Dr. **Boyan T. Georgiev**[1]
Burgas Free University (Bulgaria)

DEVELOPMENT OF ADMINISTRATIVE JUSTICE IN BULGARIA

ADMINISTRATĪVĀS TIESVEDĪBAS ATTĪSTĪBA BULGĀRIJĀ

Keywords: *administrative justice, Supreme Administrative Court, Code of Administrative Procedure, common clause.*
Atslēgvārdi: *administratīvā tiesa, Augstākā administratīvā tiesa, administratīvā procesa kodekss, klauzula.*

1. As a result of social and cultural development a modern state is formed as a complex structural organization composed of public institutions. Administration activity meets its legal boundaries contacting free legal area of each citizen; beyond these boundaries the administration cannot act without committing an offence. By defending the personal interest of every individual citizen, this activity provides legal government, and it is undoubtedly in the interest of the stability and development of the whole society. And what is the degree to which administrative justice provides both public and personal interests is a question of discussion lasting in modern scientific literature as well.

There are a dominating concept that public and personal interests are not conflicting but in cases of collision between them they could not have been contented at the same time. Therefore, priority is given to the public interest. By 1948 Bulgarian legal literature considers administrative justice as an objective one that is directed to the defense of public interest from legal recovery

[1] My name is Boyan Georgiev and I teach Administrative justice and process in Faculty of Law at Burgas Free University, Burgas, Bulgaria. I teach a public administration both to students of law and bachelors and masters of public administration. My scientific researchers are in the area of Administrative justice, Administrative law, Administration and governing.

which is offended by the published administrative acts and by the decisions published from the administrative jurisdictions.

2. 26 of May 1879 is considered as an official date for establishing the Supreme Court. It existed for too short of a time as it ended its activity for South Bulgaria when the Organic Statute was in force in Eastern Rumelia on 14 of April 1879. The Supreme Court worked in Principality of Bulgaria till 25 of May 1880 when the Second Ordinary Assembly by an Addition to the Temporary Court Rules accepted the Law for the Organization of the Courts. With that law the rights of the administrative courts have been transferred to the common court offices.

The Supreme Court that was created by the Temporary Russian Administration in Bulgaria had too short life and therefore is difficult an appraisal to be made for its practical role in administrative litigation. Its creation was a necessity because of a strong need for equal law interpretation and insurance of unity in legal practice at case decisions. However, it is important to say that from the very beginning of foundation of Bulgarian state organization has demonstrated an understanding and a will by the founders for creation of a modern three-instance administrative justice which execute a permanent control on the legality in the work of new-created administrative authority.

3. For the first time in the history of administrative justice in Bulgaria an independent Supreme Administrative Court was organized in the vassal district Eastern Rumelia which had been founded as a result of Berlin Congress /June 1878/. According to Article 18 of the Berlin Contract a European commission was organized with the purpose of working out the Organic Statute of the district. The administration, including administrative justice, was entrusted to the French ambassador baron de Ring. That is why administrative justice, including the Supreme Administrative Court, was similar to French administrative justice and French State Counsel (*Conseil d`Etat*) that had a role as a Supreme Court in that time.

On analogy of the French justice a Supreme Court for administrative complaints (*Cour superieure de contentieux administratif*) was set up and six administrative courts for administrative discussions were established in Easter Rumelia with headquarters in Plovdiv. The mixed structure of the Supreme Administrative Court is interesting because it is considered as one of the main resemblances to the French administrative system of administrative courts. Although the Supreme Administrative Court in Eastern Rumelia was a part of the administration in its structure, one of the members - the chairman, was a professional judge. One of the councilors, who was nominated by the District Assembly, is its member and the other councilor was a state employee nominated

by the General Governor. The presence of representatives of the three authorities - judicial, executive and legislative - is seen as a guarantee of independence and wider control over the administration.

The Eastern Rumelia Organic Statute made provision for publishing of special law and its purpose was to organize administrative justice and the administrative courts. Therefore, a Public Administrative Regulation was published on 31 of August 1881 and it was later finalized as a district law for judicial proceeding of the Supreme Court and the District ones.

That was the first step in the foundation of an independent Supreme Administrative Court as the highest instance in Bulgarian administrative justice. Moreover, for its activity and for the whole system of administrative courts in the self-governed district an exceptionally high appraisal is given despite the short period they had existed.

4. France is considered a home of the State Council but in different historical periods a similar organ existed in European countries such as Italy, Yugoslavia, Greece and etc. For the first time a State Council in France was founded as a council organ of the king at any matters. After the Great French Revolution and influenced by the theory of Charles de Montesquieu for the separation of power the State Council became mainly an administrative council. The modern Council State (Conseil d'état) was founded by a law on 14 of May 1872. It was summoned to give counsels on government bills, project for administrative regulations, administrative decisions of the chairman of the republic or ministers. Besides this main role the State Council is also a judicial instance for administrative discussion decisions. It possessed this special character to be both the first and last instance in essence and appeal and cassation instance as well.

A first attempt for creation of State Council on a French model in Bulgaria was made immediately after the Bulgarian Liberation by preparation of a project for an Organic Statute about state structure of Principality of Bulgaria. After the model of Serbian Constitution, the project made provision for a State Council existence with administrative, control and consultative functions.

After that first unsuccessful attempt in Bulgaria "the need of a State Council has been again pointed out" during the regime of representatives (1881–1883). A main reform in the new legal organization in the country was the foundation of a State Council by the government again by the French model. It had to create the laws and to control the government. For this purpose, a project was made according to which in the structure of the new organ there were ministers, 15 councilors - 5 nominated by the prince and 10 by the people. The Council had the right to judge as a cassation at appealing the decisions of the current administrative jurisdictions existing in this period.

The regime of representatives was ceased after Constitution recovery on 7 of September 1883 and with a decree by IV Ordinary Assembly in the next year all the laws resulted of the former political regime was suspended including the statute of the State Council. Thus, the attempts for creation of Supreme Administrative Court in Bulgaria died out for a period of about twenty years. It does not mean that during this period a control in a form of administrative justice was not being realized upon Bulgarian state government. A lot of administrative organs defined by the law as councils, commissions, state offices which aimed to inspect complaints against illegal acts of the administration had been created. These are so called administrative jurisdictions. Nevertheless, they were in the structure of the executive authority, they were occupied with justice.

5. Despite of administrative courts absence in this period, administrative disputes were often proceeded in the common courts. In these cases, the common court acted as an administrative jurisdiction. Such procedure was granted to the regional courts. They were more often judged as first and last instance but sometimes their decisions were under cassation at the Supreme Cassation Court.

A draft law for administrative justice was presented again in XV Assembly by the Prime Minister Ivan Geshov. It provoked strong debates lasting from January to March 1912. In the debates all leaders of the parties and prominent jurists as well as deputies took active participation. The law was finally voted on 8 of March 1912. On 3 of April 1912 the first Law of administrative justice was officially published, and it previsedan independent Supreme Administrative Court in Bulgaria. It is interesting to be noted that in relation with the very specific activity of this court besides the members who had to be suitable for the conditions of professional judges and public prosecutors, persons with high post in administration, science, bar or other public places were nominated as well.

In the next years of its activity the Supreme Administrative Court succeeded in creating a system and permanent jurisprudence which was developing to a better direction in the administrative justice in the first-degree jurisprudence. The decisions of the Supreme Administrative Court as a cassation instance as well were final and were not being appealed. Every officer or office was due to its dispositive. The law provided strong administrative and penal responsibility for the officers who refuse to fulfil court decisions – dismissing and even imprisonment up to one year despite of citizen responsibility. These measures are strong and seemingly archaic, but I think that they, in a modern form, would find a place in the actual structure of the cassation and in the whole administrative justice - especially today when we witness cases

of disobeying to the Supreme Administrative Court decisions even by officers in very high state position.

One of the weaknesses of this first law for administrative justice was that in accordance to its articles The Supreme Administrative Court was considered in relation and depended by the Council of Ministers and it means dependent on executive power whose acts the Court had to control. Under the article 4, the first chairman, the department chairman and the members of the court were nominated by the Council of the Ministers and proposed by the Prime Minister. Article 5 enacted the discipline power upon the judges to be imposed by the common court assembly under the chairmanship of the Prime Minister. This independency in judge work was limited and it contradicts to the main principal of power separation – according to it power contradicts to power.

It is very logical that a strong administrative justice did not fit any executive power - something that is still observed today. The structure of the Bulgarian Supreme Administrative Court was similar to the Austrian one that was also the only one for the country and it directly obeyed to the Council of The Ministers (with a law from 1875). In general, the norms of the Bulgarian law established in 1912 was a result of working out French, Austrian and Prussian administrative legislation.

6. During the whole period of its activity till its destruction after 1944, the Supreme Administrative Court marked great successes, increased the public confidence and strengthened its place in Bulgarian legal system.

We can differentiate two separate periods in Bulgarian administrative justice – independent existence of the Law of administrative justice (1912-1922) and its suspension (1922-1934). The reason for the numeral legislation changes should be searched in different directions. On the one hand the executive power did not get accustomed with the control imposed to it by the Supreme Administrative Court after it was considered itself as untouchable. This explains its aspiration for limitation of the meaning of administrative justice. On the other hand, this comparably new legal matter for Bulgaria provoked in the jurists a desire for new searches aiming improvement of administrative jurisdiction. Furthermore, Bulgarian parliament would often blindly receive legislation of the developed European countries - something we can notice in our modern political life.

In order to establish a better efficiency at juridical system management in the 20s of the last centuries the particular statute of the Supreme Administrative Court to be an organizational part of

the administration and to be subordinate to the Council of Ministers was ended. The Supreme Administrative Court was incorporated into the judicial system where was its natural place.

Less than 10 years after its creation the Law of Administrative Justice has been already written off. One big weakness in our legislation has been repeating, unfortunately even today, and that is the publishing and suspending of laws after too short of a time for acting in legal and public life. Unwritten truth is, in order to reach its purpose a law must be perceived and considered by the citizens and by the society as a whole. This is a process demanding sustained period of time and there are a lot of examples about it in the history of old western democratic legislation as in Great Britain and France.

The contemporary jurists of these events defined the Law Administrative Justice suspension as an attack against the whole administrative justice, that way it expressed the strong hostility of the executive power. Probably, in that uncertain situation in exhausted and poor country as a result of the war (1913-1918), the ruling circles searched stability and strength for the executives by releasing themselves from the control of administrative justice.

7. The regulation-law for administrative justice in 1934 recovered independence of the norms of the Supreme Administrative Court re-creating bigger part from the norms in the Law of Administrative Justice from 1912. In conjunction with this, in the new law numerous innovations and improvements were entered that strengthened and made more perfect the court activity. Also, the practice was recovered of the composition of the court and the number of departments in it to be defined by the law, the members with administrative experience were decreased at the expense of increasing members with judge ones. Thus, the court as a judge instance was underlined. For the first time the regulation-law gave statute for the public prosecutors as unchangeable at the Supreme Administrative Court.

In the Supreme Administrative Court, the rule was important that at proposal of any of the ministers the court passed a sentence on principal interpretation of the regulations and the laws relating to the department of the same minister. This new power made the Bulgarian Supreme Administrative Court closer to the role and significance of the State Council in France.

8. After 9 of September 1944 a new, totally different social and political state government under the dictation of Soviet Union was established in Bulgaria. In order the state government to fit to the totalitarian socialistic system the Constitution was suspended and the Constitution of the People`s Republic of Bulgaria was published in its place. This new structural law enacted the supreme legal control on all the courts in the country to be realized by only one Supreme Court

that replaced the Supreme Cassation Court, the Supreme Administrative Court and the Military Cassation Court. In the new-created Supreme Court an administrative legal department was not considered. There was no place for the Supreme Administrative Court and for its activity in the political conditions. Using different excuses - that the legal proceedings are very slow, the participation of a lawyer was a must, as well as the "high taxes" made legal procedures very expensive and untouchable for the people - the Supreme Administrative Court was sent into oblivion for long time.

Here are the words said during the socialism in Bulgaria in 1975 by one of the biggest Bulgarian jurists prof. Kino Lazarov: "Any legal statute might be denied under the reason it had served at exploitation classes in the pre-socialist societies". During the socialism until 1989 there existed an automatic state justice in Bulgaria as a control out of instance way. In general, it expresses the aspiration of the country to provide the legality of its acts and as a result the interests of the parties to be protected. The chairman of the Supreme Court or the Chief public prosecutor had the power only to start this proceeding. The claimant did not participate in the process and there was not any possibility of influencing it. He was only able to claim the authorities of which only the defense of his personal interest depended.

9. The new Constitution of 1991 defined the main principal the juridical reform should be built on. It incorporated the modern public tendencies related to democracy development, consolidation of the legal guarantee and citizen rights in accordance with the legal state, with interest of expedition and accessibility of the litigation, procession discipline and procession economy. The Constitution set the foundations of a new and united administrative jurisdiction in Bulgaria. Article 120 from the Constitution confirmed and strengthened entered in 1979 "Common clause" about claim of administrative acts - the courts realized legal control both on the acts and the actions of the administrative organs and the citizens and the legal persons have the right to appeal all administrative acts affected them besides these ones specified by a law. According to the Constitution administrative jurisprudence was built as an activity done exceptionally by the courts.

The Constitution anticipated the Supreme Administrative court recovery as an institution that make a supreme control about exact and equal laws applying in administrative justice and passed a sentence at proceedings on the legacy of the Council of the Ministers acts, ministers and other acts too that has been pointed out as appealed only at this Court. The Supreme Administrative Court is a part of an inspiration of the creators of the Constitution for an independent juridical

power to be built and this power to give the opportunity to everybody thinking his constitutional rights have been broken to be defended by judicial power.

On 16 of November 1996 the Supreme Juridical Council took a decision for constituting the Supreme Cassation Court and the Supreme Administrative Court. The Supreme Administrative Court was officially recovered on 1 of December 1996.

10. But the administrative judicial reform did not stop there. In 70s-80s of the past century some of the most significant scientists in Bulgarian jurisprudence who were affected by French and Russian doctrines consequently started to impose the idea for administrative process codification in a general way which was to realize its common purpose and subject, common principles, equal methods and ways. It is a continuation of the tendency for a distinction between the administrative material law and the administrative procedural law. It was necessary to overcome the collisions and normative gaps that have been accumulated as a result of the parallel acting of the procedure laws arranging different common and special administrative and juridical proceedings. The main difficulty at unifying legal regulations of the administrative proceedings comes from practical impossibility to be codify such a huge and mobile area of the public relationship relevant to state administration work at realizing its executive and operative activity.

After reforms in administrative law and administrative procedure in 90s and the Supreme Administrative Court recovery and its fast imposing as one of the main pillars in Bulgarian juridical system, a need was mounted of a differentiation between administrative justice and administrative procedure on one hand and a differentiation between civil and criminal law on the other hand. The administrative jurists, by creating a Code of Administrative Procedure and the Code of Administrative Offence, perceived the shortest way in carrying out this aim. A general place in the future Code of Administrative Procedure was assigned to the proceedings on publishing and contesting in an administrative and juridical way of all administrative acts.

It was important to independently work out some subjects in administrative jurisdiction as well as to establish a system of separate regional administrative courts, admissible evidence at first and cassation instance, cassation grounds, the Cassation Court power, annulment of enacted judicial decisions at administrative procedures, contestation of the decisions and dispositive of the administrative courts and the Supreme administrative Courts, existence and character of the juridical organs of the administrative jurisdiction and etc.

Bulgarian administrative and juridical system integration into European legislation logically held an interference of the European structures in an administrative juridical reform in

Bulgaria. In 2002 at Bulgarian government request, representatives of the United Nation Development Program and of Great Britain Embassy in Bulgaria did a review of Bulgarian administrative juridical system with the intention of unification between Bulgarian and European legislation principals in administrative justice by accepting The Code of Administrative Justice.

The direct task was helping government strategy for a reform in juridical system about establishment of system of special administrative courts built in the frame of the Supreme Administrative Court - for better efficiency and improvement of administrative justice access.

A separate system of administrative courts will lead to an improved access of justice for the citizens, to balance allocation in cases between courts, to unify court practice by setting administrative juridical system under control of the Supreme Administrative Court, to increase the quality of the juridical acts by specialization.

In order to practically implement these recommendations a project of Ministry of Justice and Britain Embassy has started at the end of 2003 that was carried out with cooperation of the Supreme Administrative Court – "Establishment of administrative juridical new system in Bulgaria".

The Code of Administrative Procedure was published by the 40th National Assembly on 26.03.2006 as the main debate emerged in the legislative bodies about the need of establishment, organization and the number of the regional administrative courts.

The reform in Bulgarian administrative justice is a continuation of the processes of modernization of the administrative procedural legislation in France, Italy, Germany and Portugal. The Code of Administrative Procedure project was influenced by the modern administrative procedures in the area of administrative legislation in the members of European Union (Germany, France, Portugal, Austria, Finland, Lithuania etc.).

The administration is a mighty power machine against which the individual standing in less organized forms of social life is always relatively powerless. A solution to this inequality, to this dependence of citizens on the administration, can and is being proposed by modern European legislation in the countries of the European Union. The main codifying normative act in this direction in our country should be the Administrative Procedure Code.

The Code of Administrative Procedure is the first codification of administrative procedure matter in Bulgaria. It gives a legal expression of unknown or insufficient principles of administrative procedures such as proportionality, equality, publicity, transparency and succession held and defended until now.

11. The history of the administrative justice in Bulgaria that includes the existence of the Supreme Administrative Court between 1912 and 1922, and 1934 to 1948, its restoration in 1996, and the establishment of regional administrative courts in each of the administrative districts is direct evidence that administrative justice is one of the most specific forms of implementation of the principle of separation and control between authorities. This is one of the most accurate and true indicators of the state of democratic structure of society. Therefore, it is necessary to endeavour for a consolidate administrative justice as a guarantee for the protection of the rights, freedoms and legitimate interests of citizens and their organizations and to consolidate the state as democratic and lawful.

According to the objective justice theories the trial for cancelation of the administrative acts is a procedure where an objective justice or a justice for defense of state and public interest. The claim of the interested side is directed not against the administration or against some person at all, but it is against an act - the appealed administrative act. This is a question for objective right and not for a subjective one. This is a question of conformity between an administrative act and the objective legal order. In this connection we should not hesitate to accept the right of the citizen in a legal state to provoke a cancelation of every unlawful act issued by the administrative power. Even if the act does not affect the citizen in the moment, it could affect him in the future.

Kopsavilkums

Administratīvās tiesas vēsture Bulgārijā, ietverot Augstākās administratīvās tiesas sākumposmu 1912.–1922. gados, darbību 1934.–1948. gados, tās atjaunošanu 1996. gadā un reģionālo administratīvo tiesu izveidi katrā no administratīvajiem reģioniem, ir tiešs pierādījums tam, ka administratīvā tiesa ir viena no visspecifiskākajām varas sadales un kontroles principa īstenošanas metodēm. Šis ir viens no precīzākajiem un patiesākajiem demokrātiskas sabiedrības struktūras indikatoriem.

Autors rosina tiekties uz stabilu administratīvo tiesvedību kā pilsoņu un organizāciju tiesību, brīvību un interešu garantu, kā arī, lai nostiprinātu valstī demokrātiju un likuma garu.

Reference

1. Georgiev B. Administrative justice and public interest: Appeal of administrative acts – expression of objective justice.– Burgas, 2015.
2. Georgiev B. Cassation in administrative justice.– Burgas, 2017

3. Diogo Freitas do Amaral, Precautionary measures in new administrative justice// Administrative Justice, No. 6, 2004.
4. Elenkov A. et al. The Code of Administrative Procedure: Systematic comment.– Sofia, 2013.
5. Jambazov A. The judicial system of Bulgaria: 1878 – 1944.– Sofia, 1990.
6. Kundeva E. Contestation of normative administrative acts in tribunal// Administrative Justice. No. 4, 2003.
7. Lazarov K., Kundeva E., Elenkov A. A commentary over the Code of Administrative Procedure.– Sofia, 2007.