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CITIZENS' GRIEVANCES AGAINST ADMINISTRATIVE AGENCIES—THE YUGOSLAV APPROACH†

Walter Gellhorn*

YUGOSLAVIA, with a population of nearly twenty million, occupies a territory slightly larger than the United Kingdom. Professedly "communist" in philosophy, increasingly "democratic" in practice, it recognizes that the supposed interests of the State do not preclude attention to individual rights as well. In recent years Yugoslavia, like the United States, has earnestly sought efficient means of examining complaints about public administration. The present article sketches some of the measures that protect citizens against official abuse or mistake.

I. POLITICAL STRUCTURE

The Socialist Federal Republic of Yugoslavia comprises six republics—Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia—which are markedly diverse in language and tradition. Each republic, like each of the components of the United States of America, has a separate constitution and a considerable measure of governmental autonomy. Municipal bodies or "communes" exercise political power at the local level. Though varying greatly in size, all communes (numbering 577 in 1964) have the same legal status and organizational structure.¹ The communes in three of the six republics have grouped themselves into forty "districts" (as of 1964) to fit their respective economic, geographic, and cultural circumstances; the districts—communities of communes, as it were—provide cooperative governmental services with greater resources than a single locality can command.

A. *Representative Assemblies and Executive Councils*

Each level of government has an elected representative assembly.² The assemblies in turn elect the chief executive officials within their respective geographical jurisdictions.

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1. The median population of communes in 1964 was only about 25,000. Only nine communes had more than 100,000 inhabitants, while 209 had fewer than 20,000.

2. The communal, district, and republican "assemblies" are bicameral bodies; one chamber is directly representative of the electorate, while the other is a "council of

At the national level, the Federal Assembly elects the President and Vice President. The President designates an Assembly member to be President of the Federal Executive Council. The President of the Executive Council then proposes other Assemblymen for election to that body, which also has additional *ex officio* members (including the presidents of the executive councils of the six republics). The Executive Council is defined by article 225 of the Constitution as "the organ of the Federal Assembly which is entrusted with political-executive powers within the framework of the rights and duties of the Federation"; and it is declared to be "responsible for the execution of the Federation's policy" as established by the Assembly. But most members of the Executive Council are not, like British Cabinet Ministers or members of the United States Cabinet, themselves the heads of governmental departments; they are coordinators, policy-makers, planners, and proposers of new legislation. Similar executive councils exist in each republic to oversee the public business of that governmental unit. The representative assembly itself performs the related tasks at the district and communal levels.

B. *Administrative Organs*

Apart from the representative and executive bodies just described, administrative agencies exist in each politico-territorial unit. At the federal level the Constitution mentions only two "state secretariats," the Secretariat of State for Foreign Affairs and the Secre-

producers," supposedly reflecting the interests of diverse economic groups. The Federal Assembly has had a more complex structure since the adoption of the 1963 Constitution. The Assembly consists of the "Federal Chamber," representative of the entire citizenry; additional members are chosen by each republican or autonomous provincial assembly from among its own members, to keep an eye on ethnic and republican interests and to function as the "Chamber of Nationalities" in a few special circumstances, such as debate upon proposals to amend the constitution. The four other chambers—the Economic Chamber, the Chamber of Education and Culture, the Chamber of Social Welfare and Health, and the Organizational-Political Chamber—are created by article 165; their members are elected by the communal assemblies. Each of the chambers has 120 members, except the Chamber of Nationalities, which has sixty. The Federal Chamber has some independent powers, for example in connection with foreign affairs (art. 178). Each of the other chambers has autonomous powers of self-administration, inquiry, and debate, but when it comes to enacting legislation each of the chambers must act "on terms of equality" with the Federal Chamber. While the Federal Assembly thus appears to be a six-chamber organization, it might more accurately be described as an aggregation of bicameral bodies; the Federal Chamber works successively, as it were, with different partners according to the subject matter under consideration. A leading Yugoslav constitutional scholar explains: "Whereas the Federal Chamber as general political representative takes part in the main in all the jurisdictions of the assembly, the chambers of the working communities equally with the Federal Chamber examine matters and pass bills and other acts only in their jurisdiction." J. Djordjević, *Preface to Constitution of the Socialist Federal Republic of Yugoslavia*, in VII COLLECTION OF YUGOSLAV LAWS at xi (Institute of Comparative Law, Beograd, 1963).

tariat of State for National Defence. But article 233 contemplates that "federal secretariats and other federal administrative organs" will be created "to discharge the affairs of the state administration in the jurisdiction of the Federation." Article 235 provides that, within its own area of responsibility, each administrative agency "shall autonomously discharge affairs," subject to constitutional and other legal limitations. Under article 236, the top administrative officials are chosen and subject to being dismissed by the Federal Assembly, upon the Executive Council's proposal.

The same type of administrative structure appears at each of the subordinate levels of government. Each level is, however, independent of the others. That is, the administrators in even the lowliest commune are theoretically not under the command of a higher official in the capital of the republic or the nation; with rare exceptions, they are subordinate only to their own executive council or municipal assembly. This is true even though, as the Constitution directs, they may be enforcing federal and republican laws.³ Each commune remains a self-governing "institution of political authority" rather than an agent of some other authority.⁴

II. ECONOMIC AND SOCIAL ORGANIZATION

Despite the elaborate governmental machinery whose outlines have just been briefly described, and despite social ownership of the chief means of production, Yugoslavia in recent times has left economic and social decision-making, to a very marked degree, in non-governmental hands. Political organs, according to the now prevailing view, should not themselves direct production or manage "creative social processes." These tasks, it is said, should be undertaken by so-called "working organizations," which are in essence self-managing cooperatives made up of the persons directly linked with an economic establishment or other activity.

Some of these organizations are very small; for example, every apartment house with three or more flats is autonomously managed by a "house council" elected by the tenants, although the house itself belongs to the State. Some, on the other hand, are extremely large. For example, the national railway system is a "working organization" self-managed by those engaged in railroading. Other self-

3. CONST. art. 101: "The communal authorities shall attend to the enforcement of federal and republican laws and shall directly enforce them, unless the Constitution or law has placed their enforcement in the jurisdiction of the district, republican or federal authorities."

4. J. Djordjević, *Introduction to the Local Government*, in II COLLECTION OF YUGOSLAV LAWS 10 (Institute of Comparative Law, Beograd, 1962).

managing bodies include not only ordinary manufacturing and commercial concerns, but also organizations regarded in other countries as governmental, such as those that give postal service, provide water supplies, or execute social insurance programs for the aged, the sick, and the disabled.⁵ A marked trend toward bigness can be discerned; as in the west, business in Yugoslavia is becoming highly concentrated.⁶

*A. Relationships Between Self-Managing Enterprises
and Administrative Organs*

The organs of government are responsible for preventing the self-managers from becoming self-aggrandizers without regard for the general interests of society or in defiance of the principles of the established order. Moreover, government makes major decisions about the directions in which new capital is to flow (although current credit financing is in the hands of banks, which are themselves self-managing organizations). To a far greater degree than most Americans imagine, however, Yugoslavia, like the United States, relies on "private initiative," "free enterprise," and "competition" to get things done; it acts, as does the United States, on the hypothesis that entrepreneurial decisions will usually be in accord with the public interest and that considerable freedom from "regimentation" is good for business and thus for the community. So a "working organization," wielding purely economic power and having no capacity whatsoever to apply legal coercion, may make determinations that profoundly affect many interests—the interests of those who work in the organization and share its prosperity, its customers, its suppliers, and so on—unless and until government intervenes. Sometimes intervention is even more cautious than in the United States.⁷

5. The minimum content of Yugoslavia's social insurance programs has been determined by federal laws, with room for additions by the several republics. The investment and protection of the insurance funds and the formulation of administrative methods and policies remain in the hands of the self-managing insurance organizations.

6. An official newspaper reports the following, synthesized from 1964 financial reports: From 1962 to 1964 the number of industrial and mining enterprises with invested "capital" of a million dollars or less decreased from 2,317 to 2,012. At the same time, the biggest enterprises showed a large numerical increase. One hundred sixty industrial enterprises held 56% of the total industrial capital of Yugoslavia, and four "giants" accounted for 40% of the total. One-fifth of the enterprises achieved four-fifths of the total income from industrial operations. A "further, more and more rapid concentration of the economy" was predicted. *Borba*, June 4, 1965, p. 5, col. 7.

7. See, e.g., *Borba*, June 1, 1965, p. 6, col. 3, reporting that the Workers' Council of the Belgrade Railway Transport Enterprise had decided to terminate freight service at twenty railway stations on the main line because they handled too little business to make the service profitable. A new timetable also omitted mention of fourteen sta-

In their relations with governmental administrators, organizations are in precisely the same position as individual citizens. They are subject to being regulated and their acts are subject to scrutiny to assure compliance with law.⁸ Corporations and other organizations in Yugoslavia, in short, resemble the private interests in America that find themselves from time to time facing administrators as opponents, as petitioners for subsidies or other aid, as critics of old policies, or as advocates of new policies.

B. *Friction Between Enterprises and Administrative Officials*

Whatever may be its virtues, nobody has ever contended that the free enterprise system works perfectly, that individual enterprisers are invariably law-abiding, that every manager of business affairs is wise, or that short-term personal advantage is always subordinated to more enduring interests. Yugoslavia, again like the United States, has found that working organizations (free enterprises under a different name) sometimes behave anti-socially—as, for example, when 55.5 per cent of those included in a 1965 survey were discovered to be disregarding a price-freeze imposed to halt inflation.⁹

Yugoslavia has found, too, that perhaps well intended decisions may produce unintended undesirable results—as, for example, when organizations in which unskilled workers predominate have fixed their wage scales according to “the policy of equal bellies,” thus eliminating the hope of higher personal earnings as an incentive to acquire skills needed in the enterprise.¹⁰ It has also observed that

tions to which passenger service had previously been given. So far as appears, these entrepreneurial decisions required no governmental approval before or after the event; the Workers' Council giveth service and it also taketh it away, according to its own judgment.

8. Compare L. VAVPETIĆ, INTRODUCTION TO THE YUGOSLAV LAW ON GENERAL ADMINISTRATIVE PROCEDURE 21 (1961): “Even in relation to such organizations public administration agencies must see to removing, by means of subsidiary legal intervention, possible social and legal irregularities committed by the organs of such organizations and resulting from the lack of social discipline. This function requires the agencies of public administration to observe strictest legality in their work, since the care for observance of legality is their main task.”

9. *Politika*, April 30, 1965, p. 6, col. 3. The Market Inspectorate inspected 1,354 economic organizations to check compliance with a price-freeze legally promulgated on March 22. Seven hundred fifty of those inspected were found to be violators.

10. See, e.g., J. Borkic, *Income and Production*, Borba, May 26, 1965, p. 5, col. 1: In Bosnia and Herzegovina, university graduates have average earnings less than three times greater than those of unskilled workers. “The spans in earnings (not in starting bases), if connected with the results of work cannot and, even, must not be small. They cannot be looked at in a static way, from today to tomorrow, but from the standpoint of the extent to which they ensure future movement, development, and progress. Without a stimulation of qualified labor there can be no rapid modernization

regulatory controls, introduced to prevent managerial abuses, are not self-executing, but require a good deal of policing in order to become effective—as, for example, when self-managing enterprises have maintained hiring and firing policies declared by law to be objectionable.¹¹ And it has noticed that the most enthusiastic adherents of free enterprise are not at all averse to dipping into the public treasury when prosperity eludes them; like American tobacco farmers, they want the profits but not the losses that self-management may bring.¹² Malfunctionings like these create pressure for governmental corrective activity. This may in turn produce further, although different, malfunctionings leading to demands that government keep its hands off business and that the bureaucracy be cut down to size.¹³

in technology, no incentives to the development of rationality, inventions, and so on. It is not difficult to make a correct ideological and political evaluation of the importance of stimulating work, particularly of skilled labor, in a country that is entering upon the world industrial stage, on which it claims its place. In fact, it is clear that without a more modern technology we will not be able to participate in the international competition for work, and ultimately there can be no rise in living standards. Looked at from this angle, stimulation of skilled labor is something communists will have to think over. They cannot and must not be satisfied with the existing home peace and a compromising evasion of this problem. It is a comforting fact that certain big enterprises—the Zenica Steelworks, the Banovici Mines, and so on—have turned over a new leaf in this respect. . . . The organizations of the League of Communists cannot satisfy themselves only with the encouragement to ‘common producers’ and with the fact that the earnings of skilled personnel are neglected, since it is on their knowledge, skill, and interest that the advancement of technology and of the organization of work depends. . . .”

11. See S. Mehmedi, *Irresponsibility of the Responsible Ones*, *Komunist*, May 27, 1965, p. 4, col. 1. Unlawful discharges by enterprises in the province of Kosovo-Metohija numbered 674 in 1964, partly, but not entirely, it is thought, because of “a lack of law experts in work organizations.” Even in large organizations with ample personnel, however, violations of the law occurred, sometimes with the specific approval of the self-management bodies. In one enterprise, ten workers were dismissed without notice and 648 persons were newly employed without observance of requirements, while two major executives were engaged “without even having competed for the job” as the law demands. For discussion of the supposedly useful but infrequently used grievance machinery in such matters, see A.S. Kahl, *Labor Law and Practice in Yugoslavia*, BUR. OF LAB. STAT. REPORT No. 250, at 55-56 (1963).

12. See, e.g., *Borba*, June 2, 1965, p. 4, col. 1, reporting proceedings in the Republican Assembly of Montenegro, which heard the Republican Secretary for Finance discuss failure of industrial productivity to keep pace with increased industrial employment. He remarked also that certain enterprises which had been operating at a loss for some time “disproportionately and unrealistically increased personal income of the employed,” instead of cutting wages and salaries; then the enterprises turned to the government for additional subsidies to offset their deficits.

13. See, e.g., the Croatian Republican Assembly’s discussion of the Executive Council’s proposed “social plan” for 1965, as reported in *Borba*, Jan. 7, 1965, p. 4, col. 1. Deputies complained that not enough of the national income was being channeled into the hands of “work organizations” but was instead going into governmental organs. This, according to one speaker, “merely nourishes illusions that certain problems will continue being solved independently of the producers themselves.” When

C. *Inherent Limits of Self-Management*

In truth, even if bureaucrats were to disappear entirely, the complexities of modern economic life might preclude absolute self-management. In most affairs of any consequence, many different entities manage various pieces of an interrelated whole, often without close attentiveness to what the other self-managers are doing.¹⁴ When that happens, managing oneself may not produce the desired results. The City Transport Enterprise of Belgrade, for example, managed itself into enlarging its garage facilities and into increasing the number of buses available in that busy city. But a few weeks later it had to withdraw twenty-five vehicles from the streets and feared that service on some routes might have to be terminated altogether, because tires had become unprocurable. Its domestic supplier was unable to obtain needed raw materials. "We have told all the influential bodies—the Jugobanka, the Federal Economic Chamber, the Council for Communications—about the situation," the director asserted. "Besides, we have also concluded contracts in time, and that is all we can do." About two thousand tires had been imported by the government, but had been sold to inter-city freight haulers instead of to local bus enterprises.¹⁵

the 1964 social plan had been adopted, he said, "the Assembly had clearly suggested that the oversized republican administration should be reduced to normal limits. However, this year again considerable funds are to be earmarked for the administration, so that the impression is gained that the administration we have today is again being emphasized as indispensable."

See also Borba, May 22, 1965, p. 5, col. 1, editorially denouncing certain local governments for having blocked a large enterprise's decision to allocate fairly big sums of money to research work and exploration for new ore deposits. This was "an infringement on the independence of the given enterprise."

14. See, e.g., N. Djurić, *Export Even to the Domestic Market*, Borba, June 4, 1965, p. 5, col. 1: "Recently the director of a well-established hotel enterprise, which takes in \$400,000 annually from foreign guests, seriously criticized the supply system. There is no good quality meat to be had, he says, because all the good meat is exported. 'We cannot obtain first class fruit, and we dare not even mention this to the producer or merchant, since the goods available are immediately sold to another customer.' . . . Much earlier, countries with developed tourist traffic, among them Switzerland, Italy, and Austria, established that sale of goods through tourism is a profitable business. Instead of exporting to the London or Munich markets, everything is exported, so to speak, to hotels. . . . However, in exports there must be a continuous response to every market demand. Therefore it would be absolutely senseless to underestimate exports on account of tourism. . . ."

15. Borba, Jan. 15, 1965, p. 8, col. 1. The scarcity of foreign exchange is a problem with many ramifications in Yugoslavia. In the interview quoted above, for example, the director added: "The Enterprise mostly uses imported vehicles. Therefore it needs imported parts. Every year we are given money for that purpose. Last year we were granted foreign currency amounting to 140 million dinars for the purchase of spare parts. This year, with more vehicles to maintain, we need about 186 million in foreign currency. The Jugobanka tells us we have been granted only about 23 million. If no change occurs, we are going to have to take still more buses out of service."

Moreover, while calling loudly for less governmental "interference," Yugoslav business enterprises often call equally loudly for more governmental "action" to produce conditions they deem favorable. This is usually done with honest unawareness that what is one man's "action" is likely to be another man's "interference." Thus, Yugoslavia's coal producers, wishing to mechanize the mines and to provide new housing for miners, welcomed a legislative inquiry into the funds of other organizations engaged in sales and distribution; the alleged prosperity of the coal dealers was "indicative of a siphoning of funds from the economy to the commercial network." The "action" the coal miners wanted (that is, tighter control over the middlemen) would of course be "interference" from the distributors' standpoint. At the same time, the mining industry was urging a sharp lowering of its contribution to social security funds and of customs duties on imported mining equipment, although, inevitably, other industries would then have to make higher payments to take up the slack.¹⁶

These are random comments upon, rather than a description of, business activities in Yugoslavia. Perhaps, nevertheless, they adequately suggest a cardinal fact of life in that country: economic power has been significantly dispersed, thus leaving in non-governmental hands the capacity to make important choices.¹⁷ As a consequence, open clashes of interests remain possible, "coordination" is not rigid in every phase of existence, and controversy between officials on the one hand and "private parties" with substantial resources on the other is a socially acceptable possibility.

III. THE YUGOSLAV LAW ON GENERAL ADMINISTRATIVE PROCEDURE

The Yugoslav Law on General Administrative Procedure, which became effective in 1957, is an extraordinarily comprehensive effort to regulate administrative adjudication. It deals not at all with the making of new rules or the conduct of public affairs in general. But article I(1) flatly states that all public officials, at whatever level of government, must "proceed according to this law whenever, applying rules directly, they decide in administrative affairs on rights, obligations or legal interests of individuals, juristic persons or other parties."¹⁸

16. *Politika*, Jan. 9, 1965, p. 7, col. 2 (Report from the Federal Economic Chamber).

17. See generally L. Sirc, *State Control and Competition in Yugoslavia*, in COMMUNIST

18. The quotation of the statute is from the translation of Prof. Leonidas Pitamic, *ECONOMY UNDER CHANGE* 125-94 (1963).

The Yugoslav Administrative Procedure Act—YAPA—contains 298 articles, embodying 761 sections that seek to anticipate every problem an administrative adjudicator might encounter.¹⁹ Apart from its details, YAPA declares a number of general principles that underlie all its sections. Among them the following seven bulk large:

1. *The principle of legality.* Decisions must rest on a statutory foundation; when a determination has been left to administrative discretion, "the decision must be made within the limits of the power and in accordance with the intention for which this power has been given."²⁰

2. *The principle that citizens' rights, consonant with those of other citizens and the public at large, must be protected.* While parties to administrative proceedings presumably safeguard their own interests, YAPA also directs that officials must enable private interests to "obtain their rights as easily as possible," although the officials must see that rights are not asserted "contrary to the public interests or to the detriment of the rights of others." "Public interest" is to be determined by reference to previously announced legal prescriptions and directives.²¹

published by the Yugoslav Institute of Comparative Law in 1961. The leading English language commentary on the statute is by an internationally respected member of the Belgrade University law faculty, N.S. Stjepanović, *The New Yugoslav Law on Administrative Procedure*, 8 AM. J. COMP. L. 358 (1959). See also VAVPETIĆ, *op. cit. supra* note 8. Prof. Stjepanović, describing the statute as the Yugoslav Administrative Procedure Act, has referred to it by the abbreviation YAPA, a practice followed in the present article.

19. See, e.g., art. 109(3) ("Persons present at an action of the procedure must not carry arms or dangerous instruments"); art. 180(3) ("Dumb witnesses who know how to read and to write shall swear by signing the wording of the oath, and the deaf witnesses by reading this wording. To a dumb or deaf witness who knows neither to read nor to write, the oath shall be administered through an interpreter.").

20. Art. 4(2). As to this provision, Prof. Stjepanović comments: "Provisions granting discretionary powers do not always clearly define the limits and purposes of such powers, but these may be determined in each concrete case from the context, motives, and other elements of the relevant provision. A very important practical consequence of this is that in Yugoslavia a successful administrative suit may be started even against a discretionary administrative decision, and not only on the grounds that it contravenes essential provisions of administrative procedure, or of incompetence, improper evaluation and incomplete finding of fact, or excess of powers, but also on the ground of abuse of powers, when the decision rendered is contrary to the purpose for which such discretionary power was granted." Stjepanović, *supra* note 18, at 362.

21. Art. 5(1). As to this, Prof. Stjepanović remarks: "A directive is a binding politico-administrative instruction of a *general nature*, not a concrete order or command governing an individual case; it must be consistent with law and other provisions and within the powers of the agency issuing it. A directive is binding on administrative agencies of the politico-territorial unit by whose representative and executive body it was issued, but it is not binding upon citizens and courts. Citizens may start a suit against, and competent courts may invalidate, administrative acts

3. *The principle of "material truth."* All relevant facts—all facts "important for a lawful and correct decision"—are to be determined. The responsibility for discovering the facts rests on the official, even where through ineptitude or otherwise the immediately interested parties have failed to produce all the relevant evidence.²² In appraising the evidence, the decision-maker must act on the basis of "his own conviction" after "conscientiously and carefully estimating each proof separately and all proofs as a whole and on the basis of the result of the entire proceeding."²³

4. *The right to be heard.* Except in special cases authorized by law (chiefly those in which a favorable decision can be made without further proceedings), every party must be given an opportunity to present evidence and argument.²⁴

5. *Independence in deciding.* The official who decides a case is directed to "establish independently the facts and circumstances" and to apply to them whatever rules may have been laid down. He must of course observe general instructions that guide the service of which he is a part, but he is not to be given (and he need not observe) orders about a concrete case.²⁵

6. *The right of appeal.* The Yugoslav Constitution itself guarantees in article 68 that decisions of "state organs and organizations which deliberate on [a person's] rights or his lawful interests" shall be appealable. The Administrative Procedure Act confirms that

issued in conformity with such directives if they are contrary to law or other provisions based on law." Stjepanović, *supra* note 18, at 363.

22. Art. 6. Prof. Stjepanović observes that a decision "based on incompletely or incorrectly ascertained facts" may be amended, revoked, or annulled in a reopened proceeding (YAPA, arts. 249-259), and may also be subjected to judicial review in an appropriate proceeding. Stjepanović, *supra* note 18, at 364.

23. Art. 8. The quoted statement sounds much like the "substantial evidence on the whole record" rule enunciated by American courts and legislatures. *E.g.*, *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951). The impression is strengthened by YAPA art. 159(2), which relieves administrative fact-finders from observing formal rules of evidence, but not from attention to "proofs." The section adds: "Everything that is useful to ascertain the state of affairs and suits to the particular case can serve as proof, as are documents, witnesses, experts, and inspections."

24. Art. 7. Other articles spell out a party's rights in greater detail. See, *e.g.*, art. 143, which refers not only to presentation of evidence but also to cross-examining adverse witnesses. Prof. Stjepanović regards art. 7 as reflecting "the conception that a citizen, organization, or other party to a proceeding is a subject of procedural rights, not an object of procedure." Stjepanović, *supra* note 18, at 365.

25. Art. 9. Prof. Stjepanović asserts that "independence of administrative agencies in administrative proceedings approaches the independence and autonomy of a law court in deciding civil and criminal cases." Stjepanović, *supra* note 18, at 366. While that statement no doubt reflects the aspiration of the statute, Prof. Stjepanović later adds a realistic reminder that "the extent and degree to which an officer conducting and deciding in administrative proceedings will be able to give effect to his independence depends on the degree of his professional qualifications, moral and political maturity and elevation, as well as on his personal legal status." *Ibid.*

guarantee by providing in article 10 that, in general, an appeal may be taken from an initial decision to the next higher-level administrative authority; no second administrative appeal is allowed, although judicial review may be sought when the single administrative remedy has been exhausted.²⁶ The act also provides that an appeal may be taken from an administrative agency's failure to act upon a case within the prescribed time limits; in such an event, the agency's inaction is taken as the equivalent of an adverse decision, appealable as a matter of course.

7. *Finality of decision.* A no longer appealable decision conferring definite rights on a party cannot later be "set aside, cancelled, or altered" except in highly unusual circumstances prescribed by law. Administrative determinations bind those who make them as well as the citizens whom the determinations affect.²⁷ Yugoslav scholars regard this as a major contribution to stabilizing social relations and reinforcing legal security.

Other general propositions, spelled out by detailed sections of the statute, are the right of a party to be represented by an attorney or "legal proxy";²⁸ the impermissibility (with very narrowly stated exceptions) of conducting proceedings from which the public has been barred;²⁹ the impropriety of action by an official who is or might be believed to be biased;³⁰ and the duty to issue written decisions that disclose the reasoning on which they rest.³¹

26. Arts. 222-248 deal at length with appellate procedures. The appellate agency's power to amend a decision to render it more favorable to a party is very broad; the power to amend it to the disadvantage of an appellant is very narrow. The appeal is, in short, actually an appeal and not a *de novo* proceeding in which the appellant risks an even less satisfactory result than the one against which he has protested. Cf. W. Gellhorn, *Protecting Citizens Against Administrators in Poland*, 65 COLUM. L. REV. 1133, 1136 (1965).

27. Art. 11. Arts. 249-270 describe the circumstances in which a decision may be annulled or amended. Prof. Stjepanović adds the observation that regardless of these provisions a decision which imposes an obligation on a party (as contrasted with one conferring a right) may be opened up at any time "under the condition that the new decision shall reduce or alleviate the obligation of the party and that it shall not violate any legal prescription or right of a third person." Stjepanović, *supra* note 18, at 368.

28. This right (conferred by arts. 53-63) seems rarely to be exercised. Art. 13 provides, in any case, that the official in charge of a proceeding must himself "see that the lack of knowledge and experience of the party and of other participants in the procedure turn not to the detriment of the rights which they have in the procedure according to the law."

29. Arts. 150, 151.

30. Arts. 42-48. An official who participated in making a decision from which an appeal has been taken may not participate in the appellate proceedings. Disqualification because of relationship to the parties is absolute. A party may challenge an official for reasons set forth in the statute "and also when other circumstances render his impartiality evidently doubtful."

31. Arts. 205-213.

How thoroughly the fine words of the statute are reflected in the daily round of administrative activities is unclear. Reality is not invariably governed by texts.³² Yugoslav administration has been pushed ever more strongly into the hands of small local communities, many of which must in the nature of things lack personnel suitable for delicate adjudicatory work. The decisions of local officials, it is true, may be quashed by a higher authority on appeal. The local officials look for guidance, however, not to professional administrators, but to small-bore politicians who may or may not sympathize with legal limitations upon governmental power.³³

In any event, unlike Poland (whose Code of Administrative Procedure covers much the same ground as the statute now under discussion),³⁴ Yugoslavia has not chosen to stake everything on its administrators' uncoerced adherence to prescribed procedures. More fully than any of the other Eastern European countries, it has empowered its courts to pass upon "administrative contests" or, as Americans would say, to engage in judicial review of final administrative acts.

IV. JUDICIAL REVIEW

The Yugoslav theory of judicial review is straightforward. Administrators and judges alike are duty-bound to achieve a *legal* application of public power. The administrators, initially charged with effectuating social policies, have been authorized to issue prohibitory orders, to grant permits, and to use other appropriate means to the desired ends, but only to the extent and in the manner prescribed by law. The judges have the responsibility of deciding finally whether legal commands have been obeyed by the persons to whom

32. For example, art. 37 of the Constitution provides: "A maximum work week of 42 hours shall be guaranteed. . . . In exceptional cases . . . the working time may for a limited period be longer than 42 hours in the week if the particular nature of the work so requires." Ever since the 42-hour week was thus constitutionally "guaranteed," Yugoslav coal miners have in fact worked a steady 53-hour week. The coal was needed, a personnel shortage existed, and so, for a "limited period" that has extended over the years, the Constitution has quietly been subordinated to the law of economic necessity.

33. Compare VAVPETIĆ, *op. cit. supra* note 8, at 28: "Another characteristic of the Yugoslav state organization consists in a close horizontal connection with and considerable dependence of administrative agencies from the executive and representative authorities within the same politico-territorial unit. Owing to this connection, regulation of internal organization of administrative agencies of politico-territorial units, appointment and discharge of managing officers, caring for the necessary material means of administrative agencies and partly determining the legal bases of their activities, as well as direction of their work, especially political direction, are within the powers of representative and/or executive authorities of such politico-territorial units."

34. See Gellhorn, *supra* note 26, at 1134-36.

the commands were addressed, whether those persons be private individuals, organizations, or state officials. The judges could not perform their duty of being the arbiters of legality if administrative agencies were free to reach their own conclusions about what is legally allowable, or if court judgments could be reexamined by anyone other than another court.³⁵

The Constitution provides in article 159 that "the legality of individual final decisions by which state organs or organizations exercising public powers decide on rights or duties shall be judged by courts in administrative litigation," although federal law may "in exceptional cases" preclude judicial review.³⁶ Two aspects of this constitutional provision deserve special notice. First, the courts' power extends only to final decisions that have already determined rights or duties; that is to say, the courts are not in a position to enjoin an administrative agency from engaging in a threatened course of wrongful conduct or to command the administrative performance of a duty. The courts can annul or reverse a completed administrative act, and in some instances can even award damages, but they can rarely shape the act affirmatively.³⁷ Second, the courts

35. Yugoslav judges are rather strongly entrenched, in a professional sense. Art. 138 of the Constitution states that no judge shall "be called to account for an opinion given in the performance of judicial functions." A Disciplinary Court composed of justices of the Federal Supreme Court can censure or discipline lower court judges, but has rarely had occasion to do so. The Federal Executive Council, under art. 228 of the Constitution, shall "propose to the Federal Chamber the election and removal of the presidents and judges of the Supreme Court of Yugoslavia . . ."; the constitutions of the various Republics contain similar provisions concerning the possible impeachment of Republican Supreme Court judges. No such impeachment has ever occurred. The "independence of the judiciary" is widely regarded as an established fact, though communal court judges seem not to have achieved much prestige or to have earned widespread admiration; they are, on the contrary, often referred to sneeringly as "too much mixed up in local politics."

For further discussion of the judiciary, see F. R. Lacy, *Yugoslavia: Practice and Procedure in a Communist Country*, 43 ORE. L. REV. 1, 11-15 (1963).

36. Professors, judges, and administrators with whom preclusion of judicial review was discussed in 1964 were almost unanimous in stating that "about 90%" of all types of administrative proceedings are subject to judicial review. A notable exception has been determination of a voter's eligibility. A Supreme Court judge hazarded the guess that this and certain other exceptions might no longer be permissible, because the Constitution of 1963 provides in art. 150, in part: "The constitutional courts, pursuant to law, shall also safeguard the rights of self-government and other basic freedoms and rights established by the constitution whenever these freedoms and rights have been violated by any decisions or action and other court protection has not been provided." Sentiment in favor of enlarging the area of judicial review has long been freely expressed by scholars and, indeed, by some administrators in Yugoslavia. In mid-1965 the Administrative Disputes Law was amended and supplemented to make explicit the judiciary's power to review all official actions that allegedly invade the "basic rights and freedoms" individuals have been guaranteed by the Constitution. See Official Gazette of the SFRY, No. 21, May 5, 1965.

37. In a few circumstances, a court can itself enter a judgment on the merits, no-

review only the "legality of individual final decisions," which means that they do not have capacity to deal with administrative regulations or other dispositions apart from an adjudicated case.³⁸ When an administrative decision is based upon a rule or regulation, however, the courts can consider whether the underlying rule or regulation is itself authorized by law, since this is a precondition to the legality of the decision under review.

Despite the two limitations just noted, judicial power in Yugoslavia is broader than in many countries (though somewhat narrower than in the United States). The courts pass on the validity of administrative procedure as well as on the substance of administrative decisions, and they do so with apparent vigor. At the same time, as is true in the United States as well, the courts defer to the administrators' "expert judgment" concerning the merits of particular cases that could reasonably be decided either way. That is, the courts rarely re-try the facts of a case, but focus their attention upon the observance of procedural requirements and upon the administrators' adherence to whatever substantive norms have been laid down by law.

Judicial review occurs at a high level. A special chamber, or panel, of each of the Republican Supreme Courts decides the "administrative contests" relating to determinations by republican, district, or communal administrators. Appeal lies in limited circumstances to the Federal Supreme Court, where a three-judge panel also directly receives challenges against the acts of federal organs.³⁹

Oral proceedings in connection with judicial review are rare. Appellants are sometimes represented by counsel, but need not be.⁴⁰

ably when an administrative agency has failed to observe a previous judicial decision in the same matter.

38. As to the power of the newly created Constitutional Court to pass on administrative regulations, see part V *infra*.

39. Art. 239 of the Constitution provides that "the Supreme Court of Yugoslavia shall . . . decide on administrative litigation against administrative decisions passed by federal organs or organizations discharging public powers on the territory of Yugoslavia."

40. As is true in most countries, legal advice is not always readily available to those who may need it most. Yugoslavia has adopted an interesting expedient in this respect. Once each week every judge stationed in a court of first instance schedules a free legal clinic. The judges not only give counsel, but also draw up petitions and complaints as may be required. The "clients" are said to number usually from five to twenty. The judges who advise their "clients" about possible administrative litigation do not risk the embarrassment of having to pass upon the same matters later when sitting judicially; the trial court judges have no official contact with "administrative contests," all of which go directly to one of the supreme courts.

In a recent interview, a member of the Federal Executive Council (Svetislav Stefanović) was quoted as deploring the present unavailability of "advocateship" and as

A Supreme Court judge recently expressed belief that many appeals are prepared by lawyers, but are signed only by the appellants themselves because, he cynically suggested, "the lawyers don't want the income tax collectors to notice how many clients they are serving." Court costs are low. When an "administrative contest" has been filed, the court notifies the organ concerned, asks that the pertinent files be sent to the court, and invites the organ's answer to the appellant's contentions. The judges and their assistants then proceed to examine the case without further participation by those whom it concerns.

The volume of review proceedings is substantial. The six Republican Supreme Courts, according to informal accounts, annually decide in the neighborhood of thirty-three thousand cases. Approximately eleven per cent of all the challenged administrative determinations are flatly annulled. Another twenty-four per cent are remanded to the administrative agencies for further proceedings, after the correction of errors the courts have discerned. The Federal Supreme Court passes each year on about fourteen thousand administrative matters, of which two thousand come to it directly from federal administrative agencies, the remaining twelve thousand being appeals from Republican Supreme Court decisions in administrative contests.⁴¹ While the precise percentage of Federal Supreme Court judgments favorable to the complainants against official acts has not been ascertainable, some estimates run as high as seventy per cent. Without accepting the accuracy of that figure, Yugoslav jurists believe that reversals and remands assuredly occur frequently enough to demonstrate the genuineness of judicial review.

having asserted that "it will be necessary to elaborate and improve as soon as possible the method for extending legal aid to our citizens through appropriate legal services in the organs of socio-political communities and organizations, to define more precisely and determine the place and role of advocateship as an independent social service, as one of the important forms of legal aid." *Borba*, April 22, 1965, p. 4, col. 5.

As a matter of fact, many communes have already set up legal aid services that include representation by professional advocates when litigation is necessary. These services are not, however, well distributed throughout the country, and they seem virtually never to be available in connection with administrative disputes.

41. A Federal Supreme Court judge who sits regularly on administrative appeals asserted during a conversation in early 1965 that "the great majority of our cases involve infringements of prescribed procedures" and that "the most frequent subject matter we deal with is social insurance of one kind or another, with housing problems coming next."

The volume of appeals from Republican Supreme Courts to the Federal Supreme Court may decline in future years. A recent statute (SFRJ No. 16/65) substantially restricted the right of appeal to the Federal Supreme Court in order to strengthen the doctrine of "republican supremacy."

Despite the large number of cases that do come before the courts, judicial review touches only a few of the matters decided by administrative agencies. Persons in a good position to guess, as it is necessary to do when comprehensive statistics are unavailable, say that administrators annually render several million judgments of the kinds judges might conceivably be entitled to review. If this guess be sound, only about one out of a hundred final administrative adjudications is carried to court. Moreover, judicial review extends (as has already been noted) only to orders entered in adjudicatory proceedings, and therefore does not touch the mass of other citizen-official relationships that may at times be less than satisfactory. Hence, while Yugoslav judges do indeed contribute importantly to fair administration, their work, standing alone, is an incomplete safeguard against administrative error or impropriety.

Before examining safeguards outside the courts, one must, however, take note of a new development whose impact is just beginning to be felt.

V. THE CONSTITUTIONAL COURT

The Yugoslav Constitution of 1963 has created a Constitutional Court, which, "as the safeguard of constitutionality, shall secure legality in accordance with the Constitution."⁴² The Constitutional Court can pass on the constitutionality of all federal laws and regulations, can determine the conformity of republican law with federal law, can resolve jurisdictional disputes between federal organs and republican organs, and can decide how to protect "basic freedoms and rights established by the Constitution" if they have been jeopardized by "an individual decision or action of the federal organs."⁴³

Apart from passing on specific constitutional challenges, the Court is also directed to "keep itself informed" about the possible need of affirmative steps for "attainment of constitutionality and legality," and it is told to "offer to the Federal Assembly its opinions and proposals to pass laws and to undertake other measures" deemed necessary "to protect the rights of self-government and the other freedoms and rights of the citizens and organizations."⁴⁴

42. CONST. art. 146. The tribunal is composed of a president and ten judges, elected by the Federal Assembly for a term of eight years, with the possibility of reelection for a second term but no more; during their terms of offices, the judges are virtually irremovable. CONST. art. 243.

43. CONST. art. 241.

44. CONST. art. 242. According to a number of seemingly authentic personal accounts, Marshal Tito and his immediate associates in the pre-1963 government (which

Moreover, when the Constitutional Court determines that a non-statutory "general act"—that is, an exercise of delegated legislative power—does not comply with the federal constitution or laws, the court "shall annul or set aside the provision or act or regulation."⁴⁵ Thus the Constitutional Court may inquire into the validity of administrative programs, policies, and prescriptions, as distinct from individualized determinations already subject to judicial review. Because the Constitution sometimes makes generous promises, the Constitutional Court's control over both substantive and procedural administrative rulemaking is at least potentially extensive.⁴⁶

Each of the six Republics has created a similar tribunal to deal with questions related to its own constitution. Local or republican laws must conform with both the republican and the federal constitutions. As to republican constitutional questions, the republican constitutional courts have the last word; as to federal constitutional questions, the federal constitutional court is the final authority. In this, the resemblance to the American constitutional system is obvious.⁴⁷

The Yugoslav Constitutional Court, however, differs from the United States Supreme Court in important respects. It is not an appellate tribunal at the highest point in a hierarchy of courts. It is not confined to dealing with "cases" or "controversies," but is expected to deal with constitutional questions in the abstract, without

was far from closely confined by constitutional concepts) were readily won to the idea, unprecedented in Eastern Europe, of having a constitutional court with the sweeping authority just indicated. One leading jurist recalled recently: "Tito and the others were easily convinced. Indeed, they didn't need to be convinced that the Constitutional Court was a good idea; they took to it right away. Where we had trouble was with the lawyers and the members of the Supreme Court. They were almost impossible to win over, either because they didn't want constitutional litigation in any shape or form or because they wanted it to be added to the Supreme Court's jurisdiction. Many of us favored a separate tribunal because we thought it could concentrate on its single responsibility and would carry greater weight with the Federal Assembly, have more prestige than the regular courts."

45. CONST. art. 247. In addition, art. 150 provides in part: "Constitutional Courts shall decide on . . . the conformity of other regulations and general acts with the constitution and law."

46. See, e.g., CONST. art. 66: "Every arbitrary act violating or restricting the rights of man by whomsoever committed is unconstitutional and punishable. . . ." Art. 67: "Every person shall be entitled to equal protection of his rights in proceedings before . . . administrative and other state organs and organizations which decide on his rights and obligations." Art. 69: "Everyone shall be entitled to damages for the unlawful or faulty execution of an office or action by a person or officer of a state organ or organization carrying on affairs of public concern."

47. For a fuller discussion of federal-republican constitutional relationships, see I. Djordjević, *The Constitutional Courts of Yugoslavia*, 14 Yugoslav Law, no. 4, p. 6 (1963).¹

reference to particular applications in specific instances. Its attention may be drawn to issues of constitutionality and legality not only by those immediately affected, but by the Federal Assembly or a republican assembly, by the Federal Executive Council or its republican counterparts, by the federal public prosecutor, or by the republican constitutional courts, as well as by the Supreme Court of Yugoslavia or other supreme courts "if the point of constitutionality and legality ensues in court proceedings."⁴⁸ Then, to top all this, "a point of constitutionality and legality may be raised by the Constitutional Court of Yugoslavia on its own initiative."⁴⁹ The Constitutional Court, in sum, does not merely rule upon the merits of contested matters, but is itself expected to promote attention to constitutional and legal restrictions upon governmental power.

At the beginning of 1965 Blazo Jovanović, President of the Federal Constitutional Court, told an interviewer how that court functions.⁵⁰ In its first full year of activity, the Constitutional Court received over 1,400 "petitions referring to individual acts" and over 150 "demands for evaluation of constitutionality and legality of various acts." As to the former, the Constitutional Court took no action because power to review administrative determinations pertaining to individuals is lodged in the regular courts. Hence, it simply referred "concrete cases" to the appropriate reviewing authority. President Jovanović remarked, however, that "the Constitutional Court of Yugoslavia does examine the petitions in these individual instances, not to make decisions about them, but to watch for trends." The Constitutional Court is said to have "undertaken a few successful interventions" in the fields of housing, labor relations, and social welfare to eliminate for the future certain general problems illustrated by particularized cases.

As to "normative acts" (general statutes, regulations, decrees), the Constitutional Court had been pleased by its own effectiveness. In fifteen instances, after the Court had taken preliminary steps to examine constitutional questions, the bodies that had issued the possibly invalid normative acts withdrew them at once. "This is a very positive thing," President Jovanović asserted, "since the purpose of

48. CONST. art. 249. Art. 149 imposes on all courts a direct duty to bring constitutional questions to suitable notice: "Whenever a court deems that a law which it must enforce does not conform to the Constitution, it shall propose to the competent supreme court to institute proceedings to assess the conformity of such a law with the Constitution."

49. CONST. art. 249.

50. The interview is reported in *Borba*, Jan. 1, 2 and 3, 1965, p. 3, col. 1.

the Constitutional Court is not to hold as many public hearings as possible, but to eliminate violations of constitutionality and legality."

The Court did annul some acts after formally declaring them to be contrary to law, chiefly because they were *ultra vires* or because they were improperly retroactive.⁵¹ Its decisions in these matters pertained technically only to the particular statute or regulation then under the Court's consideration. But President Jovanović noted approvingly that its rulings have in fact been applied more broadly when a number of governmental bodies within Yugoslavia have adopted similar laws. "It would be quite normal," he said, "that, once the Constitutional Court has assumed an attitude towards one of such acts, the other bodies should alter, that is, adapt their acts to the viewpoint of the Court, and we expect them to do so. . . . The decisions of the Constitutional Court are morally binding also for other bodies that have passed identical or similar acts, since the decisions of the Constitutional Court express its attitudes in principle towards identical cases."⁵²

The republican constitutional courts have also begun to function, albeit with small caseloads.⁵³ President Josip Hrnčević of the Constitutional Court of Croatia has reported that his court received during 1964 more than a hundred petitions concerning alleged violations of individual or organizational rights, but had rejected them because they should have been addressed to administrative agencies or to other courts. Too many citizens, President Hrnčević asserted, "apply to this Court when they are dissatisfied with a regular court's decision or have failed to use an administrative remedy. Their belief that the Constitutional Court is a 'court above all courts' is not

51. CONST. art. 154 provides, in part, that "no regulation or other general act shall have retroactive force," unless a statute specifically contemplates retroactivity in certain situations. In no event can a penal law or regulation be validly given retroactive effect, since art. 49 states that "no one shall be punished for any act that before its commission was not defined by law or by prescript based on law as a punishable offence, or for which no penalty had been provided." And art. 154 adds: "Criminal offences and economic misdemeanors and offences shall be ascertained and the penalties for these acts executed according to the law in force at the time when they were committed, unless a subsequent law is more lenient towards the offender."

According to President Jovanović, the Court's own analyses suggest that "almost two thirds of auxiliary legal acts" have been marred by offensive retroactive features.

52. The legal effect and enforceability of the Constitutional Court's judgments is discussed further in Djordjević, *supra* note 47, at 11, 15.

53. The Constitutional Court of Montenegro, for example, made its first constitutional ruling on December 28, 1964, when it held that the residents of four small villages had been subjected to an illegal "self-contribution" in connection with raising funds for a new schoolhouse. "This means that all the citizens of these villages who paid self-contribution can ask for their money back." *Borba*, Dec. 29, 1964, p. 4, col. 7.

justified. No one—and that means the Constitutional Court, too—has the right to take over the jurisdiction of the regular courts of law or to alter their decisions.”⁵⁴ Still, the Constitutional Court did have some legitimate business to do, though its content may seem strange to American constitutional lawyers.⁵⁵ Moreover, the Court had concluded, after examining official gazettes, that many local governments were enacting retroactive measures and were not publishing their regulations suitably.⁵⁶ The Court informed the Croatian Assembly and, according to President Hrnčević, “demanded that measures be undertaken for the respecting of the constitutional norms.” The effectiveness of the Assembly’s response to that demand has not been disclosed, although some reason exists for believing that the Assembly may have been too busy with beams in its own eye to warrant its worrying about motes in others’.⁵⁷

Yugoslavia’s experiment with constitutionalism is still too young to have produced conclusive results. The new tribunals, duty-bound to ring alarm bells when constitutional frontiers have been invaded, have not yet fully demonstrated their vigilance or proved their willingness to defend the boundaries at all costs. Even so, the very existence of the constitutional courts does tend to keep the spotlight focused on legality. Legal experts have been commissioned to review the large body of pre-1963 statutes and subordinate legislation to ascertain their conformity with the 1963 constitution. Hasty enactments of the past may be refined as a consequence of this work.⁵⁸

54. President Hrnčević’s remarks are reported in *Borba*, Dec. 31, 1964, p. 4, col. 2.

55. “During the next two months we shall have a number of hearings, to examine the legality of the Metkovic assembly’s decision concerning application of the minimum amount of agro-technical measures, to examine republican laws relating to election and recall of the members of managerial bodies, and to examine an individual’s right to choose a medical establishment and his own physician.” *Ibid.*

56. CONST. art. 152: “Laws and other regulations and general acts shall be made public before they take effect.”

57. President Hrnčević, referring to conditions in Croatia, is quoted as having said: “Our legislation is still incomplete and unharmonized. In a rather disorderly state of legislation, it is not always easy to find one’s bearings and to say what is law and what is not. If we add to this the unskillfulness and the bureaucratic inertia of a certain number of the administrative and other personnel, this is one of the main causes of the poor work in preparing laws and protecting citizens’ rights.”

58. *Politika*, June 3, 1965, p. 6, col. 3, reports that the “Legal Council of the Federal Executive Council,” under the chairmanship of Belgrade University Prof. Jovan Djordjević, had just completed reexamining federal laws in order to achieve constitutional compliance. The Legal Council proposed a permanent “Legal Institute” that would “study, much more thoroughly than so far, the way in which individual laws are being applied and the way the legal system established by the Constitution is being realized.” The Legal Council also advocated codifying various laws in both the “public law” and “private law” fields in order to contribute to “institutionalizing” and “stabilizing” the legal system.

Federal Executive Councillor Stefanović has been quoted as saying that federal

Furthermore, those who now promulgate rules and regulations will no doubt be more fearful of illegality than were some of their more impatient, blunter predecessors in the post-war period.

All this is to the good, but it would be absurd to say that every Yugoslav official has been so inspired, enlightened, or frightened by the Constitutional Court that problems of ultra vires acts are about to disappear. A senior Yugoslav jurist was much nearer to the mark when, in a recent conversation, he mused: "The Constitutional Court is making a good beginning, but it is really too early to know how it will end. We Yugoslavs live in a normative society, one that constantly makes pronouncements about how things should be. When it comes to constitutional principles, we need to remain aware of the difference between our aspirations and the way things actually are."

VI. NON-JUDICIAL CORRECTIVES

In Yugoslavia, non-judicial correction of administrative errors is not a trackless jungle, but a jungle so heavily criss-crossed by paths as to bewilder the wayfarer. Appeal to a second layer of officialdom is the first suitable step, prescribed by law and constitution. It is orderly, understandable, and widely used. After that, each to his taste. Some who still feel abused or unsatisfied by administrative action turn to their own "working organization," trade union or other group to take up their cause. Others write to the newspapers.⁵⁹ Others prefer to lean upon members of the Assembly or upon a locally eminent personage. Some ask the prosecuting attorney to flex his muscles. Others, relatively only a few, may have heard about

laws and regulations "in the field of internal affairs" had been revised in keeping with constitutional principles, in order to "make possible a more effective protection of the rights and liberties of man and citizen, and considerably restrict the discretionary rights of the responsible organs." He also remarked: "Of course, in other laws as well, for example, in the Law on Travel Documents, in the Law on Movement and Stay of Foreigners, and so on, we have endeavored, as much as possible at the present stage of our development, to safeguard and guarantee the process of democratization of social life and the position of man in it in accordance with the basic principles of the Constitution." *Borba*, April 22, 1965, p. 4, col. 5.

59. A sampling of topic headings will suggest the content of grumblings expressed in the press: Carelessness in a hospital; An institution's ignorance of regulations concerning providing food for children (*Borba*, Dec. 30, 1964, p. 6, col. 3); Judge criticizes Belgrade's failure to create juvenile disciplinary centers required by Criminal Code of 1960 (*Borba*, Jan. 4, 1965, p. 6, col. 6); Housing problems in Tutin; Crvenka has no coal; Shortage of stamps in Gujilane (*Borba*, Jan. 7, 1965, p. 6, col. 2); The railway station in Leskovac is dirty; Troubles over a village road (*Borba*, Jan. 15, 1965, p. 6, col. 2); Woman fined for no reason by railway official; A parcel which took eight days to reach its destination (*Borba*, May 22, 1965, p. 5, col. 3; p. 6, col. 2); Work of the Vrekar Assembly's committees and commissions should be open to the public; Wrong distribution of flats in Vozdovac (*Borba*, June 3, 1965, p. 6, col. 2).

the Bureau of Petitions and Proposals,⁶⁰ and may decide to find out whether it really does accomplish anything. Some, unwilling to waste time with subordinates, go directly to the top of the power structure to beg that things be set right. Oddly enough, however, all the paths seem at present to meander in essentially the same final direction, namely, toward the lowest level of governmental activity, the commune.

A. *The Public Prosecutor*

In the days before Yugoslavia seceded, as it were, from the Stalin Empire, Russian administration provided an admired model. So it came to pass that post-war Yugoslav prosecutors were charged with the duty of enforcing law against citizens and, at the same time, like the Russian Procuracy, were supposed to ensure that public officials carefully applied state policies (and, thus, operated legally).⁶¹ General supervision over public administration was not strongly and successfully performed, however, by Yugoslavia's prosecuting attorneys, whose prestige, professional qualifications, and perceptivity were highly variable. When Russian influence waned in Yugoslavia, nobody argued strenuously that the procuracy system had proved its worth and should be retained despite its Soviet origins.

Although the public prosecutor has now been relieved of general supervisory responsibility, Yugoslav law still recognizes him as a guardian against defective administration. Article 223 of the Administrative Procedure Act authorizes the prosecutor to seek review of any administrative decision "by which the law has been infringed to the benefit of an individual or of a juristic person and to the detriment of the social community." Further, article 261 empowers him "to present a demand for the protection of legality" when he thinks a nonreviewable decision has disregarded applicable laws; his "demand" must be considered by an authority competent to act upon appeals or, if no such authority exists, by the Executive Council itself. So, for example, a dispute concerning passport issuance (one of the matters the courts cannot review) could be reopened at the prosecutor's behest.

Authorities with whom the matter was recently discussed asserted unanimously that the public prosecutor's unofficial role is even larger than his official role. He can, to be sure, prosecute wrongdoing officials for committing crimes in office; he can protect the public

60. See section VI(C) *infra*.

61. For discussion of the Russian prototype, see G. G. MORGAN, SOVIET ADMINISTRATIVE LEGALITY: THE ROLE OF THE ATTORNEY GENERAL'S OFFICE (1962).

interest by appealing; he can require that another look be taken at a supposedly closed matter. Those powers are, however, infrequently called into play. Above and beyond exercising his legal authority, he apparently often intervenes informally on behalf of citizens embroiled in controversy with administrators. One highly placed official, familiar with the world outside Yugoslavia, put it this way: "I wouldn't say that our public prosecutors are exactly like the ombudsmen in Scandinavia, but some of the prosecutors do listen to citizens' complaints and then follow up rather effectively, even though without any real power to command. They ask a question here, make a suggestion there, and their remarks can carry a lot of weight. When a prosecutor becomes convinced that an administrative abuse has occurred, he may quietly inform a higher authority about his opinion and then the higher authority is likely to use its power to change the result. This isn't written in the law. It isn't institutionalized. It isn't uniform, because not every prosecutor has close relations with either citizens or officials. But the prosecutors are definitely still in the picture, when it comes to informal controls over public administrators."

B. *Legislative Bodies*

Since the adoption of the 1963 constitution, Yugoslavia's national legislative body has been more effectively interested in public administration than previously. Article 205 of the Constitution empowers the standing committees of the Federal Chamber to "require federal officers to explain the state of affairs in their respective departments of administration and to present reports concerning the enforcement of federal laws and other federal regulations and concerning other matters in the jurisdiction of the pertinent administrative organs, and to answer questions either orally or in writing, and to give other information and explanations." To effectuate that power, a standing committee "may hold inquiries and hearings and to this purpose may require data, files and documents from all the state organs and organizations."⁶² Each standing committee has its own staff, or secre-

62. CONST. art. 206. Individual Assembly members as well as committees have been given broadly stated powers of inquiry. Art. 198 states in part: "Every deputy shall have the right to question the Federal Executive Council or the officers in charge of the federal administrative organs on matters pertaining to their work and on matters in the jurisdiction of the organ concerned." Art. 199 adds: "Every deputy shall have the right to require information from the federal officers in charge of autonomous federal administrative organs. The officer in question shall give the required information."

tariat. The similarity of Yugoslav Assembly committees and United States congressional committees is strikingly evident.

The Yugoslav legislative investigating committees have acted on their own initiative, on citizens' proposals, or on the basis of newspaper articles suggesting the need for action. Thus far the committees have chiefly concerned themselves with looking into allegedly imperfect management of various public enterprises and with weighing the merits of proposed statutes. Although they have by no means been perfunctory in examining officials' administrative programs,⁶³ they have not been disposed to deal with individual complaints that administrators have flouted the will of the legislature or have adopted needlessly oppressive policies. Hence they have not been a major means of repairing errors or smoothing ruffled feelings.

Some leading Yugoslav scholars of public administration believe, nonetheless, that the committees are likely to evolve into "watch-dogs" and to engage in "continuous legislative oversight," as have their American equivalents. The standing committees of the Federal Chamber, according to the scholars, already show signs of wishing to superintend the administrative process in the same sporadic manner as American legislators, who devoutly believe in the separation of all governmental powers except their own.⁶⁴

Militating against that development is the Yugoslav practice of preventing the accumulation of seniority. If American legislative organization, with its insistence upon preferment for those who have had the lengthiest service, seems at times to be one of built-in obsolescence, Yugoslavia's system is assuredly one of built-in inexperience. Deputies are chosen for a single term of only four years, and may not be immediately reelected to the same chamber in the same assembly. This, according to a prominent commentator, "derives from the idea of socialist democracy according to which as many citizens as possible should take their turn in deliberation in social affairs."⁶⁵ Giving everyone his chance to sit in the seats of the mighty has a certain surface charm, of course; but it does not make for a

63. See, e.g., *Borba*, Dec. 25, 1964, p. 3, col. 1: The Federal Chamber refused, upon recommendation of its Organizational-Political Questions Committee, to take up a new tax proposal of the Federal Secretariat for Finance because it contained "formulations which would render difficult the realization of the rights of the citizens in proceedings before the organs of administration." The Federal Secretary for Finance then agreed that the proposal needed redrafting.

64. For examples of congressional participation in administration, see W. GELLHORN & C. BYSE, *ADMINISTRATIVE LAW—CASES AND COMMENTS* 174-95 (4th ed. 1960).

65. Djordjević, *op. cit. supra* note 2, at viii.

sophisticated legislature, able and willing to match its experience against the administrators' expertise.⁶⁶

C. Bureau of Petitions and Proposals

Article 34(7) of the Yugoslav Constitution of 1963 provides that, as a means of achieving "social self-government," all citizens possess "the right to petition and present proposals to the representative bodies and other organs, to receive an answer to them, and to undertake political and other initiatives of general concern." Every administrative organ and every representative assembly has developed some sort of mechanism for receiving petitions, complaints, and suggestions. To reinforce the stated right to petition for redress of grievances, the national Executive Council created its own Bureau of Petitions and Proposals, through which complaints and suggestions might be channeled by Executive Councillors or anyone else who might choose to use it. The director of the Bureau is appointed by the Council and is answerable directly to it. The executive councils of the several republics soon emulated the federal model.

The underlying theory has been that the Bureau of Petitions and Proposals will remain quiescent so long as anything remains to be done within the administrative organ immediately concerned. A complaint to the Bureau about a matter still susceptible of being considered or reviewed administratively will simply be referred to the appropriate administrator. But when all the appeals have been concluded and all of the administrative pronouncements have been made, those who are dissatisfied with the outcome may yet bring their petitions and proposals to a high governmental establishment.

Actually, the Bureau has not yet been generally recognized as the best means of gaining desired changes in administrative acts or programs. Its powers are scanty; its spirit is mildly educational rather than aggressively decisive; and its personnel have not been either

66. For a reflection of the legislators' lack of self-assurance, see Borba, June 2, 1965, p. 4, col. 1, reporting a Federal Assembly discussion of a committee report concerning the work of local representative bodies. The reporter gained "the impression that the deputies are 'shy' to speak about [the problems] and to make any definite judgments (the majority of them are new and were only recently elected, so that yesterday one could often hear them say: 'Excuse me, I am new and am not completely familiar with the matter')."

The same report indicates that 80% of one group of local assemblymen included in a recent survey were found not to read official reports; many of the assemblymen were frequently absent from sessions. One is inclined to suppose that a "professional" may be more diligent than an "amateur" legislator; but of course a similar survey among professional legislators might produce some disquieting statistics, too.

professionally or politically distinguished. Hence one forms the impression that the Bureau of Petitions and Proposals is far from being the champion most likely to be sought out by an individual in search of help against the mass.

Nonetheless, the Bureau does participate in numerous affairs, sometimes with substantial results. During 1964, according to figures informally stated by the director, the Bureau dealt with approximately fifteen thousand cases of all kinds, the bulk of which involved dissatisfaction with particular determinations. Of these, more than three thousand had to do with labor matters, chiefly allegations that applicable laws had been disregarded in imposing discipline (discharge, suspension, demotion). About four thousand cases arose from public land disputes, disagreements concerning the value of property taken for public purposes, and so on. Another four thousand had to do with housing problems, particularly the ranking of names on the lengthy waiting lists of those wishing apartments when available. A large (though not precisely ascertainable) number pertained to pensions and social insurance. Complaints ran the full range—outright illegality, rude behavior, undue slowness, poor planning, faulty judgment.

A central office staff of eight and a field staff of twelve handle the cases as they come, with some degree of specialization according to subject matter. Having no power to command, but only to inquire and suggest, the Bureau first seeks an official explanation of the action complained against. It then usually arranges what it characterizes as a "public discussion" of the grievance. This is not, as the term might suggest, a mass meeting, but is a conference that may be attended and observed by anyone interested. Especially in the area of worker-management relations, the sessions as described by the director sound very much like an effort to conciliate. "A lot of things come out that can't be brought to a court's attention," the director commented during an interview in late 1964, "because the rules of evidence wouldn't allow it. We get the subjective feelings of the people involved, and when everything is out in the open, satisfactory results can somehow be brought about through the public discussions." The director's estimates indicate that "satisfactory results" were achieved in slightly more than eighty per cent of the labor cases, in about a third of the social security cases, in perhaps ten per cent of the expropriation cases, and virtually never in the cases involving distribution of living quarters.

Such uneven consequences of the Bureau's intervention arouse

doubt as to whether the merits controlled the outcome, since one can scarcely believe that labor administrators are almost invariably wrongheaded while housing administrators are almost invariably rightminded. Persons with whom the matter was discussed in Yugoslavia tend to feel that discrepancies in the results reached simply reflected the relative "hardness" of the various subject matters. In the labor cases, they said, it is easy to feel sympathy with even an undeserving worker, so agreement can be reached on "giving him a second chance" without anyone's admitting having been wrong. In the social security cases, Yugoslav law allows discretionary evaluation of so many factors (the applicant's participation in the war effort, his having been wounded, his having been or not having been a collaborator, and so on) that considerable decisional flexibility remains after all the legal elements of the case have been resolved; hence a settlement may continue to be practicable even when a determination has already been sustained on appeal. In expropriation cases, a little leeway exists because sometimes a satisfactory trade of properties can be arranged, instead of the outright purchase that had been contemplated. But when it comes to the housing cases, change is virtually impossible because the supply of apartments is too small, the demand is too large, and rearranging the names on the waiting list will set off a chain reaction of complaints by those whose own place will be affected by any change.

To this somewhat skeptical account one must in fairness add that a distinguished and well-informed Yugoslav scholar believes that administrators pay considerable attention to the Bureau's "gentle prodding." The Bureau, he remarks, "is reluctant to say to an official, 'You should not have done such and such.' Instead it asks, 'Why did you do such and such?'—which isn't very much pressure, but still does get results. Many officials are a bit insecure. They worry about their reputations. They think that the Bureau can get the attention of important people on the inside—after all, it is the agent of the Executive Council—and so the officials are likely to listen to what the Bureau wants them to hear."

A prominent judge agreed and added: "Some of the complaints that go to the Federal Assembly and to members of the Executive Council shouldn't be ignored, but they are really too trivial to justify the Assembly's or the Executive Council's intervening in one instance after another. Take the matter of public servants treating citizens rudely. That is a big problem with us, a daily problem. It has to be ended, finally, by inner responsibility, by a feeling of

what is the right relationship between officials and the public. Somebody has to encourage the development of that feeling. The Bureau can help, though of course the main reforming pressure has to be absolutely local, right at the scene, so to say. Anyway, the Bureau can do more than others in the federal government, simply by being in touch with officials more often. So when complaints of that kind go to the Council or to the Assembly, they are likely to be referred over to the Bureau. And the Bureau has been doing some good work to change the spirit of the public servants."

In at least one other respect the Bureau of Petitions and Proposals has contributed substantially to improved public administration. When numerous complaints have fallen into a discernible pattern, the Bureau has occasionally called upon a specialized body to propose changes in administrative procedures. An "Institute of Administration," maintained by the Republic of Serbia to perform the functions of an Organization and Methods Office, provides technical and scientific advice to communal, district, and republican administrative organs. Its contacts with the federal Bureau of Petitions and Proposals appear to be cordial and fruitful. The Bureau has sometimes asked the Institute of Administration to analyze repeated complaints concerning case-handling. The Institute, a service agency with no coercive powers at all, has then considered whether improved procedures or organization might eliminate future dissatisfaction of the same kind.

Recently, for example, slowness in making payment of child welfare allowances caused considerable distress. When the Bureau inquired into the circumstances, the administrators replied that payment had been delayed only because the applicants themselves had been tardy in presenting certain required proofs. The Institute of Administration, whose advice was sought at that point, was able to show that entitlement to the welfare payments could be fairly established by four documents instead of by the dozen or more papers the administrators had been demanding. Administrators and clients alike benefited from the simplified procedures that were thereupon adopted.

The members of the Executive Council are expected to—and, in fact, do—refer to the Bureau of Petitions and Proposals virtually all the complaints they receive, unless they are plainly referable to another organ. This not only relieves them of work, but also makes possible the Bureau's analyzing the flow of grievances and suggestions in order to detect general problems. Individual members of the

Federal Assembly are permitted (though not required) to refer to the Bureau the complaints infrequently sent them by constituents. The Yugoslav League of Communists, which at one time dealt somewhat imperiously with government organs, no longer presumes to handle complaints and suggestions about administration, but routinely refers them to the cognizant administrative organ or to the Bureau of Petitions and Proposals.

VII. THE POWER HOUSE

The two most powerful recipients of complaints, President Tito and Vice President Ranković, maintain their own grievance bureaus, wholly independent of the Executive Council's complaint-processing machinery. The cases that come to their offices—the power houses of public administration—outnumber those of the Bureau about three to one.

It goes without saying that the President cannot participate personally in action upon the nearly thirty thousand written complaints addressed to him in the course of a year; nor can he conduct approximately a thousand "oral hearings"—more accurately, office discussions—that occur each month in connection with individual grievances not yet reduced to writing. The Vice President's lighter caseload—five thousand written complaints, and six thousand oral complaints annually—is still much too large for personal attention. Nevertheless, everyone inside and outside official ranks seems persuaded that Messrs. Tito and Ranković take a keen interest in grievances.

Both of these powerful men are aided by large staffs—"bureaus," as they are quite suitably called—whose work focuses on grievances. The presidential and vice presidential assistants do not simply route letters to appropriate recipients. They inquire into the circumstances of most of the matters and follow through to a final determination. As a matter of fact, the Vice President does himself become aware of an extraordinarily large number of individual complaints; a rather careful staff estimate, based on a random sampling of files, supports the statement that Vice President Ranković has personal contact with about a fourth of all the complaints, written and oral, that come to his office. President Tito is more fully insulated.

The flow of essentially petty business into these two exalted offices can be attributed partly to past military comradeship as well as to present recognition of the national leaders' commanding stature. Yugoslavs who fought together to liberate their homeland

have maintained strong ties of sentiment, often wholly unconnected with political ideology; indeed, the bonds among former Partisans sometimes irk younger people who mutter that "the old school tie," Yugoslav style, leads to preferment of valiant but otherwise undistinguished persons, to the disadvantage of the younger generation. At any rate, former comrades in arms are prominent among those who write to the President and the Vice President; the latter's extra-official distinctions include the presidency of the Yugoslav War Veterans' Federation.

Both men, of course, have a wide acquaintanceship and are strongly admired in non-veteran circles as well. A quick riffling of complaint letters in one day's incoming mail revealed some addressed to the recipient by his first name, others that referred to previous contacts, a few that might be regarded as coming from old constituents. Most, however, seemed simply to reflect the writers' belief that quick and just results could best be achieved by "cutting through red tape" and going directly to the top of the governmental structure. They pertained to almost every imaginable administrative activity and to a few that were unimaginable—as, for example, one that insisted upon an immediate personal wage increase and another that asked the Vice President to help the complainant replace his wife, who had abandoned his two small children.

Incoming complaints in the presidential and vice presidential offices are docketed at once. A preliminary examiner weeds out those that are unmeritorious on their face, and prepares a suitable reply for signature by a superior. Matters that appear worthy of further attention are referred to the bureau chief and, in his judgment, to his own chief. Considerable staff analysis of the pertinent law and facts may precede the bureau chief's next step. That step is almost invariably to request further inquiry and reports—usually, however, not by the administrative organ immediately involved in the grievance, but, rather, by the president of the representative assembly (republic, district, commune, as the case may be) within whose geographical jurisdiction the administrative organ is functioning. More often than not this is a municipal body; that is to say, the President or the Vice President of the Socialist Federal Republic asks the president of the assembly of a small commune to look into the case locally.

A communication of this nature is not likely to be ignored, but a follow-up letter is sent if response is delayed. The results have rarely dissatisfied those who act for the President and Vice President.

If, however, feeling persists that the grievance has been inadequately dealt with, a matter may possibly be referred to the public prosecutor or to the president of a republican executive council, to exert supervisory power over unresponsive persons at the local level.

The extraordinary thing about the procedure is that the two exalted political offices infrequently establish direct contact with an administrative organ. In cases involving indubitably federal action at a high level, the offices may address themselves to administrators. Far oftener they remain exclusively in the channels of representative government. In fact, when a satisfactory conclusion has been reached, the complainant usually learns it not from the presidential or vice presidential offices, but, at their suggestion, from the president of the local legislative body. "This is sound politically," a very important official explained recently, "and it brings the citizen into contact with government at the proper level, so that maybe next time he will know where to go when he has a problem. We are not trying to get credit for solving all the complainant's difficulties. If he has a deserving case, he ought to learn that he can get it attended to without coming here."

When asked why his office dealt with grievances at all instead of simply informing each grievant that his complaint had been forwarded elsewhere for suitable attention, the same person replied: "If that were done, the complainant would say, 'Just another bureaucrat.' That is the same reason we never tell a complainant that he should go to court instead of coming here. If a citizen wants to petition here instead of somewhere else, it is not for me to tell him he shouldn't have bothered me. Naturally, we can't personally investigate every little disagreement in every corner of the country; but we can make sure that someone does do so, promptly enough and thoroughly enough to satisfy us that the job has been done. That is *our* action on the petition, and it wouldn't be the same at all if we had simply informed the grievant that he should deal with another organ altogether."

"Another reason this office pays attention to grievances," he went on, "is that they point to difficulties in various parts of the country. We analyze them before passing them along to be investigated. They give us a basis for estimating social needs and for thinking about organizational changes. For a political man, analyzing these letters and understanding the problems they suggest are really essential. In a way, they amount to Government's closest touch with the ordinary people."

The citizens are justified in believing that Messrs. Tito and Ranković (through their respective aides) work quickly. A sampling of completed cases in 1964 showed none that had been in the office for longer than two weeks before being forwarded with specific directions for further action elsewhere; some bore the Vice President's initials, showing that he had given them his personal attention, within three days of having been received; in "emergency cases," such as one involving a threatened eviction, investigation had been immediately initiated by telephone.

One who cherishes administrative structure may regard the Yugoslav practices as somewhat unsettling. They make for a certain formlessness and, in a sense, indiscipline because complaints may be "processed" in so many different ways and may engage the attention of so many uncoordinated authorities. In fact, the same high official just quoted acknowledged that many a determined complainant had written both to his office and simultaneously to other organs and individuals, all of whom had then become involved in handling the complaint duplicatively. When asked whether established channels might not make for efficiency and responsibility, he answered strongly: "We don't believe in closing any channel to anybody. If that is inefficient, well, it is just a cost of Yugoslav democratization and we don't regard it as a very high one."

VIII. CONCLUDING OBSERVATIONS

Yugoslavia and the United States are significantly alike in outlook, patriots in both countries to the contrary notwithstanding. Of course the countries have differences as well as similarities. Yugoslavia, self-labeled as "communist," deplores the United States because it is "capitalist," and vice versa. Adjectives aside, both countries are seeking the good life for their people and both are essentially pragmatic in their searching. In both Yugoslavia and America doctrinal orthodoxy frequently makes way for experimentation or, if one were to phrase the matter disapprovingly, for expediency. Neither country, as a consequence, is quite as pure as it likes to think nor as depraved as the other one believes it to be.

As the preceding pages have sought to show, Yugoslavia today places heavy emphasis on administering law fairly. The individual instance is regarded as important in itself, just as in America. Rough and ready justice, impatiently disregarding the risks of mistake or

prejudice and slow to acknowledge committed errors, is not now acceptable in Yugoslavia as once it may have been.⁶⁷

Whether the present protective mechanisms will produce the desired results is more doubtful.

A. *Emphasis on Localism*

Yugoslavia's current governmental thinking is placing ever greater emphasis on local controls, as a phase of "democratization." If administration is supervised by communes, so runs the theory, the people themselves will suppress the bureaucrats' domineering propensities. The concept of local self-government appeals strongly to almost everyone, not to Yugoslavs alone. The realities of human experience in nation after nation strongly suggest, however, that many of the most blaringly oppressive, most blatantly discriminatory, and most shockingly illegal acts of public administration occur at the commune level amidst an uncaring populace. Without reference to conscious corruption and favoritism, municipal governments have been notoriously susceptible to bossism, special-interest pressures, and shortsightedness. Small administrations, rarely being able to avail themselves of developments in administrative science (specialized staffing, internal organization, mechanization, and the like), may lack the efficiency that reduces the chances of error. Municipal imaginativeness, moreover, is necessarily hemmed in by narrow geographical limits and by the demands of immediate problems; hence short-run considerations often lead local populations and their elected representatives to deal cavalierly with the future—for example, with guarding against water pollution, preserving natural beauty and resources, providing recreational facilities for coming generations, or elevating the standards of education.⁶⁸

Yugoslav communes are not unique. They are not little idylls of democracy, pockets of purity in an otherwise naughty world. Local

67. Federal Executive Councillor Stefanović, commenting on recent legal developments, said: "In practice we must fight for the consistent application of the constitutional and legal principles and norms which guarantee equality before the law. It is on this plane that we have the most frequent cases of flouting and disrespecting law, because of which our citizens rightly react and seriously criticize those who are called upon to render that impossible." *Borba*, April 22, 1965, p. 4, col. 5.

68. In four of the six republics constituting the federation, personal income of schoolteachers is lower than the average wage scales. This reflects local indifference to educational needs. At the end of 1964 moves were afoot to force some federal regulation of minimum salaries for teachers, because communes persisted in denying the necessary budgetary support. See N. Pesić, *Measures for Improving Educational Workers' Situation*, *Borba*, Dec. 24, 1964, p. 1, col. 3.

electorates and those who speak for them have no insights denied to others; often, on the contrary, they lack insights others possess. Yugoslavia's constant pressure to localize administration and its supervision, apparently inspired by genuine desire to return government to the people, may prove a dubious means of strengthening legality and safeguarding personal rights. It may, instead, simply encourage their fragmentation.

B. *Belaboring the Bureaucrats*

The stress on localism is matched by an almost obsessive clamor against "bureaucracy." Perhaps pre-war public administrators, perpetuating an arrogant tradition of the Austro-Hungarian Empire that had included much of Yugoslavia until 1919, tyrannized the citizenry instead of serving it. Perhaps post-war survivors of the civil service could not adapt their methods and attitudes to the needs of a revolutionary "people's government." Perhaps the desire to find suitable peacetime posts for the deserving veterans of the war of liberation necessitated de-professionalizing the public administration. Possible explanations and justifications for a depreciatory attitude toward civil servants come readily enough to mind, but the continually bitter derogation of bureaucracy is more difficult to understand. In Yugoslavia "bureaucracy" is an exceedingly harsh epithet, not a description. It may be and is attached irrelevantly to almost any attitude the speaker wishes to deplore.⁶⁹

Without losing anything of value Yugoslavia may, if it chooses, make "bureaucracy" a term of opprobrium and may pin it, as a locally recognized badge of infamy, on antisocial tendencies. Then some other non-pejorative word can be found to describe large-scale modern organization for executing a public policy. At the moment, Yugoslavia seems to be doing more than engaging in that kind of

69. For example, *Komunist*, May 27, 1965, p. 1, col. 4, speaks eloquently about the ethnically diverse structure of the population in Bosnia and Herzegovina—Croats, Serbs, Moslems. Efforts to overcome past hostility and divisiveness have been vigorous, but unifying the rural districts has been difficult because of lack of recreational and library facilities. The matter is worsened, the authoritative periodical adds, by "bureaucratic and careerist abuses of national color and national, that is, ethnic feelings." Another example: *Kommunist*, April 29, 1965, p. 8, col. 1, extensively reports a Belgrade University students' question-and-answer session with Veljko Vlahović, Secretary of the Central Committee of the Yugoslav League of Communists. A student question: "What is the relationship between political and scientific criticisms?" Mr. Vlahović: "Political criticism, in internal relations, is aimed against *bureaucracy* and all the obstacles which bar the way to the strengthening of democracy and self-management. . . . By such an orientation, political criticism paves the way for scientific criticism, facilitates the process of freeing science from various forms of backwardness and conservatism."

semantic digression. It seems to be persuading itself that amateurism in government is in itself a positive good, while professionalism is to be watched with sharpest suspicion, if not to be abolished altogether. Brief incumbency in official posts has become not only a policy but a constitutional principle.⁷⁰

A sort of gadgetry has begun to mark administrative organization, as though the accumulated experience of public administration throughout the world were an illusion and scientific management of large enterprises, a bourgeois fallacy. So, for example, in discussion of the federal budget for 1965, proposals were seriously advanced that the personnel of all administrative organs should be reduced by a flat five per cent without any examination of each individual organ's activities and needs. Half of the salaries thus saved would be divided up among the remaining staff members, while any organ that slashed its staff even further could then give the entire savings as a bonus to the survivors.⁷¹ Instead of considering how to strengthen governmental units that render public services, important persons debate how they can be cast adrift as self-managing organizations.⁷²

These remarks are not directed to the question of whether

70. CONSR. art. 236: "The federal secretaries of state, the federal secretaries, the secretary of the Federal Executive Council, and other federal officers designated by law shall be nominated and dismissed by the Federal Assembly. . . . An officer who has held one of the enumerated offices for four years may be appointed to that office for no more than an additional consecutive four years if justified reasons so require. Upon the proposal of the president of the Federal Executive Council, the assembly shall first determine by a majority vote whether or not the reasons given for making an exception to the principle of limitation of re-nomination are justified." But the "principle of limitation" does not apply to President Tito, whom the Constitution specifically excepts from its application and who is therefore eligible to succeed himself time after time.

71. Borba, Dec. 26, 1964, p. 1, col. 8. As of July 1, 1965, each federal organ was instructed by the Federal Executive Council that it should formulate a program truly reflective of "the substance, character and volume of the work . . . and that the professional structure of the personnel should be fixed accordingly It was also stated that the funds for personal salaries should be so distributed that personnel are paid in proportion to their work and not only according to the estimated work at individual places of work." Politika, June 3, 1965, p. 6, col. 1. No information is yet available concerning the consequences of attempting to put public servants on a piecework basis.

72. See Borba, Dec. 29, 1964, p. 1, col. 1, reporting a plenary session of the Organizational-Political Chamber of the Federal Assembly, considering which activities—education? medical care? labor exchange? culture and the arts? scientific research?—should or should not remain within the governmental structure. The editorial commentator remarked at the close: "In connection with all this, it is necessary to liquidate the resistance which is being manifested, not only in the traditional 'bureaucratic mentality' of some people in the institutions, but also in the fairly strong étatistic concepts regarding the institutions; it is necessary to overcome petty-bourgeois and other negative and sometimes even reactionary tendencies which . . . are objectively holding back the process of further assertion of the system of social self-management."

Yugoslavia correctly perceives its administrative needs; a casual visitor cannot presume even to guess which kind of government or non-government is best suited to Yugoslavia. The purpose of these comments is simply to suggest that administrative observance of legality in substance and procedure, administrative exercise of sound judgment, administrative sensitivity to persons as well as to programs presuppose *administrators*—men and women whose insights and aptitudes have been shaped by sustained experience or special training, or both. If destroying “bureaucracy” extends (as it seems in a fair way to be doing in Yugoslavia) to destroying administrators as well, securing justice will become more, not less, difficult.