General Principles and Challenges of Public Administration Organization in Serbia

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ABSTRACT

This chapter provides an overview of the functioning and organization of public administration in Serbia. It begins by outlining the constitutional foundations underpinning the operations and structure of public administration, as well as its relations with other state powers, specifically the mutual checks and balances. The chapter further describes and analyses the organizational principles and structure of public administration, with an emphasis on its division into state (ministries and other administrative state authorities) and non-state administration (territorial autonomy, local self-government, public agencies, institutions, and enterprises) and their relationships. At the end, the author designates the key theoretical, practical and politically sensitive issues that the Serbian administration faces today, such as impediments to the professionalisation of public administration, challenges regarding decentralisation, the proliferation of public agencies, and the politically controversial subject of the scope of autonomy of Vojvodina, as one of Serbia's provinces.

KEYWORDS

public administration, state administration, local government, public services, Serbia

1. Basic social, geographical, and economic overview

The Republic of Serbia is a country in southeast Europe. It is located in the centre of the Balkan Peninsula, with its territory stretching from south to north. It borders (in a clockwise direction, starting from the north) Hungary, Romania, Bulgaria, North Macedonia, Albania, Montenegro, Bosnia and Herzegovina and Croatia. Its surface area is 88,499 km^2 and it has a population of 6.6 million.[1] Serbia is a landlocked country with access to the Danube, connecting it to the Black Sea, and (via the Rhine-Main-Danube canal) to the North Sea.

1 Statistical Yearbook, Statistical Office of the Republic of Serbia, 2022 [Online]. Available at: https://publikacije.stat.gov.rs/G2022/Pdf/G20222055.pdf (Accessed: 26 May 2023). If not otherwise indicated, this is the source of all presented statistical data.

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Serbia is a middle-income country with a GDP per capita (PPP) of 21,647 USD.[2] The total GDP (PPP) is an approximately 150 billion USD.[3] Public debt is 58.2%.[4] It is a candidate country for EU accession. Its main trade partners are EU member states (60%) and neighbouring countries (10%).[5]

Serbia's urban population is 57%.[6] The country is facing significant depopulation tendencies owing to negative natural increases and emigration. These two factors have resulted in uneven population distribution and development. The most developed and populated areas are the largest cities such as Belgrade, Novi Sad, Niš, Kragujevac, and other regional centres. In contrast, the rural regions are experiencing severe depopulation, especially in the eastern, southeastern, and southwestern parts of Serbia. This creates difficulties in providing an adequate level of public services in these areas of the country, where experts in all professions are lacking.

The Republic of Serbia is a unitary state with three levels of Government.

The first level is the central state level.

Territorial autonomy is at the second level. Serbia has asymmetric territorial autonomy, indicating that it possesses two autonomous provinces that do not encompass its entire territory. These are neither federal units nor second-level local self-government. Autonomous provinces have parliaments and executive and administrative authorities, but do not have their own courts, police, or military. Their parliaments cannot pass laws but only bylaws. These provinces have an increased level of autonomy in certain fields, particularly those related to local services. They exist chiefly due to specific historical (they cover territory that was not a part of Serbia in the 19th century, when modern-day Serbia was internationally recognised) and ethnic (their population is more ethnically diverse than the rest of Serbia) factors.

Finally, Serbia has a single layer of local self-government that forms the third level. There are three types of local self-government units—municipalities, cities, and the City of Belgrade—serving as the capital and a special local self-government unit with broader authorisations. They do not have hierarchical relationships among themselves.

2 The World Bank [Online]. Available at: https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD (Accessed: 26 May 2023).

3 The World Bank [Online]. Available at: https://data.worldbank.org/indicator/NY.GDP.MKTP.PP.CD (Accessed: 26 May 2023).

4 The World Bank [Online]. Available at: https://pubdocs.worldbank.org/en/155551492011111809/mpo-srb.pdf (Accessed: 26 May 2023).

5 EU u Srbiji [Online]. Available at: https://europa.rs/trgovina/ (Accessed: 26 May 2023).

6 The World Bank [Online]. Available at: https://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS?locations=RS (Accessed: 26 May 2023).

2. Public administration and constitutional order

The Serbian Constitution,[7] in the broadest terms, lays the foundations of the functioning, structure, and relationship of public administration with other state authorities, public entities, and non-state agents.

2.1. Constitutional foundations of the functioning of administration

The Constitution sets the grounds for the functioning of the administration by prescribing a legal framework for its work and control.[8]

The fundamental premise of all state powers, including public administration, is the rule of law. From the outset, the Constitution stipulates that the Republic of Serbia is a state founded on the rule of law and social justice, the principles of civil democracy, human and minority rights, and freedoms.[9] The rule of law is the basic presumption of the Constitution, it rests on inalienable human rights and it is achieved through free and direct elections, constitutional guarantees of human and minority rights, separation of powers, independent judicial authority and compliance of the authorities to the Constitution and the law.[10]

This basic principle is further concretised with respect to the functioning of public administration. Specifically, a provision entitled 'Legality of the Administration' prescribes that individual acts and actions of state authorities, organizations entrusted with public powers, authorities of autonomous provinces, and local self-government units must be based on law.[11]

Hence, the Constitution establishes the principle of the legality of the work of public administration as the cornerstone for its functioning. Public administrations are strictly bound by law and cannot undertake any (in)action without a specific legal basis for such conduct.

In addition to the principle of legality, the Constitution binds the administration with the principles of equality and non-discrimination. It guarantees equal protection of rights before courts and other state bodies, holders of public authorisations (i.e. entities to whom administrative authorisations are delegated) and the authorities of the autonomous province and local self-government units.[12]

Moreover, the power of the state, including the power of its administrative authorities, is limited by the duty of the public authorities to respect human rights. The Constitution stipulates that when restricting human and minority rights, all state authorities, especially courts, are obliged to consider the core of the restricted

7 Official Gazette of the Republic of Serbia, no. 98/2006 and 115/2021.
8 Tomić provides an overview of the constitutional provisions most significant for the administration, see Tomić, 2018, pp. 112–113.
9 Article 1 of the Constitution of the Republic of Serbia.
10 Article 3 of the Constitution of the Republic of Serbia.
11 Article 198, paragraph 1 of the Constitution of the Republic of Serbia.
12 Article 36, paragraph 1 of the Constitution of the Republic of Serbia.

right, the importance of the purpose of the restriction, the nature and extent of the restriction, the relationship between the restriction and its purpose, and whether there is a way to achieve the purpose of the restriction through a lesser infringement of rights.[13] The latter part of this constitutional provision emanates from the principle of proportionality, one of the main guiding norms for the functioning of administration.

The power of the state is limited by citizens' rights to territorial autonomy and local self-government.[14]

Finally, administrative powers have sector-specific limitations.[15] In particular, these relate to the protection of personal data,[16] the duty to provide public access to information,[17] and prohibition of conflicts of interest,[18] which are meticulously regulated by statutes and enforced by independent regulatory agencies.

In addition to setting these basic guiding principles for the performance of administrative work and establishing boundaries for state powers, the Constitution provides grounds for the control of administrative actions.

First, it does so in a general manner, guaranteeing everyone the right to appeal or use other legal remedies against a decision that determines their right, obligation, or interest based on the law.[19] This provision does not distinguish between administrative authorities on the one hand, and courts and other public authorities (e.g. provincial and local authorities and regulatory agencies). It also contains a provision specifically pertaining to the control of administrative actions. In the previously cited provision entitled 'Legality of the Administration', the Constitution additionally stipulates that the legality of final individual acts deciding on rights, duties, and legal interests is subject to review before a court in an administrative dispute, if, in a certain case, a law does not provide for alternative judicial protections.[20] The prior provision covers not only the judicial control of administrative work[21] but also internal control via hierarchical administrative appeal.

Furthermore, along with the (ordinary) courts, administrative (in)action is controlled by the Constitutional Court. The Constitutional Court's control over the work of the administration is twofold. On one hand, the Constitutional Court controls the constitutionality and legality of general legal acts (bylaws) of the administration.[22] On the other hand, it may be petitioned through a constitutional appeal of an individual

13 Article 20, paragraph 3 of the Constitution of the Republic of Serbia.
14 Article 12, paragraph 1 of the Constitution of the Republic of Serbia.
15 Article 6, paragraphs 1, 42 and 51 of the Constitution of the Republic of Serbia.
16 On the Commissioner for Access to Information of public Importance and Personal Data Protection, see Milovanović, Davinić and Cucić, 2019.
17 Ibid.
18 For the work of the Anti-Corruption Agency in Serbia, see Glušac and De Vrieze, 2020.
19 Article 36, paragraph 2 of the Constitution of the Republic of Serbia.
20 Article 198, paragraph 2 of the Constitution of the Republic of Serbia.
21 For judicial control of administration in Serbia see Cucić, 2018 and Cucić, 2019.
22 Article 167, paragraph 2 of the Constitution of the Republic of Serbia.

or legal entity claiming that their constitutionally guaranteed rights and liberties have been infringed upon by an administrative act or factual conduct.[23]

The Constitution establishes the grounds for control performed by the Citizen Protector (Ombudsman).[24]

Finally, by regulating relations among state authorities—primarily those between the administration and the National Parliament and the Government—the Constitution provides a basis for their control over administration (see infra Section 2.3.).

2.2. Constitutional foundations of the structure of administration

The Constitution further outlines the basic contours of the administrative structure. In the section entitled 'State Administration', the Constitution specifies the position, manner of establishment, and organization of the state administration, as well as the delegation of its authority to other public entities and non-state organizations. Accordingly, the Constitution establishes the foundation for two main branches of public administration: state administration and non-state administration.

Regarding the state administration, the Constitution stipulates that state administration is autonomous,[25] bound by the Constitution and the law, and accountable for its work to the Government; that the state administration tasks are performed by ministries and other state administration authorities determined by law; that the duties of the state administration and the number of ministries are determined by law; and that the internal regulation of ministries, other state administration authorities, and organizations is regulated by the Government.[26] Therefore, structuring of the state administration is divided between the Parliament (the National Assembly) and the Government, with the former responsible for the establishment of the state administrative authorities and the latter authorised to prescribe their internal organization.

The Constitution provides the basis for the delegation of State administration tasks (authorisations and powers) to non-state agents. In the provision labelled 'Entrusting public authorisations and public service',[27] the Constitution permits the Parliament to entrust (delegate) certain tasks within the jurisdiction of the Republic of Serbia to autonomous provinces and local self-government units, if this promotes a more efficient and rational realisation of citizens' rights and obligations and serves their

23 Article 170, paragraph 2 of the Constitution of the Republic of Serbia.
24 Article 138, paragraph 2 of the Constitution of the Republic of Serbia.
25 Serbian Constitution and legislation distinguish between two terms – '*samostalan*' and '*nezavisan*'. Both terms could literally be translated as independent. Additionally, in everyday conversations, especially amongst laypersons, these would be considered as synonyms. However, these terms have distinct legal meaning. In the context of the state organization, '*samostalan*'—here deliberately translated as 'autonomous'—indicates authorities, such as ministries, that are directly subordinated to the Government. '*Nezavisan*', which will be translated as 'independent', designates public authorities that are not subordinated to the Government, such as the National Bank, the Ombudsman, the Data Protection Commissioner, the Competition Protection Commission, etc.
26 Article 136 of the Constitution of the Republic of Serbia.
27 Article 137 of the Constitution of the Republic of Serbia.

needs. The same provision permits the legislator to delegate certain public authorisations to companies, institutions, organizations, and individuals as well as to special sector-specific regulatory agencies.

2.3. Constitutional position of administration

2.3.1. Division of power between the highest state authorities

State power in Serbia is based on the division of power into legislative, executive, and judicial branches, and the relationship between these three branches is founded on mutual checks and balances, while the judiciary is guaranteed independence.[28]

The executive power is divided into gubernatorial powers, political, and (purely) administrative branches. The political level of executive power is bicephalic.[29] The bicephalous executive encompasses the Government and the President of the Republic (the head of the state).

The Constitution creates a discrepancy between democratic legitimacy and the powers of the President of the State. The President of the State is elected directly by the citizens. As the bearer of the highest level of democratic legitimacy, the President of the State expresses unity.[30] However, their authorisation is modest and disproportionate to the manner of their election. The President of the Republic: 1) represents the Republic of Serbia in the country and abroad, 2) promulgates laws by decree in accordance with the Constitution, 3) proposes candidates for Prime Minister to the National Assembly after hearing the opinions of the representatives of the selected electoral lists, 4) recommends various officials to the National Assembly in accordance with the Constitution and law, 5) appoints and recalls by decree the ambassadors of the Republic of Serbia based on the proposal of the Government, 6) receives letters of credit and letters of recall from foreign diplomatic representatives, 7) grants, pardons, and awards, 8) performs other tasks determined by the Constitution, and 9) in accordance with the law, commands the army and appoints, promotes, and dismisses its officers.[31]

As is evident, even where the President of the Republic has more significant authorisations, such as those regarding ambassadors and the army and its officers, their power is limited by the other highest state authorities (e.g. the Government proposes ambassadors, and the National Parliament proclaims a martial state[32] and enacts the state budget,[33] including military expenses, while the Government, through the Ministry of Defence, controls other activities related to the army).

28 Article 4 of the Constitution of the Republic of Serbia.
29 Orlović, 2009, p. 173.
30 Article 111 of the Constitution of the Republic of Serbia.
31 Article 112 of the Constitution of the Republic of Serbia.
32 Article 201 of the Constitution of the Republic of Serbia.
33 Article 99 of the Constitution of the Republic of Serbia.

The Constitution designates the Government as the bearer of executive power.[34] The Government comprises the Prime Minister, one or more deputies, and ministers.[35] It is elected by the Parliament, while the candidate for Prime Minister is recommended by the President of the Republic.[36] The Government is the true focal point at the political level of executive power, despite the fact that its members could lack democratic 'weight'. Specifically, members of the Government, the Prime Minister, and ministers cannot be members of the Parliament.[37] Consequently, they could, as is often the case, be individuals who were not elected by citizens in parliamentary elections. However, the Government has considerable authority. The Government: 1) determines and performs policies; 2) executes laws and other general acts of the National Assembly; 3) passes decrees and other general acts to implement laws; 4) proposes laws and other general acts to the National Assembly and offers an opinion on draft laws submitted by other proposers; 5) directs and coordinates the work of state administrative authorities and supervises their work; and 6) performs other tasks determined by the Constitution and law.[38] The Government is responsible to the National Assembly for the national policy, enforcement of laws and other general acts of the National Assembly, and the work of the state administration.[39]

The circle of the highest state authorities also encompasses the National Assembly (national parliament). The National Assembly is the highest representative body and the bearer of constitutional and legislative powers in the Republic of Serbia.[40] Parliament members are elected through general suffrage in free, secret, and general elections. National Assembly: 1) enacts and amends the Constitution; 2) makes decisions on changing the borders of the Republic of Serbia; 3) announces a state referendum; 4) ratifies international agreements, 5) decides on war and peace, and declares war and a state of emergency; and 6) supervises the work of security services; 7) enacts laws and other general acts within the jurisdiction of the Republic of Serbia; 8) gives prior consent to the statute of the autonomous province; 9) enacts a defence strategy; 10) enacts the development plan and the spatial plan; 11) enacts the budget and final account of the Republic of Serbia at the proposal of the Government; and 12) grants amnesty for criminal acts. Within its electoral rights, the National Assembly: 1) elects the Government, supervises its work, and decides on the termination of the mandates of the Government and ministers; 2) elects and dismisses judges of the Constitutional Court; 3) elects four members of the High Council of the Judiciary and four members of the High Council of the Prosecution, elects the Supreme Public Prosecutor, and decides on the termination of his office;

34 Article 122 of the Constitution of the Republic of Serbia.
35 Article 125 of the Constitution of the Republic of Serbia.
36 Article 127 of the Constitution of the Republic of Serbia.
37 Article 126 of the Constitution of the Republic of Serbia.
38 Article 123 of the Constitution of the Republic of Serbia.
39 Article 124 of the Constitution of the Republic of Serbia.
40 Article 98 of the Constitution of the Republic of Serbia.

4) elects and dismisses the governor of the National Bank and supervises his work; 5) elects and dismisses the Protector of Citizens, and supervises his work; 6) elects and dismisses other officials determined by law[41] (this mainly pertains to independent regulatory agencies and authorities not subordinate to the Government, such as those in the field of access to public information, personal data protection, competition protection, public procurements, state audit, telecommunications, electronic media, etc.).

Relationships between the highest political state authorities are based on mutual checks and balances. As previously mentioned, the Government is elected, and its mandate can be terminated by the National Assembly.[42] The Prime Minister's candidate is proposed by the President of the Republic.[43] The National Assembly can be dissolved through the interplay between the Government and the President of the Republic. The President of the Republic dissolves the National Assembly upon the recommendation of the Government, which must be reasoned.[44] Additionally, if the National Assembly is dissolved, it will not elect the Government within the prescribed deadline.[45] Finally, the President of the Republic can be resolved of its duty due to a violation of the Constitution. The procedure for dismissal can be initiated by two-thirds of MPs, after which the Constitutional Court[46] is obliged to decide on the existence of a violation of the Constitution within 45 days.[47]

2.3.2. Parliamentary and Governmental control of administration

The National Assembly and the Government control public administration. The President of the Republic has no supervisory powers in relation to state administrative authorities.

The National Assembly's control over the state administration is both political and indirect. It is political in the sense that the National Assembly is not authorised to change or remove the legal acts of the administration. It is only authorised to discuss the work of the administration and provide its opinions and conclusions thereafter, as well as to hold the Government politically responsible for the (in)action of state administration. Parliamentary control is indirect, either through its relations with

41 Article 99 of the Constitution of the Republic of Serbia.
42 Articles 127, 128, 130 and 131 of the Constitution of the Republic of Serbia.
43 Article 127, paragraph 1 of the Constitution of the Republic of Serbia.
44 Article 109, paragraph 1 of the Constitution of the Republic of Serbia.
45 The deadlines vary from 30 to 90 days depending on whether the Government is elected by the particular convocation of the National Assembly for the first time, or the National Assembly previously terminated its mandate, Articles 109, 130 and 131 of the Constitution of the Republic of Serbia.
46 The Constitutional Court is also in the system of checks and balances given that five of its judges are elected by the National Assembly, five are appointed by the President of the Republic, and five by the general session of the Supreme Court, Article 172 of the Constitution of the Republic of Serbia.
47 Article 118 of the Constitution of the Republic of Serbia.

the Government or via the activity of the Ombudsman (the Citizens Protector) and specialised independent control authorities.

The Government is responsible for the work of state administrative authorities to the National Assembly. The National Assembly has well-known disposal mechanisms for this purpose. The first mechanism is the Institute of Ministerial Responsibility, which involves a vote of confidence in the Government as a whole or in a particular minister. Ministers are members of the Government and heads of ministries, which are the most important state administrative authorities.[48] The National Assembly can also exercise its control by posing parliamentary questions, interpellations, and forming enquiry committees.[49] The work of the Government and state administration can be supervised when the Government submits the National Assembly's annual report on its work. In addition, the National Assembly can request the Government as a whole or as a particular member to submit a special report on its work.[50]

The second channel of parliamentary control over the administration is the job of the Citizens' Protector (Ombudsman).[51] The Citizens' Protector is elected and responsible for its work to the National Assembly.[52] It submits a regular annual report to the National Assembly on its work and the state of human rights in the country, containing data on activities from previous year, observed shortcomings in the work of administrative authorities, recommendations for improving practices and normative regulation of individual areas, proposals for improving the position of citizens in relation to administrative authorities, and information on the implementation of recommendations and proposals from previous reports.[53]

Lastly, the National Assembly controls the administration's work through annual or special reports submitted by independent authorities specialising in the control of public administration in certain fields.[54] These include reports submitted by the Commissioner for Access to Information and Personal Data Protection,[55] the Anticorruption Agency[56] and the State Audit Institution.[57]

48 Article 130 of the Constitution of the Republic of Serbia.
49 Article 56 of the Law on the National Assembly, Official Gazette of the Republic of Serbia, no. 9/2010.
50 Article 36 of the Law on the Government, Official Gazette of the Republic of Serbia, no. 55/2005, 71/2005, 101/2007, 65/2008, 16/2011, 68/2012, 72/2012, 7/2014, 44/2014 and 30/2018.
51 On relation between the parliament and the ombudsman, see, Glušac, 2019.
52 Article 138 of the Constitution of the Republic of Serbia.
53 Article 39 of the Law on the Citizens Protector, Official Gazette of the Republic of Serbia, no. 105/2021.
54 For detailed overview of these authorities, see Davinić, 2018.
55 Article 36 of the Law on Free Access to Information of Public Importance, Official Gazette of the Republic of Serbia, no. 120/2004, 54/2007, 104/2009, 36/2010 and 105/2021.
56 Article 39 of the Law on Prevention of Corruption, Official Gazette of the Republic of Serbia, no. 35/2019, 88/2019, 11/2021, 94/2021 and 14/2022.
57 Articles 43-48 of the Law on the State Audit Institution, Official Gazette of the Republic of Serbia, no. 101/2005, 54/2007, 36/2010 and 44/2018.

The Government can exercise both political and legal control over public administration.

The Government politically controls the work of the state administration by directing, coordinating, and supervising their work in the implementation of public policies and the enforcement of laws and other regulations.[58] The most powerful mechanism of political control is the possibility of removing the highest political officials who govern state administrative authorities. The Government can request that the National Assembly dismiss ministers.[59] The Government, solely based on its political will, appoints and removes from the office state secretaries, formerly known as deputy ministers (what they still actually are).[60] The Government also appoints and removes the highest civil servants, assistant ministers, and directors of state administrative authorities other than the ministries. They cannot be removed solely on the basis of political will, but the law provides a wide margin of appreciation to the Government, prescribing that they can be removed from their office, if during their governance a serious disruption in the work of the state authority they manage occurs due to their failure to achieve determined work plans and strategic goals.[61]

In addition, the Government has legal control over the public administration. This includes not only state administrative authorities but also non-state entities entrusted with public authorisation (known as holders of public authorisation). The Government controls both the general and individual legal acts of these authorities and entities. If a state administrative authority or holder of public authorisations at the level of the Republic (such as public enterprises, public institutions, and public agencies) does not enact a regulation, the Government enacts it, provided that the failure to enact the regulation could have harmful consequences for the life or health of people, the environment, the economy, or property of greater value. The Government can also annul or cancel the regulation of the state administrative authority in conflict with a law or Government regulation and set a deadline for the adoption of a new regulation.[62] Similarly, the Government can temporarily suspend the general legal acts of local self-government units, provided it finds them to be unconstitutional or illegal, and requests that the Constitutional Court check their constitutionality and legality.[63] Hence, the Government can assume the competence of these authorities and entities to enact regulations (bylaws) and remove or suspend illegal regulations. Another type of legal control over the work

58 Article 123 of the Constitution of the Republic of Serbia, Article 8, paragraph 1 of the Law on the Government.

59 Article 130 of the Constitution of the Republic of Serbia.

60 Article 24 of the Law on State Administration, Official Gazette of the Republic of Serbia, no. 79/2005, 101/2007, 95/2010, 99/2014, 47/2018 and 30/2018.

61 Article 78, paragraph 3 of the Law on Civil Servants, Official Gazette of the Republic of Serbia, no. 79/2005, 81/2005, 83/2005, 64/2007, 67/2007, 116/2008, 104/2009, 99/2014, 94/2017, 95/2018, 157/2020 and 142/2022.

62 Article 8, paragraphs 2 and 3 of the Law on the Government.

63 Article 6 of the Law on the Government.

of the administration is a situation in which the Government appears as the second-instance (appellate) authority in administrative proceedings. If a regulation so prescribes, the Government could be the authority deciding on an administrative appeal against the individual (legal) administrative acts of state administrative authorities or holders of public authorisations.[64] In such cases it can annul or alter their administrative acts.

3. Organizational principles and structure of the public administration

3.1. Division of public administration

Public administration in Serbia is conventionally divided into state and non-state administration.

The state administration encompasses the state administrative authorities. There are three types of state administrative authorities: ministries, authorities within ministries, and special organizations.

The non-state administration is territorially and functionally decentralised. Non-state organizations and other non-state actors become non-state administrative entities when they are entrusted with administrative public authorisation; that is, when a law delegates to them the competence to perform certain state administration tasks. The territorially decentralised non-state administration encompasses administrative authorities of the units of territorial autonomy (autonomous provinces) and local self-government units (municipalities, cities, and the City of Belgrade). The functionally decentralised non-state administration comprises public enterprises, public institutions, public agencies, and individuals to whom state administrative tasks have been delegated. Public agencies also include independent regulatory agencies. These encompass those deciding upon administrative matters and/or a having regulatory function in certain special policy domains, on the one hand, and those controlling the work of administration, on the other. The National Bank of Serbia, the central bank, as an independent and autonomous state organization, is also listed within a functionally decentralised, non-state administration. The place of the National Bank of Serbia in terms of its independence and the fact that its officials were elected by the National Assembly is akin to the position of independent regulatory agencies.

3.2. State administration

When discussing state administration, four issues must be analysed: types of state administrative authorities, their internal organizations, their relations, and personnel.

64 Article 59, paragraph 3 of the Law on State Administration.

3.2.1. Types of administrative state authorities

Ministries are the highest state administrative authorities that are competent in one or more related fields of administrative work. These are autonomous[65] state administrative authorities; in other words, they are directly responsible to the Government.[66] They are headed by ministers. In addition to being the heads of ministries, ministers are members of the Government. They are elected and removed by the National Assembly and are responsible for their work to the National Assembly and the Government.[67] Ministers may have one or more state secretaries. State secretaries are political officials who are appointed and removed by the Government. They assist the Minister in their work in a manner determined by the Minister. The state secretary (or, if there are more than one, one of them) is designated to replace the minister when the minister is absent (state secretaries were previously called deputy ministers).[68] Additionally, Ministers can appoint up to three special advisers to provide counsel on certain matters.[69] Both state secretaries and special advisers are part of the minister's cabinet and leave the ministry with the minister. The highest professional civil servants in the ministries are assistant ministers and the secretary of the ministry. They are also appointed by the Government, not on a political basis, but on their merits. Assistant ministers head sectors which are the largest internal units within the ministries. Secretaries of the ministries assist ministers in the management of human resources, finance, information technology, and other issues, and in coordinating the work of the internal units of the ministries.[70]

65 Serbian Constitution and legislation distinguish between two terms – '*samostalan*' and '*nezavisan*'. Both terms would literally be translated as independent. Additionally, in everyday conversations, especially amongst lay persons, these would be considered as synonyms. However, these terms have different legal meaning. In the sense of the state organization, '*samostalan*'—here deliberately translated as 'autonomous'—indicates authorities, such as ministries, which are directly subordinated to the Government. '*Nezavisan*', which will be translated as 'independent', designates public authorities that are not subordinated to the Government, such as the National Bank, the Ombudsman, the Data Protection Commissioner, the Competition Protection Commission, etc.

66 '*Samostalan*', that is autonomous has another meaning. Specifically, Article 7 of the Law on State Administration prescribes that '[*s*]tate administration authorities are autonomous in the performance of their duties and work within and on the basis of the Constitution, laws, other regulations and general acts'. Autonomous in this context provides guarantees that higher authorities are not going to intervene in particular matters within the competence of subordinated state administrative authorities. Higher state administrative authorities, when so authorized by law, can enact regulatory framework for the work of subordinated authorities. Pursuant to Article 48 of the Law on State Administration, higher state administrative authorities can also use instructions to direct the organization of work and the way of working of employees in subordinated state administration authorities and the holders of public authorizations in the performance of entrusted tasks of the state administration, but an instruction cannot determine the manner of handling and resolving a particular administrative matter, that is, a particular case.

67 Article 23 of the Law on State Administration.

68 Article 24 of the Law on State Administration.

69 Article 27 of the Law on State Administration.

70 Articles 25 and 26 of the Law on State Administration.

Authorities within ministries are non-autonomous state administrative authorities. They respond to their respective ministries directly and indirectly through that ministry to the Government and the National Assembly. Before the Government and the National Assembly, they are represented by their ministers.[71] These authorities are established for certain enforcement, inspection, or expert tasks, provided that the nature or scope of such tasks requires greater independence than that of a sector in the ministry.[72] Given this, the authorities within ministries are headed only by professional civil servants and not by politically appointed officials. They are governed by directors and one or more assistants, all of whom are appointed by the Government based on their merits.[73] Hence, their position and structure mirror those of the sector as the internal unit of a ministry. There are three types of authorities within the ministries: administration, inspectorate, and directorate. Administrations are primarily formed for enforcement tasks, inspectorates for inspection supervision, and directorates for expert tasks, as per rules relating to the economy.[74] The most interesting aspect is their relationship to the minister and the ministry to which they are a part. Authorities are autonomous in their work in the sense that their ministries are not allowed to intervene in particular matters within their competence, but the minister is authorised to direct their work in a general manner and enact regulations (bylaws) within their jurisdiction.[75] Sometimes, if a law provides for it, authorities within ministries can be assigned the status of legal persons (entities).[76] However, the ministries could not gain legal status. They are always only organs of the Republic of Serbia.

Special organizations, referred to as administrative organizations, are established for expert and related executive tasks, the nature of which requires greater independence than that of authorities within ministries.[77] There are two types of special organizations: secretariats and institutes. Secretariats are formed for expert tasks that are important for all state administrative authorities (e.g. the State Secretariat for Legislation, in charge of aiding ministries with legislation drafting). Institutes are founded for expert tasks that require the application of special methods and knowledge (e.g. the State Hydrometeorological Institute, in charge of issues related to climate and weather).[78] In addition to the authorities within ministries, special organizations are headed by professional management—directors, their deputies and

71 Article 32, paragraphs 3 and 4 of the Law on State Administration.
72 Article 28, paragraph 2 of the Law on State Administration.
73 Articles 30 and 31 of the Law on State Administration.
74 Article 29 of the Law on State Administration. In practice this division is not always consistently applied. For instance, there is the Police Directorate within the Ministry of Interior, although its work does not relate to the economy.
75 Article 32, paragraphs 1 and 2 of the Law on State Administration.
76 Article 28, paragraph 3 of the Law on State Administration.
77 Article 33 of the Law on State Administration.
78 Article 34, paragraphs 1 and 2 of the Law on State Administration.

assistants, that are all civil servants appointed by the Government[79]—and they can be given the status of legal entities by law.[80]

3.2.2. Internal organization of state administrative authorities

The Government regulates the internal organization of ministries and other state administrative authorities.[81] It issued a decree regulating the principles of internal organization and systematisation of workplaces within state administrative authorities. Based on the principles contained in this decree, every state administrative authority issues its own rulebook on the internal organization and systematisation of workplaces.[82]

There are three types of internal units within state administrative authorities: basic, special, and narrow. The basic internal units are sectors. These are the largest internal units within state administrative authorities and are headed by assistant ministers or assistant directors of authorities within ministries or special organizations as civil servants of the highest rank. Secretariats and ministerial cabinets are special internal units, which can only be formed within ministries. The secretariat is headed by the secretary and is tasked with human resource, finance, and information technology issues, and coordinates the work of internal units and their relations with other authorities. The minister's cabinet is headed by the chief of the cabinet and is responsible for advisory, protocol, public relations, and administrative and technical matters of significance for the minister's work. When a minister leaves his/her post, the entire cabinet leaves with him or her. Narrower internal units are departments and groups formed within sectors or secretariats.[83] Finally, other internal units and bodies can be formed within state administrative authorities for various purposes, such as working groups (e.g. for legislation drafting), expert commissions, coordination bodies, and project groups.[84]

3.2.3. Relations between state administrative authorities

Regarding relations between state administrative authorities, ministries are authorised to conduct internal supervision over authorities within ministries and, when prescribed by law, over certain special organizations.

Internal supervision consists of the supervision of work, inspection supervision through Administrative Inspection, and other forms of supervision regulated by special law[85] (e.g. control conducted by Budgetary Inspection).

The supervision of work consists of supervision over the legality of work and the opportunity (appropriateness) for the work of lower-state administrative authorities.

79 Articles 35-37 of the Law on State Administration.
80 Article 34, paragraph 3 of the Law on State Administration.
81 Article 136, paragraph 4 of the Constitution.
82 Dimitrijević, 2022, pp. 119–120.
83 Ibid, p. 121.
84 Ibid, p. 122.
85 Article 45 of the Law on State Administration.

Supervision of the legality of work examines the enforcement of laws and other general acts, while supervision of the opportunity of work examines the effectiveness, economy, and appropriateness of the organization of work.[86]

Regarding the control of ministries over authorities within ministries, the supervision of work offers wide control. Each ministry is authorised to control its own authorities within ministries in the following manner. It is authorised to: 1) request reports and data about work (including the overview of the enforcement of laws, bylaws, and other regulations, as well as decisions of the Government, the measures taken, and their effect); 2) determine the state regarding the execution of tasks, forewarn of notified irregularities, and order the measures and deadlines for their elimination; 3) issue instructions; 4) order the execution of tasks that it deems necessary; 5) initiate the procedure for determining responsibility; 6) directly enforce the tasks of the authority within the ministry if it estimates that a law or other general act cannot be executed otherwise; and 7) propose to the Government to take the measures it is authorised to take.[87] The instruction directs the organization of work and outlines how employees in the lower state administrative authority should perform their tasks. However, they cannot determine the decision-making process in particular cases, that is, particular administrative matters.[88]

As can be seen, the control of ministries over their own authority within ministries is extensive and comprehensive. It encompasses everything from requesting information to issuing guidance, identifying irregularities, and ordering measures to assuming competence.

However, the control that ministries can exercise over special organizations has two limitations. First, a ministry is authorised to exercise supervision over certain special organizations only if this is explicitly prescribed by law[89] (e.g. the ministry in charge of construction supervises the State Geodetic Authority[90]). Second, with respect to special organizations, ministries have only some of the aforementioned control powers. The ministry is authorised to: 1) request reports and data about work; 2) determine the state regarding the execution of tasks, forewarn of notified irregularities, and order the measures and deadlines for their elimination; 3) issue instructions; and 4) propose to the Government to take the measures it is authorised to take.[91] Hence, the autonomy special organizations enjoy in relation to ministries is greater than that of authorities within ministries. Most importantly, ministries cannot take over the execution of state administrative tasks from special organizations.

Another important form of internal supervision is that exercised by the Administrative Inspection. The Administrative Inspection is an authority of the Ministry of

86 Articles 46 and 49 of the Law on State Administration.
87 Article 47 of the Law on State Administration.
88 Article 48 of the Law on State Administration.
89 Article 50, paragraph 1 of the Law on State Administration.
90 Article 33, paragraph 3 of the Law on Ministries, Official Gazette of the Republic of Serbia, no.128/2020 and 116/2022.
91 Article 50, paragraph 1 of the Law on State Administration.

Public Administration.[92] It supervises not only whether state administrative authorities adhere to particular legislation, but also whether other state and non-state authorities and organizations do so. It also controls court administration, public prosecutors' offices, public attorneys' offices, the administrations of the National Assembly, the President of the Republic, the Government, the Constitutional Court, and other authorities whose members are elected by the National Assembly (e.g. Ombudsman, Data Protection Commission), as well as authorities of territorial autonomy, local self-government units and other holders of public authorisation, in the performance of entrusted tasks of the state administration.[93] Administrative Inspection supervises the implementation of laws and other regulations regulating state administration; labour relations in state authorities and authorities of local self-government units; general administrative procedure and special administrative procedures; the appearance and use of the coat of arms, flag, and anthem of the Republic of Serbia; official use of languages and letters; seal of state and other authorities; voter lists and registers; political parties and associations; and free access to information of public importance.[94]

Finally, ministries have another control mechanism over the authorities within ministries They act as the second-instance, appellate authorities in administrative procedure with respect to the decisions made by the authorities within ministries, unless otherwise prescribed by law.[95]

3.2.4. State administrative authorities' personnel

State administrative authorities have three types of personnel: public officials, civil servants, and auxiliary technical staff.[96]

Public officials represent political leadership within state administration. They enter and leave office based on political opportunities. Elected and appointed public officials can be distinguished. The former are elected by the National Assembly, while the latter are appointed by the Government.[97] The elected public officials are ministers. As previously mentioned, they head ministries and are members of the Government.[98] Appointed public officials are state secretaries (previously known as deputy ministers) and heads of administrative districts (see infra 3.3.1).

Civil servants are employees of state administrative authorities, and their tasks cover the essential competencies of state administrative authorities. Employment and status are regulated by a special law, the Law on Civil Servants.[99] They are divided

92 Article 11 of the Law on Ministries; Article 9 of the Law on Administrative Inspection, Official Gazette of the Republic of Serbia, no. 87/2011.
93 Article 2 of the Law on Administrative Inspection.
94 Article 3 of the Law on Administrative Inspection.
95 Article 59, paragraph 2 of the Law on State Administration.
96 Vasiljević and Vukašinović Radojičić, 2019, p. 98.
97 Milkov, 2013, p. 171.
98 There are also ministers without portfolio. They are members of the Government and they are in charge of a particular matters, but they do not have their own ministry.
99 Official Gazette of the Republic of Serbia, no. 79/2005, 81/2005, 83/2005, 64/2007, 67/2007, 116/2008, 104/2009, 99/2014, 94/2017, 95/2018, 157/2020 and 142/2022.

into civil servants in position and administrative civil servants.[100] The former are appointed by the Government and are the highest professional civil servants, either heading the sectors as the basic and most important internal units within ministries – assistant ministers or governing other state administrative authorities – directors of authorities within ministries and directors of special organizations, as well as their deputies and assistants. Unlike public officials, they are appointed and removed based only on their merits. They represent the professional leadership level within state administration. Administrative civil servants are all the other civil servants, subordinated to those in position.[101]

Auxiliary technical staff[102] are individuals whose employment is regulated by general labour law rules and who perform technical and auxiliary work within the state administration (e.g. drivers and janitors).[103]

3.3. Non-state administration

3.3.1. Territorially decentralised non-state administration

The territorially decentralised non-state administration encompasses the administrative authorities of territorial autonomy units and local self-government units.

The units of territorial autonomy are autonomous provinces. As previously mentioned, Serbia has asymmetric territorial autonomy with two autonomous provinces that do not cover its entire territory.[104] Autonomous provinces[105] are neither federal units nor a second level of local self-governance. They have the status of a legal entity, property, revenues, and symbols. They have their own parliaments and executive and administrative authorities, but do not have their own courts, police, or military. Their parliaments cannot pass laws but only bylaws. They have increased levels of autonomy in certain fields such as spatial planning and development, agriculture,

100 Literal translation of this type of civil servants is 'executive working places', but translated into English, it gives a false impression that these are leaders, while in the essence they are subordinate administrative staff.

101 Tomić, 2018, p. 174.

102 Again, in Serbian they are called 'nameštenici'. Literal translation would be 'officials' and it would be completely inadequate, given that these are technical and auxiliary staff.

103 Dimitrijević, 2022, p. 164.

104 This related to the Autonomous Province of Vojvodina, in the north of the country. The status of the other autonomous province – the Autonomous Province of Kosovo and Metohija, situated in the south of the country, should be regulated by a law that shall be passed in the procedure prescribed for the amendment of the Constitution, Article 182, paragraph 2 of the Constitution. This autonomous province is under the UN protectorate and is claiming independence. Final determination of its status is being negotiated under the auspices of the UN and the negotiations are conducted by the EU. Hence, all that is said in this section pertains to the legal regulation of the status of the Autonomous Province of Vojvodina.
Status of the Autonomous Province of Vojvodina is regulated by the Law on Determination of Competence of the Autonomous Province of Vojvodina, Official Gazette of the Republic of Serbia, no. 99/2009, 67/2012, 18/2020 and 111/2021 and its Statute, Official Gazette of the Autonomous Province of Vojvodina, no. 20/2014.

105 Articles 182–187 of the Constitution.

water management, forestry, hunting, fishing, tourism, spas and health resorts, environmental protection, industry and crafts, roads, river and railway traffic and road maintenance, organizing fairs and other economic manifestations, education, sports, culture, health and social protection, and public information at the provincial level.[106] In particular, below the level of the Provincial Government, as the bearer of gubernatorial political executive power, there are administrative provincial authorities—provincial secretariats (counterparts of ministries at the state level), provincial special administrative organizations, and other provincial administrative authorities.[107]

There are three types of local self-government units – municipalities, cities, and the City of Belgrade – as the capital and a special local self-government unit with wider authorisations. They do not have hierarchical relationships among themselves.[108] The two most important types of local self-government administrative authorities are city or municipal administrations (in cities, these can either be unique authorities or divided into several administrations competent for different fields) and city or municipal councils. The latter act as both political executive (gubernatorial) and (second-instance) administrative authorities.[109]

It is important to emphasise that autonomous provinces and local self-government units have only the competencies provided to them by the Constitution and laws of the National Assembly. In other words, all other competences not expressly given to autonomous provinces or local self-government units belong to the Republic, that is, to the central state level.

Autonomous provinces and local self-government units have two types of competences. They have their own (referred to also as proper or original) competences and delegated (entrusted) competences or authorisations.[110] This division is essential when it comes to the relations and control exercised by the (central) state administrative authorities over provincial or local self-governmental authorities (see infra 3.3.3).

There are four other types of territorial units in Serbia that should be distinguished from territorial autonomy and local self-government units. From territorially large to small, these are regions, administrative districts, city municipalities, and local communities.

Regions are statistical units established to plan and implement regional development policies.[111] There are five statistical regions in Serbia, two of which correspond

106 Article 183 of the Constitution and Articles 9-25 of the Law on Determination of Competence of the Autonomous Province of Vojvodina.

107 In the past, the Autonomous Province of Vojvodina opted to establish mainly provincial secretariats, while other types of provincial administrative authorities were rarely formed (Milkov, 2013, pp. 137–138). The Law on Determination of Competence of the Autonomous Province of Vojvodina, later adopted, established some of these other administrative authorities, e.g. Provincial Directorate for Health Insurance, Provincial Directorate for Protection of the Nature, Provincial Directorate for Sport, etc.

108 Dimitrijević, Lončar and Vučetić, 2020, pp. 184–186.

109 Milkov, 2013, pp. 152–157.

110 Dimitrijević, Lončar and Vučetić, 2020, pp. 75–77.

111 Ibid, p. 187.

to the territories of the two autonomous provinces, and one to the territory of the City of Belgrade. Nonetheless, they are not types of non-state administration; they do not have authority, and they serve for completely different purposes.

Administrative districts are a type of administrative decentralisation. These are territorial units within which central state administrative authorities can form local units. In general, their territory encompasses the territory of one or more cities and/or municipalities.[112] There are 29 of them. However, these are not units of territorial autonomy or a second (higher) level of local self-government. In addition to the local units of the central state administrative authorities, administrative districts have their own authority: the head (chief) of the administrative district, the professional service of the head of the administrative district, and the council of the administrative district. The head of the administrative district is a public official appointed by and responsible to the Government. He/she coordinates the work of the local units of the central state administrative authorities formed in the administrative district and monitors the implementation of the directives and instructions they have been given. Professional services assist the administrative district head. The councils of administrative districts consist of the head of the administrative district, the mayor of the cities, and presidents of the municipalities in the territory of that administrative district. Its purpose is to coordinate the work of the local units of the central state administrative authorities with local self-government authorities; that is, the authorities of cities and municipalities.[113]

City municipalities can be formed within cities, including the City of Belgrade. However, not all cities exhibit these characteristics. They are not units of local self-government but are formed by the statute of a city, which also determines their competence.[114]

Local communities are part of local self-government units covering the area of a village or city neighbourhood. Similar to city municipalities, they are not units of local self-Government and are formed by the statutes of cities or municipalities, which also determine their competence.[115]

3.3.2. Functionally decentralised non-state administration

The functionally decentralised non-state administration consists of public enterprises, public institutions, public agencies, and individuals to whom administrative tasks have been delegated.

Public enterprises and public institutions have the status of public service providers. Public enterprises are established to provide economic services of general interest in the fields of postal and telecommunications, energy, roads, communal services, and other areas determined by law. Public institutions are formed to provide

112 Tomić, 2018, pp. 162–163.
113 Articles 38–42 of the Law on State Administration.
114 Pešović, 2019, p. 102.
115 For detailed overview, see Vujadinović, 2010.

non-economic services of general interest in the fields of education, science, culture, physical culture, pupil and student standards, healthcare, social protection, social care for children, social insurance, and animal healthcare.[116] Public enterprises and institutions can be established at all levels of Government: state, provincial, and local.[117] They are legal entities (legal persons), separate from the public entities that establish them. One of the state's administrative tasks is to enable the adequate provision of public services.[118] Another option for them is to delegate the provision of these public services to private law entities – referred to as 'concessionary public service'.[119] This is done by virtue of a public-private partnership or concession agreement.[120] The provision of public services, either via public enterprises and public institutions or through PPP and concession agreements, is guided by the principles of continuity, quality, and nondiscrimination.[121]

Public agencies are organizations established for development, expert or regulatory tasks of general interest. A public agency can be established if development, professional, and regulatory tasks do not require constant and direct political supervision and if a public agency can perform them better and more effectively than a state administration authority, especially if they can be financed entirely or mainly from the price paid by service users.[122] Public agencies are legal entities; they are autonomous in their work, and the Government can neither direct their work nor coordinate it with the state administration authorities. They can be entrusted with certain tasks of the state administration, specifically, the enactment of bylaws, deciding in the first instance administrative proceedings, issuing public documents, and keeping records.[123] Their most prominent feature is that their work is completely or predominantly financed by fees paid by users of their services.[124] This is the main reason numerous public agencies have been established under special laws.[125] Particularly important public agencies are those referred to as independent regulatory agencies. On the one hand, these include agencies that decide on administrative matters and/or have regulatory functions in certain special policy domains, such as the Competition Protection Commission, the Regulatory Authority for Electronic Communication and Post-Service (RATEL), and the Regulatory Authority for Electronic Media (REM).

116 Article 3 of the Law on Public Services, Official Gazette of the Republic of Serbia, no. 42/91, 71/94, 79/2005, 81/2005, 83/2005 and 83/2014.
117 Article 6 of the Law on Public Services.
118 Article 19 of the Law on State Administration.
119 Tomić, 2018, p. 187.
120 Articles 7 and 10 of the Law on Public Private Partnership and Concessions, Official Gazette of the Republic of Serbia, no. 88/2011, 15/2016 and 104/2016.
121 Tomić, Milovanović and Cucić, 2017, p. 64.
122 Articles 1 and 2 of the Law on Public Agencies.
123 Articles 3–5 of the Law on Public Agencies.
124 Milosavljević, 2008, p. 172.
125 For instance, Agency for Privatization, Republic Agency for Development of Small and Medium Enterprises, Agency for Tobacco, Republic Agency for Spatial Planning, Agency for Commercial Registers, Agency for Licensing Bankruptcy Trustees, Agency for Energetics, etc, Dimitrijević, 2022, p. 126.

On the other hand, there are independent authorities controlling the work of the administration, such as the Commissioner for Access to Information and Personal Data Protection and the Commission for Protection of Bidders in Public Procurement Procedure.[126]

Individuals entrusted with administrative public authorisations are public enforcers and notaries.

Lastly, the legal doctrine almost unanimously situates the National Bank of Serbia as the central bank in a functionally decentralised non-state administration,[127] although there are dissonant tones classifying it as an independent state authority.[128]

3.3.3. Relations between the state administrative authorities and the non-state administration

The state administration is authorised to exercise control over both the delegated (entrusted) and original (own, proper) tasks of non-state administrative entities.

State administrative authorities exercise comprehensive control over delegated authorisations. When performing the delegated tasks of state administration, the holders of public authorisations (i.e. non-state administrative authorities and organizations) possesses the same rights and duties as the state administration bodies. The Government and state administration authorities retain responsibility for their execution, even after entrusting them the tasks of the state administration.[129] This indicates that state administrative authorities have all the powers of control that ministries possess with respect to their subordinate administrative authorities. In other words, they conduct internal supervision consisting of the supervision of work, inspection supervision through the Administrative Inspection, other forms of supervision regulated by a special law (such as the control conducted by the Budgetary Inspection), and act as second-instance authorities with respect to the decisions issued by the holders of public authorisations in the first-instance administrative proceedings (see supra 3.2.3).

In addition to these general control powers, the state administrative authorities also have special control mechanisms concerning non-state administration.[130] There are two types of special control mechanisms: takeover (substitution) of competence and control of the constitutionality and legality of bylaws enacted by non-state administration entities.

Takeover of entrusted tasks can be a one-time action or a continuous activity of the state administration, depending on the circumstances. The state administrative authority that supervises the enforcement of public authorisations entrusted to a non-state administrative authority or organization must perform an entrusted task

126 For the differentiation between the two, see Glušac, 2020; for detailed overview of the latter, see Davinić, 2018.
127 Tomić, 2018, p. 181; Milkov, 2013, p. 89; Vasiljević and Vukašinović Radojičić, 2019, p. 138.
128 Rapajić and Dimitrijević, 2018, p. 216.
129 Articles 51–55 of the Law on State Administration.
130 Articles 56–57 of the Law on State Administration.

if failure to perform that task could cause harmful consequences for the life or health of people, the environment, the economy, or property of greater value.[131] This pertains to acute failure to perform a task. Furthermore, if a holder of public authorisation, despite multiple warnings, does not start performing the entrusted work or does not start performing it correctly or in a timely manner, the supervisory state administrative authority takes over the performance of the work for a maximum of 120 days.[132] This is a sanction for the continued, chronic failure of a holder of public authorisation to exercise one or more of the tasks with which it was entrusted.

The control of the constitutionality and legality of regulations (bylaws) enacted by non-state administrative entities is pre-emptive, and depending on the circumstances, it can be conditional or unconditional. In other words, holders of public authorisations are obliged to obtain an opinion on the constitutionality and legality of the regulation they intend to enact from the competent ministry before publishing it. If it is deemed unconstitutional or illegal, the competent ministry must provide the holder of public authorisation with a reasoned proposal on how to harmonise the regulation with the pertinent legislation.[133] If the holder of public authority does not act according to the proposal of the ministry, the ministry is obliged to propose that the Government sanction this omission. The Government can either annul or cancel the regulation, provided it finds it to be at odds with another bylaw. However, if the Government deems the relevant regulation not to be in accordance with the Constitution or law, it can only suspend it from execution and initiate a proceeding before the Constitutional Court to assess its constitutionality or legality.[134] In both instances, the Government and state administration act pre-emptively to prevent the potential harm caused by illegal bylaws. In the former instance, control is unconditional and permanent, in the sense that the Government removes the illegal bylaw, whereas in the latter instance, the supervisory activities of the Government are temporary and conditional upon the final decision of the Constitutional Court.

Holders of public authorisation, primarily autonomous provinces and local self-government units, in addition to entrusted tasks of the state administration, possess their own (proper) competence. The Government and state administration have certain related control powers, but they are limited in comparison to control powers over entrusted tasks of the state administration. These range from

131 Milkov, 2013, pp. 102–103.

132 Vasiljević and Vukašinović Radojičić, 2019, p. 170.

133 Article 57, paragraph 1 of the Law on State Administration.

134 Article 57, paragraph 2 of the Law on State Administration. For instance, numerous provisions of the Statute of the Autonomous Province of Vojvodina, as the highest general legal act of an autonomous province, were declared by the Constitutional Court to be unconstitutional in 2013. Determining the scope of Vojvodina's autonomy was generally a difficult political and legal issue in the country and it led to both the Law on Determination of Competence of the Autonomous Province of Vojvodina and Vojvodina's Statute to be proclaimed as unconstitutional, see Simović, 2013.

temporary suspension and challenge of their general or individual legal acts before the Constitutional Court or the Supreme Court of Cassation to the dissolution of local self-government units' parliaments and the creation of an authority temporarily replacing the local parliament.[135] Nevertheless, they do not have authorisations derived from internal supervision (supervision of work or Administrative Inspection), nor can they act as second-instance authorities with regard to their administrative acts.

4. Current challenges in public administration in Serbia

Challenges faced by Serbian public administration vary from those purely theoretical, through legal challenges having significant practical implications, to those that, despite being legal, ignite fierce political debates.

An issue that can be classified as purely theoretical is the position of the National Bank of Serbia in public administration. While it is widely accepted that it forms part of non-state public administration, there are dissonant voices asking how it can be considered a non-state administrative authority if it is listed as a State (republic) authority in the Constitution. How can it be a non-state administrative authority if the public authorisation it exercises (governing the country's monetary policy, issuing and withdrawing permits for the work of banks, and controlling the work of banks and other financial institutions) represents the core of its work? This differs from public authorisations entrusted to public enterprises and institutions because they only play a role as an addendum to their main activities, providing services of general interest.[136] Similarly, the theoretical issues that one might raise are as follows. Should independent regulatory and control agencies, whose leadership is elected by the National Assembly, be classified as non-state administration? Should special organizations be regarded as state administrative authorities, given that, unlike ministries and authorities within ministries, their core activities are not administrative work (enacting administrative regulations, rendering administrative acts, issuing certificates, and undertaking other factual acts of administration) but other activities (e.g. statistics, hydrometeorology, ICT, etc.)?

There are several legal challenges of significant practical implications.

The first issue relates to challenges in the professionalisation of public administration. Specifically, the issue is whether decisions from the competence of state administrative authorities should be made by the head of authority or by a civil servant who prepared the decision. When the General Administrative Procedure Act[137] was enacted in 2016, this emerged as one of the more complex and conflicting issues. Until its adoption, the rule was that all decisions from the scope of the

135 Dimitrijević, Lončar and Vučetić, 2020, pp. 194–195; Articles 186–187 of the Constitution.
136 Rapajić and Dimitrijević, 2018, pp. 216–217.
137 Official Gazette of the Republic of Serbia, no. 18/2016, 95/2018 and 2/2023.

competence of state administrative authorities would be made by the head of the authority, unless otherwise prescribed.[138] In practice, this means that civil servants would conduct administrative proceedings and prepare decisions, while the head of the authority, usually overwhelmed with the quantity of work, would only sign the decision, thus taking responsibility for the decision that he/she, as a rule, would not have been able to analyse (especially if the head of the authority did not have the necessary legal and/or other professional knowledge). The General Administrative Procedure Act reverses this rule. It prescribed that the decisions should be rendered by the civil servants whose job it is to do so, and only if there is no such civil servant should the decision be made by the head of authority.[139] This aligns with one of the main aims of the Public Administrative Reform Strategy[140]: the professionalisation of public administration.[141] This resolves the issue of the practical inability of the heads of state administrative authorities to become fully acquainted with all the decisions they make and for which they are accountable. Accordingly, it links the civil servants' work to their responsibilities. Despite being eventually adopted, the rule was heavily criticised during the public debate about the draft law. Even the Citizens' Protector (the State Ombudsman) contested this legal solution. The main argument was that although legal norms guaranteeing civil servants' autonomy in individual cases exist, they do not eliminate the potential for abuse of power. In other words, the Ombudsman (as well as other opponents of this rule) feared that the heads of state administrative authorities could use other mechanisms to persuade (or pressure) their subordinate civil servants to render a decision they favoured, which might be inappropriate or even illegal, and thus shield themselves from legal liability.

The second legal issue with significant practical implications is decentralisation. Decentralisation, in the context of increasing the competence of local self-government units, either by entrusting them with the new tasks of the state administration or by widening their original competence, is recognised as one of the principles of public administration reform.[142] At the same time, the Public Administration Reform Strategy identified one of the key difficulties in this process. This can be expressed as follows:

> One of the systemic challenges for the reform of the local self-government system is asymmetric decentralization. Due to the monotypic (uniform) system of local self-government, there is a disproportion between the size of the LGU and the tasks assigned to it. In order to solve the problem in the way of assigning new jobs to the local self-government, MDULS [Ministry of Public

138 Articles 23 and 30 of the Law on State Administration.
139 Article 39 of the General Administrative Procedure Act.
140 Public Administrative Reform Strategy of the Republic of Serbia for the Period 2021-2030 (PAR Strategy), Official Gazette of the Republic of Serbia, no. 42/2021 and 9/2022.
141 Ibid, Section II.
142 Ibid.

> Administration] prepared and published the Unified list of jobs at the local self-government level. However, the assignment of tasks to LGUs and efficient administrative action is not accompanied by the provision of the necessary financial, personnel and other resources.[143]

Many small municipalities, especially those designated as economically devastated, cannot perform their tasks or provide adequate local public services. Even with financial resources, it is extremely difficult to find and maintain adequately trained civil servants and other staff members. This is corroborated by the legislative intervention that occurred at the beginning of the century. Legislators were forced to lower the requirements regarding the professional experience of the heads of municipal administration. They lowered the number of years of professional experience after graduation from the law faculty (they must be jurists) because in some municipalities they were not able to find any interested candidates. In general, they had to settle for beginners for these important posts.

The third concern is the proliferation of public agencies. As explained earlier, public agencies are organizations established for the development, expert, or regulatory tasks of general interest. These can be established if development, professional, and regulatory tasks do not require constant and direct political supervision and if a public agency can perform them better and more effectively than a state administration authority, especially if they can be financed entirely or mainly from the price paid by service users. Their most prominent feature is that their work is completely or predominantly financed by fees paid by users of their services (see supra 3.3.2.). Unfortunately, this has led to the proliferation of these agencies. It seems that they were established even in certain fields where the conditions for their establishment were not met; for instance, they were established where a public agency could perform certain tasks better and more effectively than a state administration authority. As evidence, we can offer the example of the Tobacco Agency, which used to be a public agency until it was replaced by the Tobacco Administration as an authority within ministry.[144]

Finally, we must mention a legal matter regarding organization of public administration, which represents a true political 'dynamite'—the issue of the territorial autonomy of Vojvodina. The issue at stake was the competency given to the Autonomous Province of Vojvodina. This issue has been a political challenge for various reasons. From 1945 to 1989, the Autonomous Province of Vojvodina was akin to a federal unit within Yugoslavia and Serbia, then to a territorial autonomy unit. It had its own constitution, constitutional court, judiciary, administration, police force, and many other elements of a federal unit. Its autonomy significantly

143 Ibid, Section VIII (1).

144 Articles 3 and 94 of the Law on Tobacco, Official Gazette of the Republic of Serbia, no. 101/2005, 101/2005, 90/2007, 95/2010, 36/2011, 6/2012, 69/2012, 93/2012, 8/2013, 64/2013, 108/2013, 4/2014, 79/2014, 5/2015, 67/2015, 5/2016, 65/2016, 8/2017, 76/2017, 18/2018, 62/2018, 95/2018, 4/2019, 91/2019, 91/2020 and 11/2021.

diminished in 1989. The other historical reason that prevents politically neutral legal reasoning about this topic is the fact that the other autonomous province within Serbia is now claiming independence. These traumatic events have hindered reasonable debate. When the political situation changed again, the Autonomous Province of Vojvodina was given wider autonomy in 2009, but this led to two proceedings before the Constitutional Court: one regarding state law that granted additional competencies to Vojvodina and the other relating to its statute. In both cases, the Constitutional Court found and abolished numerous provisions deemed unconstitutional.

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