinary review of validity of final verdicts, Administrative Dispute Act,*

administrative courts, High Administrative Court of Republic of Croatia, Supreme Court of Republic of Croatia

Introduction

A new machanism for the legal protection of citizens was introduced in the form of extraordinary legal remedy called the request for extraordinary review of legalitly of the final verdicts (hereinafter: request) within the framework of Croatian administrative adjudication system by passing the new Administrative Disputes Act in 2010. This paper initially analyses the Croatian normative request regulations by applying grammatical, logical and teleological interpretation methods in accordance with the ADA from 2010. Furthermore, it briefly reflects on the changes regarding the norms again in accordance with the changes and amendements of the ADA from 2012 and 2014. It also emphasizes the specificities of submitting the legal remedy in terms of its reasons, possible applicants, proscribed deadlines and contents of the request as well as the grounds and reason s for its review and the authorities of the Supreme Court of Croatia in deciding on the submitted requests. Moreover, there are indications of certain imprecisions and lack of legal regulation. The third part of the paper shows the statistical data of the State Attorney Office of the Republic of Croatia and the court practice of the Supreme Court of the Republic of Croatia in the period from 2012 to 2017 in reference with the submitted request which are analyzed based on casuistic methods. A special part in the paper is devoted to a brief overview of the legislative regulations regarding the request for (extraordinary) review of the final verdicts in Serbia, Bosnia and Herzegovina and Montenegro using the comparative method. The final part of the paper presents the conclusive and critical considerations of the scientific issues while at the same time implies possible, practical and useful propositions and improvements with the aim of changing the current legal text.

1. Description of the legal structure of the request for the extraordinary review of legality of the final verdicts in the administrative dispute in accordance with the Administrative Disputes Act from 2010

Through the Administrative Disputes Act from 2010[1] (hereinafter: ADA 2010) Art. 78 has been introduced (submitting requests and decision-making process) which represents the extraordinary legal remedy – a request for extraordinary review of the legality of the final verdicts (hereinafter: request). From the nomotechnical aspect, the request is incorporated within the third part of the ADA from 2010 called "Legal remedies" and it is included in the chapter III "The request for extraordinary review of legality of the final verdicts". The analyzed legal remedy is normed within

[1] Administrative Disputes Act, Official Gazette, No. 20/10. https://narodne-novine.nn.hr/clanci/sluzbeni/2010_02_20_483.html. Accessed: 1 June 2018.

one legal article composed out of four paragraphs. Those authorized to submit the request are the parties involved in the administrative dispute and are only able to propose to the State Attorney`s Office of the Republic of Croatia (hereinafter: SAO) to submit the request for extraordinary review of legality of the final verdict reached by the Administrative Court or the High Administrative Court of the Republic of Croatia (hereinafter: HAC). What is noticeable initially is the active legitimation for submitting the request which solely belongs to the SAO. Đerđa and Šikić support this legislative remedy since they consider that dissatisfied administrative dispute parties, this way, do not pose an excessive burden with their request to the Supreme Court of the Republic of Croatia (hereinafter: SCRC).[2] If the party from the prior administrative dispute initiates the request submission, the SAO is obligated to inform the party that there are not legitimate reasons for using the request.[3] This is a direct consequence of the constitutional provision that every person has the right to file and submit complaints as well as make propositions to state and other public bodies while the public bodies` duties are to respond to the citizens` requests. [4] On the other hand, Šprajc points out that the SAO itself can according to the Art. 17 para. 4 of the ADA from 2010 be regarded as an administrative dispute party[5], which the legislative body clearly indicates by "legally authorized public body". One of the drawbacks the legislative body is responsible for is that according to the ADA from 2010, the request is considered a unilateral extraordinary legal remedy. Considering that only the SAO is authorized to submit the request, the question that arises is can the request keep its existing form since it obviously favors one of the parties from the prior administrative dispute and therefore does not support the equality of arms which is one of the foundations of the *acquis communautaire*. The legal remedy, in our opinion, only allows indirect protection of rights and legal interests of the parties.

1.1. The object of submitting the request

Legal imperfections are immediately noticeable when regarding the object of the request. The name of the legal remedy, namely, indicates that it is to be applied only against the final verdicts reached within the administrative dispute excluding therefore the court decisions. By referring only to the final verdicts, the legislative

[2] Đerđa D., Šikić M., *Komentar Zakona o upravnim sporovima*, Novi informator, Zagreb, 2012, pp. 293-294.
[3] Šprajc, I., *Zahtjev za izvanredno preispitivanje zakonitosti pravomoćne presude: Novo pravno sredstvo u hrvatskom Zakonu o upravnim sporovima*, Sveske za javno pravo, vol. 3, No. 9, 2012, p. 72.
[4] Art. 46 of the Constitution of the Republic of Croatia, Official Gazette, No. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.
[5] Šprajc, *op.cit.* note 3, p. 68.

body narrows the object of this extraordinary legal remedy. We, however, emphasize the necessity to both harmonize and specify the name and the expressions of the extraordinary legal remedy in accordance with the object of the request. Furthermore, imprecisions and carelessness of the legislative body should not in any way affect the level and quality of legal protection attained by submitting the request. Considering that the current regulations clearly state that the request refers both to the final verdicts and court decisions, this should not be causing such a problem as it is.

1.1.1. The reason for submitting the request

The reason for the request submission is the violation of law. One of the arguments supporting its insufficient regulations is the reason for submitting the request. The legislative body has used a general expression, due to the violation of law. The legal science has taken opposing sides when interpreting the expression "due to the violation of law". On the one hand, Šprajc emphasizes that the legislative body has not made any defaults, since such formulation of the reason for submitting the request refers to every violation of every law and regulation applied in the prior administrative dispute.[6] On the other hand, however, the explanation more acceptable to us is based on the point of view provided by Staničić, who claims that "the violation of law" can be applied to both procedural and material matters, but also to falsely or incompletely determined facts, circumstances as well as inappropriate jurisdiction.[7]

1.1.2. The deadline for submitting the request

The request can be submitted by the SAO within the 6 months from the day the final verdict has been delivered to the parties. The SAO can also submit the request *ex offo*. Even though the legal context is not explained in much detail, it is presumed that the six-month period starts by delivering the final verdict to the last of the parties involved in the administrative dispute. However, the SAO could also submit the request 6 months after the court decision has been declared (if they are resolved in a dispute) or since the day the party has received the court decision (if the decision is resolved outside a dispute). The current ADA does not accept the subjective and objective combination, but only the objective six- month deadline. The institute *restitution in integrum* regulated by Art. 52 of the current ADA[8] is the only accepted and allowed means of correction for missing the six-month deadline. The problem in the interpretation is, however, whether the deadline refers to the party failing to submit

[6] Ibid, p. 65.

[7] Staničić, F., *Mogućnost primjene izvanrednog preispitivanja zakonitosti pravomoćne presude protiv odluka Visokog upravnog suda*, Informator, No. 6399, 2016., p. 13.

[8] According to Art. 52 of the ADA from 2017, the court might allow the proposition for reversal of the prior state (*restitutio in integrum*) if the request is not submitted only if there are justified reasons for missing the deadline.

a special proposal to the SAO in the provided period or the SAO failing to submit the request to the SCRC within that time? It is to be assumed that the SAO employs professionals whom in any case such transgressions are not permitted and even if they do appear, they are regarded as the obstruction of the request.

1.1.3. The content of the request

The legislative body has not officially proscribed the content of the request, as well as that of the special proposal used by the party when suggesting to the SAO for submitting the request to the SCRC. Every legal remedy needs to have a minimum of elements: the body submitting the legal remedy and the decision against which it is submitted. The request should contain: a) information about the body submitting the request (also depending on whether it has been submitted based on a proposal by the party or *ex offo* by the SAO), b) the reference of the decision and the name of the court against whose decision the request has been submitted, c) the reference of the court to which the request is being submitted, d) basis and reasons (description of the law violation) for disputing the court decision and e) signature and stamp of the submitting body.[9] If the requests lack any of the aforementioned elements, the current ADA does not have a regulation regarding the request incompletion or incomprehensibility. The only proscribed case when the request is denied is if it is submitted untimely or by an unauthorized person. It is, therefore, necessary not only to pass a regulation which taxatively regulates the content of the request, but also amendments within the deadline determined by the SCRC for the SAO to potentially make corrections needed for the request proceedings.

1.1.4. The decision-making authorities of the Supreme Court of the Republic of Croatia regarding the request

The validity of the request is determined by the SCRC in a panel of 5 judges. The purpose of this extraordinary legal remedy is fulfilled by the constitutional and legally regulated role of the SCRC as the highest instance court and is noticeable in applying equal rights and practicing equality for everyone involved in its application.[10] The jurisdiction of the SCRC in the decision-making process regarding extraordinary legal remedies against the final verdicts in the Republic of Croatia is determined by the Law on Courts Art. 20 paragraph 3[11], according to which, without legal regulation of the remedies and against the decisions made by the HAC representing the highest

[9] Đanić Čeko, A., *Žalba u upravnom sporu u hrvatskom i poredbenom pravu*, doktorska disertacija, Pravni fakultet Sveučilišta u Zagrebu, Zagreb, 2016, pp. 275-276.
[10] Art. 109, para. 1 of the of the Constitution of the Republic of Croatia, Official Gazette, No. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.
[11] Law on Courts, Official Gazette, No. 28/13, 33/15, 82/15, 82/16.

administrative-court instance, the performing of the constitutional duty of the SCRC would not be possible.[12] The modalities of the decision-making process in the SCRC regarding the request are the following: 1) accepting the request, nullifying the verdict and returning the matter to be additionally revised (cassatory decision) or 2) changing the verdict (reformatory decision). Another legal imperfection is to be noticed and this time regarding the question of the type of the decision – in which case does the SCRC reach the cassatory and in which the reformatory decision? By analyzing the SCRC current practice, Šprajc considers that the SCRC has used its cassatory jurisdictions only in cases where the Administrative Court of the Republic of Croatia has made mistakes regarding the prior decisions or the prior determined facts and/or procedural irregularities. The reformatory jurisdictions have, on the other hand, been used only if the material law was wrongly applied.[13] By doing so, the vast jurisdiction of the SCRC when reaching the reformatory decisions tends to overtake the role of the HAC, which in the future might cause difficulties in the judicial practice.

1.2. Changes in the regulation of the request in accordance with the Final Proposal of the Amendments to the Administrative Disputes Act from 2012

The Final Proposal of the Amendments to the Administrative Disputes Act from 2012[14] (hereinafter: FPAADA 2012) has influenced the change of the object of request. In the ADA from 2010, the legislative body used the expression court decision, which is a broad term incorporating both the final verdict and the court decision. In Art. 79 paragraphs 1 and 2 of the FPAADA from 2012 the term: "court decision" is replaced by the term: "verdict". This formulation clearly indicates that the request cannot be submitted against the court decision reached by the administrative court or the HAC, but only against the final verdict. This has been stated in and approved by the decision of the SCRC.[15] A new article is being introduced in the FPAADA from 2012 regulating the following: the court against whose decision the request is being submitted and the legal body in the role of the defendant are obligated,

[12] As well as Đerđa, Šikić *op. cit*. note 2, p. 293.
[13] Šprajc, *op. cit.* note 3, p. 78.
[14] Final Proposal of the Amendments to the Administrative Disputes Act, P. Z. 94, Government of the Republic of Croatia, Zagreb, November 2012., file:///C:/Users/Laptop/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/PZ_94%20(1).pdf. Accessed 5 June 2018.
[15] Decision of the Supreme Court of the Republic of Croatia, U-zpz 2/13-2 from 18 June 2013

without any delay, to deliver all the files regarding the matter to the SCRC on its request.[16]

1.3. Certain improvements in the regulation of the Final Proposal of the Amendments to the Administrative Disputes Act from 2104

The Final Proposal of the Amendments to the Administrative Disputes Act from 2014 (hereinafter: FPAADA 2014)[17] along with being extraordinary, devolutive, non-suspensive and independent has been assigned one more feature and that is being bilateral. The feature has been implicated through the formulation "…*if the court with the proper jurisdiction does not dismiss the request, it is to be delivered to the opposing party that has a 30-day long deadline to submit a response to the request*…". Up until introducing this change, the equality of arms could not have been achieved, especially if the SAO was the party of the administrative dispute, since it would have a significant advantage over the opposing party. The interpretation of the formulation: *submitting a response to request* indicates an optional obligation of the opposing party. In case the opposing party failed to submit a response for whatever reasons, there would be no harmful consequences for the party. The proscribed deadline of 30 days is only instructional since the party must be enabled to submit a response by the time the proceedings regarding the request will have finished. Both administrative dispute and extraordinary legal remedies possess the feature of bilateralism. There is, however, a better nomotechnical solution regarding the dispute renewal. The reason for that is the expression "other" rather than the expression "opposing" party, which enables the person of interest, who is also according to the Art. 16 of the FPAADA from 2014 the administrative dispute party, to participate in the request proceedings. The correction referring to the object of the request was introduced through FPAADA from 2014 by adding the term: "and court decisions" behind the existing formulation: "final verdicts" in the Art. 78 paragraph 1. Apart from changing the described formulation, there are still alternations to be made regarding the title of the legal remedy as was mentioned earlier. Until the introduction of the FPAADA in 2014 there was no regulation of the SCRC request proceedings. By introducing the changes, a new paragraph was formed norming the request dismissal if the SCRC determines deadlines have been neglected or an unauthorized person has submitted the request. This way the fulfillment of all the formal presuppositions for the request has been

[16] Final Proposal of the Amendments to the Administrative Disputes Act, P. Z. 94, 2012, p. 5.
[17] Final Proposal of the Amendments to the Administrative Disputes Act, P. Z. 690, Government of the Republic of Croatia, Zagreb, November 2014., file:///C:/Users/Laptop/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/PZ_690%20(1).pdf. Accessed 6 June 2018.

regulated. There are several cases in which the SCRC has dismissed the request without any legal grounds. One of those cases is the decision of the SCRC for dismissing the request for determining the level of legality of a general act. The decision made by the SCRC was unsupported since there are only two valid reasons for the request dismissal. After having analyzed the practice of the SCRC it is to be noticed that the highest number of requests was submitted by an unauthorized person or a party from the prior administrative dispute directly or through an intermediary (most frequently a lawyer), which was at the same time the reason for its dismissal. The request is the only institute of the administrative law in which the SCRC has a direct contact with the administrative adjudication.[18] The legislative body added a paragraph to the FPAADA from 2014 which indicates that the SCRC is to deal with the request in a non-public session, and the refuted decision is to be questioned only within the limits set by the request. The potential correction of the regulation of the request is evident in proscribing the necessity of holding a verbal discussion, since the SCRC regarding the request proceedings determines both factual and legal matters, which is the case when the European Court of Human Rights insists on holding a verbal discussion.[19] Due to the lack of legal and normative regulation, the extraordinary legal remedy and the FPAADA from 2104 have both been modified and improved regarding the request proceedings of the SCRC.

2. The analysis of the statistical data referring to the number of submitted requests for extraordinary review of legality of the final verdicts in the administrative dispute through an observed period

Since the dispute parties are only the initiators of proposals for requests to the SAO that later forwards them to the SCRC, it is necessary to determine the exact number of the proposals submitted to the SAO in the time period in which the ADA was enforced, that is from January 1st, 2012 to December 31st, 2017. As the SAO is the only legally authorized body for the submission of the request, it is of crucial importance to determine the number of the requests (from the total number of the proposals submitted by parties) they forwarded to the SCRC. This way the efficiency of this legal remedy is to be established since it represents the second available form of legal protection in the administrative dispute. The total number of proposal submitted by the parties for further submission of the requests and the total number of requests submitted to the SCRC by the SAO is going to be analyzed by using tables based on the data provided by the SAO. Moreover, an additional analysis of the total number of submitted requests regarding the legality of the final verdicts, that is final

[18] Staničić, F.; Britvić Vetma, B.; Horvat, B., *Komentar zakona o upravnim sporovima*, Narodne novine, Zagreb, 2017, p. 258.

[19] Šikić, M., *Primjena zahtjeva za izvanredno preispitivanje zakonitosti pravomoćne presude*, Zbornik radova Pravnog fakulteta u Splitu, vol. 54, No. 1, 2017, p. 189.

verdicts and court decisions reached by the Administrative Courts and the HAC will be conducted.[20]

Table 1 The comparison of the total number of the proposals submitted to the SAO and the total number of the requests submitted to the SCRC (January 1st, 2012 – December 31st, 2017)

	2012.	**2013.**	**2014.**	**2015.**	**2016.**	**2017.**
The number of proposals submitted to the SAO	190	176	155	105	117	141
The number of the requests submitted to the SCRC	73	40	18	16	39	51

Source*: interpretation by the author of the paper (according to the data provided by the SAO)*

According to the available data provided by the SAO it is visible that in the year **2012** there were **190** proposals for submitting the requests which is the highest number of proposals in the observed period. From that number **61** proposals (35,06%) were submitted against the final verdicts of the administrative courts and **7** proposals (4,02%) against the court decision of the administrative courts. **100** proposals (57,47%) were against the final verdicts reached by the HAC and **6** (3,45%) against their court decisions. To summarize, in 2012 there were **174** proposals for submitting the requests against court decisions of the administrative courts and the HAC. From 190 proposals submitted by the parties involved in the administrative disputes, the SAO has forwarded **73** requests to the SCRC. In 2013 there were **176** proposals, **165** were against the decisions reached by the administrative courts and the HAC: **55** (33,33%) against the final verdicts reached by the administrative courts and **1** (0,61%) against the administrative court decision; **92** (55,76%) were against the final verdicts reached by the HAC and **17** (10,30%) against the court decisions reached by the HAC. From the total number of 176 submitted proposals, the SAO has forwarded only **40** requests; **5** against the final verdicts of the administrative courts and **35** against the final verdicts of the HAC. According to the data available for 2014, there were **155**

[20] According to available data for the period from January 1st, 2012 to December 31st, 2014

proposals, which is the least in the observed period. **80** proposals (55,56%) were against the final verdicts reached by the administrative courts and **5** (3,47%) against the administrative courts` decisions. **58** (40,28%) were against the final verdicts of the HAC and **1** (0,69%) against the HAC court decision. To sum up, **144** proposals were against the court decisions reached in the administrative dispute. The SAO has submitted only **18** requests to the SCRC from the total of 155 proposals. **7** requests were against the final verdicts of the administrative courts and **10** against the final verdicts reached by the HAC and **1** constitutional law suit against the verdict of other courts. When comparing the total number of the submitted proposals in the observed period (**483**) and with reference to the court decisions reached by the administrative courts and the HAC, the number of requests submitted to the SCRC is quite small (**128**). From the ratio of the submitted requests against the final verdicts of the administrative courts and the HAC, it is to be concluded that there were more requests against the final verdicts reached by the HAC (**91**) than against those reached by the administrative courts (**34**). A small number of requests was submitted against the court decisions of the administrative courts (**1**) and the HAC (**2**). According to the data provided by the SAO, there were 116 proposals submitted by the parties in 2016, whereas the SAO submitted only 39 requests to the SCRC. In 2017 there were 141 proposals and only 51 requests to the SCRC. The available reports[21] regarding the work of the SCRC do not present statistical data regarding the situation of the submitted and resolved requests by the SAO. From the insight gained in the judicial practice of the SCRC (from 2012 to 2015) it is visible that referring to the court decisions of the SCRC the requests were mostly dismissed since they were not properly submitted by the SAO but by the dispute parties which have no legal authority to do so. In 2016, there were 44 submitted requests and only 2 of them were resolved, while in 2017 there were 52 requests from which 19 were resolved.[22]

3. Brief overview of the normative regulation of the request for (extraordinary) review of a court decision in administrative dispute in selected comparative legal systems

[21] Statistical reports on the work of the Civil Department of the Supreme Court of the Republic of Croatia are available on http://www.vsrh.hr/EasyWeb.asp?pcpid=28. Accessed: 10 June 2018. More detailed case analysis for the period 2012-2015 see Đanić Čeko, *op. cit.* note 11, pp. 275-278.

[22] Also see Report of the president of the Supreme Court of the Republic of Croatia regarding the status of the judiciary authorities in 2017, Supreme Court of Republic of Croatia, Zagreb, April 2018, pp. 59-62, file:///C:/Users/Laptop/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/IZVJ_PREDSJ_VRHOVNOG_SUDA_2017.pdf. Accessed: June 10th 2018.

3.1 Normative regulation of the request for review of a court decision in Serbian law in accordance with the Administrative Disputes Act from 2009

Administrative-judicial protection in Serbian law is provided based on the *Administrative Disputes Act from 1996* (hereinafter: ADA 1996)[23] from the Federal Republic of Yugoslavia. In the framework of the judicial reform[24], requirements for changes in the administrative court system have been set in order to revise the ADA from 1996, eliminate certain shortcomings and gaps, and adjust to international and European standards[25] (in particular with the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the 2006 Constitution of the Republic of Serbia). Therefore, the new Administrative Disputes Act of the Republic of Serbia from 2009 was adopted. (hereinafter: ADA 2009).[26] The jurisdiction for administrative dispute resolution from 1 January 2010 belongs to the Administrative Court which is a special jurisdiction court deciding in a panel of three judges.[27] The Supreme Court of Cassation is the highest instance court in the Republic of Serbia with its headquarters in Beograd and it is authorized to make decisions regarding extraordinary legal remedies, it can change or accept the court decisions of other courts in the Republic of Serbia as well as intervene in other legal matters. The new organization of administrative adjudication in Serbia does not accept the second-instance courts in comparison to Croatian administrative adjudication where the courts are completely acceptable. The ninth part of the law regulates the extraordinary legal remedies: 1) request for review of a court decision (Art. 49-55) and 2) repetition of the procedure (Art. 56-65). The Supreme Court of Cassation reaches the final decision in the procedure regarding the request for the court decision review (hereinafter: request)

[23] Official Gazette of the Federal Republic of Yugoslavia, No. 46/96. Judicial jurisdiction in administrative disputes is ensured through the courts of general jurisdiction (District Courts) and the Supreme Court of Serbia (especially Administrative Division).

[24] Read more Rakić-Vodinelić, V.; Knežević Bojović, A.; Reljanović, M., *Reforma pravosuđa u Srbiji 2008.-2012*. Pravni fakultet Univerziteta Union i Službeni glasnik, Beograd, 2012, p. 15-114. See also National Judicial Reform Strategy for the period 2006-2011 and following action plan, http://arhiva.mpravde.gov.rs/lt/articles/pravosudje/nacionalna-strategija-reforme-pravosudja/, accessed: 2 June 2018. The continuation of the reform activities set up in 2006 was carried out by the Ministry of Justice and State Administration, by drafting a text of the Judicial Reform Strategy for the period 2013-2018 and the Action Plan for the Implementation of the Strategy.

[25] About this see more Vučetić, D., *Serbian judicial review of administrative acts and European standards for administrative disputes*, Facta Universitatis, Law and Politics, vol. 3, No. 1, 2005, pp. 73-90.

[26] Official Gazette of the Republic of Serbia, No. 111/09 (hereinafter: ADA 2009). https://www.paragraf.rs/propisi/zakon_o_upravnim_sporovima.html. Accessed 2 June 2018.

[27] See Art. 8 of the ADA 2009.

against the final verdict of the Administrative Court where s council of three judges reviews the request.[28] There is a slight discrepancy between the improved Serbian Judiciary Act[29] and the Croatian regulations where the Supreme Court, being the court of highest instance in the Republic of Croatia, forms a panel of five judges which then make decisions regarding the extraordinary legal remedies against the final verdicts of the courts in the Republic of Croatia. The ADA from 2009 represents a simplified and more transparent system of legal remedies within the administrative-judicial procedure.

Those authorized to submit the request are either the party itself or the competent State Attorney. According to Art. 49 para. 2 of the ADA from 2009 there are three conditions to be fulfilled in order to be able to submit the request: 1) if the law allows it, 2) if the court has reached the verdict in the dispute of its full jurisdiction (Art. 43 of the ADA from 2009), 3) in the matters where a complaint was excluded from the administrative dispute. The law clearly states the acceptable reasons for making a request, as well as its content[30] and the way it should be submitted, depending of course on the person submitting it.[31] Regarding the basis for refuting the court decision, those authorized can claim that the law has been violated or some other regulation, a general act or procedure regulations have not been followed which might have affected the matter to be resolved differently. The deadline for submitting the request is 30 days that is 60 days[32] since the final verdict has been delivered to the party or to the State Attorney. The Supreme Court of Cassation reaches its decision regarding the request without holding an oral discussion of issues. Also, depending on the usual proceedings, the Supreme Court of Cassation[33] can declare the request to be untimely, unpermitted, incomplete, incomprehensible or not submitted by an authorized body. There is no appeal against the decision to dismiss the request. If the request is not dismissed, it is delivered (within a certain deadline) to the opposing

[28] See Art. 9 of the ADA 2009.

[29] See Art. 32 of the Law on Organization of Courts of Serbia, Official Gazette of the Republic of Serbia, No. 116/08, 104/09, 101/10, 31/11, 78/11, 101/11, 101/13, 40/15, 13/16, 108/16.

[30] See Art. 52 para.1 of the ADA 2009.

[31] There are three ways of submitting the request accordingly Art. 20 para. 1, 2, 4 of the ADA 2009. If a natural person submits a request, then it should be done through a lawyer.

[32] If a court decision has not been submitted to the competent State Attorney, he can submit a request within 60 days from the date of delivery of the decision of the court to the party to which it was last submitted. The verdicts are usually not delivered to the State Attorney except in the cases where he is involved in the administrative dispute (he initiates it since the administrative act violates the law by harming public interest). See more Jerinić, J., *Sudska kontrola uprave*, Pravni fakultet Univerzitet u Nišu, Službeni glasnik, Beograd, 2012, pp. 335.

[33] See Report on the work of the Supreme Court of Cassation for 2017, http://www.vk.sud.rs/sites/default/files/attachments/Vrhovnikasacioni%20sud.pdf. Accessed 2 June 2018.

party so they can form a reply. In addition, the court can either dismiss the request and declare it unfounded or accept it and nullify or modify the court decision. If the Supreme Court of Cassation nullifies the court decision, the subject is returned to the court whish initially issued it. That court is then obligated to follow all the proceedings and discuss the issues emphasized by the court of higher instance, after which it must reach a satisfying court decision. The law determines the deadline (without any delay, and 30 days at the latest) during which the court against whose decision the request has been submitted and the accused party is obligated to deliver all the files at the request of the court. Conclusively, the system for extraordinary legal remedy within the Serbian administrative dispute is well-organized and detailed and can be used as a positive guideline for the Croatian legislation when it comes to eliminating imprecisions and irregularities.

3.2 Legal regulation of the request for review of a court decision according to the Law on Administrative Disputes of Bosnia and Herzegovina

According to the *Law on Administrative Disputes of Bosnia and Herzegovina* (hereinafter: LAD BH)[34] administrative disputes are resolved by the Administrative Division of the Court of Bosnia and Herzegovina[35] in a panel of three judges (an individual judge may exceptionally decide).[36] Therefore it is concluded that the administrative dispute is a single-stage procedure.

The fifth cahpter of the Law named „Extraordinary legal remedies“ (Art. 40-60) regulates: 1) request for the repetition of the procedure (Art. 41-48), 2) request for review of a court decision (hereinafter: request) (Art. 49-54), 3) request for protection of legality (Art. 55-60).[37] The verdict (or decision) is final and can be challenged only by extraordinary legal remedies. The court decisions that can be refuted by the request

[34] Official Gazette of Bosnia and Herzegovina, No. 19/02, 88/07, 83/08, 74/10 (hereinafter: LAD BH).
http://www.ads.gov.ba/v2/index.php?option=com_content&view=article&id=1976%3Azakon-o-upravnim-sporovima-bosne-i-hercegovine&catid=52%3Aupravni-postupak-i-upravni-spor&Itemid=76&lang=en. Accessed 3 June 2018. Administrative dispute in Bosnia and Herzegovina is regulated by special laws of the Republika Srpska, the Federation of Bosnia and Herzegovina, the Brčko District and the Republic of Bosnia and Herzegovina. Consequently, four Administrative Dispute Acts are valid and the issue of establishing administrative courts is very complex. See more Krsmanović, P., *Organizacija i nadležnost upravnih sudova i upravni spor pune jurisdikcije u Bosni i Hercegovini*, u: Upravni spor i organizacija upravnih sudova, Šarčević, Edin (ur.), Fondacija Centra za javno pravo, Sarajevo, 2013, pp. 135-139.

[35] http://www.sudbih.gov.ba/stranica/40/pregled. Accessed 4 June 2018.

[36] According to Art. 5 and 7 of the ADA BH.

[37] Legal remedies according to LAD BH see more Đanić Čeko, *op.cit*. note , pp. 180-185.

are the final verdicts reached by the Administrative Division of the Court of Bosnia and Herzegovina as well as those reached by the Brčko District Supreme Court all within the administrative dispute. The reasons for submitting the request refer to violation of Bosnia and Herzegovina law or the violation of the procedure that preceded the reaching of the refuted court decision. The request must be formed in accordance with the regulations proscribed by the Art. 20 of the ADA BH and is submitted to the court against whose initial decision it is being formed. The deadline for submitting the request is 30 days since the delivery of the court decision. The request is decided upon by the Division of Appeals consisting of three judges. The jurisdiction for making the decision regarding the request (Art. 51-54 of the ADA BH), is regulated as that in the Serbian law. There is a slight difference regarding the regulations in case of incomplete or incomprehensible requests (Art. 24 of the ADA BH). The Bosnian administrative dispute does not proscribe the deadline in which the subject files are to be delivered to the Division of Appeals.

3.3 Legislative regulation of the request for extraordinary review of a court decision according to the Law on Administrative Dispute of Montenegro from 2016

In Montenegrin law, judicial control of the administration is ensured accordingly through the *Law on Administrative Dispute of Montenegro* (hereinafter: LAD MN).[38] Administrative disputes are solved by the Administrative Court of Montenegro and the Supreme Court of Montenegro. The decisions are reached by a panel of three judges and exceptionally by an individual judge. The system of extraordinary legal remedies[39] is arranged in a way that involves two legal remedies (the sixth chapter of the LAD MN „*Review of a court decision and repetition of the procedure*“: 1) request for review of a court decision (Art. 41-47), 2) request for the repetition of the procedure (Art. 48-55). The request can be submitted by the parties involved in the administrative dispute. The jurisdiction to make decision within the granted field of responsibility belongs to the Supreme Court, which reaches its decisions on a non-public session presided by three judges. When compared with the two previously presented systems, it is obvious that the basis for submitting the request is the violation of the material right and proceedings regulations within the administrative dispute. The deadline for submitting the request to the Supreme Court is 20 days from the delivery of the final verdict reached by the Administrative

[38] Official Gazette of Montenegro, No. 54/2016. Applies from 1 July 2017. http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7B2EA95CC1-6531-4842-A624-255916973BE8%7D. Accessed 4 June 2018.

[39] About the system of legal remedies in this Law see more Đanić Čeko, *op.cit.* note , pp. 178-180.

Court. There is a special legislative article (Art. 45, paragraph 1) which regulates the authority of dismissing the request by issuing a decision. In Serbian, Bosnian and Croatian legislation there is a possibility to dismiss the request in case of not following the proscribed procedural regulations. In the decision-making process[40] the Supreme Court examines *ex offo* whether the procedural regulations (in the administrative procedure) relevant for legal and regular solving of the matter have been followed. The decisions are: a) the verdict by which the request is either accepted or dismissed and b) the court decision dismissing the request. By reaching the verdict through which the request is accepted, the Supreme Court can nullify or alter the decision of the Administrative Court and thus refute the disputed decision of the prosecuted public authority. The given decision cannot be altered so it hurts the party if the request is submitted solely by the party. It is to be concluded from the presented facts that there exists a certain degree of difference within the norming processes of the extraordinary legal remedy in the Montenegrin administrative dispute when compared to the Serbian, Bosnian and Croatian court decisions.

Conclusion

Since the introduction of the ADA from 2010 and by introducing the amendments of the ADA from 2012 and 2014, we consider the request has significantly been modified from the extraordinary legal remedy with insufficient content into a one more acceptable and clearer with regard to content and became an important practical means whose *ratio* is the protection of public interest. Even though there have been many improvements, the request still remains mostly inadequately regulated. Our opinion is that regulating the request in only one legal article is obscure and that the particular parts (regulating the reasons and the content of the request and the request proceedings) should be divided with regard to the analyzed comparative solutions. The legislative body has not responded to matter of the content of the request since there have already been two amendments of the law. A possible solution to this problem has been presented in this paper. We consider the active legitimacy to be the most important element of the future modifications of the request. The current legal regulation evidently violates the

[40] 596 requests were submitted in 2017 against the decisions of the Administrative Court, from which 525 were successfully solved. From the total number of solved requests, 452 decisions (86,1%) were accepted, whereas 72 decisions (13,71%) were dismissed. In 2016 there were 456 requests submitted against the Administrative Court, from which 394 were solved. 331 decisions (84,01%) were accepted and 63 decisions (15,99%) were dismissed. In 2015 there were 384 requests, from which 360 were solved.298 decisions (82,78%) were accepted, 2 decisions (0, 56%) were modified and 57 decisions (15,83%) were dismissed. See Report on the work of the Administrative Court of Montenegro for 2017, Administrative Court of Montenegro, Podgorica, February 2018, p. 10. http://sudovi.me/uscg/izvjestaji-o-radu/. Accessed 5 June 2018.

principle of equality of arms by putting the SAO in a far better position when compared to the other involved parties, especially if it was also one of the parties in a prior administrative dispute. One acceptable solution would from our perspective be a direct submission of the proposal to the SAO without having to submit a special proposal in order for the SCRC even to start revising the request which is at the moment *conditio sine qua non.* Another form of potential regulation improvements is found in the possibility for the party to submit the request through the representing lawyer. This on one hand disables the legal laymen to submit the requests, but on the other hand positively affects the SCRC regarding the amount of work, which is currently the basic argument *in favorem* of the SAO`s exclusive legitimacy. Furthermore, we consider it is necessary to emphasize the need to modify and regulate the name and the regulations of this legal remedy in accordance with the object of the request. Lastly, any imperfections and imprecisions caused by the legislative body are not to influence the level and quality of legal protection which should be ensured by applying the request.

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