

Conference EFFECTIVE JUSTICE: CHALLENGES AND PRIORITIES FOR (ADMINISTRATIVE) COURTS

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Dr. Jurgita Paužaitė-Kulvinskienė

Director of Law Institute of Lithuania,

Associated Professor at Vilnius University Faculty of Law

NEW CHALLENGES FOR ADMINISTRATIVE JUSTICE IN TRANSITION STATES

Many countries of transformational administrative justice reform has reached the progress in state government, public administration system, respect for democracy and the rule of law. In the field of justice maintaining this progress is one of the most important policy of EU.

Concept/definition of transformational state is problematic.

Transformational processes are based on the flexibility and ability to adapt to the changing environment (situation). In legal terms, transformational state is a state that needs to change, to adapt to changes in the legal environment, regardless whether these changes are the consequence of national political processes or the consequence of foreign policy processes. Often transformational states are compared to the transition states. However, the definition of transformational state is more often associated with the concept of economics or political science, because in legal terms a separate state would be considered a transformational state almost continuously because legal regulation is changing constantly.

According to the reference books of economics (encyclopedia), transition countries world-wide are considered to be the former Baltic countries, Eastern and Central European countries and Asian countries, as well as the former post-Soviet countries. From an economic point of view, for the state to be considered transformational (transition) state, the state must pass such steps as price liberalization; macroeconomic stabilization; market restructuring and privatization as well as the legal and institutional reforms.

Politically the concept of transformational state is regarded as one in which there has been fundamental changes in the political system, both public and economical order. Political analysts agree that the transformation process does not happen chaotically, it is characterized by a certain logical sequence. Western political scientists, which analysed transformational states such as Wolfgang Merkel, Hans-Jürgen Puhle Aurel Croissant emit a certain logical sequence of development of transformational countries.

The sequence of transformational countries: first phase - the transition from autocratic regime to democratic governance; second phase - institutionalization of this transition - it appears in specific legal process, such as the adoption of constitutional act, free and democratic elections, consolidation of the separation of powers principle. The next step is the consolidation, when the created structures are not working *pro forma*, but when the public is guided by the changed legal consciousness and culture. Institutionalization and consolidation are the most important phases of the fortification of the democratic system. Only after these two phases are accomplished we can say that the transition process is completed. In order to measure the level of completion of these phases there has been created a variety of global ratings, indices, maps (or example corruption index, democracy index, measured by The Economist).

Strengthening the judiciary power and the judiciary system is a necessary element in a transition state. There are several reasons why transition countries emphasises the component of administrative justice. Firstly – assurance of qualified litigation in administrative disputes between the state and individuals on certain public decision is an important indicator of real protection of human rights; secondly – qualified decisions in administrative disputes is an important indicator for the economical stability and development.

The systemic elements that describe the administration justice reforms in transformation state:

First of all - in many transformational countries administrative justice reform has not always been in the front ranks of the legal reforms. Priority is given to the constitutional reforms in the state (the adoption of the Constitution, establishment of the Constitutional Court). Only the creation of the modern Constitution, which establishes democratic values, may form legal grounds for administrative justice reform.

Second - administrative procedural law as well as administrative justice have evolved in parallel in transition countries. It is important to note that these two elements can not be reformed separately, and the successful administrative justice reform can not be implemented without the development of substantive elements of administrative law. Acts of administrative procedure in transition countries are mostly static and fail to adapt to the changing reality of administrative law. In terms of content, most of the public administration laws are intended for the system of public administration, rather than for the catalogue of administrative procedures or for the content of general administrative law principles.

Such an insufficient regulation is compensated by the administrative courts through the application of the law and judicial precedents, elaborating the content of the general principles of administrative law. In the formation of the doctrine of the administrative law the role of judicial practice is more progressive than the slightly delayed consolidation of administrative law.

The third element - improvement of the legal regulation on purpose to ensure both the functioning of the market and the interests of society. One of the most pressing problems, which today is unresolved in many countries - application of liability for the administrative offence and the substantiation for such an application. Legislation, which establishes the administrative liability for legal persons is constantly expanding. In many cases, the administrative procedures for applying the liability differs.

For this reason, it is necessary that public administration bodies and courts would have the legal possibilities to guarantee the rights of individuals (legal persons) and procedural safeguards in legal proceedings. This demand is based on the international regulation. The European Court of Human

Rights in its case has formulated a mandatory provision to ensure adequate procedural safeguards in administrative proceedings against legal entities.

The fourth element is associated with the institutional and procedural changes of the administrative judicial system in transformational countries. I would like to point out that reforming the administrative procedural framework in this context is not characteristic exclusively to transformational states. At this point transformational states are even in a better position, because their practice is more flexible, tends to adapt to new changes and the administrative courts, although without a long historical memory, successfully overcomes challenges such as the protection of human rights or the assurance of the democracy in the crisis environment.