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LEGAL REGULATION OF ADMINISTRATIVE CONTRACTS IN BOSNIA AND HERZEGOVINA

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ABSTRACT

The institute of administrative contract was mentioned for the first time in the legislation of our country in the Preliminary Draft to the Law on Amandments of the Law on Administrative Procedure of Bosnia and Herzegovina from 2012. Although insufficiently, the first step is made towards fullfillment of the reform requirements in the area of admisitrative procedure on the way to the European integration and in accordance with the changed role of administration and the need for improvement of cooperation between the administration and citizens, or legal entities. In Bosnia and Herzegovina there is still no general legal regulation of administrative contracts, but administrative contracts are subjects to specific laws and as such already exist in the legal system. After some introductory remarks, the paper deals with the concept and characteristics of administrative contracts, and also presents legal regulation of administrative contracts highlighting their specificities and differences in relation to private law contracts. The importance of general legal norm governing administrative contracts is especially emphasized, as well as their importance for reform processes in our country. Accordingly, the importance of introducing a complaint as a legal remedy that a client can use if the public authority fails to meet contractual obligations is pointed out, but also the possibility of judicial protection in case of legal dispute.

Key words: *administrative contracts, public interest, complaint.*

INTRODUCTION

Public administration in Bosnia and Herzegovina is going through important reform processes that are a precondition for its integration into the European Union. The fundamental purpose of the reform is to strenghten the capacity of public administration with the aim of creating administrative capacities capable of implementing legal acquis of the European Union. One of the most important reform procedures refers to the new regulation of administrative procedure and the improvement of procedures in the process of application of the Law on Administrative Procedure.[2]

According to the new role of public administration as "a service" that is at its citizens, legal entities and other subjects disposal providing them with the widest variety of service of administrative kind, there is a need for legal regulation of the new institute – administrative contract. The Preliminary Draft of the Law on Amandments to the Law on Administrative Procedure of Bosnia and Herzegovina mentions for the first time in our legal system the importance of administrative contracts.

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[2]In June 2012 the Parliamentary Assembly of Bosnia and Herzegovina adopted the Preliminary Draft of the Law on Amandments to the Law on Administrative Procedure which is beyond the existing ambiguities in the application of the Law and allows the consistent implementation of its provisions.

The Preliminary Draft predicts regulations of numerous issues of administrative contracts, such as conditions for the conclusion, the subject of administrative contract, the nullity of administrative contract, changes of administrative contracts due to chnages in circumstances, the termination of administrative contracts, the complaint to administrative contract, as well as complaint procedures. This allowed for actualization of issues of administrative contracts in the local administrative and legal theory. Becoming the part of public law, administrative contracts would influence the quality of administrative decision, but also the level of legal security of citizens and business entities contributing to the removal of bureaucratic barriers in exercising rights and legal interests.

Our current legislation recognized certain types of public law contracts, such as concession contracts or public procurement contracts much earlier. All these contracts are in the regime of administrative law and the judicial protection of rights of these contracts is realized in the administrative dispute. Given the fact that the local law does not recognize a special institute of administrative court, administrative disputes and accordingly disputes arrising from administrative contracts are settled in courts of general jurisdiction. On the one hand, such a court protection of the rights of administrative contracts is quite logic because it is a contract, but, on the other hand, there is a need for disputes of administrative contracts to be settled before the special, administrative courts, because it is a special type of contract which aims to faciliatate the provision of public services.

The explicit and precise legal regulation of administrative contracts would contribute to the fact that the administration is becoming more perceived as a public service rather than as "an authoritative activity" of state, which is in line with the requirements of European integration, according to which contemporary administrative systems as well as complex systems of human cooperation cannot be conceived on the basis of outdated models of administration as the government apparatus, but must result from the social function of administration.

1. The concept of administrative contracts

The administrative contract is a special category of legal contract which is rooted in the dualistic division of law on public and private. In this regard, the contract in the area of private law is the same as the administrative contract in the area of public law. The administrative contract is also a dualistic legal act that created the free will of its subjects with the aim of accomplising certain legal effects. However, in administrative contracts, when it comes to legal effects, there is one specific element that is reflected in the fact that administrative contracts are concluded with the aim of functioning of public service. Danić (1934:106-107) states that "whenever it comes to the functioning of public service, then in terms of contract that is being concluded the provisions of private law are not applied, but the basic prinicples that exist in the public, or administrative law. The main provisions refer to the form of contract, to the authority of administration to achieve through unilateral acts proper performance of the contract, etc."

The concept of administrative contract developed in the European continent in the late 19th century from the concept of administrative contracts in civil law countries. They came into being as a result of subjecting the public legal bodies to the principle of legality, which limited their free activities even when they secured public needs.

Borković (1993) defines administrative contract as a bilateral legal act that a state or some other public authority enters with the third person (natural or legal) in order to achieve a particular goal of wider social interest, and under conditions laid down by special regulations. In relation to the administrative act, as a unilateral decision of the public authority that ends the administrative procedure, administrative contract is a special form of administrative and legal regulation of a certain case for which emergence the consent of the public authority and other contracting parties is necessary.

The main characteristics of administrative contracts refer to: a) entities that conclude administrative contracts; b) the purpose or goal for which administrative contracts are concluded and c) the special rules applicable to the conclusion and execution of administrative contracts.

The first characteristic of these contracts is that one party of the contract is always the public authority (a state, regional and local governments, but also legal persons which are completely or largely financed by the state – public institutions, public companies, etc.). The specificity of the position of parties involved in administrative contracts is reflected in inequalities because the public authority, as the party in a contractual relationship based on the administrative contract, has wider scope of authority that arise from the primacy of public interest, or from the purpose that would be achieved via these contracts.

Unlike civil law contracts, where both parties are in equal legal position, in case of administrative contracts the public authority is in a superior position and has stronger legal authority that come into play when concluding, as well as executing the contract (Borković, 1993). The favorable, or superior position of the public authority is particularly evident in the case when the other party is not fullfiling its contractual obligations regularly or at all.

The second characteristic refers to the purpose or goal of the conclusion of administrative contracts, and that is always the achievement of public interest which basically boils down to the satisfaction of certain public purpose. Lilić (2014) states that considering the purpose they want to achieve there are two types of administrative contracts, and those are: a) contracts by which the state is supplied with moveable assets (e.g. military administration concludes contracts with private parties on the supply of food, clothing and footwear) and b) contracts as means of investment in public facilities (e.g. contracts for the construction of roads, etc.). Whether it is the entrusting of the construction of public road, school, hospital or some other public building, providing the services of public transport, water or electricity supply of citizens, the allocation of public wealth to a private entity for usage or exploitation or purchase of goods for the functioning of the public service, the subject of administrative contract are always public works, public services and public procurement of goods[3].

The third characteristic is that special provisions are applied for administrative contracts, or they are entirely subject to the legal regime of the public law.

The most important issues of administrative contracts are regulated by the norms of the public law – a procedure that precedes the selection of a private entity, the selection of subjects that will be offered a conclusion of the contract, the issues of legal protection of subjects that the contract is not offered, a procedure for amending the contract during the duration of the contractual relationship, etc. (Aviani and Đerđa, 2011). The reason of the public regulation of administrative contracts primarily refers to the need for establishing certain limits of freedom when concluding contracts between entities, so that the administrative contract, as the important institute of the public law, would not "turn into" the private legal contract aimed at accomplishing reciprocal benefits for its entities. Administrative contracts are, thus, placed in a different legal regime in comparison to contracts of the private law. Singh (2002:97) justifies this with a thesis "that if entities of administrative contract are allowed the same freedom that entities of private law contract enjoy "it would spontaneously lead to commercialization of public services". Therefore, certain limitations of administrative contracts are necessary, so that they would not turn from important legal institute of the public law into an ordinary agreement.

Taking these characteristics into account, the definition of the concept of administrative contracts is based on three different criteria, and those are: a) the criterion of parties – according to which one of the parties involved in the administrative contract must be a legal entity of the public law; b) the objective criterion – according to which the administrative contract is the one whose object is linked to the performance of public service, or the one according to which an inidividual receives the right and duty to perform the public duty and c) the criterion of special powers – according to which the public authority is given greater (special) powers because it benefits more to the accomplishment of wider social interest (Ljubanović, 2010).

The theory of administrative contracts in legal systems of European countries is the most extensively developed in the French Law where the administrative contract is considered to be one of the greatest achievements of administrative and judicial practice. According to the French theory of administrative law, administrative contracts are mixed legal acts (unilateral and bilateral) because they also contain contractual provisions, but also provisions that represent the expression of the will of the public authority, that can modify them even after the conclusion of the contract, while retaining the control over the performance of public services of public works.

[3]One of the distinguihing factors of administrative contract from private law contract in the French legal theory is actually the subject of the contract, which is always related to the exercise of public service. A key element for distinction of administrative contract from private law contract in the German legal theory is also the subject of the contract. According to the German theory, administrative contract creates, modifies or abolishes legal relation "in the field of public law", while other contracts have the same effect but in the field of private law. Thus, if the legal relation that the contract creates, modifies or abolishes is in the field of public law, the contract will be under the legal nature of administrative contract. However, it is interesting to emphasize that eventhough the German legal theory and legislation recognize the institute of administrative contract, the term "administrative contract" cannot be found in the German legal system, instead a term "the public law contract" is used. A special feature of these contracts is that they are fully subject to the legal regime of the public law, and legal rules, jurisprudence, and general principles of the private law are applied to them only subsidiary (Aviani and Đerđa, 2011).

Administrative contracts, according to the French Law, are concluded in writing, and the condition of their validity is, in addition to the consent of the parties and the admissibility of the object of the contracts, that they must contain all the contractual clauses. "One of the clauses that is defined by The State Council clause exorbitante – a clause which aims to to give the rights to the parties and impose obligations of such nature that cannot be concluded or accepted by any in the field of civil or commercial law" (Ljubanović, 2010:44). One of the parties involved must be a legal entity of the public law that while concluding the contract has the right to direct and supervise, impose sanctions, to unilaterally modify the provisions of the contract and to terminate the contract unilaterally. However, the right to unilateral modification of the provisions of the contract is limited considering that the other contractual entity has the right to claim compensation from the public authority in case of an increase of expensses and disruption of "financial balance". As for the specificities of administrative contracts, in the French theory, the following is emphasized: a) those are the contracts between unequal parties; b) the public authority performs with stronger legal will and c) in the execution of contracts the public authority has public authority.

The most important division of administrative contracts in the French theory and practice includes contracts on public service concession, public procurement contracts, contracts on the takeover of public goods, contracts on registration of public borrowings, contracts on public-private partnerships and the like.

The German law also recognizes the institute of administrative contracts, but unlike the French Law – where the greatest impact on legal regulation of administrative contracts possesses thr administrative court practice, they are legally regulated by general rules of administrative procedure, as well as by special state and federal laws. The basis of creation, modification and abolition of legal relation of the public law presents administrative (public and legal) contract, except where this would be contrary to the legislation. The Law on Administrative Procedure[4] defines the concept of administrative (public and legal) contract as a special kind of contract that craetes, modifies and abolishes the public relations. It is not visible from the very definition who are its parties so it can be concluded that they can also be private legal subjects. However, considering that the object of the contract are public relations and rights and obligations of public character are taken over with it, one of the contractual entites is always the body of the public government. Given that the administrative contract is considered to be the contract: a) which is regulated by provisions of administrative law; b) which is the subject of regulation of administrative relations; c) which are a base for administrative powers and obligations and d) where one of the contractual parties is the subject of the public authority (Kostić, 2008).

In the German Law as the foundation of administrative contracts does not occur subordination exclusively, but between contractual entities can exist a certain degree of coordination. In this regard, administrative contracts can be divided into: a) coordinated and b) subordinated administrative contracts. The coordinated administrative contracts are those in which parties are equal, i.e. are in equal or almost equal position or level. Most frequently those are two subjects of public authority that are mutually completely equal. The equality of the contractual parties assumes the absence of subordination, so that none of the parties is superior to the other, or does not possess stronger legal will than the other. Given that in such contracts the subordination is absent, there can also be classified contracts concluded between two private entities. Subordinate administrative contracts present contracts that are concluded between the public authority and the third party. The basic characteristic of these contracts is that one party of the contract acts as the holder of the public authority. Therefore, we talk about contracts where subjects are in "subordinate-superior" relationship. In the theory of administrative law this type of administrative contracts can further be divided into: a) contracts which bind on the adoption of specific administrative act; b) contracts that replace the administrative act and c) contracts that are in no direct connection to the administrative act.

The German Law also provides reasons for thenullity of administrative contracts that are not the same in all cases for coordianted and subordinated contracts. The common reasons for nullity are: business or process inability of one of the contractual parties, violation of rules of procedure, if the contract is concluded contrary to social morality and if there are reasons for voidance (Detterbeck, 2009).

It can be concluded in the end that administrative contracts are bilateral administrative and legal relations which are based between public legal bodies and the third party, in order to perform activities that are of general interest, especially under the prescribed conditions and that they are the tendency of public bodies to enter legal relations otherwise and not only through an administrative act.

[4]Article 54 of the Law on Administrative Procedure / Verwaltungsverfahrensgesetz (VwVfG) vom 25.5.1976, BGB1 I, S. 1253.

2. General legal regulation of administrative contracts in Bosnia and Herzegovina

Public administration reform in Bosnia and Herzegovina and harmonization of national legislation with European administrative standards is one of the most important tasks placed before our country on the path towards European integration. The European Union has defined a set of fundamental principles according to which it is necessary to develop a legal framework and establish institutional capacity to meet the obligations of membership.
The new European standards of public administration and good practices of European countries require the reform of the administrative procedure in order to create and strengthen the administrative capacity needed for effective implementation of national legislation and the legal acquis of the European Union. The administrative procedure is necessary to be modernized in line with European orientations that require solving different administrative and legal issues, and not only through an administrative act. New social processes in which the public administration of the instrument of government evolved into "service" oriented activity of the country also led to the need for the introduction of new institutions that would affect the quality of administrative decision-making. These are administrative contracts as legal instruments that the public authority provides with a range of administrative services to citizens, legal persons and other entities.
The need for legal regulation of administrative contracts in Bosnia and Herzegovina was created as a result of entering public bodies in legal relations with the private law subjects as well. Namely, the basis of the formation of an administrative and legal relation is no longer just an administrative act which unilaterally and authoritatively decides on the rights and obligations of the parties, but it can also be a contract as the free will of its parties.
The general rules of administrative procedure in Bosnia and Herzegovina are not regulated by administrative contracts, but in 2012 the Preliminary Draft of the Law on Amendments to the Law on Administrative Procedure of Bosnia and Herzegovina was adopted, which also envisages the introduction of administrative contracts in the administrative-procedural legislation. The Preliminary Draft principally regulates only the basic issues of conclusion and execution of administrative contracts, while all the particularities are governed by regulations that apply to certain administrative authorities. The Preliminary Draft also does not provide a definition of administrative contract, or from the overall general legislation it can be concluded that administrative contracts are public and legal contracts concluded between administrative bodies and parties on the execution of rights and obligations established in the decision which settled the administrative matter, unless determined otherwise by law.
The general legal regime governing administrative contracts also includes entities, conditions for the conclusion and subject, the nullity of the administrative contract, modifications and termination, as well as complaints to the administrative contract.

2.1. The subjects of administrative contracts

The Preliminary Draft of the Law on Amendments to the Law on Administrative Procedure of Bosnia and Herzegovina does not explicitly determine who the subjects of an administrative contract are, but it can be concluded that an entity has public authority, while the other entity is referred to as a party. The Preliminary Draft, however, did not define who may appear as a party – whether those are exclusively public authorities or may be private law entities. In domestic law is, in terms of determining the subjects of the administrative contract, accepted the German theory of administrative contracts according to which a party of the administrative contract can occur both as the public and private law body. In this regard, if the administrative contract is concluded between two or more public authorities, which are hierarchically in the same or similar level, these are "coordinated" administrative contracts, and if the subjects of the administrative contract are the public authority, on the one hand, and a private law body (natural or legal person), on the other hand, then those are "subordinate" administrative contracts.

2.2. The conditions for the conclusion and subject of administrative contracts

The Administrative Procedure Code of Bosnia and Herzegovina provides the conditions for the conclusion of administrative contracts. First, the administrative body and the party can enter into an administrative contract only if previously a decision which resolves certain administrative matter is issued, and if the law requires the conclusion of such a contract.

The obligation of concluding administrative contracts is stipulated, therefore, by specific laws governing certain administrative areas, such as the Law on Public Procurement ("Official Gazette" No. 39/14), which regulates the conclusion of a public procurement of goods, services and works between one or more suppliers and one or more authorities; the Law on Concessions ("Official Gazette" No. 32/02), which prescribes the manner and conditions for granting concessions to domestic and foreign legal entities, the so-called concessionaires of the conclusion of the concession agreement or the Law on Public-Private Partnerships[5], which regulates manner, conditions and procedure for the conclusion of the public-private partnership between the public legal bodies and administrative act of the selected private partner, etc.

It is planned by the Preliminary Draft of the Law on Amendments to the Law on Administrative Procedure of Bosnia and Herzegovina to conclude administrative contracts in written form. The written form is accepted as a condition for the conclusion and validity of administrative contracts and comparative law. So in the legal systems of most modern countries such as Germany and France the general rule of the written form of administrative contract is applied, which is expressly prescribed by the law.

One of the conditions for the conclusion and validity of administrative contracts is that the agreement must not be contrary to the operative part of the decision, compulsory regulations, public interest or be coupled to the detriment of third parties. If an administrative contract has legal effect on the rights of third parties, it is valid only with the consent of such person.

The subject of the administrative contract relates to the execution of the rights and obligations stipulated by the decision which ended the administrative procedure. These are the rights and obligations arising from administrative legal relationship established between the regulatory authority and the parties. The specificity of the items in these contracts is reflected in the fact that it is always pre-determined administrative act. Namely, the administrative contract is not possible to be concluded if previously unilateral decisions of public legal body were made in which the best tenderer is selected who the administrative contract will be made with.

The administrative contract, regarding the object, appears as a means of regulating administrative and legal relations based on administrative act, that are a means of planning the execution of rights and obligations that have been decided by an administrative act. The condition for the conclusion of an administrative contract is, therefore, the existence of an administrative act and therefore the conclusion of an administrative contract with the purpose of regulating administrative and legal relationship that is not resolved by an administrative act is not possible.

The regulation of certain administrative and legal relations as the object of an administrative contract is based on the free will of the parties, where the parties are obliged to exercise the obligations deriving from contractual clauses. These are obligations of public and legal character that can only exceptionally be transferred to other persons.

The specificity of the items stipulated the specific nature of administrative contracts concluded for the achievement of the objectives of the wider public interest. In this regard, there is an obligation of the public law body as the holder of public authorities to inform the public, or interested persons on the intention to conclude an administrative contract. This is done by publishing the notice or public announcement, in order to select the winning contestants who will best fulfill their contractual obligations. Therefore, the most important criteria for the selection of the party with which to conclude a contract are its ability to fulfill contractual obligations and financial conditions under which it undertook the obligation to carry them out.

2.3. The nullity of administrative contracts

According to the Preliminary Draft of the Law on Amendments to the Law on Administrative Procedure of Bosnia and Herzegovina, an administrative contract is null and void: a) if it is contrary to the decision for whose execution was concluded and b) on the ground of nullity prescribed by the law governing contractual relations[6]. The administrative contract is null and void if the part of the contract is null and void, unless the contract would provide legal effect even without this part.

[5]The general legal framework for the regulation of public-private partnership at the level of Bosnia and Herzegovina was not adopted , but the Law on Public-Private Partnership exists in the form of a draft prepared by the Government of the Federation of Bosnia and Herzegovina in October 2013.

[6]The null and void contract is a contract that is contrary to compulsory regulations, public order and moral of society. Since the administrative contracts are concluded in accordance with the regulations governing contractual relations in Bosnia and Herzegovina, their nullity is determined from the reasons provided by the same regulations.

So, if certain provisions of the contract are null and void, the contract will not be, exceptionally, declared null and void in the event that it can survive even without null and void provisions.
The invalidity of administrative contracts is determined by competent court in administrative disputes on the basis of customer complaints or administrative bodies. The void administrative contract has no legal consequences.

2.4. The modification of an administrative contract

An administrative contract can be later modified under the condition that it is due to modified circumstances that appeared after the conclusion of the contract, and that could not be predicted during its conclusion, the fullfillment of the contractual obligation became significantly difficut for one of the parties. In that case, the contractual party which is not able to complete obligations has the right to ask for modification of the contract in accordance with the new circumstances. Also, together with this condition, the other contractual party's approval is necessary so that the amandment be possible.
Unlike private law contracts where the parties may at any time by mutual consent modify the original contract, modification of regulations of administrative contract is limited with respect to its subject and aim for whose realization it is concluded. Given the fact that one side of the administrative contract is always the public authority and that this agreement is made to achieve broader social interest, by modifying the contract provisions one must not harm the community on whose behalf the agreement was concluded, nor the rights of third parties that participated in the bidding process that preceded the conclusion of the contract. It is particularly important that the public authority when facilitating changes to the contract does not exceed the limit prescribed by the administrative act because it could lead to its nullity. Thus, the free exchange of administrative contracts is limited, on the one hand, with the rights of third parties which took part in the decision of an administrative act, but on the other hand, is limited with the public interest.

How administrative contracts are characterized by unilateral powers of public legal bodies, which come to the fore and with modifications of its provisions, it can be concluded that the conditions of modification unilaterally are determined by the public authority.[7] In doing so again one should be careful to protect the public interest and the rights of the parties. The other contracting party should not be left without legal protection, since in the case of violation of rights it must be given the authority to claim adequate compensation from the public authorities. Although unilateral modifications of the provisions governing contracts by public authorities may lead to increased costs for the counterparties, the Law on Administrative Procedure of Bosnia and Herzegovina does not explicitly provide for the right party to compensation. The fullest development of possibility of legal protection of the contracting party with unilateral modification of the contract from the public law body exist in the French Law, where the injured party is given an opportunity of protection by the so-called "preserving the financial balance of the contract." In the event of disruption of financial balance, a contracting party is entitled to claim adequate compensation from the public authority, about which they mutually communicate. If agreement on compensation that would re-establish financial balance of the contract fails, the contracting party shall be entitled to institute administrative proceedings and prosecute the charge before the court.

[7]The unilateral modification of administrative contracts in order to achieve the objectives of general interest and to act in accordance with the principles of flexibility, efficiency and protection of life, health and property of citizens, is one of the most important features of the administrative contract in the French law. Thus, the public authority, as a contracting party, has the power to unilaterally amend the provisions of the concession agreement, in response to public interest, and to the modifications that occurred after the conclusion of the concession agreement. This power does not derive from some kind of provision of the administrative contract, but is the result of the general principles of the French Administrative Law. This means that the public authority, regardless of whether it incorporated such a clause into an administrative contract or not, in certain cases, be able to fully legally, to unilaterally amend some of its provisions. The French law does not even allow the public authority to give up the powers of unilateral amendment of certain contractual provisions (Aviani and Đerđa, 2011).

2.5. The termination of an administrative contract

In addition to the fact that the public authority may unilaterally amend the administrative contract, it also has the power to unilaterally terminate the contract in cases prescribed by the law. The Preliminary Draft of the Law on Amendments to the Law on Administrative Procedure of Bosnia and Herzegovina provides for three cases of termination of administrative contracts. First, the administrative authority may unilaterally terminate the administrative contract if the parties fail to agree on amendments to the contract, if they do not agree to such change or if a third party involved in the contract does not agree to the amendment of the contract. Second, the competent authority shall unilaterally terminate the administrative contract if the customer does not meet the contractual obligations. If the administrative body suffered some damages, he has the right to claim compensation for the damages. The last case of unilateral termination exists when it is necessary to avoid serious and imminent danger to human life and health and public safety, and if it could not be removed by other means without impinging upon the acquired rights.

The administrative authority terminates the administrative contract with a decision in which reasons for the termination must be stated and substantiated, as well as the determined amount of damages if caused to the administrative body.

The administrative dispute may be initiated against the decision on termination of administrative contracts before the Court of Bosnia and Herzegovina.

2.6. A complaint to an administrative contract

A legal protection of the other contractual party with the administrative contract is provided by the institute of complaint. The complaint is in an administrative procedure legislation of Bosnia and Herzegovina arranged by the Preliminary Draft of the Law on Amendments to the Law on Administrative Procedure as a regular remedy that can be used against acts, or against the administrative body, unlike the appeal that is to be used against the decision or against an administrative act. A party may file a complaint for failure to fulfill contractual obligations of the administrative body and even seek compensation for the damage arising due to non-fulfillment. The complaint shall be filed and submitted to the authority which by law supervises the work of the administration with which the customer has signed the administrative contract. From the above it can be concluded that the complaint is devolutive, and not remonstrative legal remedy.

A complaint is resolved by a decision against which an administrative dispute can be initiated. Disputes arising from administrative contracts in Bosnia and Herzegovina are in the jurisdiction of courts of general jurisdiction, although the legal regime governing the contract as public legal contracts, is differentiated from the legal regime of private legal contracts. The law, therefore, has the option before seeking court protection in administrative dispute to try to correct the malfunction of the administrative body of the authority that it supervises. In comparative law, the settlement of disputes related to administrative contracts is in the jurisdiction of the administrative courts[8].

CONCLUSION

Based on the analysis of domestic administrative law theory and legislation, it can be concluded that the administrative contracts are public legal contracts characterized by certain specifics, primarily in the way of regulation, but also subjects, the aim of concluding and protection of their parties.

The acceptance of administrative contracts in the administrative procedural legislation of Bosnia and Herzegovina is an important element of public administration reform, which seeks to contribute to the diversity of administrative and legal issues arising between the public administration and private legal subjects by a concurring statement of their will, and not by an authoritative, unilateral act. Citizens and legal entities in this manner also exercise a more active role in relations with the public administration through participation in the administrative affairs of certain administrative authorities.

[8]In France, after the reform of administrative justice in 1953, it was stipulated that in the court proceedings on administrative matters in the first instance decide the administrative courts. Thus, the jurisdiction of administrative courts placed also disputes of administrative contracts. Disputes related to public legal contracts are also in the jurisdiction of the administrative courts in Germany, where there is a three-tier system of administrative justice. The first instance administrative courts are Verwaltungsgericht, second are Oberwaltungsgerichte and third-Bundesverwaltungsgericht as the supreme administrative court (Ljubanović, 2010).

Although there is still no general legal regulation of administrative contracts in Bosnia and Herzegovina, and which would be conducted by the Law on Administrative Procedure of Bosnia and Herzegovina, the need for the introduction of these contracts in the domestic legal system is evident from the fact that they are governed by the Preliminary Draft of the Law on Amendments to the Law on Administrative Procedure of Bosnia and Herzegovina.

The standardization of administrative contracts in the domestic legal system is useful for solving numerous open issues concerning their conclusion, but they are only basically regulated by the Preliminary Draft of the Law on Amendments to the Law on Administrative Procedure, while all the specifics are left to special regulations. In this regard, in addition to the general legal regulation of administrative contracts specific regulations should provide for the possibility of concluding such contracts in situations where such a manner of administrative action is more appropriate than making unilateral decisions by public authorities.

The local legislator took solutions accepted in comparative law when regulating conditions for conclusion of the administrative contracts. There are primarily the German and French laws which have the most elaborated system of administrative contract.

Along with the introduction of administrative contracts in the local legal system there is a need to introduce a new legal remedy that allows the protection of citizens and other entities in all cases of administrative procedures that do not result in the adoption of an administrative act. It is a complaint as a procedural activity of the party against the activity, and not decisions of the administrative body. The analysis of procedural law allows us to conclude that a complaint provides protection of the parties in the event of default of an administrative contract by the public authority, but also that one may seek compensation for damages due to non-fulfillment of contractual obligations by the complaint.

In the domestic legal system is particularly actual the issue of dispute of resolution from administrative contracts. Namely, in Bosnia and Herzegovina there are no specialized courts for resolution of administrative disputes, but all administrative disputes including those of administrative contracts are settled by ordinary courts of general jurisdiction. The situation is additionally aggravated by the fact that the judicial system in Bosnia and Herzegovina follows the complex state structure, so that at each level of political and territorial organization there are courts which adhere in accordance with their responsibilities. In the end, it can be questioned whether the regular courts can effectively resolve administrative disputes together with civil legal disputes.

Reform efforts should, in addition to standardization of administrative contracts, engage and prescribe ways of resolving disputes arising from them, provided that all possible solutions (whether administrative disputes are resolved by ordinary courts, special administrative bodies or administrative courts) must be based on European standards and the principle according to which "everyone has the right to the legally established independent and impartial tribunal which fairly, publicly and within reasonable time examines his case."

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