



МЕСТО КОНСТИТУЦИОНА  
УЛОЖАЊА У ПРАВО  
НА ПОСРЕДСТВО ГЛАВНОГ



Organization for Security and  
Cooperation in Europe  
Regional Administrative Institute



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**PROGRAMME  
INTERNATIONAL WORKSHOP**



**«Application of the Constitution as an  
Act of Direct Effect in Administrative  
Proceedings»**

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**Direct Application of Constitution to Protect the  
Rights of the People Suffered from Armed Conflict  
and Forced Displacement: Balkan Experience**

**SLAVICA BANIĆ**

Editor in Chief

International Expert

Former Justice of the Constitutional Court of the Republic of  
Croatia (2008-2016)

# CONSTITUTIONS OF WESTERN BALKAN COUNTRIES AND ADMINISTRATIVE JUSTICE

## **Republic of Croatia**

### **Article 19**

Individual acts of state administration and bodies vested with public authority shall be grounded in law.

Judicial review of individual acts made by administrative authorities and other bodies vested with public authority shall be guaranteed.

## **Republic of Serbia**

### **Article 198**

Individual acts and actions of state bodies, organizations with delegated public powers, bodies of autonomous provinces and local self-government units must be based on the Law. Legality of final individual acts deciding on a right, duty or legally grounded interest shall be subject to reassessing before the court in an administrative proceedings, if other form of court protection has not been stipulated by the Law.

## **Bosnia and Herzegovina**

### **Article II par 2 – International standards**

The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.”

## **Montenegro**

### **Article 148 provides**

Individual legal acts must be in accordance with law. Final individual legal act enjoys the judicial protection

# Legislation on Refugees and Displaced Persons

## REPUBLIC OF CROATIA

1. The Governmental Decree on the Status of Displaced Persons and Refugees from 1991
2. The Governmental Decree on Granting the Special Credits for Repair of Housing and Commercial Objects and Residing Buildings Damaged by War Destructions from 1991
3. The Law on Registration of War Damage from 1991
4. The Law on Financing the Reconstruction from 1992
5. The Law on Crediting the Reconstruction of by War Damaged and Destroyed Housing and Commercial Objects from 1993
6. The Law on Status of Displaced Persons and Refugees from 1993
7. The Law on Temporary Disposition and Management of Certain Property from 1995
8. The Law on Reconstruction from 1996
9. The Law on Areas of Special State's Care from 1996
10. The Law on Convalidation from 1997 with three Governmental Decrees:
  - Decrees on Implementation of the Convalidation Law in judicial matters, administrative matters and for administrative field of labour, employment, pension and disability insurance, child's allowance, social care and protection of military and civil war invalids from 1998 and Ordinance of procedure for decisions and individual acts from pension insurance field from 2008
11. The Law on Civil Victims of Homeland War from 2021

## REPUBLIC OF SERBIA

1. Law on Refugees from 1992
2. Law on rights of fighters, military invalids, civil invalids of war and their families from 2020

## BOSNIA AND HERZEGOVINA

1. Law on displaced persons, returnees and refugees in Republic Srpska
2. Law on displaced persons and returnees in Federation of Bosnia and Herzegovina and on refugees from Bosnia and Herzegovina
3. Law on Foundations of Social Protection, Protection of civil victims of war and protection of family with children of Federation of Bosnia and Herzegovina
4. Law on Protection of Civil Victims of War in Republic Srpska

# Legal Remedies against the decisions of public bodies in relation to legislation on refugees, displaced persons and civil victims of war

## 1. The Act on (General) Administrative Procedure

The right to appeal is guaranteed against the decisions of public bodies.

Only in special cases provided by the law, the right to appeal is excluded, in which case the administrative dispute is available.

## 2. The Act on Administrative Disputes

The administrative dispute is established by the ADMINISTRATIVE LAWSUIT

The Administrative Court may: annul the decision, confirm the decision or annul and solve it on its own (Croatia)

## 3. The Constitutions of Croatia, Serbia and Bosnia and Herzegovina

- Constitutional complaint as legal remedy for protection of human rights

# The effect of constitutional rights in the administrative proceedings

## **The Republic of Croatia**

### Article 5 of the Constitution

In the Republic of Croatia, laws shall comply with the Constitution. Other regulations shall comply with the Constitution and law.

All persons shall be obliged to abide by the Constitution and law and respect the legal order of the Republic of Croatia.

### Article 31 of the Constitutional Act on Constitutional Court

(1) The decisions and the rulings of the Constitutional Court are obligatory and every individual or legal person shall obey them. (2) All bodies of the central government and the local and regional self-government shall, within their constitutional and legal jurisdiction, execute the decisions and the rulings of the Constitutional Court. (3) The Government of the Republic of Croatia ensures, through the bodies of central administration, the execution of the decisions and the rulings of the Constitutional Court. (4) The Constitutional Court might determine which body is authorized for the execution of its decision, respective its ruling. (5) The Constitutional Court may determine the manner in which its decision, respective its ruling shall be executed.

## **The Republic of Serbia**

### Article 18 of the Constitution

Human and minority rights guaranteed by the Constitution shall be implemented directly. The Constitution shall guarantee, and as such, directly implement human and minority rights guaranteed by the generally accepted rules of international law, ratified international treaties and laws. The law may prescribe manner of exercising these rights only if explicitly stipulated in the Constitution or necessary to exercise a specific right owing to its nature, whereby the law may not under any circumstances influence the substance of the relevant guaranteed right.

### Article 166 of the Constitution

The Constitutional Court shall be an autonomous and independent state body which shall protect constitutionality and legality, as well as human and minority rights and freedoms. The Constitutional Court decisions are final, enforceable and generally binding.

# Legal Rights vs. Constitutional Rights in administrative proceedings

Everyone has the right to refer to his or her constitutional right in the proceedings!

The administrative courts have to review the case in the light of constitutional rights!

The judicial review on the status of refugee, displaced persons or civil victims of war and additional rights allocated to them upon the acquired status are legal rights which mainly do not have the equivalent expression in the constitutional rights, however they touch upon

- Right to home;
- Right to equal access to education;
- Constitutional guarantee on special care for vulnerable groups
- Right to property
- Right to fair trial

## Decision of CCRC – U-III-947/2007 convalidation of social insurance rights

- In the constitutional complaint it is alleged that the Administrative Court rejected the complaint on the grounds that the applicant was not registered in the records of the pension and disability insurance body as an insured person, and that Administrative Court considered that the validation of the affairs within the body whose activities were aimed at destroying the legal order of the Republic of Croatia was not possible.
- The applicant considers that the administrative bodies, as well as the Administrative Court, from the very beginning of the procedure of convalidation of the applicant's insurance record, acted contrary to the laws of the Republic of Croatia and that should not have happened that certain persons were recognized for their length of service and others like applicant, were not.
- He considers such treatment to be discriminatory, moreover because the applicant has proved the existence of length of service by public documents, such as a work book, a copy of the registry book, a record of length of service and salary. He states that the accuracy of these allegations can be checked in the archives of the defendants, and that he can also attach decisions on the convalidation of the length of service of his colleagues in the same companies..

## Decision of CCRC – U-III-947/2007 convalidation of social insurance rights

In the constitutional complaint, the applicant, inter alia, alleges a violation of Article 14 para. 2 of the Constitution, 26, 29 and 54 of the Constitution.

Article 14 para. 2 of the Constitution contains a general guarantee of the equality of all before the law. It must be considered together with paragraph 1 of the same constitutional provision which contains the constitutional guarantee of non-discrimination in the exercise of all rights and freedoms guaranteed by the Constitution and laws.

Article 14 of the Constitution is not an independent legal basis for a constitutional complaint, but must be emphasized together with some other (substantive) right that the applicant considers to have been violated.

**Therefore, the inequality will not be reviewed from the aspect of prohibition of discrimination, but from the aspect of inequality which is enshrined in the Article 29, in terms of the right to fair trial, which is also emphasized.**

**The rules and means of proving are the part of the procedural rules of administrative procedure, contained in the General Administrative Procedure Act and as such are an inseparable component of the procedural guarantees of a fair trial, protected by the Constitution!!!!**



THANK YOU FOR YOUR ATTENTION