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YUGOSLAV JUDICIAL PROCEDURE IN ADMINISTRATIVE DISPUTES

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[Following is the translation of an unsigned article in Jugoslovenski Pregled (Yugoslav Review) Vol IV, No 11, Belgrade, November 1960, pages 459-463].

The legality of the activity of the administrative organs is ensured in the Yugoslav social system through the responsibility of the administrative organ to the political-executive organs and representative bodies, as well as other socio-political relations (participation of citizens in the administration of social affairs, public control, the role of social organizations, etc.) and by means of judicial measures, established by law, which stipulate the position and functioning of the administrative organs (the evaluation of the legality of the acts of administrative organs, the role of the public prosecutor and the organ of inspection, etc. (See: "Ensurance of Legality in FNRJ," Jugoslovenski Pregled, 1958, pages 375-380).

One method of ensuring legality of the activity of the administration, adopted from the very beginning of the construction of the system of administration, was the judicial control of acts by means of which administrative organs adjudicate important rights of citizens. Thus, for example, state employees could file a complaint at court when their rights had been violated by a decision of the administrative organ (Article 18 of the "Law on Public Employees" (Sluzbeni List FNRJ. No 62/46); parties could likdwise file a complaint in court against the decisions of the expropriation committee (Article 30 of the "Basic Law on Expropriation" (Sluzbeni List FNRJ, No 28/47). It was characteristic of court control of legality during this period that the citizen could not always turn to court when he believed his rights had been violated by acts of the administration, but could do so only in case of instances that had been expressedly foreseen in law, and, furthermore, that it was the sreski orbokruzni court which had the authority to render a decision, and who conducted the procedure as if it were a regular law suit.

With the introduction of workers' self-government in economic and communal management of public services it was necessary to ensure the rights of citizens and organs of communal self-government more fully against illegal acts of the administration. In the fourth plenary session of the Central Committee of the Communist

League of Yugoslavia, held on 3 and 4 June 1951, it was stressed that the courts are of special importance in ensuring these rights, and in the resolutions of the plenary session it was emphasized that it would be necessary to "ensure that citizens could, in case of violation of their rights by acts of state administrative organs, bring administrative disputes before regular courts. Questions of the scope and conditions for bringing about such an administrative dispute have to be studied and worked out by law, thus strengthening the role of the court in adjudicating such problems."

Adopting this initiative, the National Assembly, FNRJ [Federated People's Republic of Yugoslavia] produced in 1952 the "Law on Administrative Disputes."

([Note:] Published in Sluzbeni List FnRJ, No 23/52; effective 9 May 1952)

The administrative dispute is very readily adopted as a means of protecting the rights of citizens from illegal acts of the administration, and is widely practised in all the People's Republics (Table I).

([Note:] Data presented in this survey are taken from the annual report on court statistics of the Secretariat of the Federal Executive Council for judicial affairs.)

TABLE I: NUMBER OF ADMINISTRATIVE DISPUTES

Supreme Court	1952	1954	1956	1958	1959
Total	17,434	34,570	25,471	32,561	35,001
Serbia	4,501	10,525	9,217	13,000	13,343
Voyvodina	2,525	4,124	3,130	3,733	4,017
Croatia	4,045	8,062	4,922	6,046	7,530
Slovenia	3,176	3,670	2,578	2,520	2,358
Bosnia & Herzegovina	833	4,269	2,036	3,173	3,485
Macedonia	427	1,577	1,042	1,619	1,983
Montenegro	427	801	542	1,136	1,000
Federal Supreme Court	1,665	1,542	2,004	1,334	1,285

The first most characteristic feature of an administrative dispute is the fact that illegal acts of the administration are annulled through court procedure and that the rights and legal interests of individuals, economic and other organizations and institutions are thus ensured. The administrative dispute is also of wider significance. The decisions of the court brought about in individual administrative disputes contain in their expositions observations on the procedures of the administrative organs, and legal concepts of the court, which the administrative organs adhere to also in settling other similar cases. For this reason the practise of the courts in administrative disputes brings about a more efficient functioning of the administrative organs and ensures uniformity in the application of the law on a wider scope than is evidenced in the number of administrative disputes actually taking place.

Decisions of the court brought about in administrative disputes also point out numerous important legal, organizational and social problems which appear in the application of law in the various fields of administration, thus presenting very useful material on the basis of which one studies and regulates the problems concerned. [See Note[. Thus, for example, experiences of the activity of the administrative organs and courts in administrative disputes have been widely studied and made use of in the formulation of the "Law on General Administrative Procedure", the new housing legislation, as well as in the new rules on pensions and invalid insurance.

([Note[Court decisions on important questions in the sphere of administrative disputes are published in the official "Collection of Court Decisions" in the publication Sluzbeni List FNRJ. The 13 volumes of this collection published thus far present court decisions given in the period 1 January 1955 to 3 April 1960.)

A special variety of the administrative dispute is presented by the "administrative-accounting dispute," created by the "Law on Communal Accounting." [See Note]. The administrative-accounting dispute may be originated by the holder of communal property when he believes that some of his rights, or some direct personel interest founded on law, have been violated by the office of communal accounting. For the settling of administrative-accounting disputes, authority rests in the first place with the higher economic courts and, secondly, with the Supreme Economic Court. The same law contains special rules on the procedure to be followed by the economic courts when settling administrative-accounting disputes; in all other matters, however, the regulations of the "Law on Administrative Disputes" apply to these disputes as well.

([Note:] Published in Sluzbeni List FNRJ, No 43/59
See: "Office of Communal Accounting" in Jugoslovenski Pregled, 1959, pages 405-407 (81-83).)

Subject Matter of Administrative Disputes.

An administrative dispute can be brought only against an administrative act, i.e., an act of a state organ dealing with some administrative matter, and which, in a concrete instance, makes decisions on the rights or duties of the individual or legal person concerned (Article 5, "Law on Administrative Disputes"). An administrative dispute cannot be brought against other acts, general in nature, which do not deal with concrete administrative matters, but which regulate, on the basis of legal authority, problems in the sphere of administrative activity, or give explanations, instruction or directives to other organs, e.g. statutes, regulations, decisions of people's committees, directives, and others.

Organs of state administration bring about administrative acts in accordance with the procedure prescribed in the "Law on General Administrative Procedure." In this procedure the plaintiff has the right to file an appeal against the decision brought about in the first stage, insofar as it is not stated in law that the appeal is not permissible. The decision on the appeal is rendered regularly by the corresponding administrative organ of the next higher grade. An administrative dispute can only be brought against an administrative act which is final in administrative procedure, i. e. against an act which has been carried to the second stage. Only in cases where administrative procedure makes no provisions for the filing of complaints can an administrative dispute be set in motion against an act brought forth at the first stage. Furthermore, the plaintiff may also not bring an administrative dispute against a first-stage administrative act that has become final because the plaintiff had not utilized his right to file a complaint against the administrative procedure.

The rights of citizens, economic and other organizations and institutions, may be violated not only by illegal acts of organs of state administration, but also by the fact that the authorized organ of state administration may not want to bring about a decision on the claims of the plaintiff, in the administrative matter concerned. For the purpose of protecting the Party from this aspect of illegality, time periods have been established within which the first and second stage, as appropriate, administrative organs are obliged to bring a decision on the claim of the plaintiff (Article 217, 246 and 247 of the "Law on General Administrative Procedure"). In order to safeguard legality in the work of the administration, it is characteristic that under special conditions an administrative dispute is also permissible in cases where the administrative

organ neglected to settle the claim of the plaintiff within the designated time period, (the so-called "administrative silence"), thus, even in cases where there is no definite act which could be defeated in an administrative dispute.

An administrative dispute may be filed against every act of thestate organ which has elements of an administrative act (principle of the general clause). An administrative dispute is only not permissible in matters where there are explicit legal rulings that an administrative dispute may not be filed. Thus, administrative disputes cannot be conducted on the following: on matters of court administration, excepting acts pertaining to employment and work relations; on disciplinary matters of public employees; on matters of violation, which according to law are adjudicated at the second stage by the judge for violations or by the council for violations; on matters where decisions have been made by the Federal National Assembly, the People's Assembly of the People's Republic, or their executive councils; and on matters in which explicit decrees of special laws prohibit administrative disputes [See Note] (Article 8, "Law on Administrative Disputes"). Meanwhile, administrative disputes may also be conducted against these acts (with the exception of acts of national assemblies and their executive councils), if the state organ over-stepped the boundaries of its authority on the occasion of carrying out the administrative act, (e. g., if in a disciplinary matter concerning a public employee, the superior in authority passed a sentence which, with regard to its type and size, may only be passed by a disciplinary court; or, if the judge for violations passed a sentence which, according to law, cannot be passed in an administrative-penal procedure).

([Note] See, for instance, the ruling of Article 15 of the "Law on Housing" (Sluzbeni List FNRJ, No 16/59), according to which one may not conduct an administrative dispute against the decisions of the state organ in the assigning of houses for use.)

Due to the fact that administrative disputes may evaluate only the legality of acts of state organs, court control of the legality of acts of organs of communal self-government in the sphere of education, science, culture, public health, social endeavor and other social services, is ensured in an indirect manner. Complaints against these acts are settled at the second stage by the state organ which supervises the legality of the activity of these organs in matters with which the decision is concerned (Article 288, "Law on General Administrative Procedure"). The decision made by the state organ at the second stage has all the elements of an administrative act, and may be the subject matter of an administrative dispute.

In some administrative matters this question is solved, by means of special regulations, also in another manner. Thus, for example, in matters of social insurance the complaint against the decision of the Institute of Social Insurance given at the first stage is settled by the higher institute, the latter also being an organ of communal self-government and not a state organ.

According to explicit legal prescriptions, however, an administrative dispute is permissible against these acts, despite the fact that one here is not dealing with acts of a state organ.

([Note:] See: Article 36 of the "Rulings on the Organization of the Institute of Social Insurance" (Sluzbeni List FNRJ, No 12/55, Article 76 of the "Law on Health Insurance of Workers and Employees" (Sluzbeni List FNRJ, No 51/54), Article 183 of the "Law on Pensions" (Sluzbeni List FNRJ, No 51/57), and Article 21 of the "Law on Insurance of Invalids" (Sluzbeni List FRNJ, No 49/58).

Parties to an Administrative Dispute.

The administrative dispute is set in motion by the plaintiff. The plaintiff may be an individual, an economic or other organization of institution, or any other legal body, which believes that the administrative act has violated one of its rights or some direct personal interest which is founded on law. As plaintiff in an administrative dispute may also appear a state organ, an institution, a factory or any other independent unit of economic organization, a village, or a settlement; they may do so even if they do not have the characteristics of a legal body, provided they are holders of rights or duties that have been affected by the administrative acts. A syndicated organization may be the plaintiff if it considers that the administrative act has violated some right of the working collective as a whole or its direct interest founded on law.

Communal organizations may, with his consent, file on behalf of its member a complaint in an administrative dispute against the administrative act which has violated the rights of the member, or some of his interests which the organization, according to its regulations, has the duty of protecting. Such an organization may enter into the administrative dispute on the side of its member at any stage of the procedure, and take over for his benefit all the work involved and make use of all available legal methods, insofar as this is not contrary to the statements and conduct of the plaintiff himself.

By means of the administrative dispute the lawful work of the administration in general is also ensured. For this reason, administrative acts in which the law has been violated in favor of an individual or of a legal body, to the disadvantage of the social unit, may also be defeated in administrative disputes. In this case the public prosecutor is the plaintiff in the administrative dispute.

Special regulations prescribe when the public defendant is authorized to initiate an administrative dispute against an administrative act, by means of which general public property has been harmed. Moreover, it has been shown in practice that administrative disputes are far more useful to the individual in the protection of his rights than are the activities of the public prosecutor and public defendant in the protection of public interests (Table II). This is quite understandable since the organs which carry out the administrative acts are themselves legally bound to watch that the realization of the rights of citizens will not be in opposition to public interest (Article 5, "Law on General Administrative Procedure").

TABLE II: PLAINTIFFS IN ADMINISTRATIVE DISPUTES (Given in percentages).

Plaintiff*	1952	1954	1956	1958	1959
Individuals	98.1	97.9	96.4	96.6	97.3
State organ or institution, manufacturing concern, or other legal body	1.7	1.7	2.8	2.7	2.3
Public prosecutor, public defendant, or communal organization in defense of its member	0.2	0.4	0.8	0.7	0.4

*The number of plaints is given in percentages of the total number of complaints filed in administrative disputes in the period of one year.

The defendant in an administrative dispute is always the organ which carried out the disputed administrative act. The organ higher in rank than the organ that carried out the act may at any stage of the procedure enter into the dispute on the side of the accused organ, and may, along with the accused, make use of all legal measures available, just as this is done by the accused organ.

Defendants in administrative disputes are most frequently organs whose work is concerned with administrative matters, that necessitate making a large number of decisions on the rights of ciyizens, e.g., organs of social insurance and administrative organs of people's committees (Table III).

TABLE III: ADMINISTRATIVE MATTERS, SUBJECTS OF ADMINISTRATIVE DISPUTES (Given in Percentages)

Administrative Matter*	1952	1954	1956	1958	1959
Social Insurance	58.2	48.1	52.0	42.9	40.7
Taxation	7.5	17.9	12.5	18.8	13.4
Housing Problems	19.6	15.5	15.2	12.0	15.7
Work & Employment Relations	4.3	3.2	5.0	8.0	7.2
War Invalid Matters	1.3	4.3	4.9	2.6	6.0
Violations	0.4	1.4	1.6	0.4	1.5
Custom's Duty	0.1	-	0.6	1.0	1.4
Expropriations	0.7	0.8	1.0	0.6	0.8
Leases and Agrarian Matters	2.1	3.3	1.5	1.6	1.4
All others	5.8	5.6	5.7	12.1	11.9

* The number of administrative disputes for each type of administrative matter is given as a percentage of the total number of administrative disputes during the given year.

A party to the administrative dispute is also the person who would suffer loss if the administrative act were to be defeated in the administrative dispute (the interested party). The interested party is most likely to appear in an administrative dispute when one is dealing with an administrative act which has brought about a decision on the opposing claims of two parties: e.g. the case in which an administrative act has given a decision in the dispute between co-tenants on the use of a house. In this case the party whose claim has been denied by the administrative act appears as plaintiff in the administrative dispute, demanding that the administrative act be reversed while the opposing party appears as the interested party, seeking that the claim be denied.

Authority.

The following are authorized to settle complaints in administrative disputes: the Federal Supreme Court, the supreme courts of the People's Republics, the supreme court of the Autonomous Pokrajina of Voyvodina, and the military supreme court. The decision in an administrative dispute is made by a council consisting of three permanent judges.

The authority of these courts over the organ responsible for the administrative act disputed in the plaint is clearly established.

The Federal Supreme Court is authorized to adjudicate complaints in administrative disputes if a Federal organ is responsible for the act; the supreme court of a People's Republic, or that of an autonomous Pokrajina, as appropriate, if the act was brought about by some other organ from the area of jurisdiction over which these courts have authority.

Cases against administrative acts of military organs are regulated in a special manner (Article 77, "Law on Military Courts. Sluzbeni List FNRJ, 52/45). The military supreme court is authorized to adjudicate an administrative dispute against an administrative act of a military organ, when the plaintiff in the dispute is a military person [See Note], or a person who, at the time of lidging the plaint, no longer has the status of a military person, if the administrative act of the military organ dealt with his rights, or direct personal interest, derived from his status as a military person.

([Note:] The concept "military person" is defined in Article 21 of the "Law on the Yugoslav National Army" in the ruling: "According to this law the term "military person" includes soldiers serving their military term, pupils of military schools, non-commissioned officers, officers and military employees on active duty, as well as members of the reserve, as long as they are performing their military duties in the Yugoslav National Army.")

The Federal Supreme Court has the authority to adjudicate appeals in the administrative dispute. The Federal Supreme Court also brings its decision in the second stage in a council consisting of three permanent judges.

Procedure.

An arraignment in an administrative dispute is presented either in person or by mail; it may, however, also be entered in the registry of the authorized court, or of any sreski court.

"According to regulations, the execution of the administrative act against which the complaint has been lodged does not form part of the complaint. On request by the plaintiff, the organ responsible for the execution of the disputed act will postpone its execution until the final court decision has been reached, should its execution inflict on the plaintiff damage that would be difficult to correct and if the postponement is neither antagonistic to public interest nor would cause some heavier irreparable damage to the opposing party. Along with request for postponement, proof must be submitted that a complaint has been filed. Upon such a request the authorized organ must make a decision within a period not

longer than three days after receipt of the request. The organ responsible for its execution may also postpone the execution of the disputed act until the final court decision for other reasons, providing public interest permits this." (Article 16, "Law on Administrative Disputes").

The plaintiff must file the complaint within 30 days from the day the administrative act which he is disputing with a legal suit has been served to him. This time limit holds good even in case the complaint is filed by a state organ authorized to initiate an administrative dispute (the public prosecutor). On the other hand, if the administrative act had not been delivered to this organ at all, it may lodge a complaint within 60 days from the day the act had been delivered to the party in whose favor he is lodging the complaint.

A complaint may also be lodged on account of "administrative silence" when the administrative organs has not brought about the administrative act within the legal time limit (Articles 217, 246 and 247 of the "Law on General Administrative Procedure"), or within a period of seven days from the day the party had made a renewed request for the bringing about of the administrative act.

In practice the courts have adopted the view that the time limit for lodging a complaint is procedural in nature, and an administrative dispute may also be conducted on a complaint which had been lodged after the lapse of the time limit, if the court, on the suggestion of the plaintiff, established that there exist valid reasons for allowing the time limit to lapse (return to former condition).

The complaint must give information on the plaintiff and the administrative act, and state for what reason and in what capacity the act is disputed. The complaint must include an exemplar of the disputed act, in original or in copy, and copies of the complaint and addenda, which are presented to the accused organ and the persons who have the status of interested parties.

The court first determines whether the complaint is in order, whether it has been lodged within the correct time limit, and whether it deals with a subject matter which may be the basis of an administrative dispute.

An incomplete or unclear complaint is returned by the court to the plaintiff in order that he may, within a period stipulated by the court, correct the deficiencies. If the plaintiff does not comply with the orders of the court within this period, the court may decide to reject the complaint, should the shortcomings be of such a nature as to preclude continuation of the court procedure.

In the preliminary proceeding the court may pass judgment to overrule the disputed administrative act (Article 28, "Law on Administrative Disputes"), if it finds that the act has shortcomings which make it impossible to determine whether the decision of the organ is correct (e.g., when an administrative act lacks all com-

mentary, when it is not evident to whom the administrative act refers, etc.).

If the dispute is not terminated by a decision during the preliminary proceedings, the court delivers the complaint (with addenda) for rejoinder to the accused organ and to all persons who legally represent the interested party. A reply to the complaint is presented in writing within a time period determined by court, but which may not be shorter than 30 days. Along with the reply to the complaint, the accused organ presents to the court all records of the administrative act which is the subject of the administrative dispute. In case the accused organ - even upon repeated requests of the court -- does not present records on the subject, the court may, on the basis of conditions deducible from the complaint against the disputed act, render a decision on the matter without the presence of these records.

Decisions in administrative disputes are ordinarily rendered without the presence of either party or the public. Should it be found necessary, the court may summon the parties and order an oral hearing on the administrative dispute, until now a rare occurrence in practice.

In an administrative dispute, the legality of a disputed act brought about by a state organ in performance of its public service is evaluated and for this reason there exists public interest that the court will bring a decision that will establish whether the disputed act may legally have effect, or whether it must be rejected as unlawful. For this reason the procedure in an administrative dispute does not permit coming to terms, or passing judgment on the basis of concession or default, nor may the proceedings come to a standstill (Articles 268 and 205 of the "Law on Law-suit Procedure"). Should one party not appear at the oral hearing, one may not assume that it has relinquished its claims; the court shall in this instance render a legal decision on the basis of the conditions deducible from the records on the subject and from the petitions the parties had directed to the court. If neither plaintiff nor the accused organ appears at the oral hearing ordered by the court, the hearing is not postponed: the court discusses the case and passes judgment on the dispute without the presence of the parties involved.

The administrative organ whose act the administrative dispute is directed against, may in the course of administrative procedure nullify or amend the disputed act in accordance with the complaint, provided this does not injure the rights of the plaintiff, or that of any third person. In this instance the court summons the plaintiff to notify the court within a 15 day period whether he is satisfied with the amended act, or, whether he maintains his complaint. The court will terminate the proceedings if the plaintiff does not give a reply within the given time period, or if he declares that he is satisfied with the new administrative act. In the opposite case, the court shall continue with the proceedings.

The court acts in the same manner also in cases where the complaint has been lodged due to "administrative silence" and, where the accused organ brings about the administrative act demanded by the party in the course of the administrative dispute.

In all other matters the regulations of the "Law on Law suit Procedure" apply to the procedure in administrative disputes.

Judgment.

In an administrative dispute, the court examines the legality of the administrative act.

An administrative act is illegal if it is enacted by an organ which does not have the authority to do so; if the decision on the administrative matter settled by the administrative act is based on material-legal prescriptions which do not apply to the case at all, or if the applied rules are incorrectly understood and applied (incorrect application of material law); or, if during the administrative procedure preceding the disputed act, the accused organ did not follow the rules which regulate the procedure and this violation of procedure may have affected the correctness of the decision contained in the administrative act.

In examining the legality of the disputed administrative act, the court determines whether the above mentioned violations of law exist and brings a decision in the form of a judgment. In doing so, the court is not bound by the arguments listed by the plaintiff in the complaint; the administrative act, (the part which is disputed), may be reversed on grounds which were not the basis of the plaintiff's complaint and claims. When the disputed act is found to be lawful, the courts bring a judgment which reject the complaint. In thereverse case, the court passes judgment to validate the complaint and to reverse the disputed decision.

([Note:] The state organ may settle with a single administrative act two or more administrative matters, each of which could have been settled by a separate decision. The plaintiff may be interested in disputing in the complaint only one part of such an administrative act, i.e. that part in which the decision on one of these problems was to the detriment of the party. The court may question the legality of the disputed act only within the confines of the plaintiff's claim and will not enter into any evaluation of the legality of that part of the administrative act which is not disputed in the complaint).

An administrative dispute is not the prolongation of an administrative procedure, but a new process. The subject of an administrative dispute is not the administrative matter which is settled in the administrative procedure, it is only the legality of the administrative act brought about in this procedure. Further-

more, the court in an administrative dispute does not have the role of a higher authority with regard to the administrative organ which rendered the final decision in the administrative procedure, nor is the court empowered, as an organ of higher rank in the administrative procedure, to give a decision on the administrative act itself, which was the subject of the administrative procedure, when passing judgment in the administrative dispute. For this reason the court cannot, when finding the disputed act unlawful, settle the administrative matter, which only the administrative organ has authority to decide upon, in other words: the court will only acknowledge the complaint and reverse the disputed act. In carrying out the court's decision, the authorized administrative organ carries out a new administrative act in accordance with law. The administrative dispute does not infringe upon the legally established division of functions between the administrative organ on the one hand and the court on the other; nor does it place the courts in a position where, in exerting control over the legality of administrative acts, they themselves bring decisions on matters which have, for given socio-political, organizational and other important reasons, been placed under the authority of the administrative organ.

The state organ carries out an administrative act after it has, in a procedure that is conducted alongside the participating party, discussed all disputed points, presented and, on the principle of immidiateness, evaluated all evidence which is necessary for the correct and complete determination of facts and circumstances which are of importance to rendering a lawful decision. During the administrative procedure preceding the decision the plaintiff has the right to present all his arguments and claims, and offer all the required evidence which it considers necessary; it is also guaranteed the right to appeal to a higher state organ. In consideration of this, the court in an administrative dispute, according to regulations, adjudicates on the basis of facts established in the administrative procedure (Article 26, "Law on Administrative Disputes), and the party may not present new facts and evidence on the same circumstances in the administrative dispute. On the basis of new facts and evidence the party may only demand the reinstatement of administrative procedure, a matter which the state organ which carried out the disputed act has the authority to decide upon, and not the court.

The court is also empowered to annul an administrative act in cases where the factual conditions established by this act can obviously not be accepted as valid and fully determined, e.g. when there exist contradictions in the established facts, when not all facts which are of importance in the acceptance of the law had been established, or when a conclusion has been derived from the established facts which, on the basis of logical thinking, cannot be accepted as correct. In addition to this, the court examines in an administrative dispute whether the accused organ followed the

regulations ruling the administrative procedure, and always nullifies disputed administrative acts when it finds that the rules on procedure have been violated, where violation may have had bearing on the settlement of the administrative matter (e.g. in case the plaintiff in an administrative procedure was not given a hearing, or was not instructed on its rights in the procedure, and for this reason did not have the possibility of making statements and presenting evidence on important circumstances; or if the organ itself has omitted its official duty of introducing evidence which was necessary for the elucidation of the matter when it could have done so.)

In giving decisions on the rights and duties of citizens, institutions and organizations, the organ in authority may not take sufficient account of the regulations on procedure, and for this reason essential facts remain incompletely or incorrectly established. Administrative acts are most often annulled on these grounds (Table IV).

TABLE IV: COMPLAINTS GRANTED IN ADMINISTRATIVE DISPUTES, 1959

Supreme Court	Total	Complaints upheld due to violation of procedure and shortcomings in establishment of the factual conditions		Complaints upheld due to violation of material law, or for other reasons	
		Number	Percent	Number	Percent
Serbia	4,784	3,688	77.1	1,096	22.9
Voyvodina	1,547	1,281	82.8	266	17.2
Croatia	2,466	1,173	47.5	1,293	52.5
Slovenia	871	80	9.2	791	90.8
Bosnia & Herzogovina	858	658	76.7	200	23.3
Macedonia	798	548	68.7	250	31.3
Montenegro	245	237	96.7	8	3.3
Federal Supreme Court	313	74	29.6	239	76.4
Total	11,882	7,739	65.1	4,143	34.9

In order to speed up the effectuation of rights, the law stipulates cases in which the court, in an administrative dispute, is given wider powers, so that the procedure which the accused organ conducts in the execution of the court's judgment is in some cases significantly curtailed, and in others completely eliminated.

When the disputed administrative act can be reversed on grounds of defects in procedure, or due to incorrect and incomplete establishment of factual conditions, the court, itself, may - in an oral hearing or via a member of its council, through the sreski court or some other state organ - establish the factual conditions on the basis of evidence available from records of the administrative procedure, as well as from evidence of court records. The court is empowered to do so only when the "renewed procedure of the accused organ would incur damage to the plaintiff, which would be difficult to repair; when it is apparant from public documents, or on the basis of other evidence from the records of the matter, that the factual condition is different from that established in the administrative procedure; or if the administrative act has once already been reversed in the same dispute and the organ in authority has not fully carried out the court's judgment (Article 36, Paragraph 3 and 4, "Law on Administrative Disputes"). In court practice it is very rare for courts to proceed in this manner.

In order to speed up the effectuation of rights to social insurance, which are of special importance to the citizens, the courts are given still wider powers. The court may pass judgment not only to annul the disputed act that dealt with rights in the field of social insurance, but it may also, if the data from the administrative procedure provide a reliable basis for this, render a decision on whether or in what measure, the rights to social insurance pertain to the plaintiff. In this case the accused organ does not carry out a new administrative act. The demand of the plaintiff for the recognition of his rights to sicial insurance was settled by the court's decision itself, this replacing the administrative act in all respects (Article 40, Paragraph 3, "Law on Administrative Disputes"). In practice this power is very rarely made use of (Table V).

TABLE V: JUDGMENTS PASSED ON THE PLAINTIFFS' RIGHTS TO SOCIAL INSURANCE

Supreme Court	Number	Percent of total number of complaints granted in administrative disputes.
Total	36	0.3
Serbia	-	-

Voyvodina	21	1.4
Croatia	4	0.2
Slovenia	-	-
Bosnia & Herzegovina	3	0.3
Macedonia	3	0.3
Montenegro	5	2.1
Federal Supreme Court	-	-

Appeal and Decision at the Second Stage

An appeal against the decision (judgment and resolution), rendered in an administrative dispute in the first stage by the supreme court of a People's republic, or of an autonomous unit, is permitted only if the judicial matter adjudicated in the administrative dispute has direct reference to a Federal law. On the basis of experience in administrative disputes, the courts have adopted the view that the only decisive factor in deciding whether an appeal is in order, is the question whether one is dealing with the application of a Federal law, which is material-legal in character; it is not of importance that the procedure on the disputed matter was conducted before the administrative organ according to Federal regulations on procedure, this, according to prescriptions of the "Law on General Administrative Proceudre", being regularly the case. It is assumed that an appeal is not only permissible when an exclusively Federal law applies to the disputed matter, but also when prescriptions of the Republic, or decisions of a people's committee, based on, or within the boundaries of, basic (general) Federal jurisdiction, are applicable.

When prescriptions from an exclusively Republican domain of jurisdiction are applicable to the judicial matter, an appeal is only permissible against court decisions which reject the complaint because the disputed act is not an administrative act, when the act does not affect the rights or direct personal interest of the plaintiff, or if the complaint is rejected because the matter is one which cannot be the subject of an administrative dispute at all.

An appeal is always permissible against decisions of themilitary supreme court.

An appeal may be made within a period of 15 days from the day that the decision defeating the complaint was passed. It is presented to the court which gave a decision at the first stage.

The Federal Supreme Court passes judgment, or brings a decision, on the appeal.

When adjudicating the appeal against the judgment at the first stage, the court either gives a decision that the appeal be rejected as without foundation, or that it be recognized and the

judgment at the first stage be reversed. When the court finds that the procedure before the court of the first stage was defective and prevented the matter to be thoroughly examined and evaluated, it renders a decision that the judgment at the first stage be discarded and that the matter be returned to the court of the first stage, which is to bring a new decision, keeping to the legal concepts and remarks on procedure, which the Federal Supreme Court listed in the exposition of its solution.

The Federal Supreme Court always renders a decision on an appeal against the judgment of the court of the first stage, either rejecting the appeal or recognizing it and altering or discarding the resolution of the first stage.

The Federal Supreme Court ensures uniformity in the application of law in administrative disputes, mainly by adjudicating appeals against decisions of the supreme courts. In order to realize the scope of the work of the Federal Supreme Court in this area, it is useful to present the following data on the number of appeals and decisions made on them by the Federal Supreme Court (Table VI).

The judgment of the Federal Supreme Court in an administrative dispute is final: no further judicial redress is possible against it. Against the court decision in an administrative dispute one may also not bring an appeal for protection of legality.

TABLE VI: ACTION OF THE FEDERAL SUPREME COURT ON APPEALS.

Year	Number of Appeals	Percentage of appeals filed			
		Rejected	Defeated	Acknowledged	Solved in another manner
1952	208	7.9	16.7	15.1	60.3*
1954	5,509	10.0	47.3	31.0	11.7
1956	7,270	8.9	46.3	36.9	7.9
1958	8,015	0.9	84.1	15.0	--
1959	9,910	0.9	84.3	14.8	--

*The high percentage of these decisions in 1952 is due to the fact that a large number of cases on pensions were, on the basis of special regulations, discontinued by the court because it was necessary that the institutes of social insurance create new resolutions.

A procedure terminated by court decision in an administrative dispute may be renewed if it is warranted by special conditions (Article 51, "Law on Administrative Disputes"), which basically correspond to grounds for renewal in cases of ligitation or criminal procedure.

Work of the State Organ and Court upon Termination of the Administrative Dispute.

When the final court decision is one which rejects the complaint in the administrative dispute, the disputed administrative act becomes legally valid and the administrative matter is definitely settled in the manner ordered in the disputed act. On the other hand, when the administrative act is rejected and it is necessary that a new administrative act be created, the accused organ is obligated to follow all the court"s remarks on procedure (presentation of definite evidence, giving a hearing to the party, collection of pertinent data, etc.). In addition, the accused organ must carry out a new administrative act in agreement with the judicial opinion presented by the court in exposition of its judgment within a period not longer than 30 days.

It is only in rare instances that the state organ does not respect the judgment passed by the court in an administrative dispute. Nevertheless, such eases do occur. Disregard of the court's judgment comes to expression in the following manner: in execution of the court's judgment the accused organ either entirely refrains from producing a new administrative act within the legal time limit, or it carried out an act contrary to the court's stipulation on procedure or to the judicial opinion presented by the court in its judgment.

If, upon the defeat of an administrative act, the authorized state organ introduces a new act contrary to the judicial concepts of the court, or contrary to the court's comments on procedure, the party has the right to lodge a new complaint. Upon complaint of the party the court destroys the disputed act and, according to rules, by its own judgment settles the rights of the party. Such a judgment replaces the act of the authorized organ in all respects. In 1959 all courts, together have brought such decisions in a total of 15 cases.

If the accused organ does not create a new administrative act within a period of 30 days, and also does not produce it within a further period of seven days following the day the plaintiff pressed for the creation of the act, the plaintiff has the right to turn to court and request that the court, which adjudicated the disputed act at the first stage, itself bring about an act, by means of which the court will decide on the rights of the plaintiff in place of the accused organ. The court shall require of the accused organ that it give information on the reasons why it did carry out about the admi-

nistrative act. If the authorized organ does not submit this information within seven days, or if the reasons given do not, according to the concepts of the court, justify the non-execution of the court's judgment, the court will bring a decision which replaces the act of the authorized organ in all respects. The court will present this decision for execution to the authorized organ, simultaneously informing the higher state organ on the matter. The organ responsible for its execution is obligated to carry out such a decision without delay.

10,189

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