

Absence of an Oral Hearing in Administrative Disputes: A Comparative Analysis of Slovenia and Croatia

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ABSTRACT

Purpose: The right to an oral hearing is an essential element of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This is particularly emphasised in administrative procedures where the parties are in a hierarchical relationship. The absence of an oral hearing can significantly limit a party's right to a fair trial. Therefore, this paper aims to explore the positive law and state of play in the Republic of Slovenia and the Republic of Croatia regarding the right to an oral hearing. The purpose of this paper is to analyse relevant legislation and case law with the goal of proposing future legislation that better aligns with effective legal protection.

Design/Methodology/Approach: Desk research was conducted to analyse current legal solutions and case law using sociological research methods. These involved analysing domestic and international legal texts and reviewing the rules governing national administrative procedures in the countries included in the research, as well as against decisions of the European Court of Human Rights. In addition, the research used a combination of primary and secondary data sources.

Findings: Administrative courts should prioritise procedural justice and equality of arms, even when there is no clear need for oral hearings, especially if one of the parties requests to appear before the court. To minimise damaging discretion, both parties should consent to relinquishing the right to an oral hearing, which should be mandatory by default.

Academic contribution to the field: The primary contribution of this paper lies in its *de lege ferenda* suggestions regarding the right to an oral hearing,

which could potentially enhance the protection of human rights in relation to a fair trial in both administrative disputes and administrative procedures.

Originality/Value: This research is original as it presents a comparative analysis of administrative procedure and disputes in selected Member States. To the best of the author's knowledge, no such comparative study has been conducted before. The findings of this research could have significant value as they highlight the need for improving procedural justice and equality of arms in ensuring a fair trial in administrative disputes.

Keywords: administrative dispute, administrative law, European Court of Human Rights, fair trial, oral hearing

JEL: K23, K40, K38

1 Introduction

The right to a fair trial is one of the fundamental human rights and a pinnacle achievement of modern legal systems. The concept of effective legal protection is entrenched within the European Union's *acquis communautaire* and in European Court of Justice's case law practice, as well as in the cases of the European Court of Human Rights.¹ Subjects who cannot present their legal interests fully in the procedure or cannot rely on the impartiality of the public authorities in the course of the administrative adjudication, in which their rights and interests are affected, are deprived of equal respect of equality of arms, fair trial and their human rights may as well be violated.²

However, in some cases the right to an oral hearing stands against other equally important principles of the administrative dispute procedure, most notably the principle of efficiency where the facts are clear or not disputed by the parties. Some authors also indicate that the right to an oral hearing is not an absolute right in administrative proceedings.³

A number of studies examined the right to a fair and public hearing in the broadest sense, as stipulated in the European Convention on Human Rights and Fundamental Freedoms⁴, within criminal proceedings.⁵ Also, literature

1 Correia, S. (2011). Administrative Due or Fair Process: Different Paths in the Evolutionary Formation of a Global Principle and of a Global Right, in Anthony, G. *et al.* (eds.), *Values in Global Administrative Law*, Hart Publishing, Oxford, pp. 313–362.

2 Correia, S. (2011). Administrative Due or Fair Process: Different Paths in the Evolutionary Formation of a Global Principle and of a Global Right, in Anthony, G. *et al.* (eds.), *Values in Global Administrative Law*, Hart Publishing, Oxford, pp. 313–362.

3 For example, see: Žuber, B., Lovšin, Š. (2019). Judicial dialogue in the light of protocol no. 16 to the European Convention on Human Rights. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, vol. 40 (2), pp. 915–916. However, the refusal to allow such a hearing, firstly, must be reasoned by a court or a tribunal. See more: Zrvandyan, A. (2016). *Casebook on European fair trial standards in administrative justice*. Strasbourg: Council of Europe, pp. 73–74.

4 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, referred also as European Convention on Human Rights and the Convention further in the article.

5 Hirvelä, P. and Heikkilä, S. (2021). Right to a fair trial: a practical guide to the Article 6 case-law of the European Court of Human Rights. *Intersentia*; Ilić, I. and Knežević, S. (2020). *Scope of Ar-*

extensively focused on the right to a fair trial within a reasonable time which remains one of the most common basis for Article 6 violations⁶, on access to justice in general⁷ and also on its implications on country-specific level.⁸

One of the first analysis of the applicability of Article 6(1) to administrative proceedings was conducted in 1975.⁹ Regarding the civil limb, analysed research focused on harmonization of procedural guarantees with the Convention's rights in non-criminal matters.¹⁰ Authors noted cases establishing the general entitlement to a hearing under Article 6 of the Convention, but also that the right to an oral hearing is not absolute, especially in cases whereas a public hearing has been held at least at one instance or due to exceptional circumstances.¹¹

Due to the COVID-19 pandemic, literature also extensively focused on ensuring the Convention's right to a fair trial in online hearings.¹² The results of such research is twofold. On the one hand, Oliveira *et al.* conclude that the digitalisation of judicial administrative procedures provides for "more than just an update of technological tools for judicial operators. It signifies

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- title 6 of the European Convention on Human Rights - Contribution of the European Court of Human Rights Practice. *Balkan Social Science Review*, 16, pp. 39–55. <https://doi.org/10.46763/BSSR20160391>; Guran, M. (2019). Short considerations on the scope of the right to a fair trial provided by art. 6 of the ECHR – the concept of "criminal charge. *Law review (Romania)*, 2, pp. 157–165.
- 6 See: Langford, I. (2009). Fair Trial: The History of an Idea. *Journal of Human Rights*, 8(1), pp. 37–52, DOI: 10.1080/14754830902765857; Borraccetti, M. (2011). Fair Trial, Due Process and Rights of Defence in the EU Legal Order, in Giacomo, D. (ed.) *The EU Charter of Fundamental Rights. Ius Gentium: Comparative Perspectives on Law and Justice*, vol 8. Springer, Dordrecht.
- 7 Gerards, J. H., Glas, L. R. (2017). Access to justice in the European Convention on Human Rights system. *Netherlands Quarterly of Human Rights*, 35(1), pp. 11–30. <https://doi.org/10.1177/0924051917693988>
- 8 Further reading on the implementation of the right to a fair trial in the Republic of Croatia: Uzelac, A. (2004). Vladavina prava i pravosudni sustav: Sporost pravosuđa kao prepreka pridruživanju, in Ott. K. (ed.), *Pridruživanje Hrvatske Europskoj Uniji, Izazovi institucionalnih prilagodbi*, volume 2, pp. 99–123, Republic of Macedonia: Zendeli, E. (2013). The Challenges of the Implementation of Paragraph of Article of the European Convention on Human Rights and Fundamental Freedoms in the Judicial System of the Republic of Macedonia. *Journal of Politics and Law*, 6(2), pp. 193–201, for Republic of Serbia Milošević, M., Knežević Bojović, A. (2018). Trial Within Reasonable Time in EU Acquis and Serbian Law. *EU and Comparative Law Issues and Challenges Series (ECLIC)*, 1, pp. 447–470. <https://doi.org/10.25234/ecllc/6540>, for Republic of Montenegro Council of Europe (prepared by: Roagna, I.) (2018). The right to trial within reasonable time under Article 6 ECHR.
- 9 Harris, D. J. (1975). The application of Article 6 (1) of the European Convention on Human Rights to Administrative Law. *The British Year Book of International Law*, 47(1), pp. 157–200.
- 10 Lillo Lobos, R. (2022). Understanding due process in non-criminal matters: how to harmonize procedural guarantees with the right to access to justice. Springer, pp. 109–155, Galič, A. (2017). The inconsistency of case law and the right to a fair trial, in Uzelac, A., van Rhee, C. (eds.) *Revisiting procedural human rights. Fundamentals of civil procedure and the changing face of civil justice*. Intersentia, Cambridge, pp. 17–51.
- 11 Lillo Lobos, R. (2022). Understanding due process in non-criminal matters: how to harmonize procedural guarantees with the right to access to justice. Springer, pp. 142–145; Helmreich, M. (2013). Absence of an oral hearing before the Independent Administrative Panel. *Vienna Online Journal on International Constitutional Law*, 7(4), pp. 541–546; Paužaitė-Kulvinskienė, J. (2016). The principle of effective legal protection in administrative law in Lithuania, in Z. Szenté and K. Lachmayer, eds., *The Principle of Effective Legal Protection in Administrative Law: A European Perspective*. London: Routledge, pp. 190–217.
- 12 See for example research on the right to hear a case within a reasonable time and the right to public hearing during the pandemic: Paduch, A. (2021). The Right to a Fair Trial Under Article 6 ECHR During the Covid-19 Pandemic. *Central European Public Administration Review (Online)*, 19(2), 7–25. <https://doi.org/10.17573/cepar.2021.2.01>

a paradigm shift and a change in the nature of the legal process".¹³ On the other hand, whilst acknowledging the positive aspects of remote hearings, Bilevičiūtė notes that Lithuanian legislative framework lacks complete insurance of "rights to attend one's trial, to communicate confidentially with the lawyer, to put questions to witnesses and to challenge evidence" in administrative procedures.¹⁴ Concerns about insuring the right to a fair trial as guaranteed under Article 6 of the European Convention on Human Rights have been researched regarding remotely held criminal procedures as well.¹⁵

Relevant literature on oral hearings before international tribunals demonstrated that the right to an oral hearing appears to be more restricted than before national tribunals, noting that zero oral hearings have been conducted before the International Labour Organization Administrative Tribunal since 1989.¹⁶

Furthermore, authors have discussed the right to an oral hearing in terms of procedural fairness and social psychology, indicating that hearing people in person enhances procedural fairness judgments and contributes to better acceptance of court's decisions¹⁷, while also acknowledging that the oral hearings can even be a disadvantage for claimants.¹⁸

Finally, papers have discussed the use of experts and scientific evidence in the light of the rights to a fair trial, concluding that the right for the defendant in criminal cases to participate in and challenge the use of such evidence could be improved and that the European Court of Human Rights should have the competence to review admissibility and impact of such evidence.¹⁹

The first section of this paper examines the development and positive law within the two selected countries. Following that, the conventional framework of the European Court of Human Rights shall be laid down and analysed. The main research part of the paper is the analysis of the most relevant cases

13 Oliveira, A. M., Pedro, R. L. D., Correia, P. M. A. R. and Lunardi, F. C. (2023). An Overview of the Portuguese Electronic Jurisdictional Administrative Procedure. *Laws*, 12(5), 84. <https://doi.org/10.3390/laws12050084>

14 Bilevičiūtė, E. (2022). Actual issues of remote court hearings in administrative procedure. *Acta Prosperitatis*, 13, pp. 7–23.

15 See Kamber, K. (2022). The Right to a Fair Online Hearing. *Human Rights Law Review*, 22(2). <https://doi.org/10.1093/hrlr/ngac006>, Kulesza, C. (2021). Remote Trial and Remote Detention Hearing in Light of the ECHR Standard of the Rights of the Accused. *Białostockie Studia Prawnicze*, 26(3), pp. 205–221. <https://doi.org/10.15290/bsp.2021.26.03.11>

16 For International Labour Organization Administrative Tribunal see Treichl, C. (2019). The Denial of Oral Hearings by International Administrative Tribunals as a Factor for Lifting Organizational Immunity before European Courts: A(nother) Critical View. *International Organizations Law Review*, 16(2), 407–446. <https://doi.org/10.1163/15723747-20181139> and For European Court of Justice Rosas, A. (2014). Oral Hearings before the European Court of Justice. *Maastricht Journal of European and Comparative Law*, 21(4), pp. 596–610. <https://doi.org/10.1177/1023263X1402100402>,

17 De Graaf, C. V. (2021). Procedural fairness: Between human rights law and social psychology. *Netherlands Quarterly of Human Rights*, 39(1), pp. 11–29. <https://doi.org/10.1177/0924051921992749>

18 Johannesson, L. (2023). Silence and Voice in Oral Hearings: Spatial, Temporal, and Relational Conditions for Communication in Asylum and Compulsory Care Hearings. *Social & Legal Studies*, 32(3), pp. 410–416. <https://doi.org/10.1177/09646639221118654>. The study concerned asylum and compulsory care hearings in Sweden.

19 Vuille, J., Lupària, L., Taroni, F. (2017). Scientific evidence and the right to a fair trial under article 6 ECHR. *Law, Probability and Risk*, 16(1), pp. 55–68. <https://doi.org/10.1093/lpr/mgx001>.

stemming from the European Court of Human Rights and national courts. Finally, the main scientific contribution of this paper is *de lege ferenda* suggestions, which contribute to a higher level of human rights protection in the context of a fair trial.

2 Methodology

The purpose of this paper is to provide an overview of the importance and effect exercising the right to be heard, with an analysis of the current legal state of play in two countries: the Republic of Croatia and the Republic of Slovenia. Although comparative research of two countries already exists,²⁰ comparative papers relating to the topic of oral hearings in administrative disputes has not yet been conducted. The paper deals with cases from the national courts and from the European Court of Human Rights, where cases deal with (potential) violations of human rights or fundamental freedoms regarding the absence of an oral hearing in administrative procedure. The study is exploratory and interpretative in nature. To examine the research topic, the method of analysis of domestic and international legal texts was utilized. It was necessary to assess the administrative procedure rules in both countries included in the research, as well as legal framework of the Council of Europe, in order to examine the issue of oral hearings in administrative disputes and identify effective solutions. Beyond Slovenia and Croatia, further country-specific practices regarding the access to justice in general²¹ and on the right to an oral hearing was also analysed for the purposes of this paper.²² In addition, empirical research using sociological research methods was conducted to analyse current legal solutions and case law. Data used for this research includes both primary and secondary data: the author analyses prior research, legislation and decisions of the European Court of Human Rights²³ and national courts.

20 See for example an comparative analysis of an administrative appeal: Đanić Čeko, A., Kovač, P. (2020). COMPARATIVE ANALYSIS OF AN ADMINISTRATIVE APPEAL IN CROATIAN, SLOVENIAN, AND EU LAW. EU and Comparative Law Issues and Challenges Series (ECLIC), 4, pp. 1065–1096. <https://doi.org/10.25234/eclj/11940>

21 Republics of Austria, Hungary, Lithuania, and Macedonia were analysed in this respect. See: Lachmayer, K., Szente, Z., eds. (2016) *The Principle of Effective Legal Protection in Administrative Law: A European Perspective*. London, Routledge.

22 On Republic of Finland's civil and appeal procedure see: Kiesiläinen, J. (2008). Efficiency and justice in procedural reforms: the rise and fall of the oral hearing, in van Rhee, C., Uzelac, A. (eds.) *Civil justice between efficiency and quality: from Ius Commune to the CEPEJ*. Intersentia, Oxford, pp. 29–45, where a request by a party seems to be enough to arrange the main hearing. On Republic of Austria's administrative procedures see: Helmreich, M. (2013). Absence of an oral hearing before the Independent Administrative Panel. *Vienna Online Journal on International Constitutional Law*, 7(4), pp. 541–546. <https://doi.org/10.1515/icl-2013-0407>, on the United Kingdom of Great Britain and Northern Ireland see Gordon, A. (2013). Article 6 ECHR, Civil Rights, and the Enduring Role of the Common Law. *European Public Law*, 19(1), Mills, A. (2012). The Requirement of an Oral Hearing in Judicial Review Claims, *Judicial Review*, 17(4), pp. 326–329 and Samuels, A. (2005). A Right to an Oral Hearing in Quasi-Judicial Proceedings?. *The Cambridge Law Journal*, 64(3), pp. 523–527.

23 For a comprehensive overview see: Council of Europe (2022). *Guide on Article 6 of the European Convention on Human Rights. Right to a fair trial (civil limb)*. Strasbourg. At <https://www.echr.coe.int/documents/d/echr/guide_art_6_eng>, accessed 12 November 2023.

3 National Legislation

For Slovenia - and Croatia also, the General Administrative Procedure Act of the Kingdom of Yugoslavia is the first regulation, dating back from 1930. It was based on the example of the Austrian regulation from 1925. Judicial review of administrative acts was already in force with the Act on the Council of State and Administrative Courts of 1921, based on the French model of administrative jurisprudence. Within the next ruling regime, general principles of administrative procedure were introduced in 1946, while the Administrative Disputes Act was in force starting from 1952. A codified federal General Administrative Procedure Act was enacted in 1956, with subsequent modernizations.²⁴

3.1 Slovenia

The General Administrative Procedure Act served as the basis of the regulation in force in the independent Republic of Slovenia, which was adopted in 1999, with several revisions. A new Administrative Dispute Act was adopted in 1997. Finally, a completely new Administrative Dispute Act was passed in 2006 and came into force in 2007.²⁵

“With regard to the significance and number of administrative procedures, the General Administrative Procedure Act represents one of the most important acts in the legal system of the Republic of Slovenia. According to the records of the Ministry of Public Administration, around 10 million first-instance administrative decisions are issued in Slovenia every year.”²⁶

A final administrative act can be subject to judicial review before administrative courts. The procedure before administrative courts can be initiated by a claim after the administrative act is final. The Slovenian Constitution states that there is a special judicial review procedure of the legality of final individual acts with which state authorities, local community authorities and bearers of public authority decide the rights or obligations and legal interests of individuals and organizations, if other judicial protection is not provided by law for a particular matter.²⁷

The Administrative Court in Slovenia is ruled by the Administrative Dispute Act and is split into 5 departments: Department for public finances; Department for property relations; Department for protection of constitutional rights; Department for environment, spatial planning and construction; Department for customs and other taxes. The seat of the Administrative Court

24 Kerševan, E. (2016). The principle of effective legal protection in administrative law in Slovenia, in Z. Szente and K. Lachmayer, eds., *The Principle of Effective Legal Protection in Administrative Law: A European Perspective*. London: Routledge, pp. 266–267.

25 Kerševan, E. (2016). The principle of effective legal protection in administrative law in Slovenia, in Z. Szente and K. Lachmayer, eds., *The Principle of Effective Legal Protection in Administrative Law: A European Perspective*. London: Routledge, pp. 266–267.

26 Koprić, I. et al. (2016). *Legal remedies in administrative procedures in Western Balkans*. Danilovgrad: Regional School of Public Administration, p. 60.

27 Article 157, Constitution of the Republic of Slovenia, Official Gazette RS, nb. 33/91-I, 42/97, 66/2000, 24/03, 69/04, 68/06, 47/13, 75/16, 92/21.

is in Ljubljana and deconcentrated departments in Celje, Maribor and Nova Gorica.²⁸

In short, the person entitled to start the administrative dispute as a plaintiff can (with exceptions) only be the person who was a party or an accessory participant in the proceedings of issuing an administrative act, also having legitimate interest in starting the proceedings before the Administrative Court. The administrative act can be challenged both regarding factual and legal issues. Finally, legal remedies (namely appeal, revision, and repeated procedure) against the decisions by the Administrative Court are decided by the Administrative Chamber of the Supreme Court of the Republic of Slovenia. However, appeals against judgments of the Administrative Court are possible in a rather limited number of cases.^{29,30}

Article 59 (paragraphs 1 to 3) of the Slovenian Administrative Dispute Act regulates the main topic of this paper: "The Administrative Court may issue a decision without holding a hearing if the facts on which the administrative decision is based are uncontested. Regardless of this provision, the court may also decide without holding a hearing, even if there is a dispute regarding the facts of the case between parties, in the following circumstances:

1. if, on the basis of the action, the impugned legal act and the administrative case files, it is apparent complainant's request shall be granted and the administrative act shall be annulled in line with Article 64(1) of the Act, whereas no third party with opposing interest has participated in the dispute;
2. if new facts and evidence submitted by the parties in their action before the Administrative Court are inadmissible (in accordance with Article 52 of the Act) or not relevant for the decision;
3. if the parties merely propose evidence not necessary to establish disputed facts, in cases those can be established even without reviewing the proposed evidence.
4. if the court has already decided on a dispute between the same parties on the same factual and legal basis
5. if the court decides only on the basis of the documents and the parties have agreed that the main hearing does not take place, and the court is not bound by the facts that were established in the process of issuing the administrative act.

Regardless of subsection (1), the court shall decide at a hearing if:

28 Čarni, M. and Košak, Š. (2013). A Guide to the Republic of Slovenia Legal System and Legal Research. At <<https://www.nyulawglobal.org/globalex/Slovenia1.html>>, accessed 14 October 2022.; Koprič, I. et al. (2016). Legal remedies in administrative procedures in Western Balkans. Danilovgrad: Regional School of Public Administration, p. 61.

29 Kerševan, E. (2016). The principle of effective legal protection in administrative law in Slovenia, in Z. Sente and K. Lachmayer, eds., *The Principle of Effective Legal Protection in Administrative Law: A European Perspective*. London: Routledge, pp. 266–280.

30 Administrative Dispute Act, Official Gazette RS, nb. 105/06, 107/09, 62/10, 98/11, 109/12, 10/17, 49/23.

1. it concerns a person who should have participated in the administrative proceedings as party or a third party and it is not a case provided for in subsection (2) of section 229 of the Administrative Procedure Act or a substantially identical provision of another statute governing the procedure of issuing the administrative act;
2. during the administrative proceedings, a party was not able to provide a statement on the facts relevant for the contested decision.”³¹

3.2 Croatia

At the beginning of the 1990s, Croatia also took over the former federal general administrative procedural law, however with some adaptations. After lengthy preparations for the new General Administrative Procedure Act, the first draft of the new law was prepared in 2008 and the Act finally entered into force in 2010 (Official Gazette HR, nb. 47/09).³² The General Administrative Procedure Act was amended only once afterwards, and the amended framework is in force since January 2022³³.

The new Croatian Administrative Disputes Act³⁴ was adopted two years later, coming into force in 2012. Since then the system of administrative justice has been organized as a two-tier system with four administrative courts of first instance (Zagreb, Split, Rijeka and Osijek) and the High Administrative Court in Zagreb which as a rule decides on the appeals filed against first instance administrative court decisions.³⁵ The Administrative Dispute Act of 2010 broadens the matter of the administrative dispute and ensures legal protection in every administrative procedure.³⁶

The previous Administrative Dispute Act regulated in Article 34 that, as a rule, disputes are solved in a non-public session, while only due to the complexity or clarity of facts of the matter, the court may decide to hold an oral hearing. For the same reasons, the party may also propose an oral hearing.³⁷ However, oral hearings were held quite seldom.³⁸ This setup was not in line with the requirements of Article 6 of the Convention.³⁹

31 Administrative Dispute Act, Official Gazette RS, nb. 105/06, 107/09, 62/10, 98/11, 109/12, 10/17, 49/23 Article 59, paragraphs 1–3.

32 Koprić, I. and Đulabić, V. (2009). *Modernizacija općeg upravnog postupka i javne uprave u Hrvatskoj* (Modernisation of the General Administrative Procedure and Public Administration in Croatia). Zagreb: Institut za javnu upravu and Društveno veleučilište.

33 General Administrative Procedure Act, Official Gazette HR, nb. 47/09, 110/21.

34 Administrative Disputes Act, Official Gazette HR, nb. 20/2010, 143/2012, 152/2014, 94/2016, 29/2017, 110/21.

35 Koprić, I. et al. (2016). *Legal remedies in administrative procedures in Western Balkans*. Danilovgrad: Regional School of Public Administration, pp. 62–63.

36 Article 3 Administrative Disputes Act, Official Gazette, nb. 20/2010, 143/2012, 152/2014, 94/2016, 29/2017, 110/21.

37 Administrative Dispute Act, Official Gazette SFRY 4/1977, 36/1977, Official Gazette HR 53/1991, 9/1992, 77/1992.

38 Đerđa, D. and Kryška, D. (2018). *Neka rješenja upravnog spora u usporednom pravu: kako unaprijediti hrvatski upravni spor?*. Zbornik Pravnog fakulteta Sveučilišta u Rijeci, 39(1), pp. 91–126.

39 Britvić Vetma, B. (2012). *Europska konvencija za zaštitu ljudskih prava (članak 6) i Zakon o upravnim sporovima iz 2010*. Zbornik radova Pravnog fakulteta u Splitu, 49(2), pp. 395-410. <https://hrcak.srce.hr/84239>

The principle of the oral hearing is provided for, as a general rule, in Article 7 of the Croatian Administrative Dispute Act. "In an administrative dispute, the court shall decide in an oral, direct and public hearing. Courts may adjudicate in an administrative dispute without holding an oral hearing only in the cases laid down further in the Act"⁴⁰, especially in articles 36 and 73.

"The court may resolve a dispute by a decision without holding a hearing:

1. if the respondent acknowledged the statement of claim in full;
2. in a case where the adjudication is based on a final judgment rendered in a model dispute⁴¹;
3. if the court establishes that a particular decision, action or administrative contract is defect so that it prevents an assessment of its lawfulness;
4. if the complainant disputes only the application of law, the facts of the case are indisputable, and if the parties in the complaint or in the response to a claim do not have request for holding a hearing.
5. if the parties explicitly agree to adjudicate without holding a hearing, and the court finds that it is not necessary to present new evidence."⁴²

"The High Administrative Court decides about the appeals at council sessions, without holding a discussion. If the High Administrative Court deems necessary, it may hold a hearing."⁴³

Above regulations, indeed, represent a derogation from the oral hearing principle as set out in Article 7 in favour of the principle of efficiency.

4 European Court of Human Rights

"The European Court of Human Rights⁴⁴ is an international court set up in 1959. It rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms."⁴⁵

Since its establishment in 1959, the Court has delivered more than 24.500 judgments.⁴⁶ These are binding on the countries concerned and have led governments to alter their legislation and administrative practice in a wide range

40 Article 7 Administrative Disputes Act, Official Gazette, nb. 20/2010, 143/2012, 152/2014, 94/2016, 29/2017, 110/21.

41 Model dispute solution is regulated in Article 48 of the Administrative Dispute Act. Due to the content limitation of this paper, the model dispute is not inspected in detail.

42 Article 36 of the Croatian Administrative Dispute Act. The 5th subparagraph was added in additions to the Act in 2012, as well as the wording "substantial law" was amended by deleting "substantial" in the 4th subparagraph. See more: Staničić, F., Britvić Vetma, B. and Horvat, B. (2017). *Komentar Zakona u upravnim sporovima*. Zagreb: Narodne novine, pp. 131–134.

43 *Ibid.* Article 73.

44 Also referred to as European Court, the Court or ECtHR further in the paper.

45 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, referred also as European Convention on Human Rights and the Convention further in the article.

46 European Court of Human Rights (2022). *Overview 1959-2021 ECHR*. Strasbourg: Council of Europe.

of areas. The Court's case-law makes the Convention an adaptable living instrument for surpassing new challenges and consolidating the rule of law and democracy in Europe.

4.1 Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms can be understood as a set of rights within the system of the European Court of Human Rights and is very important when it comes to the principle of effective legal protection in administrative procedures and disputes. "Article 6(1) of the European Convention on Human Rights provides that, in the determination of their civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."⁴⁷ Administrative procedures are strongly influenced by the guarantees of the European Convention on Human Rights, especially through the procedural guarantees under the Article 6(1) of the Convention. Although the guarantees only apply to procedures concerning "civil" and "criminal" matters, both fields have been subject to an extensive interpretation through the Court's decisions.⁴⁸

The European Court of Human Rights has held that even in relatively trivial cases, a party cannot generally be denied a public hearing in court procedures aimed at simplifying or expediting cases.⁴⁹ In addition, the European Court of Human Rights concluded in *Fischer v. Austria* that, unless there are exceptional circumstances that justify dispensing with a hearing, the right to a public hearing under Article 6(1) implies a right to an oral hearing at least at one level of jurisdiction.⁵⁰

The exceptional character of the circumstances that may justify not holding any oral hearing in proceedings concerning a "civil" right is closely related to the nature of the meritorious that had to be adjudicated by the competent tribunal. This does not mean that refusing to hold an oral hearing may be justified only in rare cases. Such prime examples are cases where the proceedings concerned exclusively legal or highly technical issues.⁵¹

"There may be proceedings in which an oral hearing may not be required. For example, where there are no issues of credibility or contested facts which

47 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, Article 6(1).

48 Breuer, M. (2016). Creating a European-wide standard of effective legal protection: The European Convention on Human Rights, in Z. Sente and K. Lachmayer, eds., *The Principle of Effective Legal Protection in Administrative Law: A European Perspective*. London: Routledge, pp. 42–46. See more: Šarin, D. (2015). *Pravo na pristup sudu u praksi Europskog suda za ljudska prava*. *Pravni vjesnik*, 31(3-4), pp. 269–271.

49 *Scarth v. The United Kingdom*, Application no. 33745/96 (ECtHR, 22 July 1999).

50 *Fischer v. Austria* Application no. 16922/90 (ECtHR, 26 April 1995).

51 Cases in question are, for example *SchulerZgraggen v. Switzerland*, Application no. 14518/89 (ECtHR 24 June 1993), *Varela Assalino v. Portugal*, Application no. 64336/01 (ECtHR 25 April 2002) and *Speil v. Austria* (dec.), Application no. 42057/98 (ECtHR 5 September 2002).

necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written materials."⁵²

4.2 Summary of data

Data shows that a total of 964 cases were solved by the European Court of Human Rights which concerned breaches of Article 6 specifically in administrative proceedings. 814 of them were judged as violations of the article.⁵³

A total of 40 cases concerning breaches of the right to oral hearing appeared before the European Court of Human Rights. 28 of them were concluded as breaches due to the absence of an oral hearing. Interestingly, 16 violations were found in Austria,⁵⁴ 5 in Sweden and one from Czech Republic, Finland, France, North Macedonia, Slovakia, Slovenia and Turkey.

As for the Court's case law regarding the Republic of Croatia, the Court decided on 18 violations of the Article 6 in administrative proceedings. However, there were no absence of oral hearing violations.

As for the Republic of Slovenia, six (6) cases in which violations of Article 6 in the administrative proceedings occurred, with the only absence of an oral hearing breach was in the *Mirovni inštitut* case⁵⁵. The case of *Produkcija plus storitveno podjetje d.o.o.* was categorized as a criminal procedure, but contains principles and implications applicable within administrative disputes, hence it was analysed.⁵⁶

5 Analysis and Discussion

5.1 Slovenian cases

This part of the paper briefly introduces and analyses the two key cases of breaches of the right to an oral hearing which concern the Republic of Slovenia before the European Court of Human Rights: *Mirovni Inštitut* and *Produkcija Plus storitveno podjetje d.o.o.* cases.

5.1.1 *Mirovni Inštitut v. Slovenia*

In this case, the applicant institute alleged that the lack of reasoning in a decision of the Administrative Court and the absence of an oral hearing before

⁵² See *Döry v. Sweden*, Application no. 28394/95 (ECtHR 12 November 2002). Note that the case concerns the civil limb.

⁵³ Data extracted from the HUDOC database website <https://hudoc.echr.coe.int/eng>, accessed 17 September 2022. It is important to note that Committee decisions appeared on HUDOC only as of April 2010. Decisions concerning single judge cases are not published. Commission decisions prior to 1960 exist in hard copy only in the Court Archives.

⁵⁴ This might be the case since Austria's administrative dispute system regulates that the oral hearing is an exception, rather than a rule. See more in: Đerđa, D. (2010). *Sudske odluke u upravnom sporu - pozitivno i buduće pravno uređenje*. Zbornik Pravnog fakulteta u Rijeci, 31(1), pp. 459-460.

⁵⁵ *Mirovni Inštitut v. Slovenia*, Application no. 32303/1 (ECtHR 13 June 2018).

⁵⁶ *Produkcija Plus storitveno podjetje d.o.o. v. Slovenia*, Application no. 47072/15, (ECtHR 3 January 2019).

it amounted to a violation of the right to a fair trial under Article 6(1) of the Convention.⁵⁷

Mirovni inštitut is a private institute that carries out research in the field of social sciences. The case dates back to 2003 when the Slovenian Ministry of Education, Science and Sport (Ministry) made two calls for tenders for making financial awards for scientific research projects, on which the Mirovni Inštitut submitted a tender. The tenders were joined into one proceeding by the Ministry without explanation and eventually awarded to three other subjects.

Mirovni Inštitut subsequently lodged several actions against the Ministry: it argued, *inter alia*, that the evaluation procedure had been unfair because some of the evaluators had been biased, as shown by the fact that only those research programmes in which the evaluators were leaders or members of research teams obtained financing. The applicant institute expressly requested a hearing at which witnesses could be heard with regard to the alleged procedural errors in the evaluation of the programmes. Additionally, it submitted a letter which one of the witnesses, K., had sent to the Minister and several other addressees in which K. notified them of problems he had detected in the tender procedures in which he had participated as an evaluator.⁵⁸

After the parties had exchanged a number of written submissions, the Administrative Court, without holding a hearing, dismissed the action. In its decision of 2 February 2011, the court gave an extensive account of the proceedings before the Ministry and the submissions of both parties. The reasons for the decision were given on a single page. Invoking section 71(2) of the Slovenian Administrative Dispute Act, the Administrative Court chiefly referred to the submissions of the Ministry. It considered, *inter alia*, that the Ministry had not acted unlawfully in joining the proceedings. No reasons were given for not holding a hearing. None of the evidence relied on by the applicant institute in their appeal was acknowledged or referred to in the court's reasoning.⁵⁹

The Inštitut lodged an appeal on points of law and complained that the Administrative Court had not held a hearing even though the facts of the case had been contested, and the applicant institute had explicitly requested a hearing at which witnesses could be heard. It also argued that the Administrative Court had failed to address its allegations that errors had been made in the evaluation procedure, and complained that insufficient reasoning had been given for the decision. The Supreme Court rejected the appeal as inadmissible. No reasons were given in its decision on the merits of the applicant institute's complaints. Finally, the applicant institute then lodged a constitutional complaint, which was dismissed as the Constitutional court found that it did not concern an important constitutional question or entail a violation of human rights with serious consequences for the applicant institute.⁶⁰

57 Mirovni Inštitut v. Slovenia, Application no. 32303/1 (ECtHR 13 June 2018), paragraph §4.

58 Mirovni Inštitut v. Slovenia, Application no. 32303/1 (ECtHR 13 June 2018), paragraphs § 8-11.

59 Mirovni Inštitut v. Slovenia, Application no. 32303/1 (ECtHR 13 June 2018), paragraphs § 12-13.

60 Mirovni Inštitut v. Slovenia, Application no. 32303/1 (ECtHR 13 June 2018), paragraphs §14-17.

The Court ruled the application admissible, as the applicant institute clearly enjoyed a procedural right to the lawful and correct adjudication of the tenders. Furthermore, should the tender be awarded to the applicant institute, the latter would have been conferred a civil right. After granting the application admissible, the European Court of Human Rights considered the merits of the application.⁶¹

The Court reiterated that: “in proceedings before a court of first and only instance, the right to a “public hearing” within the meaning of Article 6(1) entails an entitlement to an “oral hearing” unless there are exceptional circumstances that justify dispensing with such a hearing. In proceedings before two instances, at least one instance must, in general, provide such a hearing if no such exceptional circumstances are at hand.”⁶² In Slovenia, the Administrative Court is the first judicial instance and the only one with full jurisdiction (not only limited to law but to factual issues).

As:

1. the facts were disputed by the parties in this case,
2. the Inštitut explicitly requested an oral hearing,
3. presenting further evidence (hearing witness K, *inter alia*) could have been relevant for the outcome of the proceedings and
4. the Administrative Court neither acknowledged the applicant institute’s request that a hearing be held, nor gave any reasons (or a legal basis) for not granting the request,

the European Court of Human Rights concluded correctly that the proceedings were not fair and that, accordingly, there has been a violation of Article 6(1) of the Convention.⁶³

5.1.2 *Produkcija Plus storitveno podjetje d.o.o. v. Slovenia*

In this case, the applicant, *Produkcija plus storitveno podjetje d.o.o.* (a private media company) alleged that Articles 6 and 13 of the Convention had been breached on account of the lack of an oral hearing, the lack of opportunity to be heard, and have witnesses examined on its behalf. The proceedings concerned the imposition of a fine for the obstruction of an inspection and proceedings concerning a violation of competition rules.⁶⁴

On 10 August 2011, the Competition Protection Office (later the Competition Protection Agency, hereinafter referred to as “Office”) initiated proceedings against the applicant company following a complaint from two television stations that the applicant company had abused its dominant position. On the same day, the Office issued an order to inspect the premises, which contained a warning that if the inspection was obstructed, an order imposing a

61 *Mirovni Inštitut v. Slovenia*, Application no. 32303/1 (ECtHR 13 June 2018), paragraphs §28-30.

62 *Fröbrich v. Germany*, Application no. 23621/11, (ECtHR 16 March 2017), paragraph §34.

63 *Mirovni Inštitut v. Slovenia*, Application no. 32303/1 (ECtHR 13 June 2018), paragraph §45.

64 *Produkcija Plus storitveno podjetje d.o.o. v. Slovenia* Application no. 47072/15, (ECtHR 3 January 2019), paragraph §3.

fine amounting up to 1% of the applicant company's annual turnover in the preceding business year could be issued.⁶⁵

During the inspection, the officers were apparently assaulted and asked to leave the premises by Mr P., who worked as a contractor for the company and refused to allow them to continue the inspection. According to the report, at 9.31 a.m., the officers left the building because they believed that the inspection would not be possible without police assistance. At 9.57 a.m., after the arrival of the police, the officers again entered the applicant company's premises. At 10 a.m. Mr V. arrived. He apologized for the inconvenience and was willing to cooperate. At 10.45 a.m., the officers started the inspection, which was then carried out without any obstructive behaviour on the part of the applicant company. By an order of 21 February 2012 the Office fined the applicant company 105.000 euros (EUR), 0.2% of the company's annual net turnover in the preceding year, for obstructing the inspection on 11 August 2011. The obstruction had been Mr P.'s unwillingness to cooperate with officers and to immediately facilitate access to evidence and its preservation.⁶⁶

On 22 March 2012, the applicant company brought an action and an application for an interim measure against the above order. The applicant requested an oral hearing, maintaining that a direct examination of the evidence was required to properly establish the facts of the case. In particular, the four witnesses who had been present at the premises on the day of the alleged obstruction would prove that the applicant company had not obstructed the inspection or refused to cooperate with the officers. They would also show that the officers had not properly introduced themselves and had tried to enter the premises in an aggressive manner.⁶⁷

On 26 November 2013, the Supreme Court dismissed the applicant company's action. It noted from the outset that the applicant company was not allowed to introduce new facts and evidence in the judicial review proceedings and that they would not be taken into consideration. The court emphasised that although the applicant company had contested the facts as established by the Office, it had not challenged the fact that the officers could not immediately after their arrival at the company's premises secure the evidence. According to the Supreme Court, the applicant company had merely argued that the above-described acts had not constituted an obstruction of the inspection. In the Supreme Court's opinion, this was not a question of fact but purely of law. The only important fact was that the authorised persons could not immediately start securing the evidence. Finally, the applicant institute then lodged a constitutional complaint, which was not accepted, as the Constitutional Court found that it did not concern an important constitutional

65 *Produkcija Plus storitveno podjetje d.o.o. v. Slovenia* Application no. 47072/15, (ECtHR 3 January 2019), paragraphs §6-7.

66 *Produkcija Plus storitveno podjetje d.o.o. v. Slovenia* Application no. 47072/15, (ECtHR 3 January 2019), paragraphs §8-10.

67 *Produkcija Plus storitveno podjetje d.o.o. v. Slovenia* Application no. 47072/15, (ECtHR 3 January 2019), paragraph §11.

question or entail a violation of human rights with serious consequences for the applicant institute.⁶⁸

In the proceedings related to the determination of a violation of competition rules (supervision proceedings), on 24 April 2013 the Agency decided that the applicant company had been abusing its dominant position. It refused to hold a hearing on the grounds that it was not necessary to hear the witnesses proposed by the applicant company, and that the applicant company had sufficient opportunity to present its case in writing.⁶⁹

On 24 May 2013, the applicant company filed an action against the Agency's infringement decision, asserting that the Agency had violated its right to adversarial proceedings and to defend itself. It also urged the Supreme Court to examine the proposed witnesses at an oral hearing. On 3 December 2013, the Supreme Court dismissed the action. It held that the examination of the witnesses proposed by the applicant was unnecessary. This was because the facts of the case had already been fully established by the Agency, which had provided logical and convincing reasons for each of the central issues in dispute. Consequently, it refused to hold a hearing. Subsequently, the Constitutional Court also rejected the appeal.⁷⁰

The Court reiterated that an oral, and public, hearing constitutes a fundamental principle enshrined in Article 6(1) and that it is particularly important in the criminal context, where an accused has an entitlement to have his case "heard", with the opportunity, *inter alia*, to give evidence in his own defence, hear the evidence against him, and examine and cross-examine the witnesses. The Court also reflected on the fact that, despite the applicant company expressly requesting that a hearing be held, the Supreme Court neither acknowledged the request nor gave any reasons for not granting it. That is even more necessary as the Supreme Court was the first and only tribunal to examine the applicant company's case, and as such, it was required under Article 6(1) of the Convention to examine not only the legal aspects of the case but also to review the facts (full jurisdiction) on which the applicant company's punishment was based and which the applicant company disputed.⁷¹

Conclusively, the European Court of Human Rights found that the applicant company was deprived of a right to have the factual aspects of the administrative decision issued against it reviewed by the tribunal with full jurisdiction and that the Article 6(1) of the Convention had been violated.⁷²

68 *Produkcija Plus storitveno podjetje d.o.o. v. Slovenia* Application no. 47072/15, (ECtHR 3 January 2019), paragraphs §12-15.

69 *Produkcija Plus storitveno podjetje d.o.o. v. Slovenia* Application no. 47072/15, (ECtHR 3 January 2019), paragraphs §17-18.

70 *Produkcija Plus storitveno podjetje d.o.o. v. Slovenia* Application no. 47072/15, (ECtHR 3 January 2019), paragraphs §19-21.

71 *Produkcija Plus storitveno podjetje d.o.o. v. Slovenia* Application no. 47072/15, (ECtHR 3 January 2019), paragraphs §53-58, Zuber, B., Lovšin, Š. (2019). Judicial dialogue in the light of protocol no. 16 to the European Convention on Human Rights. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, vol. 40 (2), pp. 914-915.

72 *Produkcija Plus storitveno podjetje d.o.o. v. Slovenia* Application no. 47072/15, (ECtHR 3 January 2019), paragraphs §59-60, Zuber, B., Lovšin, Š. (2019). Judicial dialogue in the light of

After analysing both cases, it is evident that the applicant received somewhat unsatisfactory remuneration despite the decision of the European Court of Human Rights decided in favour of their application. The main reason is that the Slovenian Administrative Dispute Act does not envisage in its Article 96 (Renewal of the procedure) that renewal is possible if, following a final judgment of the European Court of Human Rights, it was decided on a violation of fundamental human right or freedom in a way different from the judgment of the court. The Croatian Administrative Dispute Act foresees the exact wording as ground for renewal of the procedure⁷³. Therefore, it would be useful if the Slovenian Administrative Dispute Act were amended to provide this option to applicants whose rights have been found violated before the European Court of Human Rights.

5.2 Croatian cases

The Republic of Croatia did not have any administrative proceedings that involved a breach of the right to an oral hearing, as outlined in the Article 6(1) of the Convention. There was a case relating to civil law matters in which the right to an oral hearing had been violated.⁷⁴ However, civil and criminal matters fall beyond the scope of this paper.

In a case that appeared in second instance at the High Administrative Court, the applicant was awarded a right to an oral hearing which was denied at the Administrative Court level. The Administrative Court was erred in applying the provision of the Article 36(4) of the Administrative Dispute Act, as the Court deemed that the complainant contested only the application of substantive law, the facts of the case were indisputable, and neither party in the complaint nor in the response to the claim had requested holding a hearing. In the concrete case regarding health security rights, the applicant requested the reference of an expert to be provided as evidence. Therefore, the High Administrative Court rightly decided that the Article 36(4) had been wrongfully invoked by the first instance court.⁷⁵

In a case before the Constitutional Court, the applicant was granted invalidity pension due to illness. However, the applicant considered herself healthy and therefore contested the administrative decision, the Administrative Court in Rijeka's decision as a judicial body of first instance, and the High Administrative Court's decision which also confirmed the invalidity pension. The applicant disputed the expert's opinion and the medical documentation. As the applicant contested facts, she expected that a hearing in front of the court would be held, what she also noted in the appeal on the Administrative Court's decision. The applicant argued in the appeal that there were no legal terms to invoke Article 36(4) of the Administrative Dispute Act since the facts of the case were

protocol no. 16 to the European Convention on Human Rights. Zbornik Pravnog fakulteta Sveučilišta u Rijeci, vol. 40 (2), pp. 914–915.

73 Article 76 of Croatian Administrative Disputes Act, Official Gazette HR, nb. 20/2010, 143/2012, 152/2014, 94/2016, 29/2017, 110/21.

74 Adžić v. Croatia, Application no. 19601/16 (ECtHR 02 August 2019)

75 High Administrative Court of the Republic of Croatia, case Usz-1927/15-8, 30 November 2016.

not indisputable. The High Administrative Court argued that the applicant did not provide any new evidence necessary to determine the facts on which her assumptions were based on. Therefore, and also since neither party requested an oral hearing (the applicant merely “expected” one at the Administrative Court level, only what she composed in writing), there was indeed a legal basis to adjudicate without a hearing. Subsequently, the Court rejected the claims of the applicant. The Constitutional Court agreed with the former decisions on the grounds that the applicant had failed to propose any evidence for the courts to assess and also did not explicitly request a hearing.⁷⁶

In a recent case, the Constitutional Court reiterated the principle when the dispute concerns only a legal issue, and not factual matters that are undisputed, the administrative courts do not violate any human rights or the Constitution by not holding an oral hearing, referring to Article 36(4) of the Administrative Dispute Act.⁷⁷

Also, Croatia envisaged that the court of first instance shall provide an oral hearing and may only exceptionally deny it within its rights set by law. At the High Administrative Court’s level, the oral hearing is an exception, but still allowed if the Court deems it necessary. The solution is in par with the vision of the ECtHR and an oral hearing is very likely to occur at the first instance unless it is clearly not required, if one of the reasons outlined in Article 36 of the Administrative Dispute Act is applicable.⁷⁸

A potential issue may arise in procedures where it is not envisaged to file a complaint at the administrative court level, but directly before the High Administrative Court (similar situation is with the Slovenian Supreme Court) as a body of first (and only) judicial instance authorised to resolve the administrative dispute. Such a procedure is the public procurement procedure, where the entire process may remain without an oral hearing prior to the dispute before the High Administrative Court following a complaint against the decision of the State Commission for Supervision of Public Procurement Procedures (DKOM)⁷⁹, because, as mentioned *supra*, the High Administrative Court holds oral hearings only if it deems it necessary.⁸⁰

76 Constitutional Court of the Republic of Croatia, case U-III-357/2017, 25 April 2018.

77 Constitutional Court of the Republic of Croatia, case U-III/4581/2016, 29 March 2018.

78 Britvić Vetma considers this requirement fulfilled within the current Croatian legislative framework. Britvić Vetma, B. (2012). *Europska konvencija za zaštitu ljudskih prava (članak 6) i Zakon o upravnim sporovima iz 2010*. Zbornik radova Pravnog fakulteta u Splitu, 49(2), pp. 405-406. <https://hrcak.srce.hr/84239>. See also *Döry v. Sweden*, Application no. 28394/95 (ECtHR 12 November 2002).

79 The Croatian State Commission for Supervision of Public Procurement Procedures may opt not to hold an oral hearing, even when there is a plea for an oral hearing made by either of the parties involved. Article 427 in relation to Article 434 of the Public Procurement Act, Official Gazette HR n. 120/16, 114/22.

80 Article 73(3) of the Croatian Administrative Disputes Act, Official Gazette HR, nb. 20/2010, 143/2012, 152/2014, 94/2016, 29/2017, 110/21.

6 Conclusion

As some authors assert that “administrative law is a concretised constitutional law”⁸¹, effective legal protection becomes a necessity, especially for parties, which are hierarchically in a subordinate position.

Despite administrative courts in Croatia and Slovenia may, within their scope of authorities, use their discretion given by law when deciding not to enable oral hearings before the court, procedural justice and equality of arms should prevail, even when there is no obvious need for oral hearings, if one of the parties requests appearing in front of the court. Also, in administrative cases within the general administrative procedure, the parties are in principle in an unfair hierarchical relationship. Enabling oral hearings should be emphasized especially during administrative disputes, as the asymmetry of parties in administrative procedures prior to the administrative dispute could still be present without an oral hearing.

Regarding *de lege ferenda*, it should be reiterated that the right to be heard is a fundamental procedural right. Subjects not allowed an oral hearing, as a vital instrument of the whole concept of a right to a fair trial, need to be provided with improved protective rights to avoid cases of illegal absence of an oral hearing from occurring and procedural rights in view of reopening the case where a severe violation has been found,

Subjects are entitled to an oral hearing to resolve a dispute of any substance between themselves and the state. At the very least, appellants should have an opportunity to be heard, to understand the process and have confidence in the fairness of the process as a whole. Therefore, in most cases, administrative procedures and disputes should require an oral hearing before at least one instance. Additionally, hearings before the first instance administrative court would almost always ensure the right to a fair trial.

Accordingly, to ensure that oral hearings are not arbitrarily refused, they should be obligatory unless the parties agree to waive their right. It should be mandated that an administrative court of full jurisdiction must hold an oral hearing upon request from a party, whether explicit or implied. Based on the conducted analysis, both Slovenian and Croatian legal frameworks should consider including provisions allowing for oral hearings before the first instance if requested so by any party submitting or disputing evidence and facts or contesting legal or procedural matters, unless the parties waive their right in writing. This would ensure respecting Article 6(1) of the Convention in almost every case, and would also be in line with practices from the United Kingdom in relation to procedures before final tribunals of full jurisdiction, where the legislative framework in principle “contemplates that agreement is required to proceed without an oral hearing whenever there is a decision which would constitute the end of the case”.⁸² Another example is the Hungarian General

81 Werner, F. (1959). *Verwaltungsrecht als konkretisiertes Verfassungsrecht*. *Deutsches Verwaltungsblatt*, vol. 74, pp. 527–533.

82 Mills, A. (2012). *The Requirement of an Oral Hearing in Judicial Review Claims*, *Judicial Review*, 17(4), pp. 326–329, DOI: 10.1080/10854681.2012.11426747.

Rules of Administrative Procedures and Services which grants the parties with a right to be heard without exceptions.⁸³

The literature review showed the tendency towards narrowing down the right to an oral hearing⁸⁴ and the focus seems to be switching on ensuring a fair trial within a reasonable time. Some authors also indicate that oral hearings could sometimes be difficult to organize and would result in prolonged adjudication or higher expenses.⁸⁵ This finding is contrary to other studies which have shown that both very quick and very lenient judicial decision making processes produce more uncertainty for both the parties and the general public, with “timely” being the preferred outcome.⁸⁶

To take into account both arguments, a reasonable approach to tackle this issue for both legal frameworks would be to regulate that administrative courts should provide a detailed justification in writing as to why they have dispensed with an oral hearing despite one of the parties requested it. Such a provision would have prevented the Mirovni Inštitut case from being brought before the European Court of Human Rights. The same requirement could also be extended to respective general administrative procedures.

Another consideration could be to allow *lex specialis* to determine any special types of shortened or emergency procedures⁸⁷ where oral hearings could be dispensed with due to the protection of public interest.⁸⁸ For this recommendation, authorities could add a similar safeguard as found in Article 24(4) of the Austrian Federal Act on Proceedings of Administrative Courts which explicitly requires that dispensing with a hearing in spite of a party’s request must not be contrary to Article 6(1) of the Convention and Article 47 of the Charter of Fundamental Rights of the European Union.⁸⁹

Finally, for the Republic of Slovenia, in relations to reopening the case where a severe violation has been found, better protection on the national level in

83 Gárdos-Orosz, F. and Temesi, I. (2016). The principle of effective legal protection in Hungarian administrative law, in Z. Sente and K. Lachmayer, eds., *The Principle of Effective Legal Protection in Administrative Law: A European Perspective*. London: Routledge, p. 165.

84 For example in the Republic of Austria, Helmreich, M. (2013). Absence of an oral hearing before the Independent Administrative Panel. *Vienna Online Journal on International Constitutional Law*, 7(4), pp. 543–546. On the decision level of the ECtHR, see Lillo Lobos, R. (2022). Understanding due process in non-criminal matters: how to harmonize procedural guarantees with the right to access to justice. Springer, p. 143.

85 Samuels, A. (2005). A Right to an Oral Hearing in Quasi-Judicial Proceedings?. *The Cambridge Law Journal*, 64(3), pp. 523–527. <http://www.jstor.org/stable/4500818>.

86 Valkeapaa, A., Seppala, T. (2014). Speed of Decision-Making as a Procedural Justice Principle. *Social Justice Research*, 27. p. 305; Outlaw, R. et al. (2019). How Fair versus How Long: An Integrative Theory-Based Examination of Procedural Justice and Procedural Timeliness. *Personnel Psychology*, 72(3), pp. 361–386.

87 Gordon indicates that national security seems to be the main justification for limiting the right to a hearing in the United Kingdom. See: Gordon, A. (2013). Article 6 ECHR, Civil Rights, and the Enduring Role of the Common Law. *European Public Law*, 19(1), pp. 75–96.

88 Sente, Z. (2016). The principle of effective legal protection in administrative law – a comparison, in Z. Sente and K. Lachmayer, eds., *The Principle of Effective Legal Protection in Administrative Law: A European Perspective*. London: Routledge, pp. 356–393.

89 Article 24(4) of the Austrian Federal Act on Proceedings of Administrative Courts (Original version: Federal Law Gazette I No. 33/2013, as amended by: Federal Law Gazette I No. 109/2021). It is worth noting that the concrete provision can be applied only if an oral discussion would not further clarify the legal matter.

which cases such as Mirovni Inštitut and Produkcija plus may fully enjoy the rights as given in the Article 15(4) of the Slovenian Constitution (which expressly guarantees the right to obtain redress for any violation of human rights and fundamental freedoms) may be provided if the Slovenian Administrative Dispute Act added the clause for applying for renewal in situations when in a final judgment of the European Court of Human Rights it was decided on a violation of fundamental human right or freedom in a way different from the judgment of the court – as the Croatian Administrative Disputes Act regulates.

However, the *de lege ferenda* proposal for broadening the obligation for oral hearings in administrative law should not be assessed as a separate element, but also taking into account its public policy implications in the context of the overall reform of the judicial system. Although international organizations clarify that the “European Administrative Space” encompasses the right a hearing in administrative decision making procedures⁹⁰, extending the right to a hearing and obliging authorities to justify each dispense of that right could add another layer of formalization of the procedures and affect their overall length. This could be seen as contrary to the conclusions of some authors that administrative proceedings should use the simplest available (preferably digital) solutions in to conclude files within reasonable time.⁹¹ This could, in turn, ultimately lead to a less positive perception of the public administrations and judiciary in the eyes of the general public. However, assessed literature and cases show that omitting the right to an oral hearing, especially without providing written justification, could ultimately lead to more detrimental – and longer – outcomes. The social and public policy impact assessment of adding *de lege ferenda* provisions is an issue that was not addressed in this paper, but could pose an important topic for further research.

The information and views set out in this article are those of the author and do not necessarily reflect the official opinion of the Institution.

90 OECD (1999). European Principles for Public Administration. SIGMA Papers, 27. Paris.

91 Roczynski, B. (2022). Simplification and Electronisation of Administrative Procedure in the Visegrad Group Countries – a Sociological and Legal Approach. Central European Public Administration Review, 20(2), pp. 123-146. <https://doi.org/10.17573/cepar.2022.2.06>

References

- Administrative Dispute Act, Official Gazette SFRY 4/1977, 36/1977, Official Gazette HR 53/1991, 9/1992, 77/1992.
- Administrative Dispute Act, Official Gazette RS, nb. 105/06, 107/09, 62/10, 98/11, 109/12, 10/17, 49/23.
- Administrative Disputes Act, Official Gazette HR, nb. 20/2010, 143/2012, 152/2014, 94/2016, 29/2017, 110/21.
- Adžić v. Croatia, Application no. 19601/16 (ECtHR 02 August 2019).
- Austrian Federal Act on Proceedings of Administrative Courts (Original version: Federal Law Gazette I No. 33/2013, as amended by: Federal Law Gazette I No. 109/2021).
- Bilevičiūtė, E. (2022). Actual issues of remote court hearings in administrative procedure. *Acta Prosperitatis*, 13, pp. 7–23.
- Borraccetti, M. (2011). Fair Trial, Due Process and Rights of Defence in the EU Legal Order, in Giacomo, D. (ed.) *The EU Charter of Fundamental Rights. Ius Gentium: Comparative Perspectives on Law and Justice*, 8, Springer, Dordrecht.
- Breuer, M. (2016). Creating a European-wide standard of effective legal protection: The European Convention on Human Rights. In Z. Sente and K. Lachmayer, eds., *The Principle of Effective Legal Protection in Administrative Law : A European Perspective*. London: Routledge.
- Britvić Vetma, B. (2012). Europska konvencija za zaštitu ljudskih prava (članak 6) i Zakon o upravnim sporovima iz 2010. Zbornik radova Pravnog fakulteta u Splitu, 49(2), pp. 395–410.
- Čarni, M. and Košak, Š. (2013). A Guide to the Republic of Slovenia Legal System and Legal Research. At <<https://www.nyulawglobal.org/globalex/Slovenia1.html>>, accessed 14 October 2022.
- Constitution of the Republic of Slovenia, Official Gazette RS, nb. 33/91-I, 42/97, 66/2000, 24/03, 69/04, 68/06, 47/13, 75/16, 92/21.
- Constitutional Court of the Republic of Croatia, case U-III/4581/2016, 29 March 2018.
- Constitutional Court of the Republic of Croatia, case U-III-357/2017, 25 April 2018.
- Correia, S. (2011). Administrative Due or Fair Process: Different Paths in the Evolutionary Formation of a Global Principle and of a Global Right, in G. Anthony et al., eds., *Values in Global Administrative Law*, Hart Publishing, Oxford, pp. 313-362. <http://dx.doi.org/10.5040/9781472560889.ch-014>.
- Council of Europe (2022). Guide on Article 6 of the European Convention on Human Rights. Right to a fair trial (civil limb). Strasbourg. At <https://www.echr.coe.int/documents/d/echr/guide_art_6_eng>, accessed 12 November 2023.
- Council of Europe (prepared by: Roagna, I.) (2018). The right to trial within reasonable time under Article 6 ECHR.
- Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950.
- Đanić Čeko, A. and Kovač, P. (2020). Comparative Analysis of an Administrative Appeal in Croatian, Slovenian, and EU Law. *EU and Comparative Law Issues and Challenges Series (ECLIC)*, 4, pp. 1065–1096. <https://doi.org/10.25234/ecllic/11940>.

- De Graaf, C. V. (2021). Procedural fairness: Between human rights law and social psychology. *Netherlands Quarterly of Human Rights*, 39(1), pp. 11–29. <https://doi.org/10.1177/0924051921992749>.
- Đerđa, D. (2010). Sudske odluke u upravnom sporu – pozitivno i buduće pravno uređenje. *Zbornik Pravnog fakulteta u Rijeci*, 31(1), pp. 445–473. <https://hr.cak.srce.hr/53572>.
- Đerđa, D. and Kryška, D. (2018). Neka rješenja upravnog spora u usporednom pravu: kako unaprijediti hrvatski upravni spor?. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 39(1), pp. 91–126. <https://doi.org/10.30925/zpfsr.39.1.3>.
- Döry v. Sweden, Application no. 28394/95 (ECtHR 12 November 2002).
- European Court of Human Rights (2022). Overview 1959-2021 ECHR. Strasbourg: Council of Europe.
- European Court of Human Rights, HUDOC database website. At <<https://hudoc.echr.coe.int/eng>>, accessed 17 September 2022.
- Fischer v. Austria Application no. 16922/90 (ECtHR, 26 April 1995).
- Fröbrich v. Germany, Application no. 23621/11, (ECtHR 16 March 2017).
- Galič, A. (2017). The inconsistency of case law and the right to a fair trial, in Uzelac, A., van Rhee, C., eds., *Revisiting procedural human rights. Fundamentals of civil procedure and the changing face of civil justice*. Intersentia, Cambridge, pp. 17–51.
- Gárdos-Orosz, F. and Temesi, I. (2016). The principle of effective legal protection in Hungarian administrative law. In Z. Szente and K. Lachmayer, eds., *The Principle of Effective Legal Protection in Administrative Law: A European Perspective*. London: Routledge, pp. 158–173.
- Gerards, J. H. and Glas, L. R. (2017). Access to justice in the European Convention on Human Rights system. *Netherlands Quarterly of Human Rights*, 35(1), pp. 11–30. <https://doi.org/10.1177/0924051917693988>.
- Guran, M. (2019). Short considerations on the scope of the right to a fair trial provided by art. 6 of the ECHR – the concept of “criminal charge”. *Law review (Romania)*, 2, pp. 157–165.
- Harris, D. J. (1975). The application of Article 6 (1) of the European Convention on Human Rights to Administrative Law. *The British Year Book of International Law*, 47(1), pp. 157–200.
- Helmreich, M. (2013). Absence of an oral hearing before the Independent Administrative Panel. *Vienna Online Journal on International Constitutional Law*, 7(4), pp. 541–546. <https://doi.org/10.1515/icl-2013-0407>.
- High Administrative Court of the Republic of Croatia, case Uš-1927/15-8, 30 November 2016.
- Hirvela, P. and Heikkilä, S. (2021). Right to a fair trial: a practical guide to the Article 6 case-law of the European Court of Human Rights. Intersentia.
- Ilić, I., and Knežević, S. (2020). Scope of Article 6 of the European Convention on Human Rights - Contribution of the European Court of Human Rights Practice. *Balkan Social Science Review*, 16, pp. 39–55. <https://doi.org/10.46763/BSSR20160391>.
- Johannesson, L. (2023). Silence and Voice in Oral Hearings: Spatial, Temporal, and Relational Conditions for Communication in Asylum and Compulsory Care Hearings. *Social & Legal Studies*, 32(3), pp. 399–419. <https://doi.org/10.1177/09646639221118654>.

- Kamber, K. (2022). The Right to a Fair Online Hearing. *Human Rights Law Review*, 22(2). <https://doi.org/10.1093/hrlr/ngac006>.
- Kerševan, E. (2016). The principle of effective legal protection in administrative law in Slovenia. In Z. Szente and K. Lachmayer, eds., *The Principle of Effective Legal Protection in Administrative Law: A European Perspective*. London: Routledge, pp. 266–280.
- Kiesiläinen, J. (2008). Efficiency and justice in procedural reforms: the rise and fall of the oral hearing. In van Rhee, C., Uzelac, A. (eds.) *Civil justice between efficiency and quality: from Ius Commune to the CEPEJ*. Intersentia, Oxford, pp. 29–45.
- Koprić, I. and Đulabić, V. (2009). *Modernizacija općeg upravnog postupka i javne uprave u Hrvatskoj (Modernisation of the General Administrative Procedure and Public Administration in Croatia)*. Zagreb: Institut za javnu upravu and Društveno veleučilište.
- Koprić, I. *et al.* (2016). *Legal remedies in administrative procedures in Western Balkans*. Danilovgrad: Regional School of Public Administration.
- Kulesza, C. (2021). Remote Trial and Remote Detention Hearing in Light of the ECHR Standard of the Rights of the Accused. *Białostockie Studia Prawnicze*, 26(3), pp. 205–221. <https://doi.org/10.15290/bsp.2021.26.03.11>.
- Langford, I. (2009). Fair Trial: The History of an Idea. *Journal of Human Rights*, 8(1), pp. 37–52, DOI: 10.1080/14754830902765857.
- Law on General Administrative Procedure, Official Gazette HR, nb. 47/09, 110/21.
- Lillo Lobos, R. (2022). *Understanding due process in non-criminal matters: how to harmonize procedural guarantees with the right to access to justice*. Springer.
- Mills, A. (2012). The Requirement of an Oral Hearing in Judicial Review Claims, *Judicial Review*, 17(4), pp. 326–329, DOI: 10.1080/10854681.2012.11426747.
- Milošević, M. and Knežević Bojović, A. (2018). Trial within Reasonable Time in EU Acquis and Serbian Law. *EU and Comparative Law Issues and Challenges Series (ECLIC)*, 1, pp. 447–470. <https://doi.org/10.25234/ecllc/6540>.
- Mirovni Inštitut v. Slovenia, Application no. 32303/1 (ECtHR 13 June 2018).
- OECD (1999). *European Principles for Public Administration*. SIGMA Papers, 27. Paris.
- Oliveira, A. M. *et al.* (2023). An Overview of the Portuguese Electronic Jurisdictional Administrative Procedure. *Laws*, 12(5), 84. <https://doi.org/10.3390/laws12050084>.
- Outlaw, R. *et al.* (2019). How Fair versus How Long: An Integrative Theory-Based Examination of Procedural Justice and Procedural Timeliness. *Personnel Psychology*, 72(3), pp. 361–391.
- Paduch, A. (2021). The Right to a Fair Trial Under Article 6 ECHR During the Covid-19 Pandemic. *Central European Public Administration Review (Online)*, 19(2), pp. 7–25. <https://doi.org/10.17573/cepar.2021.2.01>
- Paužaitė-Kulvinskienė, J. (2016). The principle of effective legal protection in administrative law in Lithuania, in Z. Szente and K. Lachmayer, eds., *The Principle of Effective Legal Protection in Administrative Law: A European Perspective*. London: Routledge, pp. 190–217.
- Produkcija Plus storitveno podjetje d.o.o. v. Slovenia Application no. 47072/15, (ECtHR 3 January 2019).
- Public Procurement Act, Official Gazette HR, nb. 120/16, 114/22.

- Rosas, A. (2014). Oral Hearings before the European Court of Justice. *Maastricht Journal of European and Comparative Law*, 21(4), 596–610. <https://doi.org/10.1177/1023263X1402100402>.
- Rozczynski, B. (2022). Simplification and Electronisation of Administrative Procedure in the Visegrad Group Countries – a Sociological and Legal Approach. *Central European Public Administration Review*, 20(2), pp. 123–146. <https://doi.org/10.17573/cepar.2022.2.06>.
- Samuels, A. (2005). A Right to an Oral Hearing in Quasi-Judicial Proceedings?. *The Cambridge Law Journal*, 64(3), pp. 523–527.
- Šarin, D. (2015). Pravo na pristup sudu u praksi Europskog suda za ljudska prava. *Pravni vjesnik*, 31(3-4), 269–296. <https://hrcak.srce.hr/155994>.
- Scarth v. The United Kingdom, Application no. 33745/96 (ECtHR, 22 July 1999).
- SchulerZraggen v. Switzerland, Application no. 14518/89 (ECtHR 24 June 1993).
- Speil v. Austria (dec.), Application no. 42057/98 (ECtHR 5 September 2002).
- Staničić, F., Britvić Vetma, B. and Horvat, B. (2017). Komentar Zakona u upravnim sporovima. Zagreb: Narodne novine.
- Szente, Z. (2016). The principle of effective legal protection in administrative law – a comparison, in Z. Szente and K. Lachmayer, eds., *The Principle of Effective Legal Protection in Administrative Law: A European Perspective*. London: Routledge, pp. 356–393.
- Szente, Z. and Lachmayer, K. (eds.) (2016). *The principle of effective legal protection in administrative law: A European perspective*. London: Routledge.
- Treichl, C. (2019). The Denial of Oral Hearings by International Administrative Tribunals as a Factor for Lifting Organizational Immunity before European Courts: A(nother) Critical View. *International Organizations Law Review*, 16(2), 407–446. <https://doi.org/10.1163/15723747-20181139>.
- Uzelac, A. (2004). Vladavina prava i pravosuđni sustav: Sporost pravosuđa kao prepreka pridruživanju, in Ott. K. (ed.), *Pridruživanje Hrvatske Europskoj Uniji, Izzakovi institucionalnih prilagodbi*, 2, pp. 99–123.
- Valkeapaa, A. and Seppala, T. (2014). Speed of Decision-Making as a Procedural Justice Principle. *Social Justice Research*, 27. p. 305–321.
- Varela Assalino v. Portugal, Application no. 64336/01 (ECtHR 25 April 2002).
- Vuille, J., Lupària, L. and Taroni, F. (2017). Scientific evidence and the right to a fair trial under article 6 ECHR. *Law, Probability and Risk*, 16(1), pp. 55–68. <https://doi.org/10.1093/lpr/mgx001>.
- Werner, F. (1959). Verwaltungsrecht als konkretisiertes Verfassungsrecht. *Deutsches Verwaltungsblatt*, 74, pp. 527–533.
- Zendeli, E. (2013). The Challenges of the Implementation of Paragraph of Article of the European Convention on Human Rights and Fundamental Freedoms in the Judicial System of the Republic of Macedonia. *Journal of Politics and Law*, 6(2), pp. 193–201.
- Zrvandyan, A. (2016). *Casebook on European fair trial standards in administrative justice*. Strasbourg: Council of Europe.
- Žuber, B. and Lovšin, Š. (2019). Judicial dialogue in the light of protocol no. 16 to the European Convention on Human Rights. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 40 (2), pp. 899–925.