EU Administrative Law and its Impact on the Process of Public Administration Reform and Integration into the European Administrative Space of South East European Countries
EU Administrative Law and its Impact on the Process of Public Administration Reform and Integration into the European Administrative Space of South East European Countries
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EU Administrative Law and its Impact on the Process of Public Administration Reform and Integration into the European Administrative Space of South East European Countries
CONTENT

INTRODUCTION ........................................................................................................... 7

CHAPTER ONE

THE EUROPEANIZATION OF ADMINISTRATIVE LAW .................................................. 11

HARMONIZING SERBIA’S ADMINISTRATIVE LAWS WITH EUROPEAN ADMINISTRATIVE SPACE PRINCIPLES by Stevan LILIĆ.................................................................13

ADMINISTRATIVE REFORM IN MONTENEGRO AND CAPACITY TO IMPLEMENT EUROPEAN UNION LAW by Dražen CEROVIĆ .................................................................21

CHALLENGES FOR PUBLIC ADMINISTRATIONS OF CANDIDATE STATES REGARDING EU LAW AND COSTANZO OBLIGATION by Erlir PUTO ...................................................29

GOOD ADMINISTRATION AND GOOD GOVERNANCE AS THE KEY ELEMENTS OF THE EUROPEAN ADMINISTRATIVE SPACE by Ivan KOPRIĆ ......................................................39

CHAPTER TWO

THE IMPACT OF THE LISBON TREATY ON ADMINISTRATIVE LAW .......................... 51

TREATY OF LISBON – ON ITS STRUCTURE AND ASPECTS OF INFLUENCE ON ADMINISTRATIVE LAW AND PUBLIC ADMINISTRATION by Boris LJUBANOVIĆ.....53

CHAPTER THREE

THE EUROPEAN CODE OF GOOD ADMINISTRATIVE BEHAVIOUR .......................... 61

THE PRINCIPLE OF GOOD ADMINISTRATIVE BEHAVIOUR IN THE EUROPEAN UNION AND BOSNIA AND HERZEGOVINA by Zlatan MEŠKIĆ and Enis OMEROVIC...........................................................................63

CHAPTER FOUR

TOWARDS CODIFICATION OF EU ADMINISTRATIVE PROCEDURE LAW ............... 77

TOWARDS THE CODIFICATION OF EU ADMINISTRATIVE PROCEDURAL LAW by Dario ĐERĐA........................................................................................................................79

CONTEMPORARY AND FUTURE PERSPECTIVES OF ADMINISTRATIVE PROCEDURE IN THE EU by Ana PAVLOVSKA-DANEVA.................................................................85

CODIFICATION OF EUROPEAN ADMINISTRATIVE PROCEDURE LAW AND ITS REFLECTIONS ON SERBIAN PUBLIC ADMINISTRATION REFORM by Dejan VUČETIĆ....................................................................................................................99

CHAPTER FIVE

CONCLUSIONS........................................................................................................... 111
INTRODUCTION

The reform of public administration in SEE countries as accession countries has become one of the main EU accession requirements since the EU Summit in Copenhagen in 1993 and Madrid in 1995. Public administration and good governance are the key priorities under the political Copenhagen criteria for EU accession of SEE countries. Their governance systems are expected to meet certain requirements that are crucial for the reliable functioning of the entire administration, including key criteria which are part of the *acquis communautaire*: 1. Rule of law (legal certainty and predictability of administrative actions and decisions); 2. Openness and transparency; 3. Accountability of public administration; and 4. Efficiency in the use of public resources and effectiveness in accomplishing the policy goals. Respect of these principles provides for a common “European Administrative Space” (EAS). On their way to integration to the EU, the public administrations of SEE countries need to reach the acceptable standards of reliability, predictability, accountability, transparency, efficiency, and effectiveness in order to meet EU accession requirements.

Aiming to contribute to analysing and preparing comparative overview on the EU Administrative Law and principles and impact of the recent developments on the current accession countries from South East Europe, Faculties of Law of Skopje, Niš and Zagreb within the South East European Law School Network (SEELS) initiated a project on “Administrative law and its impact on the process of public administration reform and integration into the European administrative space of SEE countries”. The project started in November 2013 with a duration of one year and is supported by the project “Open Regional Fund for South East Europe - Legal Reform” implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) on behalf of the German Federal Ministry of Economic Cooperation and Development (BMZ).

The main objective of the project is to carry out analyse on the extent to which are the standards of EAS implemented at the national level of respective countries from the academic standpoint, to increase research and expertise in the area of administrative law in SEE countries and to promote interdisciplinary study of the practice and theory of the EU administrative law and its implementation in national contexts.

The project is divided into four research areas:

*Europeanization of administrative law* and the process of harmonization of legal standards for administrative action between nationals laws and the EU;

The *impact of the Lisbon Treaty* by introducing the principle of the administrative autonomy of the Member States (Art. 291 TFEU), reconfirmation of the importance of the rule of law (Art. 6 TFEU), recalling for administrative cooperation and support for improving administrative capacity to implement EU law (Art. 197 TFEU);

The *European Code of Good Administrative Behaviour* as a vital tool for examining existence of maladministration, encouraging the highest standards of administration, respect of the four principles in performing administrative conduct: lawfulness, non discrimination, proportionality and consistency; and

*Towards codification of EU administrative procedure law* and the four main purposes for this: clarification of, and easier access to law; increasing the coherence of principles and procedures; setting up default procedures to fill gaps in existing law and establishing the functions of administrative procedure.

The results from the key findings from the regional research in the abovementioned four research areas carried out by assigned national experts were presented at the Regional Conference held on 4th and 5th of September 2014 at the Law Faculty of Zagreb in Croatia. Representatives from
the national Ministries and authorities on public administration, national administrative courts and
Law Faculties from Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, and Serbia,
as well from Georgia, Armenia and Azerbaijan took part at the Regional Conference.

In this regard, the government sector, judiciary and academics through exchange of
their roles, competencies and views in the process of approximation and implementation of
administrative legislation, enforcement and application of the harmonised administrative laws in
practice and theoretical and analytical research, teaching and training contributed to identification
of relevant recommendations for future steps and activities for further alignment with the acquis
and needed reforms and improvements in the field presented at the end of this publication.

Nine professors and one young researcher from the Faculties of Law of Tirana, Zenica, Zagreb,
Rijeka, Osijek, Skopje, Podgorica, Belgrade and Niš carried out the regional comparative research
whose outcomes are synthesised into this publication. We would like to express our gratitude for
their valuable work and results produced. We hope this publication will serve for further research
on EU administrative law principles and their reflection in national legislation and administrative
practice in SEE countries.

Skopje, October 2014.

Prof. Dr. Goran Koevski
Manager
Centre for the South East
European Law School
Network (SEELS)

Dr. Veronika Efremova
SEELS Sub-Project Manager
Open Regional Fund for SEE
-Legal Reform Deutsche
Gesellschaft für
Internationale
Zusammenarbeit (GIZ)
CHAPTER ONE
THE EUROPEANIZATION OF ADMINISTRATIVE LAW
HARMONIZING SERBIA’S ADMINISTRATIVE LAWS WITH EUROPEAN ADMINISTRATIVE SPACE PRINCIPLES

Stevan LILIĆ

Abstract

European Administrative Law is a product of convergence between national legal systems, the legal system of the European Union and the legal system of the Council of Europe in the process of creating principles and rules which regulate issues related to the organization, functioning, accountability and supervision of the administration within member-states and candidate countries applying for European Union membership. The concept of the European Administrative Space is the result of practical needs of the future member-states of the European Union and represents a framework for defining guidelines which their respective administrations should follow in order to be capable for future administrative tasks, both on the national level, as well as the level of the European Union. Regarding Serbia’s administrative legislation, in particular laws regulating administrative procedure and administrative disputes, the European Commission’s Serbia 2013 Progress Report explicitly specifies that “with regard to the legislative framework, a new Law on General Administrative Procedures (…) have yet to be adopted and the Law on Administrative Disputes has not yet been fully aligned with European standards for judicial review of administrative acts.” In this context, the article examines the issue of harmonizing Serbia’s administrative laws with European Administrative Space standards.

Keywords: European Administrative Space. Harmonizing Serbian Administrative Laws with the Acquis Communautaire. Law on General Administrative Procedure. Law on Administrative Disputes.

1. Administrative Law and Social Regulation

Administrative law represents a complex area of contemporary law within which, depending on the development or stagnation of social processes, new legal (sub) systems appear and existing one disappear. In referential literature, two major administrative law concepts dominate: the traditional and the modern. The traditional concept rests on the premise that administrative law regulates the exercise of “administrative power”; while the modern concept rests on the premise that administrative law regulates “public services”.1

In defining the subject matter of administrative law, it is crucial to define “administration”. The modern concept sees the administration as a “systems of social regulation”. This means that administrative activities that regulate social processes are seen as legitimate influence on the behavior of citizens according to previously set standards. In accordance with this, the administration as a “systems of social regulation” has the task of neutralizing the negative effects of contingency as a result of possible illegitimate behavior in social interaction.2

* Stevan Lilić, PhD, Full Professor of Administrative Law, University of Belgrade, Faculty of Law, e-mail: slilic2@yahoo.com


2 Ibidem.
In contrast to the traditional normative concept of repressive administrative action, the modern concept of administrative action rests on the premise that in exercising administrative authority, not only must “legality” be respected, but “legitimacy” must be observed, as well. Consequently, administrative procedures and administrative decisions do not become “legitimate” simply by virtue of being conducted and enacted “legally” by an administrative authority, but must be procedurally justified in each particular case, as well as evaluated on the basis of the value content of each particular decisions.

2. Origins of European Administrative Law

Administrative Law, apart from the perspective of national legal systems may also be viewed from a comparative perspective, i.e. from the aspect of other legal systems. This is the subject of research of a specific legal discipline - Comparative Law. As other disciplines, Administrative Law may also be studied comparatively as Comparative Administrative Law, which on the other hand, interacts with International Administrative Law. International Administrative Law originated as a discipline with regard to resolving administrative disputes of international organization and its civil servants. The League of Nations was the first international organization to introduce an administrative tribunal for resolving these disputes, and was later followed by other international organizations (e.g. the International Labor Organization, World Health Organization etc.).

As is International Administrative Law, European Administrative Law is also developing. European Administrative Law is the final step in the process in which different legal systems interact and create principles and general norms in administrative areas where these are applied. This is a system of legal rules and principles which are formed either by spontaneous interaction or are created by the decisions and will of the court, the legislator, political factor etc. Elements which contribute to the creation of the phenomenon of European Administrative Law are the legal systems of the member-states of the European Union which interact with the legal system of the European Union, but also with other legal systems, primarily the legal system of the Council of Europe.

The most significant subsystem of the European Administrative Law is the Administrative Law of the European Union. Administrative Law of the European Union as a part (“branch”) of the legal system of the European Union consists of a set of legal rules and general principles which regulate the organization, functioning, accountability and supervision (control) of the administration of the European Union. However, due to the many dilemmas which exist in this area (e.g. in defining the status and structure of the EU), the Administrative Law of the European Union is a discipline which is in a state of “searching for its identity”.

Although the Administrative Law of the European Union represents the core matter of European Administrative Law, the influence of the legal system of the Council of Europe in creating European Administrative Law is not to be dismissed. Countries in the European Union have an increasing variety of administrative tasks and there is growing significance and influence of the public administration on social interaction in general. Administrative agencies are increasingly

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involved in many different fields with the task of rendering “public services” to citizens and improving social conditions. From this expanded domain of administrative activity stems the possibility of infringing individual human rights. Because of this, effective protection of civil rights from unlawful and illegitimate administrative action needs to be the fundamental guideline for contemporary states which is to be achieved by coherent implementation of the principles of the rule of law and the protection of human rights.\(^8\) In protecting human and civil rights from unlawful actions of the administration, a significant role is played by the European Court of Human Rights in Strasbourg. Through its case law, this Court has developed general principles that the administrations of the Council of Europe member-states must apply in their administrative activity and which legislators should incorporate in their respective national legislative framework. The legal system of the Council of Europe influences the legal system of the European Union, as standards developed by the European Court of Human Rights in applying the European Convention of Human Rights and Fundamental Freedoms, are respected by the European Court of Justice. Also, apart from the standards based on the case law of these courts, their recommendations, as well as other documents adopted by the Council of Europe influence the convergence of administrative systems of Council of Europe member-states.

European Administrative Law, apart from influencing the convergence between national legal systems, the legal system of the European Union and the legal system of the Council of Europe in the form of defining the general principles of administrative law, is actively creating principles and rules that regulate the organization, functioning, accountability and supervision (control) of the administration within the member-states of the European Union, as well as the candidate countries.\(^9\)

3. The Concept of European Administrative Space

The European Union represents a specific form of regional integration, and in many respects differs from other forms of regional cooperation which appear worldwide. One of the main features of the European Union, and at the same time the most significant difference in relation the other forms of regional and international cooperation, is its “supranational” component.\(^10\) The Lisbon Treaty, which entered into force on 1 December 2009, is an international agreement amending two previous treaties: i.e. the Treaty on European Union (Maastricht Treaty) and the Treaty establishing the European Community (Rome Treaty), which was renamed the Treaty on the Functioning of the European Union.

The concept of the European Administrative Space is the result of practical needs of the future member-states of the European Union and represents a framework for defining guidelines which their respective administrations should follow in order to be capable for future administrative tasks, both on the national level, as well as on the level of the European Union. The formulation “European Administrative Space” initially was used in publications by SIGMA,\(^11\) a joint initiative of the OECD and the European Union (in the implementation of the then Phare Program) with the goal of strengthening the capacities of governments and administration in Central and East European countries.

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\(^11\) SIGMA - Support for Improvement in Governance and Management in Central and Eastern European Countries (www.sigmaweb.org).
In this context, the term “European Administrative Space” is used to designate a set of administrative principles, values and standards which form the contours of European Administrative Law. By conceptualizing European Administrative Space, the organization, functioning and activity of administrative agencies based on standards and principles of the acquis communautaire are to be “harmonized” with the administrative systems of the future European Union member-states.

The administrative capacity of a European Union member-state candidate for implementing EU membership obligations is evaluated by the method of comparing their administrative capacities with the existing administrative capacities of the European Union member-states. The quality of the administration needed to implement obligations stemming from EU membership is not defined forehand by the acquis communautaire. However, by “supervising the quality of administrative action” in concrete cases it is possible to gradually define certain values and standards which make up “principles” of the European Administrative Space as segment of the Administrative Law of the European Union.

The supervision of the quality of administrative action and administrative capacities, thus creating European Administrative Space standards, is largely generated by the European Court of Human Rights. The European Court of Justice (Court of Justice of the European Union) is steadily defining a substantive number of administrative law principles by calling upon the general principles of administrative law which are common to all member-states. The most important principles created by the Court must be implemented by all member-states in their national administrative systems when they implement European Union Law, inter alia, the principle of proportionality, the principle of non-discrimination, the principle of legitimate expectations, etc.

4. Serbia’s Administrative Laws and European Administrative Space Standards

In a document titled Enlargement Strategy and Main Challenges 2013-2014, the European Commission concludes that “Twenty years ago, the Western Balkans were torn by conflict. At the same time, the European Union agreed the conditions, known as the Copenhagen criteria, for entry of future Member-States into the EU. The Copenhagen criteria reflect the values on which the EU is founded: democracy, the rule of law, respect for fundamental rights, as well as the importance of a functioning market economy. This paved the way for the historic transformation and accession of the countries of Central and Eastern Europe. Ten years later, at the Thessaloniki Summit in 2003, the EU granted all countries of the Western Balkans a clear perspective of EU membership, subject to fulfillment of the necessary conditions, in particular the Copenhagen criteria and the conditions of the Stabilization and Association Process (SAP).” (…) “The historic agreement reached by Serbia and Kosovo in April 2013 is further proof of the power of the EU perspective and its role in healing history’s deep scars. It also, crucially, reflects the courage of the political leadership in both countries. In June, the European Council decided to open accession negotiations with Serbia and the Council authorized the opening of negotiations for a Stabilization and Association Agreement between the EU and Kosovo.”

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This document also concludes that: “Among the key challenges it faces, Serbia will need to pay particular attention to the key areas of rule of law, particularly the reform of the judiciary, fight against corruption and fight against organized crime, public administration reform, independence of key institutions, media freedom, anti-discrimination and protection of minorities.” (...) “The government also needs to enhance its steer in the area of public administration reform and further develop a transparent, merit-based civil service system.” (...) “As regards its ability to take on the obligations of membership, Serbia has continued aligning its legislation to the requirements of the EU legislation in many fields, efforts which were underpinned by the adoption of a National Plan for the Adoption of the acquis.”

In another document titled Serbia - 2013 Progress Report, the European Commission examines Serbia’s ability to take on the obligations of membership (i.e. the acquis) as expressed in the Treaties, the secondary legislation and the policies of the Union. The analysis is structured in accordance with the list of 33 acquis chapters. In each sector, the Commission’s assessment covers progress achieved during the reporting period and summarizes the country's overall level of preparations. In this document, the European Commission states that: “In February, the government adopted the National Plan for the Adoption of the Acquis (NPAA) for the period 2013-2016. It replaces the National Program for Integration (NPI) for 2008-2012 under which 88% of the planned legislation was reported having been enacted.”

Regarding Serbia’s administrative legislation, particularly laws regulating administrative procedure and administrative disputes, the Serbia 2013 Progress Report explicitly specifies that: “With regard to the legislative framework, a new Law on General Administrative Procedures and a Law on local government employees and salaries have yet to be adopted. The Law on Administrative Disputes has not yet been fully aligned with European standards for judicial review of administrative acts.”

A similar (or rather identical) formulation assessing Serbia's administrative legislation was contained in the previous Serbia - 2012 Progress Report: “The legislative framework is still incomplete. New legislation on general administrative procedures and on local government employees and salaries is yet to be adopted. The Law on Administrative Disputes still needs to be fully aligned with European standards for judicial review of administrative acts.”

5. Law on General Administrative Procedure and European Administrative Space Standards

It is interesting to note that according to the Serbian Government’s Action Plan for Implementing the Reform of Public Administration (2004-2008), the new Law on General Administrative Procedure was to be adopted by the end of 2004. However, more than a decade later, this Law is still “in procedure”. Also interesting is that this Law is constantly present in the European Commission’s Serbia Progress Reports in the chapters on the “rule of law” as legislation that needs to be “harmonized” with European standards, a condition Serbia needs to fulfill on its road to European integration. On insisting that the “legislative framework be finalized” by adopting a new law on general administrative procedure, the European Commission is actually saying something very

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simple: the present general administrative procedure law in Serbia is not a “Serbian law” as the one presently in force in Serbia is actually the general administrative procedure law adopted in 1997 by the now non-existing Federal Republic of Yugoslavia.

The Head of the European Delegation to Serbia, recently “surprised” the public when he, on the occasion of presenting the Serbia Progress report for 2012, emphasized “zero tolerance” towards corruption, and pointed out that Serbia still had not adopted a new law on administrative procedure, and that this represented “fertile grounds for corruption and the prolonged procedures” (source: www.euractiv.rs).

Why has the Law on General Administrative Procedure, which is daily applied to thousands of cases (social and medical security, construction permits, child care etc.), become an anti-corruption target. The answer is hidden in the formulation of the Law as to what follows when an administrative agency does not render a decision. In theory and court practice, this situation is known as the “silence of administration”, as the administrative agency is “silent” in regard to the request or appeal of the party in administrative procedure. Recently, a public round table debate was held on the topic of “Implementing the Recommendation of the Ombudsman”, organized by two non-governmental organizations. The results of this project showed that a large portion of the problem in implementing the recommendations of the Ombudsman deals with the “silence” of administrative agencies. In one illustrative case, the ombudsman concluded that a ministry (for sport) has “made an error, as it has, infringing the principles of good administration, failed to notify the party of the outcome of the procedure and deliver the decision”, and in this concrete case, “has deprived the party for two years the possibility to submit a complaint or initiate procedure before the administrative court for judicial review”.

In a document titled *Strategy of Administrative Reform* (2004), the Government of Serbia, inter alia, states that in public administration “there are trend that obviously cannot be avoided, and which deal with (…) the changing of attitude which sees the administrative as a service to the citizens, and not as a powerful tool of authority”. Not much is needed to make the connection between the resistance to change the perception that the administration is “as a powerful tool of authority”, on one side, and the decade long delay in adopting Serbia’s new Law on General Administrative Procedure (“as a fertile ground for corruption”), on the other. The roots of this resistance in transforming the administration into a “service for citizens” are numerous and include inertia, unprofessionalism, formalism, bureaucratic arrogance, professional conservatives, but above all a “favorable climate for corruption” which exists in administrative procedure as the Law on General Administrative Procedure, *ex lege* defines the “silence” of the administration as “rejecting the request of the citizen”.

The silence of the administration represent a specific procedural legal institute which is reflected in unjustified delay or unjustified omission of enacting an administrative decision. The silence of the administration means that the inactivity of the administrative agency is breaching the statutory obligation of the administrative agency to process requests and enact decisions. By being “silent”, the administrative agency acts unlawfully. The present Law on General Administrative Procedure treats the silence of the administration as “rejection of the party’s request” which causes great difficulties for the citizens (e.g. when applying for citizenship), as additionally they have to

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engage in legal and administrative procedure in proving their case (submissions, appeals, court
procedures etc.), and experience additional expenses and loss of time.

A solution for this “silence” naturally exists, and as a matter of fact is rather simple. From
the position of the rule of law and the principle of efficiency in rendering public services, the
existing (negative) option prescribed by the Law on General Administrative Procedure is “standing
on its head”. When put on its feet, we get a (positive) option according to which in case of delay
or obstruction of the administrative procedure, it is _ex lege_ provided that the request of the party
has been granted (and not rejected). With this simple legislative intervention in the Law on General
Administrative Procedure, overnight the bureaucracy would lose its position of “a powerful tool of
authority” and become what is should be, a “public service” to the citizens. Maybe this is the real
answer behind the “mystery” why the new Law on General Administrative Procedure has not yet
been adopted and why Serbia’s administrative procedure legislation has not been harmonized with
standards of the European Administrative Space.

6. Law on Administrative Disputes and European Administrative Space Standards

The European Commission’s _Serbia Progress Report for 2013_, states that The Law on
Administrative Disputes has not yet been fully aligned with European standards for judicial review
of administrative acts._22_ Similar formulations were container in the previous Progress reports.
_Ac tion Plan for Implementing the Reform of Public Administration (2004-2008)_ stated that the Law on
Administrative Disputes was to be adopted in by the end of 2004. The adoption of this Law was
“only” five years overdue: the Law on Administrative Disputes was adopted in 2009._23_

In the public debate preceding the adoption of the new Law on Administrative Disputes,
serious caution was expressed as to the quality of the Draft, as well as to certain solutions which did
not comply with standards of European Administrative Space. Among these, it was indicated that
the Draft did not have a narrative which explained the included solutions, that there were numerous
contradictions within the text (_contradictio in adiecto_), and most notably that the Draft did not
include an appeal as a “regular legal remedy”. Eventually, the initial Draft was partially upgraded (e.g.
a narration was added), making the final Draft better than the initial one.

The main defect of the 2009 Law on Administrative Disputes is that it provides no appeal
mechanism in regard to decisions of the administrative court._24_This is why this Law is “not harmonized
” with European Administrative Space standards and why it is constantly referred to in the European
Commission’s Progress Reports on Serbia as “not fully aligned with European standards for judicial
review of administrative acts”. The irony of this solution is the Law on Administrative Disputes
provides “extraordinary legal remedies ”, but does not provide a “regular” legal remedy (i.e. appeal)._25_

However, in is interesting to note that in spite of these assessment of the European Commission,
there are scholars in Serbia that claim that this Law is “a modern piece of legislation”, harmonized
with European standards, “not only with the European Convention on Human Rights, but also with
recommendations of the Council of Europe regarding administrative disputes”.

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24  Lilić, Stevan. “Nacrt zakona o upravnim sporovima Srbije u kontekstu evropskih standarda” (Draft Law on Administrative Disputes
of Serbia in the Context of European Standards). In _Pravni kapacitet Srbije za evropske integracije_ (Legal Capacities of Serbia for
25  Zoran Tomić, _Kometar Zakona o upravnim sporovima_ (Commentary on the Law on Administrative Disputes), Beograd: Službeni
glasnik, 2010.
ADMINISTRATIVE REFORM IN MONTENEGRO AND CAPACITY TO IMPLEMENT EUROPEAN UNION LAW

Dražen CEROVIĆ* 

Abstract

Regarding Montenegro’s administrative legislation, the European Commission’s Montenegro 2013 Progress Report explicitly specifies that “As regards the overall public administration strategy, the coordination and monitoring mechanism for its implementation needs to be strengthened. Responsibility for the coordination of public administration reform is spread among three structures. A consistent legislative framework for public administration bodies and agencies needs to be developed. The majority of necessary implementing legislation has been adopted (…) the law on general administrative procedures has yet to be revised in line with European standards and best practice. Overall, in the area of public administration reform, the adoption of the plan for the reorganisation of the public sector and the entry into force of the new law on civil servants and state employees are positive steps forward. Proper implementation needs to be ensured. More efforts are needed to implement the public administration reform strategy. Significant further efforts are needed to improve and to implement the legislative framework. The undated resignations are an issue of concern and should be returned to the staff who signed them”. In this context, the article examines the issue of harmonizing Montenegro’s administrative laws with European Administrative Space standards.

Keywords: administrative reform in Montenegro; EU candidate country; implementation capacity for EU law; AURUM, Progress Report

Introduction

Montenegro is a country in South-Eastern Europe with coast on the Adriatic Sea and bordering Croatia, Bosnia and Herzegovina, Serbia, Kosovo and Albania. After the dissolution of the Socialist Yugoslavia in 1992, Montenegro remained part of a smaller Federal Republic of Yugoslavia with Serbia and in 2003 this Federation was replaced by the State Union of Serbia and Montenegro. This Union was dissolved by a referendum in Montenegro, and in May 2006 Montenegro became an independent state and full member of the United Nations. Montenegro is a candidate country for membership of the EU.1

Montenegro is a candidate country for membership of the EU. The European perspective of Montenegro was affirmed by the European Council in June 2006 after the recognition of the country’s independence by EU member-states. Montenegro submitted an application for EU membership in December 2008. In line with Article 49 of the EU Treaty, the member-states requested that the European Commission prepare an opinion on the application. This began in 2007 with a political dialogue at the ministerial level between the Government of Montenegro and the EU institutions, and further political dialogue meetings take place annually. In October 2007 Montenegro signed a Stabilization and Association Agreement (SAA) with the European Union by which it formally agreed

* Dražen Cerović, PhD, Assistant professor of Administrative law, University of Podgorica, Faculty of Law, e-mail: drazen.cerovic@t-com.me
to an association with the European Community and its member-states and accepting responsibility for the European future of Montenegro.

The European Commission acknowledged that Montenegro had made significant progress toward opening talks on EU membership and gave recommendation for its candidate status in November 2010. In December 2010 the European Union granted Montenegro the official status of candidate country and accession negotiations with Montenegro began in June 2012. Later that year, Chapters 25 (science and research) and 26 (education and culture) were opened, and then temporarily closed in April 2013.

2. Montenegro and European Union Enlargement

In 2013, the European Commission presented a document under the name "Enlargement Strategy and Main Challenges 2013-2014". In the section referring to the public administration in Montenegro, the Strategy underlined that “Public administration reform is a priority to ensure Montenegro has the capacity to apply the acquis, to tackle politicisation and increase transparency and professionalism of the civil service.”

Among the conclusions, the Strategy states that “As regards the ability to take on the obligations of EU membership, Montenegro is at varying degrees of alignment. Strengthening of administrative capacities is a cross-cutting challenge in many areas. In chapters such as public procurement, company law, intellectual property law, information society and media, taxation, and enterprise and industrial policy, Montenegro is sufficiently advanced for the Commission to have recommended the opening of accession negotiations.”

3. European Commission Montenegro Progress Reports for 2013 on Public Administration Reform

In the its progress reports, the European Commission reports regularly to the Council and Parliament on the progress made by the countries of the Western Balkans region towards European integration, assessing their efforts to comply with the Copenhagen criteria and the conditionality of the Stabilisation and Association Process.

In the Montenegro Progress Report for 2013, on the topic of public administration, the European Commission states that “As regards the overall public administration strategy, the coordination and monitoring mechanism for its implementation needs to be strengthened. Responsibility for the coordination of public administration reform is spread among three structures. A consistent legislative framework for public administration bodies and agencies needs to be developed. The adoption of implementing regulations for the law on inspection control, designed to bring inspections within a single authority and improve the business climate, is well on track. Overall, in the area of public administration reform, the adoption of the plan for the reorganisation of the public sector and the entry into force of the new law on civil servants and state employees are positive steps forward. Proper implementation needs to be ensured. More efforts are needed to implement the public administration reform strategy. Significant further efforts are needed to improve and to implement the legislative framework. The undated resignations are an issue of concern and should be returned to the staff who signed them.”

4. AURUM Public Administration Reform Strategy in Montenegro (2011-2016)

The Government of Montenegro is a key holder in the process of further reform of public administration in Montenegro. To this end, in March 2011 the Government adopted a document called “AURUM” which represents the Public Administration Reform Strategy in Montenegro for the period 2011-2016.4

This Strategy provides a framework for reform in this area and is focused on improving the administrative capacity of this country for implementing EU law in accordance with the obligations deriving from the Stabilization and Association Agreement signed between Montenegro and the European Union, which entered into force in 2010.

The Strategy emphasizes that Montenegro is determined to become part of the European system of values. To this end, public authorities should be trained to fully develop and harmonize the national legal framework with the acquis communautaire, and based on its full implementation and capacity unreserved application of its own regulations effectively work within the European administrative space. For a successful public administration reform decisive political support is needed as it requires a full commitment not only of the government but also by all other social structures to achieve objectives, which will result in an efficient, professional, service-oriented public service, which is readily available and guaranteeing the rule of law and effective response to state institutions the needs of citizens and other social and economic subjects. Service quality in public administration is crucial to achieve a higher level of quality of life and creating a favourable economic and social environment that determines social development.

The previous Strategy of Public Administration Reform in Montenegro 2002-2009 set out the framework for a comprehensive public administration reform. In this period, certain reform objectives had been accomplished, which included improving the knowledge of the administrative system of the EU and of other relevant international institutions and their member-states and comparative analyses of these systems with the administrative system in Montenegro. However, certain limiting factors have hindered the implementation of the planned activities, and particularly include: the resistance of the administrative system to change, the global economic crisis and the absence of a competent institution which would monitor the reform process.

Bearing this in mind, the Government of Montenegro adopted a new public administration Reform Strategy with the goal of creating an efficient, professional, and service oriented public administration serving the needs of citizens and other social and business entities in the 2010-2016 period. To this end, the Strategy enumerates specific objectives which have been identified: “strengthening of rule of law by strengthening legality and predictability of administrative procedures and decisions; improving efficiency and cost-effectiveness of public administration; improving the business environment while improving the quality of public services and reducing the administrative burden; raising the level of ethics in public administration; improving transparency and accountability of public administration; integration of Montenegro’s public administration in the European Administrative Space.”

The Strategy defines the process of administrative reform as a "long-term development process which entails continuing development and upgrading of the administrative system”.

Structural adjustments in the reform are to be achieved through normative regulation of the public administration system, improving the civil service system and up-grading existing administrative procedures with orientation toward e-government.

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As defined by the Strategy, the state administration is regulated by the Law on State Administration which sets out that state administration affairs are discharged by ministries and other administration authorities. Some state administration affairs are delegated or assigned to local self-government authorities or other legal persons. State administration affairs comprise the following: proposing internal and foreign policies; managing development policy; normative activity; implementation of laws and other legal instruments; conduct of administrative supervision; issuance of decisions in administrative procedures relating to the rights and duties of citizens and legal persons; acting in misdemeanour procedure; ensuring that the affairs in the public interest are discharged; and other state administration affairs as set by law and regulations.

Taking this into account the Government of Montenegro decided to continue the public administration reform with structural adjustments complying with European standards and reorganise the administrative system following EU requirements.

The Strategy also indicted the need of improving administrative procedures in line with European standards. The Strategy states that in the Opinion of the European Commission on Montenegro’s application for membership in the European Union, it was pointed out that the administrative procedures are complicated, last too long and must be simplified. The Law on General Administrative Procedure Act of 2003 represents a framework law which is applied when public administration bodies, in administrative matters, decide on rights, obligations or legal interests of natural and legal persons or other parties. Although the Law has a quality basic structure, analysis indicates difficulties related the cost of administrative procedures and prolonged time for processing requests and appeals. This is further complicated by the fact that in addition to the Law on General Administrative Procedure, a series of special laws governing procedural matters of administrative procedure. There is still a traditional bureaucratic attitude which leads to inefficiency and unnecessary length of proceedings, thus increasing the cost of exercising the rights of citizens and other clients.

5. SIGMA Montenegro Assessment

The SIGMA document “Assessment Montenegro” for 2012 states that “The small size of the country may explain some, but not all, of its administrative shortcomings. However, most problems stem from a bureaucracy based on patronage rather than merit, administrative practices disrespecting the rule of law, a political system dominated by a single political party since its inception, and a weak system of checks and balances. An evaluation of the case law of the Administrative Court – a remarkably capable and well functioning institution, and therefore valued by citizens and international observers - highlights the major shortcomings of the public administration: civil servants are insufficiently familiar with the applicable legislation; administrative bodies often consciously ignore or disrespect the law; and senior and top-level staff do not consider themselves as accountable for the legality of their bodies’ administrative practices. Furthermore, the Administrative Court’s decisions tend to be ignored by administrative authorities, unfortunately without any legal consequences because the current legislation does not provide any controlling mechanism or sanctions. On the whole, it can be argued that the lack of respect of the law in administrative practice is notorious and strongly hampers the consolidation of a state ruled by law. However, the Government’s decision to prepare a new Law on General Administrative Procedures - a first draft legal text is expected to be completed by the end of 2012 - could open the door for real progress in the medium-term, since a good system of administrative procedures is the basis for good administrative behaviour in general. A Law in line with the principles of EU law and

SIGMA, Assessment Montenegro, March 2012.

good administrative practice would provide the legislative conditions for administrative decisions of adequate quality and for their legal correctness. It would also further avoid unnecessarily complicated, formalistic and lengthy processes, and enhance transparency and accountability.\textsuperscript{6}

The SIGMA Assessment Report also includes the "recommendations". "The Government should address the existing shortcomings related to the implementation mechanisms of the AURUM Strategy. The establishment of a small but authoritative body for the co-ordination of reform activities is strongly recommended. (…) The working group of the Ministry of Interior should complete the process of drafting a new Law on General Administrative Procedures by the end of 2012.

A programme to prepare the implementation of the new Law should start immediately and be followed up after the adoption of the Law, at least in the first half of 2013, to ensure effective and sustainable implementation. At a political level, the EC should underline the importance of adopting a Law on General Administrative Procedures that is fully in line with EU legislation and standards of good practice in EU member states."\textsuperscript{7}

6. NISPAcee - Network of Schools and Institutes of Public Administration of Central and Eastern Europe

The Network of Schools and Institutes of Public Administration of Central and Eastern Europe (NISPAcee) was established twenty years ago for the purpose of encouraging, assisting and chronicling the transition in the field of public administration which has taken place in the region during this time. One of its publications, \textit{The Past, Present and the Future of Public Administration in Central and Eastern Europe} has been designed to assess both the events that have taken place within the region in terms of the development of effective public administration and the role of NISPAcee in helping to influence and shape these developments.\textsuperscript{8}

The NISPAcee also issued a publication supporting the project “Implementation of the Public Administration Reform Strategy in Montenegro” in which it gives a summary overview of the state of affairs regarding administrative reform in Montenegro and the administrative capacity of the country to implement EU legislation, in context of the Slovak experience.\textsuperscript{9} It states that the process of public administration reform in Montenegro began with the adoption of several strategic Government documents. This was still ongoing during the existence of the Federation of the Republics of Serbia and Montenegro (2003–2006) – the Administrative Reform Strategy 2002–2009 and the Work Programme for Better Local Self-government for the Year 2005, which set out the strategic direction and key reform goals. The basic legislation and its implementation in practice, was also adopted during this period. After the Independent State of Montenegro came into being, based on the May 2006 referendum results, its representatives continued with the previous reform attempts by adopting the Public Administration Reform Strategy 2001–2016 (AURUM) and by continuing the reform process.

The legal basis of the public administration reform consists of the following legislation:


\textsuperscript{6} SIGMA, Assessment Montenegro, March 2012, pp. 4-5.
\textsuperscript{7} SIGMA, Assessment Montenegro, March 2012, p. 6.
• Law on State Administration (2003)
• Law on General Administrative Proceedings (2003)
• Law on Inspection Control (2003)
• Law on Civil Servants and Employees (2004)
• Law on Salaries of Civil Servants and Employees (2004)
• Law on the Capital City (2005)
• The Constitution of Montenegro (2007)
• Law on Local Self-government Funding (2008)
• Law on Historical Capital City (2008)
• Law on European Charter of Local Self-government Ratification (2008)
• Law on Additional Protocol to European Charter of Local Self-Government (2010)
• Law on Territorial Organisation of Montenegro (2011).

Through the adoption of this set of legislation laws and their legal provisions, the basis of territorial-managing and administrative division of the state was set out, together with laying the foundations for the system of regional self-government, harmonized with the European Charter of Local Self-government and the adopted standards of the European Community, in which a citizen became the basic subject in the decision-making process of the local communities from the viewpoint of the law and responsibility, and in accordance with the statutory powers. As a result, statutory conditions for professional, depoliticised and effective local self-governments were created.

The public administration reform strategy in Montenegro for the period 2011–2016 specified its general aim as follows: an efficient, effective, professional, easily accessible, service-oriented public administration, which serves the citizens and the social and economic subjects. The following were set out by the strategy as specific goals:

• strengthening the principles of the legal state and the responsibility of public administration,
• institutional stability, functionality and flexibility of the public administration system,
• improving the business environment, improving the quality of public services and reducing the administrative burden,
• increasing the transparency and ethical level in public administration,
• further incorporation of Montenegro into the European administrative area.

The following tasks were determined among the short-term priorities of the Strategy and Action plan (2011):

• to secure the full implementation of new legal solutions,
• to create a system of state administration in accordance with the new concept of the Law on State Administration,
• to adopt and implement the new Law on General Administrative Procedure,
• to secure efficient institutional mechanisms for coordination, monitoring and assessment,
• to continue in the cooperation with relevant international partners (SIGMA/OECD programme, bilateral and multilateral cooperation etc.),
• to promote new solutions (seminars, trainings, round tables),
• to implement Ethical Codes applicable to local elected representatives, officials, officers and employees,
• to revise and improve local programmes and action plans for the battle against corruption in local self-government,
• to establish the Board for the Development and Protection of Local Self-government and to secure its uninterrupted operation,
• to strengthen the activity of local communities and to support the advantages of the establishment and operation of local coordination centres,
• to implement the Plan of Activities of Local Self-government Units in order to enhance the level of consumer protection,
• to strengthen the capacity of local self-governments in order to create inter-municipal and cross-border cooperation between territorial communities or state administration authorities.

"The public administration system, based on the above regulations and all planned activities should serve the citizens and should contribute to the improvement of life and citizens’ equality in the application of the right for local self-government, the democratisation of local self-governments, the decentralisation of power, the strengthening of autonomy, the responsibility and rule of law in local self-government, non-political and professional local administration and public services, the improvement of the quality of public services, more active citizen involvement in the decision-making process and the partnership relationship between the state and local communities."10


In a comprehensive project “Montenegro in the 21 Century”, the Montenegrin Academy of Sciences and Arts launched research with the aim of finding “answers on how to make Montenegro competitive in the European and international community in the 21. Century.” Some 150 researchers took part in this project examining areas which included economic growth, protection of the environment and European and Euro-Atlantic integration processes. Also, the issue of Montenegro’s administrative reform and its administrative capacities to implement the aquis were examined. In this context, it was pointed out that: "The European Union sees the organisation and activity of the public administration as an internal issue of the member-states, but at the same time, the national public administration must implement certain standards which to its citizens guarantee rights set down in the EU agreements, regardless of the country they live in. This implies the adherence to principles established in the Copenhagen (1993) and Madrid (1995) criteria, which contain unified standards for the activity of the public administration. (…) Apart from the principles of the European Administrative Space, in the Union itself there is a practice of codifying particular administrative standards, in different fields of activity and in regard to various issues. This in particular refers to the status of civil servants, administrative procedure and financial management in the overall strategic and coordination activities of the Government of Montenegro which it must fulfill in becoming a member of the European Union, although some standards have already been incorporated into many legal documents and/or development strategies. In this way, full “membership” of the public administration of Montenegro will be secured in the field of the European Administrative Space, and more important, this will achieve a higher level of quality of rendering services to the citizens, the economy and other subjects, not only in Montenegro, but also in the European Union."11

Present State of the Public Administration in Montenegro and Basic Elements of its Modernisation for Harmonising with the European Administrative Space.

Currently, the public administration in Montenegro has the following features: overwhelming number of institutions and employees; huge amount of paper documents; the practice of administrative agencies which requires the citizens to submit documents with their requests that already the agencies have in their databases; insufficient expediency; poor utilizations of IT possibilities; lack of incentives and stimuli for the employees for innovative procedures; unsatisfactory level of consistency in implementing laws; deficiency in professional capacity and over employment. Additionally, there is preference of political party orientation over professional knowledge and skills.\(^\text{12}\)

The modernization of the public administration is one of the key challenges and tasks of Montenegro. However, of particular significance in this context is achieving a synergic effect when implementing measures which have the goal of raising the capacities of the public administration. Implementing measures which are not synchronized can result in partial, can negative effects in regard to the set goals. This is why caution should be applied and efforts focused on defining steps which are to be undertaken in reforming the administration.

Priority in this direction should be given to achieving a public administration in Montenegro which is rational, based on professionally competent human resources capable of efficiently and lawfully implementing administrative tasks, as well as knowingly and analytically preparing draft legislation and formulating strategy policy.

To these ends, the framework administrative legislation needs to be upgraded, including legislation on administrative organization, civil servants, administrative procedures, professional integrity and accountability. When employing civil servants in administrative tasks, the political factor should be eliminated, and professionalism should be the main objective criterion.

Human recourse need to be managed more efficiently, particularly in separating incompetent and inefficient activity from competent and efficient administrative decision making. An important issue is to facilitate mobility and enhance motivation of the employed in the public administration for a higher degree of quality their work.\(^\text{13}\)

The modernization of Montenegro’s public administration also means that regulatory administrative agencies have taken over part of the legislative functions of parliament, which makes is an issue of particular interest for upgrading administrative activity. Information technology in the work of the public administration is crucial for administrative reform.

Transparency and efficiency of administrative agencies, rendering public services to citizens and other subject in a more efficient manner, facilitation of communication between the administration and the citizens need to be implemented, and supplemented by various forms of supervision and control mechanisms.

In affirming standards of the European Administrative Space in the work of the public administration of Montenegro, regulations need to be implemented impartially by means and measures in a planned and systematic way. Only with synergic effects can the positive results of administrative reform be effective in upgrading the public administration reform in Montenegro to the wellbeing of all its citizens, as well as in fulfilling the standards needed for the public administration of Montenegro to efficiently implement the EU aquis.

\(^{12}\) Cerović, Dražen, Unapređenje i modernizacija uprave (Upgrading and Modernisation of the Administration), Crna Gora u XXI stoljeću - u eri kompetitivnosti (Montenegro in the 21 Century – the Era of Competitiveness), Izgradnja i funkcionisanje države Crne Gore. Crnogorska Akademija nauka i umjetnosti, 73/5, Podgorica 2010. 373-379.

CHALLENGES FOR PUBLIC ADMINISTRATIONS OF CANDIDATE STATES REGARDING EU LAW AND COSTANZO OBLIGATION

Erlir PUTO*

Abstract

The most fundamental part of the EU institutions activity is strongly connected with its norms application from Member State administrations. In fact, there is a European legal system which is integrated with the internal system of the State Members. In substance, most of the norms produced by the Union are of administrative kind. They establish administrative obligations toward European Union institutions from member states and their citizens.

This study is focused in the fundamental aspects of the above indicated rapport. Mostly it considers the crucial point on how Albanian public administration has to deal with the so called “Costanzo Obligation”. In other words, how Albanian public administration has to apply EU Law, and how they can be responsible on that. The responsibility should include not only the central state administration but also Independent Authorities and Local Governments bodies.

Keywords: EU Law, Costanzo Obligation, local government, independent authorities, rule of law.

1. Introduction to the Relations between EU Law and Candidate Countries Internal Legal Systems

At modern times, the concept of extraterritoriality has become a very common element regarding most of the fields of law. As human rights are considered an international issue, with reference to most of the developed countries, international economical relations, as international trade, migrations, the fall of ideological borders and of economical ones, has interfered to the international relations. 1 This new system of international communication between people and economies has required the statement of different international rules, which should be mandatory for the internal juridical systems of the countries. So international rules approved by the consent of state representatives are becoming now binding for the entire internal systems and its law subjects. Meanwhile, international agreements in fact are not so keen on administrative ruling. They are applied so rarely by public administration organisms. As a general rule their content is adapted through internal laws, or bylaws, and not independently. 2 A particular case is the EU legislation which relies on an administrative space and an integrated administrative system.

In these regards the belonging of sovereign countries to international organizations, has imposed them some sovereignty limits. So the decision taken by the international organization, even if it is contrary to the will of a member country, should by mandatory for all of them. Member countries have admitted this principle, but while operating, for sure they not always will be happy to execute some rulings which are not approved with their consent. According to the Albanian Constitution, the international law is superior in front of the domestic law but not constitutional laws. Meanwhile, as provided by article 122 point 3, “… international organizations may produce legal

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* Erlir Puto, PhD, Lecturer of Advanced Administrative Law, University of Tirana, Faculty of Law, e-mail: erlirputo@gmail.com
norms which should be directly applied to the internal legislative system…". So a valid international law ruling, even if not approved by a member state, should be directly applied by the state internal organisms like: Courts and the Public Administration.

Doctrine has realized that the relation between EU Law and the National Law is not similar with the usual relation between international law and national law. This doesn't mean that there are no problematic connected to the adaptability of the national law with EU Law, but it means that this mechanism happens in a different way, as it refers to different situations.

In fact, the relation between the international system and internal system is resolved with a coordination relation among two juridical systems in a reciprocal autonomy. At the other hand the relation with EU Law and the member states is an integration relation, as all member states are in a reciprocal equal relation, and the communities system has the tendency to be integrated to the internal system. Usually the international law in itself is quiet or indifferent, about the ways how national authorities use to apply their international obligations in the internal State system. The result is the main important thing, so what counts is the realization of the aim the international norm had. As a consequence the internal application model remains a predominant subject of the internal law system. This distinction is very valid among the EU Law and the internal systems. Regulations, Directives, Decisions establish obligations and rights which act directly to the European citizens.

From the other side, this strong connection between the national law and the EU law, is reinforced by the obligation determined by article 10 of the European Community Treaty, for the member states who have to realize “all the general or particular measures in order to realize the obligations deriving from the Treaty or established for the Community Institutions acts…. they should avoid any measure which may obstacle the realization of the treaty aims (honest collaboration obligation)”. For this rule should be applied a wide interpretation, as for the word “State” we should not intend the unity of the State central powers. The Court of Justice of European Union has established that “… it regards to all the member State authorities, of the central power of the State, the federal State authorities or other territorial authorities, to guaranty the respect of community law normative as defined by their powers…” In other cases, the EU Court of Justice has specified that this obligation is valid for all organisms of the member States, including as to their power even the organisms with jurisdictional functions or nature.

This principle approved form article 10 of the Treaty comes from the consciousness that the Communities system in different way from national systems doesn't represent a closed and self sufficient system, but, in order to be realized completely, it should be integrated with the administrative System of member States. The close integration which consist between the communities system and that of member States, intends necessarily a system and a harmonization which is not always applied in the reality. So there are a lot of contrasts between instructions given by both systems. The solution of this contrasts results very important in the case when the communities’ law decides in producing directly applicable norms for every member subject or citizen.

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5 Sokol Bana, and Erjona Canaj; E Drejta e Bashkimit Europian, Tirana: Arberia-07, 2009.

6 Decision dated 12.06.1980 “Germany v. European Commission”, European Court of Justice.
The EU system serves as a reference model for the modernization of the political, economic and social systems of the aspiring candidates in transition, and Europeanization becomes a series of operations leading to systematic convergence through the processes of democratization, marketization, stabilization and institutional inclusion. In this regard the future European Union membership will require some internal efforts in order to directly apply its normative by internal institutions.

The domestic application of the EU legislative system will comport different problematic which should be very carefully treated by the public administration and contracting private subjects. Government bodies must realize very well organized information network and an active by-ruling system which should prevent any possible legislation contrast with very strong economical consequences.

Even that actually the EU normative is not obligatory to be applied to the Candidate Countries internal system; the next EU membership wouldn't be too far. From the first day of membership on this Supra-national Organization, the new member country should be able to directly apply the entire normative produced by the Communities and the following European Union system. As this normative from that first day of membership, should interfere at the everyday's life of individuals, companies, central and local public administration, and courts of every level, there should be previously resolved some particular issues. There should be a legislative and doctrinal solution to all the uprising problematic including the one of the internal adaption of the upcoming binding new normative.

Meanwhile, between the Candidate Countries and EU there are in force the so called Stabilization Association Agreements (hereinafter SAA). Regarding to this Agreements, the European Court of Justice in the Demirel Case, established that: “A ruling in an International Agreement between the Communities with non member states, should be considered as directly executable...”. The same effect is produced by the SAA, like that one with the Republic of Albania, to the internal legal order of candidate countries.

After the entry into power of the SAA with the Republic of Albania, its Constitutional Court has directly referred to the EU Law in the decision no. 24 of 24.07.2009, and the decision no. 3 date 05.02.2010. In concrete the Constitutional Court decided if limiting the economic freedom by the contested act was in conformity with the SAA. Referring to article 33 point 2 of the SAA, the state power to intervene in the exercise of economic freedom, has a new limit which foresees that: “From the entrance in power of SAA, there will be no more quantitave limits to imports or exports, or similar measures, and no further limits on the existing one there should be in the trade between Communities and Albania.”

At the other above mentioned decision, the Constitutional Court analyzes directly if an EU Directive is in conformity with the internal legislation. So in concrete the Constitutional Court is judging directly as first instance judge, the conformity of an internal law with the EU Directive.

Of course there is a wide judiciary tradition in recognizing to similar agreements like SAA an effective force of international law, following the most famous one of the Polish Constitutional

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10 Decision no. 24 date 24 July 2009 of the Constitutional Court of the Republic of Albania.

11 Decision no. 3 date 5 Febrary 2009 of the Constitutional Court of the Republic of Albania.
Court of 1997. In the decision no. K15/97 it explains that: “Of course EU Law is not legally binding in Poland. Anyway referring to articles 68 and 69 of Poland - EU Accession Agreement, .... Poland is obliged to undertake all the necessary efforts in order to ensure that its future legislation should be in conformity with that of the Communities, .... the Constitutional Court considers that the obligation to ensure legislation adaptability is expressed even in the obligation to interpret the actual legislation in the most adaptable way to the EU Law”.

So the mutual logic of the above mentioned Constitutional Courts decision is that from the SAA rises the obligation that every normative act or similar administrative activity which produces obligatory norms for the future should be conform to the EU Law and the legal specter of acquis communautaire. Being a non member state doesn’t exclude the State from the obligation of producing a new normative in conformity to the EU Law. At that context, every new normative (laws or by laws) in contrast to the EU law should be a violation of the international normative (SAA) and as a consequence should be legally invalid.

2. Relevant Problematic of EU Law Application by Administrations of Member States

As a principle, the European law requires the same what national systems ask to, the direct application of their normative. The basis of this “one on one rule” is contained at the Court of Justice decision “Van Schijndel”.

The European Court has imposed a more general obligation to administrative authorities of the Member States. When a national administrative authority finds that between a provision of national law and a directly effective provision of European law conflict exists - and so can not apply both provisions simultaneously - the authority is required to resolve this issue in favor of the provision of the European law. If possible, the administrative authority can achieve this by interpreting the provision of national law in the light of European law. However, if consistent interpretation is not possible, the administrative authority is obliged to set aside the provision of the national law which is incompatible and instead directly apply effective provisions of European law.

We refer to this obligation, which is made clear by the European Court of Justice to both primary and secondary European law legislation, simply for convenience, as “Costanzo’s liability.” Although this requirement may seem perfectly clear and explainable from a European perspective, problems can arise from the national point of view of constitutional and administrative law.

This study focuses, among other, on difficulties that Costanzo obligation and other obligations that are imposed directly by this issue, will face within the Member States in implementing the national administrative authorities in cases of contradictions on the mode of application of EU law.

16 Case C-198/01 Consorzio Industrie Fiammiferi (CIF ), 2003, ECR I-8055.
17 Due to regulations, this requirement may come from its nature and character as set out in Article 288 TFEU (ex Article 249 EC); for the provisions of the directives that are directly effective and which are not implemented in a correct and timely manner. This was decided in Case Fratelli Costanzo.
This problematic are analyzed even referring to candidate states and for those states that are in a regime of Stabilization Association Agreement (SAA).

On one hand, European law carries the traditional rule of international law that the Member States should be considered as subject to the fulfillment of obligations of European law. This means that Member States have a responsibility to the European Union for the correct application of European law. The European Union is not concerned about the internal competent structures of the Member States and to which authority each task is assigned, as this would violate the prime principle of the national and institutional autonomy. However, on the other hand, the obligation Costanzo is basically addressed directly to the administrative authorities of the Member States and non-Member States.

To limit the scope of this paper on the specific topic about Costanzo obligation, at first the discussion should be focused on the possibilities of oversight by the central government on the internal organs of public administration and in relation to acts or decisions adopted by the administrative authorities. The Member State shall ensure that the result required by the relevant provisions of the Treaty or secondary legislation is achieved at the national legal order. This also applies to federal states. In this regard, with reference to the case law concerning the obligations for breaches of European law, the traditional approach of the Court is clearly defined. When obligations are not met, the state per se is responsible, and not its individual organs, as the Court clearly noted in its decision in Brasserie du Pecheur.

3. National Institutional Autonomy

The effect of European law in the domestic legal orders is mainly carried out by the Member States. Their administrative authorities adapt the internal regulations and their national courts ensure the implementation of these norms. This leads to the so-called “dédoublement fonctionnel - duplication of functions” of national administrative authorities, since now their obligations not only are derived from national law, but also from European law. However, this matter does not directly influence the institutional structure of the member states, which as a rule remains intact. Member States must decide which administrative authority has the power to exercise the authority granted through the internal normative acts, in order to fulfill the obligations of the European Law.

It is quite understandable that these obligations cannot be avoided by addressing national institutional autonomy. Finally, national institutional structure cannot be used as an excuse to ensure misuse of European law. Member States are not allowed to justify failures based on national provisions, or by including also, for example, the rules over the separation of powers and competences of various organs. Obligations of Member States as a subject always apply, regardless of the institutional freedom their internal organs may have.

The same idea clearly stands following the case law over the infringement procedure of Article 258 TFEU (ex Article 226 EC). Obligations on Member States are transferred over the states per se, and “the obligation of a Member State under Article 226 arises despite the agency of the State, the action or inaction of which is the cause of the failure to fulfill its obligations, even in the case of an independent constitutional institution”.

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18 This is a constant case of the Court. See e.g. Case 77/69 Commission vs. Belgium, 1970, ECR 237 or Case 17/85 Commission vs. Italy, 1986, ECR 1199. See also carefully the Conclusion of Geelhoed in Case C-129/00, Commission Vs. Italy, and in particular p. 55.
19 See also e.g. Case C-383/00 Commission vs. Germany, par. 18.
The reasons for the fact that Member States are responsible for the behavior of European law in national legal practices are numerous and of a political, practical and legal nature. Despite the fact that the concentration of powers at the level of Member States may be preferable for political reasons, it is clear that European institutions do not have the means to apply and implement themselves all the approved measures. Therefore the application of European law in general is made by authorities of the Member States: a decentralized application of European law by independent administrative authorities.

There are two basic assumptions of European law seem to be in contradiction with each other at first sight: they primarily consider only Member State as a unique entity, but despite this on the other hand they address the specific obligations to the local administrative authorities. The key to solve this contradiction or paradox can be found in the possibility that the central governments of the Member States have to supervise the administrative authorities. It is easily explainable and acceptable that the Member States themselves be responsible to the European Union for correctly respecting Costanzo obligation. After all, if the central governments are there to guide and supervise these authorities, do the latter have sufficient opportunities?

The choice of decentralizing the application of European law does not mean that the content of the institutional infrastructure of the Member States be set at a European level. In contrast, in principle, it is a matter of national law. The right of the European Union in principle is not concerned with the question of which authority takes the required measures to meet the obligations of the Member State under European law, or which procedures of the internal law are applicable. This is often referred to as the principle of procedural autonomy of national institutions.

Given the principle of national institutional autonomy, each member state is free to determine independently its internal organization. Herein is also involved the separation of powers and duties between administrative authorities in all Member States. However, Costanzo obligation, applies to all administrative authorities in all Member States. Consequently, any administrative authority, in case of conflict with the provisions of European law, is bound to set aside provisions of national law which conflict with them by not applying them. Moreover, Member States have the general obligation to actively promote respect for the European Law. However, the fact that the Member State is responsible to the European Union for any breach of this obligation leads to the question of whether Member States are able to oversee their administrative authorities?

If there are enough powers at central level to oversee the administrative authorities within Member States in this regard, it can be more easily accepted that Member States are solely responsible for the correct application of European Law. However, if opportunities for supervision are very limited, a clear conflict may exist at the national level.

It is quite crucial to clarify the opportunities for surveillance by the central government in respect of acts or decisions adopted by the administrative authorities. In other words, the possibilities of supervision are related to cases in which the central government will be forced out as mentioned above, to force an independent administrative authority (central or local) to amend an adopted act or decision, so as to perform non-application of national law in favor of a directly effective provision of European law which is incompatible with the provisions of national law.

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4. Important Issues and Necessary Measures to be Adopted by National Administration in Candidate Countries like the Republic of Albania

a) Analyzing the internal legal order in the Republic of Albania, there should be some important conclusions to keep in regard for applying in the internal administrative system the “Constanzo Obligation”. Especially regarding the question of independent administrative authorities, and the state general responsibility for EU law application some issues raise up, to be prevented before the final membership.

b) The Albanian legal system, very similar to the French system of local government supervision by the Prefect (le Préfet)\(^{24}\) is a very useful and adaptable on legality supervision. This is a practical instrument which analyzes the legality of the local administrative bodies’ acts, even in the case the illegality derives as a result of a confront with EU Law. Meanwhile, regarding the internal organization of the Prefecture, e special EU office should be active. It will be necessary for the coordination, community supervision, and for local government bodies’ information. Even now with the SAA entered actually into force that particular office should be active. Also, further modifications regarding this aspect should occur on the law “On the prefect” and to the law “On the organization and operation of Local Government”\(^{25}\).

c) As to the supervision on central administrative independent authorities, it is particularly clear that a specific coordination office working in the Ministry of Integration should be active at a parliamentary level and that of the Council of Ministers. This office should control the EU legitimacy of normative acts produced by the Parliament, the Council of Ministers and other administrative independent or not independent authorities.

d) The activisation of specific Administrative Courts with the new law 49/2012 constitutes a very important system of control on the legality of the activity of the public administration. The judgment for the legality of the administrative activity will be a strong support to the central government on controlling local administrations. At this point a special power of judiciary control should be given to the State Attorney. State Attorney Office should be empowered to open cases in front of administrative courts, in case any administrative authority (local or central, independent or not) produces acts in contrast to the EU law.

e) A special power of supervising should be given to other independent organism exercising administrative control like state’s Ombudsman and High Audit Authority. Specialized offices of EU law supervision, and also of information on EU law, are necessary to be founded and this should be empowered by specific law in this pre accession phase.

f) Regarding the issue of independence violation as to a vertical control (local government bodies’) and horizontal control (independent central bodies’), we should notice that supervision on correct EU law application is a legality control. Controlling legality is exercising a very important principal as the one of legality principal. So there should be no independence violation but rule of law, as to a reciprocal control between administrative bodies’ acting locally or centrally.

\(^{24}\) Law no. 8927 date 25.07.2002 “On the Perfect”, as modified.

\(^{25}\) Law no. 8652 date 31.07.2000 “On the organization and operation of local government”, as modified.
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Case law


2) ECJ. Case 93/71 Leone-sio, 1972, ECR 287.

3) ECJ. Decision dated 12.06.1980 “Germany v. European Commission”.

4) ECJ, Case 17/85 Commission vs. Italy, 1986, ECR 1199.


8) ECJ, Case C-383/00 Commission vs. Germany.

9) ECJ, Case C-198/01 Consorzio Industrie Fiammiferi (CIF ), 2003, ECR I-8055.


11) Decision no. 3 date 5 February 2009 of the Constitutional Court of the Republic of Albania.

GOOD ADMINISTRATION AND GOOD GOVERNANCE AS THE KEY ELEMENTS OF THE EUROPEAN ADMINISTRATIVE SPACE

Ivan KOPRIĆ*

1. Introduction

The paper analyses the concepts of good administration and good governance on the example of the functioning of the European Ombudsman. The main achievements of the Ombudsman are concentrated around the preparation and application of the Code of Good Administrative Behaviour and stipulation of the right to good administration and several additional rights of citizens within the European Charter of Fundamental Rights. Good administration and good governance are the key elements of the European Administrative Space. All three concepts have their normative and empirical sides and are used in literature interchangeably.

However, European Administrative Space has recently become the dominant concept in administrative theory and doctrine, for analysis of the phenomenon of administrative convergence in Europe, thus subsuming both good administration and good governance as narrower concepts with somewhat different focus. Thus, good administration has predominantly normative connotations, referring mostly to the respective rights, their elements and way of further normative development. Good governance has got an increasingly pivotal role in doctrinal discussions about the new type of relationships between government, citizens and society as a whole, and is more oriented to policy making than to policy implementation.

In such a vein, good administration has been attracting legal meanings, good governance has had doctrinal connotations, and the European Administrative Space has got theoretical significance. However, dissection of these notions is still a rather complex and sensitive task which this paper can only initiate.

2. European Administrative Space

European Administrative Space (EAS) is based on the idea of administrative harmonization and convergence of traditional models of public administration1 and traditional administrative solutions. It is a space with approximately equal level and quality of public services for all European citizens and other people. The EAS is grounded on and comprises a set of values and social and citizens’ expectations, governance principles and standards of public administration organisation and functioning defined by law, whose application is supported by the appropriate procedures and accountability mechanisms. As a theoretical notion, it has several different meanings: geographic, normative, cultural, political, sociological and comparative-administrative (more in: Koprić et al., 2012: 132-135).

The EAS is created and driven by EU institutions, the Council of Europe, the OECD-Sigma, and other European players. It is facilitated by civil servants’ learning in the process of sharing best practices. The EAS is not based only on formal regulations: it is fuelled by the expectations of European citizens, civil society, economic and other non-governmental actors (see also Ulusoy, 2009: 364-367). Those expectations give propellant to the process of Europeanization and make the EAS a viable and live concept.

* Ivan Koprić, PhD, Full professor of Administrative Science, University of Zagreb, Faculty of Law, e-mail: ikopric@pravo.hr

1 There are Westminster or Anglo-Saxon, Weberian or German, Napoleonic or South European, and Scandinavian or Nordic models of public administration in Europe. More in: Koprić et al., 2014: 40-45.
The convergence seems to be slow, but constant. There are continuous efforts of the Council of Europe, the EU and the OECD-Sigma, to create, systematize, codify, promote, and impose (if possible) common European administrative principles and standards. These principles and standards are undergoing the process of sedimentation through everyday administrative functioning and practice. There are many fields of harmonization and convergence, with administrative procedures and administrative justice being some of them.

Convergence and ever increasing similarities did not use to be the result of imposing harmonisation policy but of almost inevitable mutual adjustments among the EU member states. However, after the Lisbon Treaty and its Charter of Fundamental Rights this is not completely true: the right to good administration represents the main instrument of legally induced harmonization in the field.

Although it can be said that administrative convergence is “a restructuring and adjustment rather than a homogenizing Europeanization” (Page, 2003: 175) and that it is a pretty slow process, the effects are visible and observable in various administrative fields, tempting European citizens to demand and expect even more, and in a much faster manner. In parallel with top-down Europeanization, bottom-up Europeanization, with citizens in the centre, has to be recognized (see also: Checkel, Katzenstein, 2009: 10).

Within the EAS, Europeanization of policy formulation is going parallel with Europeanization of policy implementation. European integrated administration (Hoffmann, Türk, 2009) is competent for the implementation of common and harmonized EU public policies and EU acquis communautaire. European integrated administration is structured as a network, with the Commission and the EU agencies (“EU bureaucracy”) as the network nodes and with national public administrations as the main field force. Apart from vertical line (EC – EU agencies – national administrations), there are multiple horizontal networks of cooperation between national bodies and other actors in charge of information sharing, planning, coordination, regulation (independent regulators) and implementation.

3. Good Governance

Governance can be treated as a theoretical and as a doctrinal concept. Theoretically speaking, for analytical purposes, it can be divided into two main, opposite types: hierarchical, more vertically-oriented, and network, more horizontal type. Thus, on the basis of extensive empirical literature research, Hill and Lynn concluded that “… shift away from hierarchical government toward horizontal governing … is less fundamental than it is tactical: the addition of new tools or administrative technologies that facilitate public governance within hierarchical systems” (quoted in: Frederickson, 2005: 298).

Frederickson, also, urges that the concept of governance should be narrowed, because it is “imprecise, woolly, and, when applied, so broad that virtually any meaning can be attached to it” (Frederickson, 2005: 289). He identifies three types of governance as “a kind of public administration”: inter-jurisdictional governance, third-party governance, and public nongovernmental governance.

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2 For further information about theoretical debate on governance and its implications see: Bevir, 2007; Pierre, 2000, etc.

3 “The critical point here is that instead of governance replacing public administration, governance is a kind of public administration.” Frederickson, 2005: 295.
At the end, he states that public administration “is the basis of policy implementation in government, and government is an essential precondition of governance” (2005: 299). In other words, there is no governance without government (2005: 298).

Governance can be seen as a continuum with classic, hierarchical government at one pole, and horizontal governance at the other. Such a continuum can show the degree of governance development towards the horizontal pole, or, at best, a stage in the departure from the vertical government type of managing public affairs.

Governance can be defined as a type of administrative doctrine, too. An administrative doctrine is a system of ideas about desirable ways of operating and prescriptions about good practices, grounded on dominant values and systematised experiences, comprising standards with regard to organisation, functioning, regulation, management, etc. in public administration. Administrative doctrines are themselves influenced by social, economic, political, demographic, and other circumstances. The main pillars of administrative doctrines are the dominant values.

Contemporary administrative development is characterised by two main and very influential administrative doctrines – the new public management (NPM) and good governance. The United Nations (UN), the EU, OECD, the IMF, and the WB5 have begun advocating good governance. The new doctrinal orientation emphasises the role of citizens and civil society, transparency, legitimacy, responsibility, efficiency, human and citizens’ rights, the rule of law, better quality of the public services, the implementation of modern information-communication technologies, and better human resources management. Citizens are seen as partners who significantly contribute to the final results of public administration’s activities. Citizens need to be informed and consulted; they have to participate in the creation of public policies and in administrative and other public processes (see for example: OECD, 2001).

Along with the strengthening of the institutional capacity, the doctrine of good governance states that it is necessary to renew the democratic political legitimacy of the modern countries. It also calls for the strengthening of the policy capacity in public administration, i.e., of its ability to analyse and create public policies. It claims that good results can be achieved through cooperation, consultation, and synchronisation between citizens, local and central governments. Only well-balanced and widely accepted public policies have chances to result in efficient economic and social development. Some will say that “good governance is … a combination of democratic and effective governance” (UNDP, 2002: 1), while others would stress that good governance is “transparent, effective, participative, accountable, responsive and responsible” (Fraser-Moleketi, 2009: 7).

Among the principles of good European governance, the EU emphasises openness, participation, responsibility, effectiveness, and coherence (EC, 2001). However, other principles of European governance have been codified in several documents of various legal significance, from legally binding to less strict, policy, institutional and professional documents. Good governance serves, in practical terms, as the benchmark for the evaluation of administrative functioning in EU member states, as well as in candidate countries. Codification and advocating of good European

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4 Inter-jurisdictional governance means inter-jurisdictional and inter-organizational cooperation that is vertical and horizontal and relies on voluntary participation in certain specific policy area (the examples are environmental inter-jurisdictional governance or national defence inter-jurisdictional governance). Third-party governance extends “the state or jurisdiction by contracts or grants to third parties, including sub-governments” (the first party is elected democratic legislative authority; the second is executive administration or public administration). Public nongovernmental governance is characterised by the substantive autonomy of actors outside government engaged in policy making representing the interests or well-being of citizens. Frederickson, 2005: 294-295.

5 As early as in 1991, the WB organized a conference devoted to ‘good governance’. McNutt, Pal, 2011: 442.
CHAPTER ONE • THE EUROPEANIZATION OF ADMINISTRATIVE LAW

governance principle, legal and administrative standards and best administrative practices have to be assigned in particular to the European Ombudsman.

4. European Ombudsman and Good Administration


The Ombudsman shall perform his duties with complete independence, in the general interest of the Communities and of the citizens of the Union. He may not be engaged in any political or administrative duties, or any other occupation. In his personal status (remuneration, allowances and pension), he is equal to the judges of the Court of Justice. Only Court of Justice can dismiss him, at the request of the European Parliament, if he not longer fulfils the conditions required for the performance of the Ombudsman duties or if he is guilty of serious misconduct. He may resign from duty on his own will, too.

The Ombudsman has secretariat with officials and servants. He appoints the principal officer of the Secretariat. For more efficient and better performance, he can cooperate with authorities of the same type in the member states, as well as with other member states' institutions and bodies in charge of the promotion and protection of fundamental rights. The European Network of Ombudsmen, established in 1996, serves in that regard.

The European Network of Ombudsmen consists of national and regional Ombudsmen and similar bodies of the member states, candidate countries and of Iceland and Norway, together with the European Ombudsman and the Committee on Petitions of the European Parliament. There are almost a hundred offices in 35 European countries linked to the Network. The Network adopted the Statement in 2007, wishing to make the EU dimension of the work of ombudsmen better-known and to clarify the service they provide to people who complain about matters within the scope of EU law. It is important to note that national and regional ombudsmen deal with complaints against public authorities of the member states, including those under the scope of EU law, while the European Ombudsman is competent for complaints against the EU institutions.

The European Ombudsman carries out inquiries into maladministration in the functioning of the Union's institutions, bodies, offices and agencies. The judicial role of the courts is outside of the Ombudsman's competencies. Everyone can act as a complainant: he/she should not be personally affected by the maladministration and should not have any special interest in the case. Article 43 of the Charter of Fundamental Rights entitles any citizen of the Union and any natural or legal person residing or having its registered office in a member state to refer to the Ombudsman cases of maladministration in the activities of the institutions, bodies or agencies of the Union, with the exception of the European Court of Justice and the High Court acting in their judicial role. The Ombudsman also conducts inquiries on his own initiative.

Establishment of a broad concept of maladministration, encompassing legality, fundamental rights and principles of good administration, is considered as one of the main achievements of the

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Regional Ombudsman are from Austria (2), Belgium (3), Germany (20), Italy (15), Spain (10), Switzerland (5) and the United Kingdom (4).
European Ombudsman. In the period 1993-2010, he had processed more than 36,000 complaints and completed more than 3,800 inquiries into possible maladministration cases.

Besides empowering citizens and increasing respect for their rights through investigating maladministration cases, the Ombudsman aims at promoting administrative culture of service. For that purpose in 2012, he drafted and elaborated, five public service principles for the EU civil service: Commitment to the EU and its citizens, Integrity, Objectivity, Respect for others, and Transparency. Through these principles of good EU civil service he aims to promote good administration, too.

The main instrument of establishing and promoting good administration and good governance is the European Code of Good Administrative Behaviour. The Code was drafted in 1999 by the Ombudsman himself, and adopted in 2001 by the European Parliament. The Ombudsman Söderman in his presentation of the Code to the Parliament accentuated, among other issues, the importance of good administration for the democratic and legitimate governance (good governance). It is also interesting to note that the Charter of Fundamental Rights with the right to good administration and the right to refer to the Ombudsman was prepared and proclaimed almost simultaneously, in 2000.7 Certain authors believe that the original role of the Code was to further elaborate the meaning of the right to good administration stipulated in the first version of the Charter (Mendes, 2009; Kanska, 2010; etc.) – the same was stressed in the foreword to the Code written by the second Ombudsman Diamandouros.

Be that as it may, it is obvious that the European Ombudsman, having a task to cope with maladministration, concentrates on its positive side; on defining good administration. This reflects his proactive attitude in that respect. In addition, he attempts to raise the quality of EU administration and the quality of governance within the EU. This was clearly stated in the Strategy of 2010: “the Ombudsman aims to help the Union to deliver on the promises it has made to citizens in the Treaty of Lisbon concerning fundamental rights, enhanced transparency and greater opportunities for participation in the Union’s policy making”. Although administration and governance are firmly interconnected, (good) administration is more connected with the implementation and (good) governance with the policy making.

5. Maladministration and Good Administration as Defined by the Code of Good Administrative Behaviour

Maladministration is opposite to good administration: it is the failure of a public body to act in accordance with the binding rules and principles, i.e. normative expectations of their relevant environment (citizens, businesses, etc.). The basic principle is the principle of legality, accompanied by other principles and rules developed predominantly in the Code of Good Administrative Behaviour. The Code encompasses 27 articles. Majority of them (24) are stipulating various principles of good administration.

Lawfulness (Article 4) says that the official shall act according to law and apply the rules and procedures laid down in EU legislation. Decisions which affect the rights or interests of individuals shall have a basis in law and their content shall comply with the law.

Equality and non-discrimination has been stipulated in Article 5. Citizens and other subjects that are in the same situation shall be treated in a similar manner. Differences in treatment have to

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7 Charter of Fundamental Rights entered into force along with the Lisbon Treaty, on 1st December 2009. In this context, Articles 41 on the right to good administration, 42 on the right to access to documents, 43 on the Ombudsman and 44 on the right to petition are especially important. More in: Koprić et al., 2011.
be justified by the objective relevant features of the particular case. Any unjustified discrimination shall be avoided.\(^8\)

Proportionality is one of the basic principles in the Code, stipulated in Article 6. Measures taken by a decision shall be proportional to the aim pursued. Restrictions of the rights and charges imposed on the citizens and other subjects have to be in a reasonable relation with the purpose of the action pursued. The balance between the interests of private persons and the general public interest has to be respected when taking decisions.

Abuse of power is prohibited by the Code (Article 7). In parallel, the officials shall be impartial and independent: they shall abstain from any arbitrary action adversely affecting members of the public, as well as from any preferential treatment on any grounds. Their conduct shall never be guided by personal, family, or national interest or by political pressure. The official shall not take a part in a decision in which he or she, or any close member of his or her family, has a financial interest (Article 8). The official shall act not only impartially, but fairly and reasonably as well (Article 11).

Courtesy and correctness are important characteristics of the officials (Article 12). The Code stipulates that an official shall be service-minded, correct, courteous, accessible, and helpful. He or she shall reply as completely and accurately as possible to questions or direct the citizen to the appropriate official. In a case of error which negatively affect the rights or interests of a citizen, the official shall apologise, expeditiously correct the negative effects, and inform the citizen about right of appeal.

The official shall reply in the same language in which a citizen sent his or her letter, which shall be applied as far as possible to legal persons (NGOs and companies), too (Article 13). Every letter of complaint shall receive an acknowledgement of receipt within two weeks, except if a substantive reply can be sent within that period, or if letters or complaints are abusive (because of their excessive number or because of their repetitive or pointless character). The acknowledgement or reply shall contain information about the responsible official (name and telephone number) and about the service to which the responsible official belongs (Article 14). If a letter or complaint is addressed to a body which is not competent, it has to be transferred to the competent service or institution without delay. Sender of the letter or complaint has to be informed about this transfer and the name and telephone number of the responsible official. Sender has to be warned about errors or omissions in documents sent and has to have an opportunity to rectify them (Article 15).

The officials shall be consistent in their administrative behaviour, following the institution’s normal administrative practices, unless there are legitimate grounds for departing from them in an individual case. Where such grounds exist, they shall be recorded in writing. Uniform administrative practice results in the development of legitimate and reasonable expectations of public, which have to be respected by officials (Article 10).

Decisions have to be objective, based on relevant factors and their importance for a decision (Article 9). Decisions have to be made within a reasonable time-limit, without delay, and in any case no later than two months from the date of receipt. Only complexity of the matters can cause prolongation. In such a case, the official shall inform the interested citizen about the postponement, solve the case and communicate a decision in the shortest possible time (Article 17).

The relevant facts and the legal basis shall be stated as the grounds for the decision which may affect the rights of interests of a private person. The official shall avoid making decisions which are based on brief or vague grounds, or which do not contain an individual reasoning. Individual

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\(^8\) The Code mentions possible discrimination bases: nationality, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation.
reasoning can be obtained also in the similar cases with similar decisions in which standard replies are sent, if the citizen expressly requests it (Article 18, duty to state the grounds of decisions). At every stage in the decision-making procedure, the official shall ensure that the rights of defence are respected, because individuals have the right to be heard. Also, individuals have the right to make statements in written form (comments) and, when needed, in oral form (oral observations) before the decision is taken (Article 16, right to be heard and to make statements).

Every decision shall contain an indication of appeal possibilities including information about the nature of the remedies, the appeal bodies and the time-limits for lodging them. Decisions shall in particular refer to the possibility of judicial proceedings and complaints to the Ombudsman (Article 19). Decisions have to be notified to the persons whose rights or interests are affected in writing (Article 20).

Personal data shall be protected by respecting the privacy in accordance with the relevant EU regulations. The official shall avoid processing personal data for non-legitimate purposes or the transmission of such data to non-authorised persons (Article 21).

In parallel, citizens have the right to get clear and understandable information from responsible official. When appropriate, the official shall give advice on how to initiate an administrative procedure within his or her field of competence. Demands for information can be submitted orally or in writing. Information of confidential nature cannot be communicated: instead, the reasons why it cannot be communicated shall be indicated (Article 22). Furthermore, citizens may submit a request for public access to documents in accordance with relevant EU regulations (Article 23).

Each institution’s department shall keep adequate records on their incoming and outgoing mail, of the documents received, and of the measures taken (Article 24).

The institution shall take effective measures to inform citizens of the rights ensured by the Code, which includes publication of the Code in electronic form on its website. The European Commission shall publish and distribute the Code to citizens in the form of brochure on behalf of all institutions (Article 25).

Citizens have the right to complain to the European Ombudsman in each case when any failure of an institution or official to comply with the principles set out in the Code occurs (Article 26). Each institution shall review its own implementation of the Code after two years of operation and shall inform the Ombudsman on the results of its review (Article 27).

All the principles from the Code can be systematised into three large groups:

a) general principles of administrative law and public administration: lawfulness (Article 4), non-discrimination (Article 5), proportionality (Article 6), absence of abuse of power (Article 7), impartiality and impendence (Article 8), data protection (Article 21), access to information and documents (Articles 22 and 23), and right to complain to the Ombudsman (Article 26);

b) principles of administrative procedure and administrative functioning in general: objectivity (Article 9), legitimate expectations and consistency (Article 10), fairness of treatment (Article 11), right to use the language of the citizen (Article 13), acknowledgement of receipt and indication of the competent official (Article 14), obligation to transfer to the competent service of the institution (Article 15), right to be heard and to make statements (Article 16), reasonable time-limit for decision-making (Article 17), duty to state grounds of decision (Article 18), indication of the possibility of appeal (Article 19), and notification of the decision (Article 20).\(^9\)

\(^9\) Some of them are now included in the Charter of Fundamental Rights.
c) service ethics standards: courtesy (Article 12), keeping records on activities and correspondence (Article 24), the need for publicity of the Code (Article 25), and duty to review operation (Article 27).

Possible maladministration encompasses various cases, such as late payment for EU projects, publishing inaccurate information, failure to reply to a letter, unjustified refusal to give out a document, inadequate record keeping, inadequate consultation, broken promises, etc.

It is important to recognize that the Code connected with the right to good administration from the Charter of Fundamental Rights forms a system of basic principles establishing pillars of good administration and good governance. It is applicable to both policy making and to the frame of policy and EU law implementation. It is applicable to issuing individual decisions and to adopting general acts. The Code stipulates procedural and substantive rights of citizens. It covers all phases and all situations in the functioning of the EU institutions, bodies and agencies. Moreover, it covers situations when national authorities serve as the parts of so-called European integrated administration. Its influence is general, wide and strong. It is primarily a benchmark and an ethical code. However, since it is elaborating the right to good administration from the Charter, it gets binding effects, too (see also Mendes, 2009). The Code stands as a template for any other administration, has symbolic meaning and can inspire other institutions, bodies and public administrations, including national.

The persistent work of the European Ombudsman and of the Parliament resulted in the effort to prepare the first European Law of Administrative Procedure (compare also Craig, 2013). On 15th January 2013, the European Parliament adopted the Resolution 2012/2024(INL) with recommendations to the Commission on a Law of Administrative Procedures of the European Union. Integrative and harmonizing effects of such a legal document are clearly stated in the Resolution: it stresses that the Law could strengthen a spontaneous convergence of national administrative law and thus strengthen the process of integration, and could foster cooperation and exchange of best practices between national administrations and the Union’s administration.

The following principles are listed as the main pillars of the new Law: lawfulness, non-discrimination and equal treatment, proportionality, impartiality, consistency and legitimate expectations, respect for privacy, fairness, transparency, and efficiency and service. The proposed Law is under scrutiny and preparation of the European Commission.

**Conclusion**

The EAS as the space with approximately equal level and quality of administrative and public services for all European citizens and other people has been developing on the ideas and values of good governance and is firmly grounded on the concept of good European integrated administration. Judicial protection of citizens’ rights before European courts is part of the concept, too. Case law, generated by the European Court of Justice and the European Court of Human Rights, offers and strengthens several basic procedural standards such as equality of arms, right to be heard, proportionality, reasonable time frame for solving the cases, etc. Both elements, good administration and judicial protection, are parts of the complex system of legal protection of citizens and other subjects from maladministration.

Maladministration includes various examples of citizens’ rights violations and harmful actions of European institutions, bodies and agencies as well as similar violations and actions of national public administrations when they act as the parts of the European integrated administration. However, through activities aimed at sharing best practices, benchmarking, implementation of
conditionality policy and other instruments and channels, the idea of harmonizing prevention and healing maladministration is getting more and more support throughout Europe.

Proactive activity, efforts and enthusiasm of the European Ombudsman who has worked on identification, codification and development of citizens’ rights with regard to European institutions and administration has resulted in adoption of the Code of Good Administrative Behaviour, inclusion of the right to good administration into the Charter of Fundamental Rights, necessary improvements in relevant stipulations of the Lisbon Treaty, and preparation of the first European Law of Administrative Procedure.

Croatia has tried to acquire the European standards and to function within the European Administrative Space (more in: Koprić, 2014). Predominant approach is normative, legalistic and bureaucratic. In spite of that, certain simplification of administrative procedure, introduction of two-tier administrative justice, acknowledgement of other European legal standards including those from the Charter of Fundamental Rights and many other adjustments have been made. However, efforts of the European Ombudsman, standards of the Code of Good Administrative Behaviour and preparation of the European Law of Administrative Procedure have not attracted enough attention of the scientific and professional community so far.

Croatia is responsible not only to its own citizens, but also to the European citizens, member states and the EU itself for the implementation of EU law and for ensuring the same legal environment for undisturbed mobility of capital, goods, services and people. Croatian legal and administrative tradition accompanied with adjustments during the Europeanization phase ensures many standards from the Code of Good Administrative Behaviour, in formal sense. However, much is to be done in administrative practice.
Bibliography

CHAPTER TWO

THE IMPACT OF THE LISBON TREATY ON ADMINISTRATIVE LAW
TREATY OF LISBON – ON ITS STRUCTURE AND ASPECTS OF INFLUENCE ON ADMINISTRATIVE LAW AND PUBLIC ADMINISTRATION

Boris LJUBANOVIĆ

After the so called Constitutional Agreement of the European Union (or so called first Constitution of the European Union) signed in Rome on October 29, 2004 had not become effective due to a negative outcome of the referendum on its ratification in France and the Netherlands in 2005, Conference of the governments of the member states made and agreed on the text of the new agreement. It was signed in Lisbon on December 13, 2007, and it is called Reform Treaty or Treaty of Lisbon. It became effective on the 1st of December, 2009, after being ratified by all the member states.\(^1\) As opposed to the Constitution Agreement that opted for replacing of all effective Founding Agreements in the new legal foundation of the European Union, Treaty of Lisbon was for altering of the Founding Agreements, i.e. Treaty on European Union and Treaty on European Community. On that occasion, the below stipulated treaty gets the name of Treaty on the Functioning of the European Union, which means that only the name European Union is kept to have the right of the legal entity.\(^2\) According to Article 1, Paragraph 3 of the Treaty on European Union “Union is based on this Treaty and on the Treaty on the Functioning of the European Union… These two Treaties have the same legal power. The Union replaces and takes place of the European Community”.

Among the changes brought by the Treaty of Lisbon, there should especially be pointed out those which refer to the strengthening of position and role of the European Union institutions. As it is known, the Treaty on European Union was signed in Maastricht on February 7, 1992 (it became effective on November 1, 1993) and it was based on three so called columns, with only the first column (previous European Community) had the supranational characteristics and therefore larger influence on the European Union bodies at decision making, while the second column (cooperation in foreign and security affairs) and the third column (judicial and police cooperation)\(^3\) were based on the mutual cooperation which provided the opportunity of a larger role for the member states in decision making, all the way until declining of applying of the stipulated decision.\(^4\) Treaty of Lisbon joined the third column with the first column, which means extending of the super national method of decision-making. Strengthening of the European integration and creating of “even closer union” are contributed by other changes foreseen by the Treaty of Lisbon, among which there are extending of competence of the European Court\(^5\), and within the third column issuing of directives, instead of provisional decisions.

Starting from the understanding that there should be clear distinction of competence between the Union and the member states, Treaty of Lisbon stipulates the areas with the exclusive competence of the Union, shared competence with the member states, and the areas where they have the competence of supporting, coordinating or amending of activities of the member states. According to Article 3 of the Treaty on Functioning of the European Union, the Union has exclusive competence over the customs union, determining of rules for market competition necessary for

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\(^1\) Deciding by referendum for the Treaty of Lisbon was planned only by Ireland, in their constitution. They accepted the Treaty only in the repeated referendum in October, 2009, after the guarantees issued to them by the European Council.

\(^2\) Comp. of Article 47 of the Treaty on European Union.

\(^3\) The third column was renamed in 1997 to Police and Judicial Cooperation in Criminal Matters – PJCCM because a part of their duties was transferred to the first column.

\(^4\) It is so called out clause.

\(^5\) The competence of the European Court was extended to cases from the field of Judicial and Police Cooperation, with exception stipulated in Article 276 of the Treaty on Functioning of the European Union.
functioning of the internal market, monetary policy for the member states which have Euro as a currency, preserving of sea biological resources within the common fishery policy and common trading policy. Exclusive competence of the Union also comprises making of an international treaty, when its creation is foreseen by the legal act of the Union, or if such an act is necessary in order to enable the Union to perform their internal competence or in a measure that creating of it might influence the common regulations or alter the scope of them. Shared competence between the EU and the member states is present, according to Article 4 of the Treaty on Functioning of the European Union, in internal market, social policy for the aspects stipulated by this agreement, economic, social and territorial cohesion, agriculture and fishery, except in preserving of biological resources, environment, consumer protection, transportation, transeuropean networks, energy, freedom, safety and justice and common care for safety in public health for the aspects stipulated by this agreement. The Union has the competence to support, coordinate and amend the activities of the member states according to Article 6 of the Treaty on Functioning of the European Union in the fields of protection and improvement of health of people, industry, culture, tourism, sport and education of youth, civilian protection and administrative cooperation.

When it comes to exclusive competence of the Union, only the Union can make and stipulate the legally binding acts, while the member states can do it independently only if authorized by the Union. When it comes to shared competence, legally binding acts in that field can be brought and stipulated both by the Union and member states. Member states perform their competence in the extent in which the Union does not perform their competence, or they perform it again in the measure where the Union decided to cease performing their competence.6

Treaty on European Union formulates the principles that refer to the distribution of competence between the Union and member states as follows: principle of allocation, principle of subsidiarity and principle of proportionality. Principle of allocation requires the Union to act only within the competencies awarded to it by the member states through the treaties, in order to accomplish the goals stipulated by them. Competences that are not allocated by the treaties to the Union are held by the member states (Article 5, Paragraph 2). Principle of subsidiarity requires the Union to act in the areas which are not in their exclusive competence only and in the extent in which the goals of the proposed activity of the member state cannot be sufficiently performed at the central, regional or local level, but due to the scope or effect of the proposed activity, they can be performed in a better way on the level of Union (Article 5, Paragraph 3). Principle of proportionality sets the requirement that the contents and form of performance of the Union does not exceed what is necessary to perform the goals of the Union (Article 5, Paragraph 4). The institutions of the Union act in a way stipulated by the protocol on application of principle of subsidiarity and proportionality. This Protocol regulates the liability of delivering the draft legal acts of the Union to the national parliaments at the same time when they are delivered to legislator of the Union. All such drafts must contain a detailed statement that enables the evaluation of harmonization with the principles of subsidiarity and proportionality. That statement has to contain the assessment of the financial influence of the proposal, and in case of the directive, the assessment of its effects onto the regulations which the member states have to accept, including, if necessary, regional legislature. The reasons for conclusion that the goal of the Union can be better performed at the level of Union is explained by qualitative and, where possible, quantitative indicators. Thus, it is especially considered the necessity for every burden, both financial and administrative, for the Union, national governments, regional or local authorities, economic entities and citizen is taken to the lowest possible extent and to be in accordance with the goal that is to be performed. Each national parliament or each house of the national parliament can, within eight days to the day of

6 See Article 2, Paragraph 1 and 2 of the Treaty on Functioning of the European Union.
delivering of the draft of the legal act in official languages of the Union send to presidents of the European Parliament, Council and Committee clear statement where they stipulate why a certain draft is not in accordance with the principle of subsidiarity.\(^7\)

The Court of the European Union decides on violation of the principle of subsidiarity by a legal act of the Union, in the procedure which, in accordance with Article 263 of the Treaty on Functioning of the European Union, is started or is reported about by the member states according to their establishment on behalf of the national parliament or its house. The Regional Committee can also start the procedure, if at stipulating of the respective act, the Treaty on Functioning of the European Union foresee counseling with that Committee.\(^8\)

The distribution of jurisdiction between the European Union and the member states also reflects to the distinguishing of jurisdiction of the European Union entities and the administrative entities of the member states, thus reflecting to forming of the European administrative area. Namely, from our presentations on jurisdiction of the European Union it is visible that it has no authority to create the model of structuring of public administration and to require the member states to apply it. It should also be noted that acquis communautaire of the European Union does not contain specific regulation on organizing of public administration of the member states. In other words, there is no final European solution on how to reach a modern and successful public administration. The principle of administrative autonomy of the member states was accepted by the stipulation of Article 291, Paragraph 1 of the Treaty on Functioning of the European Union, which says: “Member states issue all the measures of the national law necessary for implementing of the legally binding acts of the Union”\(^9\). This is the case of “implementation deficit” (Koprić) because the Union has no authority to organize public administration of the member states, although those public administrations implement its binding acts, with the requirement that this implementation has to be harmonized and efficient.

The aforementioned deficit was attempted to be removed or mitigated by the Articles 197 and 291 of the Treaty on Functioning of the European Union. According to stipulation of Article 197 that is called “Administrative cooperation”, the efficient implementation of the law of the Union by the member states, which is significant for the functioning of the Union, is considered the issue of mutual interest. The Union can support the efforts that the member states put into improving of their administrative ability to implement the law of the Union. Such activity can include making easier the exchange of information and public servants, as well as supporting of training programs. No member state has the liability to use that support. The European Parliament and Council, by deciding on orders in accordance with regular legislative procedure, thus stipulate the necessary measures, which exclude any harmonization of the law and other regulations of the member states. The mentioned stipulation provides the possibility of strengthening the administrative capacities of the national public administration that is improvement of its ability to implement the law

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\(^7\) The Protocol (namely Protocol no.2) on application of principle of subsidiarity and proportionality which is, like other protocols enclosed to the Treaty of Lisbon regulates the necessary number of votes of national parliaments which consider that the legal act is not in accordance with the principle of subsidiarity, when the draft act needs to be reexamined as well as the necessary number of members of the legislative entity (European Parliament and Council) which consider the same, when the draft legal act should not be considered anymore.

\(^8\) See Article 8 of the Protocol quoted in ref. 7

For the decisions of Court on violation of the principle of subsidiarity, see e.g. case 804/79 Commission v. United Kingdom (1981) ECR 01045; Case C-376/98 Germany v. European Parliament Council (2000) ECR I-8419, for the decision of complex issue whether some matter should be assessed at European or national level see V. Bogdamar, Federalism and the Nature of the European Union, in K. Nicolaidis, S. Weatherill (ed.) WHOSE EUROPE? NATIONAL MODELS AND DECONSTITUTION OF THE EUROPEAN UNION, Papers of a Multidisciplinary Conference held in Oxford in April 2003, pp. 49, 53.
of the Union. According to Article 291, Paragraph 2 and 3, when it is necessary to have unique conditions for the implementation for the legally binding acts of the Union, these acts transfer the implementation authority to the Committee or the Council in special, rightfully grounded cases and in cases from Articles 24 and 26 of the Treaty on European Union. For that purpose, European Parliament and Council issue the orders in accordance with the regular legislative procedure, and in advance determine the rules and general principles for mechanisms that the member states use to monitor the implementation of the implementation authorities awarded to the Committee.

Considerations on European administrative area mostly come to the certain principles of European public administration. Those are the following principles:

a) Rule of law means acting by the law with self-understanding of certain requirements regarding the contents of the Constitution. It is significant for operating of administration for it excludes arbitrary decision-making and requires persistent fulfilment of legality, distribution of power, right and non-bias administrative proceeding, court monitoring of administration, etc.

b) Reliability and predictability. Reliability means absence of arbitrary decision making in acting of public administration which is accomplished by obeying of the basic principle of the legal state (Rechtsstaat) – acting by the law and in accordance by the law. Predictability means that it can be assessed in advance, what the decision of the administrative bodies might be. Predictable, certain and clear administrative environment is especially appreciated by foreign and domestic investors. The application of these principles requires the fast administrative procedure and professional acting of administrative servants, which is accomplished by suitable system of recruiting and promotion and by right material rewarding.

c) Openness and transparency. Openness means that there have to be conditions for monitoring of the public administration from the outside, and transparency means that the administration itself has to be “transparent” for the possibility of controlling. Public interest is protected in that way, for it decreases the possibility of making of bad decisions, bribe and corruption, but also protects the interest of citizens, because it opens the possibility of disputing the administrative decisions.

d) Responsibility. Responsibility means: first of all that the administration has to make their decisions responsibly and must be able to clarify them and second of all, that the administration must be responsible for their decisions and for the ethical aspect of their work. That means the responsibility for the specific decisions and acts of the administrative officers. The supervision of the work of administration can be internal, inner (so called internal control) and external (by the prosecution, court, ombudsman and parliament).

e) Efficiency and effectiveness. These are not synonyms. Efficiency namely means “a good proportion between the utilized resources and the accomplished results”, and effectiveness means “the ability of public administration to accomplish the goals and find solutions for the issues of public interest”. The principle of efficiency is accomplished by larger practice of contracting, concessions and delegating of public services to private companies (roads, ports, telephones, waste, etc.) as well as by some public services entering the market and thus competing with the private sector.

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10 The aforementioned articles refer to common foreign and safety policy.
There are, however, other principles that are accepted in every democratic public administration, and they refer to public administrators and quality of regulations and procedures.

Principles that refer especially to public administrators are the following:

a) Non-biasness. This principle has two aspects. The first is that religious and public perspective of the public administrators, their social connections, personal and family interest must not influence the contents of administrative decisions and regulations in a sense of being bias. The other aspect of non-biasness is the intellectual independence of the public administrator in respect to their superiors. They have the right to reject the order of the superior officer that is clearly illegal, or if by performing it, there would be committed a legal offense.

b) Loyalty. This principle requires: first of all that the proponent is obliged to offer multiple possible solutions and indicate to consequences of the solutions, whenever possible; and second of all, that the orders to subordinate officers must be clear and non-ambiguous, with clearly defined mandate (competence) and means to be used.

c) No material interest. This principle manifests itself as absence of corruption by the administrative officers and absence of cumulating of public service and private activities that bring to conflict of public and private interest.

d) Discretion and refraining. This is principle that requires the officer of public administration to refrain from commenting of their professional work and stipulating of facts from the private domain of beneficiaries of the public services.

The principles that refer to quality of regulations and procedures are clarity, simplicity and the least possible formality. The main goal of the administrative activity is to serve the citizens, and that is only possible if the regulations are understandable, and the administrative procedure is simple with minimum formality.

For acting of public administration, there are significant stipulations of Article 2 and 6 of the Treaty on European Union. According to Article 2 “Union is based on the values of respecting the human dignity, freedom, democracy, equality, rule of law and respecting of human rights, including the rights of minorities. These values are common to the member states in the society with prevalence of pluralism, non-discrimination, tolerance, justice, solidarity and equality of men and women”. According to Article 6 “Union recognizes the rights, freedom and principles stipulated by the European Union Charter on basic rights…” (Paragraph 1); “Union adheres to European Convention for protection of human rights and basic freedoms…”

Regarding the fulfillment of requirements from the Treaty of Lisbon in Croatian public administration, the downsides mostly relate to administrative capacities i.e., the ability of public administration to fulfill all the requirements of implementing of European Public Policy and European acquis communautaire, primarily because the standards have not been adapted which refer to the system of officers (absence of politics in operation of officers and public administration, comprehensive training of public officers, system of career advancing, salaries of public officers and their status).

We cannot discuss here the European standards of administrative proceeding and administrative court proceedings. However, we can generally say that these standards have been adopted, at least in the normative level, in existing Croatian regulations that stipulate the respective matter.

11 For more details on the standards see Koprić, work cited in ref. 9, p. 160-174.

12 It is the General Administrative Procedure Act (Official Gazette 47/09) and Act on Administrative disputes (Official Gazette 20/10, 143/12).
Conclusion

Treaty of Lisbon from December 13, 2007 (became effective on December 1, 2009) significantly altered the Treaties on Foundation, i.e. Treaty on European Union and Treaty on European Community. The latter is called Treaty on Functioning of the European Union, thus remaining only the name of European Union to have the legal entity. Union is based on the aforementioned treaties which have the same legal value.

Treaty of Lisbon strengthens the competences of the institutions of the European Union, especially by joining of the third column (police and judicial cooperation in criminal matters) with the first column (previous European Community) by expanding of competencies of the European Court (to the cases from the area of police and judicial cooperation), as well as within the third column by issuing of directives instead of provisional decisions.

Starting from the requirement to clearly distinguish the competences between the Union and member states, Treaty of Lisbon foresees the areas with exclusive competence of Union, areas with shared competence with the member states and areas with the competence of coordination or amending of activities of the member states. The right of Union formulates the principles regarding the distribution of competencies between the Union and member states, and these are the principle of subsidiarity and the principle of proportionality. The respective principles are referred to in Protocol (no.2) on application of principle of subsidiarity and proportionality.

The law of the Union accepted the principle of administrative autonomy of the member states and therefore Union has no competence on creating or setting up of public administration of the member states. The same right stipulated that “the effective implementation of the rights of Union by the member states... is considered to be the issue of mutual interest”. Theory of administrative law speaks about the “implementation deficit”, which is attempted to be mitigated by the stipulations of Union, which set rules for the administrative cooperation with the purpose of strengthening of abilities of national public administration for effective and harmonized application of the legal acts of the Union.

Regarding Croatian public administration, it becomes up to the implementation of European law and European public policy if its practical operation follows the principle (general rules) of the European public administration (especially the principle of rule of law, responsibility and efficiency), and the principles which especially refer to public officers (principle of non-biasness, loyalty and no material interest), if and when the European standards of system of officers are met (absence of politics in operation of officers and public administration, systematic training of public officers, advancing in career, salaries of public officers and their status).
CHAPTER THREE

THE EUROPEAN CODE OF GOOD ADMINISTRATIVE BEHAVIOUR
THE PRINCIPLE OF GOOD ADMINISTRATIVE BEHAVIOUR IN THE
EUROPEAN UNION AND BOSNIA AND HERZEGOVINA

Zlatan MEŠKIĆ
Enis OMEROVIĆ

Abstract

A codification of European Administrative Law in form of a legally binding instrument has not
been initiated yet. The European Code on Good Administrative Behaviour as a non-binding proposal
by the European Ombudsman partly fills this gap, by taking over some of the functions of a binding
codification. The subjective right to good administration of Art 41 of the Charter of Fundamental Rights
of the European Union (ECFR) is the preliminary conclusion of the development from general principle
of EU law established by the ECJ practice and supported by Treaty amendments to the expressly codified
right. The principle of good administration is under this term unknown to the legislation of Bosnia and
Herzegovina. The legislator of Bosnia and Herzegovina has recently adopted a declaration according to
which the principle of good administration, inter alia on the ground of the Stabilisation and Association
Agreement, is set as a legal standard for the public administration in BiH. Many elements of the principle
of good administration contained in the European Code of Good Administrative Behaviour and Art
41 of the Charter of Fundamental Rights of the European Union (ECFR) can already be found in the
administrative law of Bosnia and Herzegovina.

Keywords: good administration; European Code on Good Administrative Behaviour; Charter
of Fundamental Rights of the European Union; administrative law of Bosnia and Herzegovina.

1. Codes on Good Administration in the EU

The Code on Good Administrative Behaviour (ECGAB) was proposed by the European
Ombudsman in 1999. The initiative is based on the Report of the Committee for Petitions of 1996,
wherein the Committee called the Commission to establish clear standards of service that European
citizens are entitled to expect from the Commission.1 The so called „standards“ should correspond
to general principles of administrative behaviour, which are legally assessable, and which give the
EU citizen the right to expect courteous consideration at all times and response to queries within a
published and acknowledged timescale.2 At first, the European Ombudsman proposed the ECGAB
to the EC institutions, bodies and agencies, which should primarily serve as a model for their own
codes on good administration. Even though the institutions, bodies and agencies mostly followed
the initiative by adopting their own codes on good administratitions, in many terms these codes
differ considerably from the model proposed by he Ombudsmen.3 Nevertheless, the European
Parliament approved in 2001 the ECGAB as it was proposed by the European Ombudsman and this

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1 Zlatan Meškić, PhD, Professor at the University of Zenica, Faculty of Law, e-mail: zmeskic@hotmail.com
2 Enis Omerović, LLM, Assistant at the University of Zenica, Faculty of Law, e-mail: enis.omerovic@prf.unze.ba
1 Martínez Soria, José. “Die Kodizes für gute Verwaltungspraxis-ein Beitrag zur Kodifikation des Verwaltungsverfahrensrechts der EG”.
2 See e.g. Commission Decision of 17 October 2000 amending its Rules of Procedure (OJ 2000 L 267/63); Guide to the obligations of
officials and other servants of the European Parliament (Code of conduct) (OJ 2000 C 097/1); Decision of the Secretary General of the
Council, on a code of good administrative behaviour for the General Secretariat of the Council of the European Union and its staff in
their professional relations with the public (OJ 2001 189/1).
approval constitutes its most important ground of political legitimacy. The Charter of fundamental rights of the European Union (ECFR), which became legally binding with the entry into force of the Lisbon Treaty in 2009 and belongs to the primary law of the EU (Art 6 (1) TEU), contains in its Art 41 the right to good administration. The European Ombudsman considers that elements of the ECGAB overlap with the fundamental right to good administration, which is enshrined in Article 41 of the ECFR, and thus the ECGAB may serve for explanation and interpretation of Art 41 of the ECFR. However, as the Art 41 of the ECFR contains subjective rights, the interpretative function of the ECGAB should be used with caution. Further on, the Ombudsman applies the ECGAB when examining whether maladministration has occurred. The ECGAB also follows the goal to promote the right to good administration and makes its more visible for the citizens. Finally, it points to the further development of EU administrative law and thereby influences national administrative law.

The legislator of Bosnia and Herzegovina (BiH) seems willing to make its first steps in this direction. Although a subjective right to good administration in not known in the legal system of BiH, the Parliamentary Assembly adopted a Declaration on Good Administration in 2008, wherein the principles of “openness”, “wide involvement”, “responsibility”, “effectiveness” and “coherence” are established as principles of good administration. The Stabilization and Association Agreement as well as the requirements of the “European partnerships” are mentioned as the legal basis of the Declaration. In the following, we will briefly outline the principle of good administration in EU Law and make an overview of the elements of good administration in the administrative law of BiH in comparison to the principles contained in the ECGAB.

2. The Principle of Good Administration in EU Law

The codification of EU administrative law, or even EU administrative procedural law, is neither planned nor initiated in the EU. Thus elements of the principle of good administration have been developed through the ECJ jurisprudence and amendments of individual provisions of EU primary law. The ECJ has established the principle of good administration as a general principle of EU law. In national administrative laws in Europe two different traditions, a Roman-English and a Scandinavian tradition, have been developed, which use the essence of the principle of good administration in different ways. In Roman-English tradition the term good administration comprises internally binding obligations of administrative good practice, which have no external effect towards the citizens. Within this traditional understanding the criteria of good administration cannot be used for judicial access of the legality of the administrative act. On the contrary, the Scandinavian traditional concept, which is also acknowledged in the Netherlands, beside the internal effect of the principle of good administration comprises also the principle of legality of administration, and thus implies all the administrative procedural provisions with external effect. Consequently, the development of Codes of Good Administrative Behavior in the EU symbolizes the shift from the Roman-English

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5 OJ of BiH, No. 19/09.


9 Ibid.
towards the Scandinavian understanding, as the ECGAB establishes criteria for assessment of the principle of good administration and makes it more visible for EU citizens, but remained a legally non-binding instrument. Given these circumstances, the European Ombudsman after his proposal of the ECGAB, not only proposed the inclusion of the rights to good administration in the ECFR, but also the adoption of European Administrative Law in form of EU regulation. The subjective right to good administration of Art 41 of the ECFR, at least for now represents the conclusion of the development brought forward by the European Ombudsman. The idea of uniform European Administrative Law seems far away from any legislative initiative.

Art 41 of the ECFR represents a codification of some of the elements of the right to good administration which have already been established by the ECJ or expressly provided in EU primary law. Here the ‘transfer clause’ (ger. Transferklausel) of Art 52 (2) ECFR is applicable, providing that the rights contained in ECFR, for which a provision is made in the Treaties, shall be exercised under the conditions and within the limits defined by the Treaties. Namely, the duplication of rights in ECFR shall not lead to different interpretation or application of provisions.

In Art 41 three principles of good administration are expressly determined: impartiality, fairness and treatment within a reasonable time. The principle of impartiality is on the one hand already covered by the general principle of non-discrimination of Art 21 TFEU, and on the other hand reflects the ECJ practice on the objective, accurate preparation of the decision including the exact research on the information (Calliess Rn 10). The principle of fairness and the conduct of the administrative procedure within a reasonable time leave a lot of space for the assessment in concreto and have both already been used in the ECJ practice.

In Art 41 (2) ECFR concrete rights are enumerated. The first one, the right to be heard, has been established very early in the practice of the ECJ as a fundamental principle in every administrative proceeding which may affect the individual concerned in a negative way. The right to access his or her file, needs to be distinguished from the general right of access to documents pursuant to Art 42 ECFR. The right to have access to his file is limited to the person concerned by the administrative procedure and is an expression of the principle of legality, not the principle of democracy. The obligation of the administration to give reasons for its decision comes from Art 296 (2) TFEU and thus on the ground of Art 52 (2) ECFR both provisions shall be interpreted in the same way within their common scope of application. The same applies to the right to damage caused by the EU (Art 41 (3) ECFR), which reflects Art 340 (2) TFEU, and the right to communicate with EU institutions in his or her own official language (Art 41 (4) ECFR) which reflects Art 20(2)(d) of the TFEU.

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16 ECJ, 13 February 1979, 85/76-Hoffmann-La Roche, [1979], ECR 461, para. 9.
3. Application of General Principles of the ECGAB in Bosnia and Herzegovina

General principles enumerated in the ECGAB represent legal standards and level of quality for public administration of the European Union institutions to achieve. Those general principles are legal grounds for contemporary organisation and good function of civil service in Europe.\(^{18}\) Some could state that full and correct application of those principles depends on the existence of an administrative culture of service and code of ethics;\(^{19}\) however, using other logical construction, it could be noted that those principles should possibly create and represent, in general, a true foundation or improvement of the administrative culture of service.

3.1. Principles for the Conduct of Administrative Bodies and Principles of Administrative Procedures

Principles of public administration in BiH are divided into three main groups of principles: 1) principles for the conduct of administrative bodies; 2) principles of administrative procedure; and 3) principles of public administration work. Principles for the conduct of administrative bodies cover the following: 1) principle of constitutionality and legality;\(^{20}\) 2) principle of independence;\(^{21}\) 3) principle of effectiveness;\(^{22}\) 4) principle of transparency (public);\(^{23}\) 5) principle of cooperation and mutual informing.\(^{24}\) Some authors have introduced two new legal principles: 1) principle of usage of language and alphabet\(^{25}\); and 2) principle of adequate national representation of civil servants.\(^{26}\) Interestingly, the Act on Organisation of Administrative Organs in the Federation of BiH prescribes


\(^{19}\) Code of ethics and culture of civil servants are of a great significance in one democratic society. Having this in mind, it could be determined that one of the basic goals of the ECGAB is promoting certain ethical code of behaviour and important elements of basic culture in public administration. For basic idea and sense of code of ethics and (working) culture of civil servants in general see: Agić, Nusret. “Kultura i etički karakter djelovanja državne vlasti” (Culture and Ethical Character of Public Administration Acting). Pravna misa 9-10 (2010): 79-94; Karajica, Vladimir. “Uticaj reformskih mjera i standarda na profiliranje etike i aksiologije ljudskih potencijala u državnoj upravi Republike Srpske” (Impact of Reform Measures and Standards on Profiling of Ethics and Axiology of Human Potentials in State Administration of the Republic of Srpska). Moderna Uprava 2 (2009): 167-181; Pusić, Eugen. Nauka o upravi (Science on Administration). Zagreb: Školska knjiga, 2002, 247.

\(^{20}\) Constitution of BiH and Constitution of the Federation of BiH does not contain provision on constitutionality and legality. In this regard, see Art 97 of the Act on Organisation of Administrative Organs in the Federation of BiH.

\(^{21}\) Art 3 of the Act on Administration of the Federation of BiH (OJ of the Federation of BiH, No. 28/97).

\(^{22}\) “Internal organisation of administrative organs is based on the principle of rational and effective work of administrative organs, including the principle of ensuring of expert [professional] work [...]” See: Art 45 of the Act on Administration of BiH (OJ of BiH, No. 32/2, 102/9); Art 9 of the Act on Public Administration of Brčko District of BiH (OJ of Brčko District of BiH, No. 19/07, 2/08, 43/08, 9/13).

\(^{23}\) Art 6 of the Act on Administration of the Federation of BiH (OJ of the Federation of BiH, No. 28/97).


\(^{25}\) This means there are at these date three official languages in BiH (Bosnian, Croatian, Serbian) which are equally used by public administration as well as two officially recognised alphabets in BiH (Latin and Cyrillic). Art 7 of the Act on Administration of Federation of BiH (OJ of the Federation of BiH, No. 28/97) prescribed that official languages in administrative organs in the Federation of BiH are Bosnian and Croatian, and the official alphabet is Latin. However, following the Decision of the Constitutional Court of BiH on the Constituent Peoples (Bosniaks, Croats, and Serbs) on the whole territory of BiH (No. U 5/98 of 2000), this principle had to be altered. In this respect, the Parliament of the Federation of BiH adopted the Act on Organisation of Administrative Organs in the Federation of BiH in 2005. Thus, for this principle, consider Art 6 of this particular Law (OJ of the Federation of BiH, No. 35/05).

\(^{26}\) In public administration it must be assured that adequate national representation of civil servants is to be in accordance with national structure of population of certain political-territorial units in BiH. (Kamarić, Mustaša, and Festić, Ibrahim. Upravno pravo. Opći dio (Administrative Law. General Part). Sarajevo: Pravni fakultet Univerziteta u Sarajevu, forth ed, 2009, 156).
that work of administrative organs shall be based on, *inter alia*, principle of responsibility, principle of professional impartiality and political independence.27

Principle of constitutionality and legality are essential principles of every legal system. Principle of constitutionality refers to legal system where each enacted law must comply with constitution. Principle of legality means that a civil servant must unconditionally and correct executes laws and law-grounded acts.28 Named principles are necessary preconditions for the rule of law in one society. It should be emphasised that legal certainty of one party which corresponding to this principle, as well as the predictability of administrative action in making lawful decisions, which is contrary to state arbitrariness, must be in function of the legitimate expectations of all citizens.29 Principle of legality corresponds with the European Union public service principle of objectivity.30 It is also in compliance with Art 4 of the ECGAB.31 Principle of legality can prevent any arbitrariness on the side of civil official. It also corresponds with Art 7 (absence of abuse of power), Art 8 (impartiality and independence), Art 9 (objectivity), and Art 11 (fairness) of the ECGAB.

Principle of independence reflects in the fact that representative and political-executive state organs should not interfere in the work and activity of administrative organs. It is a key principle for the achievement of depoliticization of public administration what must achieve every democratic society. This principle is in compliance with the first three public service principles that should guide EU civil servants, namely commitment to the European Union and its citizens, the principle of integrity, and the principle of objectivity, and with Art 8 (impartiality and independence). Although, principle of independence refers mostly to the autonomy of an administrative organ within the state legal system, this could also have certain legal consequences and requirements for one civil official to be impartial and independent in his/her work within public administration.

Principle of effectiveness is a core principle when compare domestic legal framework for good administrative behaviour with the EU principles and requirements in this respect. This principle is tantamount to intent to expeditiously and as quickly as possible the rights and interests of all citizens be exercised by public administration, that is to say, to exercise duties of citizens as well as various organisations and communities as fast as it could.32 In other words, principle of effectiveness means public officials have to fulfill their obligation in terms of respecting the rights, freedoms, and interests of all natural and legal persons within their jurisdiction. It should be stressed that effectiveness means having a more economic work and to rationalise a state administration. One of the preconditions for this process is certainly a functional organisation of administration at all levels of political-territorial units.33 It is noted that this principle is in accordance with the fourth public service principle that should guide EU civil servants, more precisely, principle of respect for others (citizens). Furthermore, this principle complies with Art 6 (proportionality), Art 10 (legitimate expectations, consistency, and advice), Art 11 (fairness), Art 12 (courtesy), Art 13 (reply to letters in

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27 Art 4 of the Act on Organisation of Administrative Organs in the Federation of BiH (OJ of the Federation of BiH, No. 35/05).
the language of the citizen), Art 14 (acknowledgement of receipt and indication of the competent official), and Art 15 (obligation to transfer to the competent service of the institution).

The essence of the principle of public is the possibility of wide public scrutiny or control of public administration, which is one of the basic presumptions for fight against various deviations in the work of public administration such as bureaucratism, abuse, and exceeding the public functions and public authority, and other negative, unconstitutional, and illegal phenomenon.34 It seems that this principle includes the fifth public service principle that should guide EU civil servants – transparency, and also cover principles presented in Art 22 (requests for information), Art 23 (requests for public access to documents), including Art 24 (keeping of adequate records) of the ECGAB.35 Principle of public is properly and closely linked to the last principle for the conduct of administrative bodies and this is precisely the principle of cooperation and mutual informing with respect to citizens, interested organisations, communities, and various associations.36

Moreover, the basic principles of administrative proceedings in BiH follow the spirit and letter of the ECGAB. The laws (acts) on administrative proceedings recognise 14 fundamental principles37: 1) principle of legality (Art 18 of the ECGAB: duty to state the grounds of decisions); 2) principle of protection of rights of citizens38 and protection of public interest (Art 20 of the ECGAB: notification of the decision); 3) principle of effectiveness (Art 17 of the ECGAB: reasonable time-limit for taking decisions); 4) principle of material truth; 5) principle of party hearing which corresponds with Art 16 (right to be heard and to make statements) of the ECGAB; 6) principle of free evaluation of evidence; 7) principle of independence in solving; 8) principle of right to appeal (Art 19 of the ECGAB: indication of appeal possibilities); 9) principle of decision validity; 10) principle of economics of proceedings; 11) principle of obligation to provide assistance to unlearned party; 12) principle of usage of languages and alphabets corresponds with Art 13 of the ECGAB (reply to letters in the language of the citizen); 13) principle of final decision; 14) principle of transparency.39

3.2. Principles of Public Administration Work

It has to be taken into account that the main sense and basic meaning of the ECGAB, observed and analysed in the whole context, is work on creating or increasing moral and legal responsibility of all civil servants in various structures of public administration with the ultimate aim of real professionalization of public administration.

When it comes to public administration in BiH, international community has invested a lot of effort through its various institutions to reinforce and strengthen its professionalization, which

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35 Art 21 (data protection) of the ECGAB is covered by the Personal Data Protection Act in BiH (OJ of BiH, No. 49/06, 76/11, 89/11).
36 In this respect, BiH has determined a normative framework so legislature organs (at state and entities levels) have already enacted the Free Access to Information Acts. For the Federation of BiH see the OJ of the Federation of BIH, No. 32/01 and 48/11.
37 Dedić, Sead. Upravno procesno pravo (Law on Administrative Procedure). Bihać/Sarajevo: Pravni fakultet Univerziteta u Bihaću and Magistrat Sarajevo, 2001, 37; Đelmo, Zenaid. Sistemi društvene regulacije (Systems of Social Regulation). Sarajevo: Fakultet kriminalističkih nauka, 2005, 288; For further research see acts on (general) administrative procedure in BiH, Federation of BIH, Republic of Srpska, and Brčko District of BIH.
38 “Administrative organs ensure effective and full exercise of rights and freedoms of citizens”. (Art 5 of the Act on Administration of Federation of BiH (OJ of the Federation of BiH, No. 28/97); Art 4 of the Act on Public Administration of Brčko District of BiH (OJ of Brčko District of BiH, No. 19/07, 2/08, 43/08, and 9/13)).
39 This means that each civil servant has the duty to ensure every private and legal person right to access information. See: Kamarić, Mustafa, and Festić, Ibrahim. Upravno pravo. Opći dio (Administrative Law. General Part). Sarajevo: Pravni fakultet Univerziteta u Sarajevu, fourth ed, 2009, 306.
is one of administration development tendencies. The process of public administration reform at all levels of governance in BiH in respect of civil servants began in 2002, when the Office of the High Representative of International Community in BiH (hereafter: OHR) declared the Act on Civil Service in the Institutions of Bosnia and Herzegovina. Normative framework in the light of professionalization of civil servants has required the enactment of certain legal acts and other documents, including the foundation of several independent state institutions in order to fulfil the aims of public administration reform in BiH. Specifically, in this country, as a part of the reform process of public administration, Agencies for Civil Service, as independent state bodies that carry out the recruitment process of civil servants in administrative organs, have been established, including the Public Administration Reform Coordinator's Office (hereafter: PARCO or Office) at the state level of governance in 2004, following the recommendation of the Feasibility Study for Bosnia and Herzegovina. In this regard, BiH in 2006 adopted the Public Administration Reform Strategy (hereafter: Strategy) together with the Action Plan for the Strategy implementation.

“Civil service ensures compliance with and application of the following principles: 1) legality; 2) transparency and public; 3) responsibility; 4) effectiveness and economy; 5) professionalism
and impartiality." The same legal act in the Federation of BiH introduced the principle of political independence of a civil servant. Besides these, in the Republic of Srpska there is a principle of honesty, and, equally, in Brčko District of Bosnia and Herzegovina, there are, inter alia, principle of material truth, principle of discrimination and privileging prohibition, and principle of hierarchical subordination.

Professional civil service and good administrative behaviour cannot be required without functional normative prerequisites and mechanisms, educated civil servants, and “adequate motivation”. To confirm previous statement, it is needed to suggest that a professional civil servant has to possess the following characteristics: 1) to be educated; 2) to be professional; 3) to be motivated; and finally 4) to be functional. When the first two has to be taken into consideration, we must note that exact conditions and requirements that need to be fulfilled in order to one person become a civil servant, i.e. for civil servants' professional engagement, are to be found primarily in legal acts (Acts on Civil Service) as well as in bylaws, e.g. rules and regulations (Ordinance on Uniform Criteria, Rules and Procedure of Appointment and Engagement of a Civil Servant). Furthermore, a motivated and functional civil servant is a real representation of a good administrative behaviour. In this sense, there are rules on assessment of civil servants with the aim of having a successful performance management in the civil service structures in Bosnia and Herzegovina. A true sense of assessment and evaluation of public administration is motivation of civil servants and employees “to constantly improve their professional knowledge and skills in order for them to make a progress in their careers and develop their full working potential.” Analyzing from the aspect of civil service, an objective and transparent assessment could lead to improvement of overall quality of provided public civil services as well as having a responsible and effective usage of public money. The assessment of various criteria such as the degree of fulfillment of the set work objectives, quality

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48 Art 3 of the Act on Civil Service in the Institutions of BiH (OJ of BiH, No. 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10 and 40/12). This means that a civil servant has to follow these enacted principles in his/her work.

49 Art 4 of the Act on Civil Service in the Federation of BiH (OJ of the Federation of BiH, No. 29/03, 23/04, 39/04, 54/04, 67/05, 8/06, 4/12).

50 Art 11 of the Act on Administrative Service in the Administration of the Republic of Srpska (OJ of the Republic of Srpska, No. 62/02, 38/03, 42/04, 49/06) prescribe main administrative principles for a civil servant. Significantly, this Article determines, amongst other, honesty as one of the fundamental principles in this regard. Furthermore, Art 86 provides duties of a civil servant which could be observed in correlation to abovementioned principles regarding good administrative behaviour. In this sense, check also Art 13, 14, 104, 107 of the same Act. In relation to this, also consult the Act on Civil Servants (OJ of the Republic of Srpska, No. 118/08, 117/11, 37/12).

51 Consult Art 4 of the Act on Civil Service in Administrative Organs of the Brčko District of BiH (OJ of the Brčko District of BiH, No. 28/06, 29/06, 19/07). As an illustrative example of achieving and attaining of good administrative behaviour is Art 5 (1) of this Act where it is provided that „a civil servant [...] must act so as not to diminish his/her reputation and reputation of civil service.”


54 For instance: OJ of the Federation of BiH, No. 7/05, 8/10, 75/10. In this entity, the Agency for Civil Service adopted new rules on this matter, published in the OJ, No. 4/13.


56 Ibid.

57 Art 5 of the Ordinance on Assessment of Civil Servants’ Work in the Institutions of BiH (OJ of BiH, No. 59/11); Art 3 and 4 of the Ordinance on Assessment of Civil Servants’ Work in Civil Service Organs in the Federation of BiH (OJ of the Federation of BiH, No. 34/07, 14/09, 8/10, 62/11, 89/13); Art 6 of the Ordinance on Procedure of Assessment and Promotion of Civil Servants and Employees (OJ of the Republic of Srpska, No. 43/09, 87/11); The Mayor of the Brčko District of BiH adopted the new Ordinance on Assessment on 27 May 2008 (Doc. No. 01.1-33-023871/08).
of work\textsuperscript{58}, effectiveness in work\textsuperscript{59}, civil servant independence\textsuperscript{60}, his/her attitude towards work\textsuperscript{61}, creative abilities and initiative, relations with others in performance of duties and responsibilities including his/her communication skills, willingness to adapt to changes, and other additional criteria represents an excellent ground for defining the needs for (continuous) education of a civil servant. As one of the main assessment criteria is the knowledge of work which includes understanding and application of gained knowledge relevant to the particular work, and knowledge of general and specific legal regulations, training opportunities for civil servants are of a great importance for establishing high standards in public administration.\textsuperscript{62}

Moreover, there is a very close material coherence between principles and standards of good administrative behaviour set out in the European Union and Codes of Ethics for public administration in BiH. The very essence of those Codes of Ethics is that a civil servant, as a representative of an institution, by his/her behaviour, protects public and legal interest based on the Constitution and law, thus contributing to strengthening the role and reputation of civil service.\textsuperscript{63} These documents enumerate and elaborate, with principles, standards, and certain requirements, what is meant by good administrative behaviour of a civil servant.\textsuperscript{64} In addition, we notice that the Codes of Ethics entail legal effects as we see in case of their violation when there is a possibility of initiating and conducting disciplinary proceedings against a civil servant.\textsuperscript{65}

4. Conclusion

Although the principle of good administration is set only as a legal standard for the public administration in BiH, many elements of this principle contained in the ECGAB and Art 41 of the CFR of the EU can already be found in the administrative law of BiH.

BiH has a very solid normative framework for good administrative behaviour in form of various legal principles and requirements in different legal acts and bylaws at state, entity, and district levels. Breach of those administrative legal principles could have different legal consequences, namely from the grounds for appeal in one administrative procedure to disciplinary procedure of a civil servant who violates a specific code of ethics in administrative service. In practice, a true motivation for public administration to comply with the main principles of good administrative behaviour could be a procedure of assessment and periodic evaluation of civil servants. Only well-established system of assessment, which is characterized by objectivity, with clearly defined mechanisms of rewards and sanctions of civil servants could produce encouraging final effects in terms of work and behaviour in accordance with these principles.

\textsuperscript{58} Means accuracy, thoroughness, and organisation.
\textsuperscript{59} Relation between the quantity of work done and time spent.
\textsuperscript{60} Ability to perform work tasks with minimal supervision.
\textsuperscript{61} Presence at work, respect for working hours, responsibility, consistency in work, and attitude towards colleagues.
\textsuperscript{64} Compare with Art 1 (2) of the Code of Civil Servants in the Institutions of BiH (OJ of BiH, No. 49/13).
\textsuperscript{65} Violation of this Code represents a breach of a civil servant’s professional duty. See: Art 17 of the Code of Civil Servants in the Institutions of BiH (OJ of BiH, No. 49/13).
CHAPTER THREE • THE EUROPEAN CODE OF GOOD ADMINISTRATIVE BEHAVIOUR

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CHAPTER FOUR

TOWARDS CODIFICATION OF EU ADMINISTRATIVE PROCEDURE LAW
TOWARDS THE CODIFICATION OF EU ADMINISTRATIVE PROCEDURAL LAW

Dario ĐERĐA

The administrative procedure as a set of procedural rules that the administrative authority has to follow in administrative adjudication represents one of the fundamental guarantees for the protection of rights and legal interests of individuals. Prescribing the prerogatives and the procedure that the administrative authority has to follow is essential for every community, either local, regional, national, or supranational. For the reasons of lawful and efficient conduct of administrative procedure it has become desirable, especially during the last several decades, not just to prescribe those rules, but to codify them in one, integral act. Nevertheless, within the European Union legal system, this codification has not been achieved yet. There are two main reasons why this codification has not been yet achieved: the first is one based on the organisational forms of implementation of administrative activities, and the second one has foundations in regulations of administrative procedures in the first six Member States.

However, up until today, the European Union has expanded its own administrative activities and its jurisdiction. Shared administration between the Union and Member States is becoming more frequent, together with the strengthening of procedural rights of individuals in administrative procedure. Due to those reasons, today the legal procedures in the Union require setting limits for all administrative activities in order to guarantee individuals certain procedural rights in administrative adjudication.

Legal rules governing the administrative procedure in the Union law can be derived from the contracts and other primary sources of law, such as the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms. They can also be derived from other resolutions and recommendations of the Council of Europe. The rules of administrative procedure law in the Union are also contained in a number of regulations, directives and recommendations that make the secondary law, as well as in the general principles of the Union law. Finally, certain rules and principles of administrative procedures were established by the jurisprudence of the Court of the European Union and by the administrative practice of the Union’s institutions, bodies, offices and agencies.

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¹ Dario Đerđa, PhD, Associate professor, Head of Department for administrative law at University of Rijeka, Faculty of Law, e-mail: dariod@pravri.hr


Despite of large number of regulations governing the material issues in special administrative areas such as competition, telecommunications, environment, agriculture, industrial policy, science and research, border control, etc., there are not any detailed procedural provisions that would govern the entire administrative procedure. There are only few areas, such as the public procurement, prescribed in detail and thereby limiting the freedom of actions in these areas. The European Union generally regulates only certain specific questions of administrative procedure in these areas; for instance, jurisdictions and relationship between the bodies involved in these procedures. On the other hand, this Union legislation does not prescribe ways of taking procedural actions or certain procedural rights of individuals, except the right to use legal remedy. Issues not prescribed are: whether the party is entitled to take procedural actions, questions of individuals' representation, questions of conflict of interest, whether a party is entitled to extend or modify its request, should the oral hearing be conducted, ways of communication between the authority and the party, delivery of acts, right to look at the files, etc. For all those reasons, the need to codify the rules for conducting administrative procedure in the European Union is of great importance.

Codification of legal rules governing the administrative procedure in the Union law would have a number of advantages. Codification of rules for conducting administrative procedures in all administrative matters should be systematized and integrated in one legal text. This would result in rational, coherent, consistent, clear and comprehensive catalogue of administrative procedure actions and rights. Different terminology used in various sources of law should be equalised and linguistically modernised. All this would help in avoiding ambiguity and vagueness. Codified rules of administrative procedure would be useful in administrative adjudication for the Union institutions, bodies, offices and agencies as well as for the administrative authorities of Member States.

Although the formal codification of administrative procedure is still an unfulfilled goal in the Union, there have been several attempts of standardising that procedure. Starting from the premise that the administrative law represents “a set of principles and rules applying to the organisation and management of public administration and to the relations between administration and citizens” and considering that national differences should not be an obstacle for formulating common administrative procedure principles, in 1999 SIGMA adopted Paper no. 27: European Principles for Public Administration. In that paper, SIGMA pointed out four main standards that candidate countries for the Union membership must fulfil in order to equalise their administrative procedural rules with the procedural rules in Member States. Although unstated in the written law, these principles are considered ethically and legally binding. The most important administrative procedure codification initiative has been launched by European Union Ombudsman. In order to develop the concept of “good administration”, Ombudsman stated ways of interpretation and application of that concept. For that purpose, it developed a European Code of Good Administrative Behaviour, which sets out a number of rules that administrative authorities have to apply when conducting administrative procedure. Although the European Parliament adopted this Code by resolution on 6 September 2001, it still only represents soft law. This soft law nature of this Code slows down the efforts for codifying the rules of administrative procedure in the Union law.

Thus, the European Union law has developed rules of administrative procedure, but there is still no codified regulation of these rules in one, integral act. Therefore, administrative authorities are facing numerous problems when taking actions in administrative procedures, since they have to take into account different legal sources. Several important standards can be found in the sources of the European Union law. These standards are obligatory for all institutions, bodies, offices and agencies.

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of the Union, as well as for the administrative authorities of Member States while conducting administrative procedures and while settling administrative matters. These standards are numerous, but the most important ones are: legality, equality of treatment, impartiality and fairness, the right to inspect the file, the right to be heard and make statements, duty to state grounds for decision, proportionality in decision-making and decision-making within reasonable time.

The principle of legality requires that all institutions, bodies, offices and agencies of the Union act in accordance with the legal rules and that the actions of those authorities are based on the Union sources of law. Each institution, body, office or agency of the European Union should act and apply its powers in accordance with the legal provisions established by the Union legislation. Special attention should be placed on the decisions that have an impact on the rights and legal interests of individuals, and the content of these decisions should be in compliance with the law. The principle of legality is also important in exercising discretionary powers in administrative adjudication, since in those cases the administrative authorities are restricted with discretionary limitations and with the purpose of discretionary adjudication.\(^7\)

Insisting on equality in conducting administrative procedure contributes to the lawful, fair and impartial activity of institutions, bodies, offices and agencies of the Union as well as of the administrative authorities of Member States. The principle of equality in the Union law has been further strengthened by laying down very exhaustive catalogue of grounds for discrimination, such as nationality, sex, race, colour, ethnic or social origin, language, religion, political or other opinion, financial status, birth, disability, age and sexual orientation. Any kind of discrimination should be avoided during administrative procedures in order to fulfil the standard of equality.\(^8\)

Principles of impartiality and fairness place the obligation on the officials empowered to conduct administrative procedures that prevents them from taking arbitrary actions that could violate the rights and legal interests of the parties. Officials should refrain from all kinds of preferential or discriminatory treatment towards any person taking part in the administrative procedure. For that purpose, work of officials should never be guided by personal, family or national interests and it should be protected from any coercion. Impartiality and fairness of officials empowered to decide in administrative procedures is secured by a vast number of grounds for exemption as well as by prohibiting them from abusing their powers. The officials will meet those requirements if they use their powers strictly for the purpose entrusted to them by regulations, if they take all relevant factors into consideration, and if they give appropriate weight in decision-making to all those relevant factors.\(^9\)

The right to be informed about all relevant factual and legal issues in the administrative procedure is one of the most essential requirements for the protection of the party’s rights and legal interests. In the procedural law this standard is usually achieved by inspecting the file. On request,

\(^7\) For example, the principle of legality in the Union law is established in Article 4 of the Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration, in Article 4 of the European Code of Good Administrative Behaviour and in the case law of the Court of the European Union. See for example Joined cases 46/87 and 227/88, Hoechst AG v Commission of the European Communities, 1989, European Court Reports – 2859 and Case 294/83, Parti écologiste “Les Verts” v European Parliament, 1986, European Court Reports – 1339.

\(^8\) For example, the principle of equality in the Union law is established in Articles 18, 19, 40 and 157 of the Treaty on the functioning of the European Union, in Article 3 of the Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration, in Article 5 of the European Code of Good Administrative Behaviour and in the case law of the Court of the European Union. See for example Case 1/72, Rita Frilli v Belgian State, 1972, European Court Reports – 457, Case 152/73, Giovanni Maria Sotgiu v Deutsche Bundespost, 1974, European Court Reports – 153 and Case 21/74, Jeanne Airola v Commission of the European Communities, 1975, European Court Reports – 221.

\(^9\) For example, the principle of impartiality and fairness in the Union law is established in Article 41 of the Charter of Fundamental Rights of the European Union, in Article 4 of the Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration and in articles 7, 8, 9 and 11 of the European Code of Good Administrative Behaviour.
the party has the right to be notified about all the facts and circumstances that were relevant in
the decision-making process. Right to be informed is a necessary precondition for exercising the
party’s right to be heard in the administrative procedure, since in order for her to give the statement
she has to know the facts and reasons on which the administrative authority is going to base its
decision. However, this right can be restricted in certain cases, particularly in cases where personal
and confidential data are at stake.10

The right to be heard represents an important prerequisite for protecting the rights and
legal interests of the party in the administrative procedure. Individuals whose rights and legal
interests could be violated by an administrative decision, should have the right to give the statement
to the administrative authority that conducts the administrative procedure. The administrative
authority should provide that person with an opportunity to express her opinion about facts and
circumstances as well as about legal issues important for adjudicating the administrative matter
and, if it finds necessary, to submit evidence. The party has the right to be heard within reasonable
time, in order to prepare herself for participating in the process, and if she finds it necessary to hire
legal representative.11

An individual has the right to know on which facts and legal provisions the administrative
authority based its administrative decision. This is very important for the protection of individual’s
rights and legal interests, especially while using legal remedies. Today it is widely accepted and
standardised that administrative decisions should be in writing and should have strictly prescribed
content. In all the legal acts of the Union reasons should be given for delivering a certain act. That
reasoning should consist of all specified proposals, initiatives, recommendations, requests and
opinions required by the European Union law. Furthermore, each administrative decision should
be clear and understandable. In cases when a decision could violate the rights and legal interests of
individuals, it must also contain factual and legal reasoning.12

In accordance with the principle of proportionality, the content and the form of the measure
contained in the administrative decision shall not exceed what is necessary to achieve the objectives
defined in the legal provision. This means that no institution, body, office or agency of the Union
as well as no administrative authority of Member States is allowed to place any obligation to
individual other than those which are prescribed by the law and which are necessary to protect
the public interests. By placing that obligation, the principle of proportionality requires existence of
a reasonable connection between the prescribed measure and the goal determined by the law. It
also requires that the institutions, bodies, offices and agencies of the Union and the administrative

10 For example, the right to inspect the file in the Union law is established in Article 41 of the Charter of Fundamental Rights of the
European Union, in Article II of the Resolution (77) 31 on the Protection of the Individual in Relation to the Acts of Administrative
Authorities, in Article 9 of the Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good
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11 For example, the right to be heard and to make the statements in the Union law is established in Article 41 of the Charter of Fundamental
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Authorities, in Articles 8 and 14 of the Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good
administration, in Article 16. of the European Code of Good Administrative Behaviour and in the case law of the Court of the European Union. See for example Case 17/74, Transocean Marine Paint Association v Commission of the European
Communities, 1974, European Court Reports – 1063 and Case 75/77, Emma Mollet v Commission of the European Communities,
1978, European Court Reports – 897.

12 For example, the obligation to give the base for deciding in the Union law is established in Article 41 of the Charter of Fundamental
Rights of the European Union, in Article IV of the Resolution (77) 31 on the Protection of the Individual in Relation to the Acts of Administrative
Authorities, in Article 17 of the Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good
administration and in Article 18 of the European Code of Good Administrative Behaviour.
authorities of Member States should refrain from any action that would not lead to the prescribed objective. Otherwise, they would misuse their administrative powers.13

Finally, a very important obligation of administrative authority while conducting administrative procedure is to make decisions within reasonable time. Because of the complexity of defining what represents “reasonable time”, it is often specified and regulated individually in different administrative areas. If that is not the case, an administrative authority should decide about the party’s motion within a reasonable time and without delay, but no later than two months after the party submitted the application. Decision-making within reasonable time leads to faster and better exercise of public tasks, exclusion of unfair treatment, and it prevents state liability for damages.14

In addition to the above mentioned standards, in conducting an administrative procedure it is also necessary to apply other standards prescribed in the Union law, for example: predictability and transparency of administrative actions; protection of legitimate expectations; obligations to have consistent administrative actions; the right to use own own language; the right to correct deficiencies in the application; the right to be represented and to have legal assistance; the right to an effective legal remedy and fair dispute, etc.15

These rules are also binding on administrative authorities of Member States when they conduct administrative procedures in accordance with the Union law. It can be argued that all of these requirements have already found their place in legal rules that regulate administrative procedure in Croatia. One of the reasons for this is certainly a long tradition of well organised administrative procedure on the Croatian territory, established on the normative grounds since 1930 when the Law on Administrative Procedure of the Kingdom of Yugoslavia systematically and in detail regulated the administrative procedure. Modernization of that legislation, which has in its eighty years long history changed a few times, but significantly only in the 1956, was finally made in 2009. This happened during the process of harmonization of Croatian legislation with the acquis communautaire. In drafting that Act, European Union experts took part together with Croatian experts, which brought Croatian administrative procedure standards closer to the one of the Union.

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13 For example, the principle of proportionality in decision-making in the Union law is established in Article 5 of the Treaty of the European Union, in Article 5 of the Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration, in Article 6 of the European Code of Good Administrative Behaviour and in the case law of the Court of the European Union. See for example Case 5/73, Balkan-Import-Export GmbH v Hauptzollamt Berlin-Packhof, 1973, European Court Reports – 1091 and Case 114/76, Bela-Mühle Josef Bergmann KG v Grows-Farm GmbH & CO. KG, 1977, European Court Reports – 1211.

14 For example, the obligation of make decision within reasonable time in the Union law is established in Article 41 of the Charter of Fundamental Rights of the European Union, in the Articles 7 and 13 of the Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration and in Article 17 of the European Code of Good Administrative Behaviour.

CONTEMPORARY AND FUTURE PERSPECTIVES OF ADMINISTRATIVE PROCEDURE IN THE EU

Ana PAVLOVSKA-DANEVA*

Abstract

In this paper, the author define the review the goals and principles of administrative procedure as well as present an overview of contemporary academic debates around the need for codification of administrative procedures on EU level. By argumenting the pros and cons of codifying administrative procedure at EU level, the authors propose a theoretical framework to explain this process, and analyse the process of administrative procedure harmonization in the Balkan Region under Sigma.

The starting premise is that EU member states still retain national legislation with specifics that best suit the national administrative systems and differ from state to state. A narrower scope of research in this paper is the need to codify and/or unify administrative procedure in a set of acts or single acts, that would regulate principles and other matters in a uniform fashion for all member states of the EU. A final aspect of this research is the mechanism through which the codification of administrative procedure may be exercised.

Keywords: administrative procedure, codification, EU, european administrative procedures

1. Introduction

Apart from international administrative law, strictly in a theoretical legal sense, European administrative law is gradually formed and constructed in the form of legal norms and principles created by the interaction of european authorities, national and supranational agencies, judicial verdicts etc. (Lilić S.: 16) One of the more important areas of standardization and convergence is the administrative procedural law of the European Union. Experts argue the need for codification of at least a minimum set of procedural rules which could be aplicable in any state equally. The Contemporary state of administrative procedural legislation in the Union can be seen in several Treaties of the European Union, Charters, judicial practice of the Court of Justice, numerous reccomendations and resolutions. However, such a heterogenous legal framework often contributes to complications in procedure before EU institutions, as well as when procedures are carried out before national authorities. Examples from these issues confirm the need to adopt a single legal act (law or codex) at a national level which would hold the norms of internationally ratified acts, reccomendations by the Council of Europe and EU regulations. Such an act should be founded on the principles of good governance and rule of law, while carrying the “spirit” of EU Law. Codification would achieve unifomring and standardizing procedural legislation providing parties in administrative procedure accross EU member states with the same level of guarantees, rights and proper legal protection at the same time removing the complexity of harmonizing different laws at national and supranational levels. Failure to determine clear and predictable rules causes a deficit in liability, gradually undermining the the Unions rule of (Towards an EU Administrative Procedure Law? ReNEUAL March 15th &16th).

Difficulties in the consistent harmonization of norms and practices in administrative law, in different EU states as well as candidate countries are a direct result of the way in which national administrations are built. Each country builds it’s administration to best suit it’s political, social and economic needs. Because of this national administrations differ greatly from country to country, even

* Ana Pavlovsk-aneva, PhD, Full Professor at the at the Faculty of Law * Iustinianus Primus*, University Ss. *Cyril and Methodius* Skopje, e-mail: anapd222@yahoo.com
EU member states. These differences are seen in national administrative law of each state despite of decades of European integration and harmonization. EU member states still show differences in the level of development, institutional complexity, legal rights protection and judicial system.

If we accept the fact that administrative procedure needs to be codified, the question to be asked is what concept of administrative procedure should be accepted at EU level? Should this EU administrative procedure concept be similar to national administrative procedure laws or should it be *sui generis*, characteristic to EU institutions only? Other than the concept of the act, there must be agreement on the method of codification as well. An example for this may be the Federal Administrative Procedure Act of the United States of America.

### 2. Challenges and Dilemmas of Accepting a Codified Administrative Procedure in the European Union

Administrative procedures in the European Union can be categorized in three groups: administrative procedures at a supranational level i.e. at EU level, hybrid or mixed administrative procedures run at both supranational level and national level (which means that some phases of the procedure are carried out by EU institutions or bodies), procedures run at a national level in EU member states (Đerđa D.: 114). Determining the competence in these procedures is regulated by the Treaty of Lisbon (2007/C 306/01). According to Art. 3 Par. 1 of the Treaty on the Functioning of the European Union, the Union has exclusive competence to regulate the areas of: the customs union, the establishing of the competition rules necessary for the functioning of the internal market, monetary policy for the Member States whose currency is the euro, the conservation of marine biological resources under the common fisheries policy and the common commercial policy (C83/47). According to Art. 2 the Union is competent to legislate and adopt legally binding acts for member states. According to Art. 6 the Union is competent to carry out actions to support, coordinate or supplement the actions of the Member States in the areas of protection and improvement of human health, industry, culture, tourism, education, vocational training, youth and sport, civil protection and administrative cooperation.

According to Art. 4 of the Treaty of Lisbon the Union has shared competence with member states in the areas of the common market, social policy, economic social and spatial connection, agriculture, fishery and under exception preservation of biological resources of the sea, environment protection, protection of consumers, commerce, transeuropean networks, energy, freedom, security and justice, commong security issues in public healthcare to the extent regulated by the Treaty for the Functioning of the European Union.

What is most important for this papers research is that all these processes are carried out by competent institutions, applying separate (in some cases different) procedural legislation when dealing with administrative matters. In order to uniform these regulations, especially regarding the founding principles of administrative procedure, deadlines for decision making, legal remedies, ensuring an active role for the parties in process, as well as transparency and accountability, further in the paper we will argument the pros and cons to unification and adequate codification administrative procedure in a single act.

#### 2.1. Arguments to Accepting the Concept of Codified Administrative Procedure

There has been an active academic debate around accepting a concept of codified administrative procedure in the European Union for some time now.

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1. Also known as the Reform Treaty.
There are many authors supporting the idea of adopting a single codex of EU Administrative Procedure. Most orbit around the idea that codification of procedure will be applied by institutions, agencies and other authorities which would aid the Union in fulfilling its mandate given by Art. 268 of the Treaty of the Functioning of the EU as well as contribute to the development of the principle of good governance regulated by Art. 41 of the Charter of the Fundamental Rights of the (C.364/1). Arguments supporting the aforementioned are: first and foremost, codification of EU administrative procedure will strengthen legal certainty and clarity; Second, the code would systematically coordinate procedural regulations currently contained in a multitude of laws, bylaws and various judicial verdicts by European courts; Thirdly, due to their (extensive) scope and compass, this codex would be applied in many sectors overcoming contemporary gaps in legislation, additionally influencing the principle of simplification and accessibility to administration. We believe that codification will systematically standardize the basic process rules and principles of EU administration, thus creating a common reference for administrative procedure, according to which national legislation (of member states) would later harmonize (accordingly). Codification would provide for improvement and more innovative solutions to contemporary challenges and problems of administrative procedure, through a legitimate democratic process (Towards an EU Administrative Procedure Law? ReNEUAL March 15th &16th).

The Administrative Procedure Act would serve as a means to operationalize common values of EU Administrative Law, such as the principle of lawfulness, common regulations for proportionality and transparency.

In order to better support the need for a single administrative procedure act we must review some of several acts regulating administrative procedures at the EU level. The subject of analysis is procedural norms applied by EU institutions and agencies when dealing with administrative matters. As an example we take the European Codex of Good Government and the Directive for the Services in the Internal Market, Recommendation for the Council of Europe Board of Ministers (Rec(2007)7) regarding good governance, Resolution on the Protection of Individuals in regard to Decisions by Administrative Authorities (Res(1977)31), European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4.XI.1950) etc.

The European Codex for Good Governance by the European Ombudsman adopted by the European Parliament in October 2001, serves as a crucial criteria to evaluate if the operation of the administration is in accordance to principles of good government. The Code itself contains the basic principles for EU civil service (their rights and duties) such as: the principle of lawfulness, equality, proportionality, ban on misuse of competence, impartiality and independence, objectivity, transparency, individuality, use of languages, delivery, hearing of the party, reasonable deadlines, justification of decisions, legal remedies, protection of personal data and access to information of public character.2

We could note here the Directive for Services in the Internal Market adopted 2006, containing requests for simplification of administrative procedures and the establishing of a single point of contact system, developing electronic means of communication during procedures and regulating the institute of administrative silence in the sense that if in a determined period of time the competent authority doesn’t make a decision it will present the existence of a fictinal administrative act.

Resolution Res(1977)31 on the protection of the individual in relation to the acts of the administrative authorities also has an impact to a certain extent, since it contains the principles of the
administrative acts: hearing of persons, access to information, legal assistance and representation, obligation for a statement of reasons of the administrative act and the right to a legal remedy.

Recommendation Rec(2007)7 of the Committee of Ministers of the Council of Europe from 2007 concerns the good administration and incorporates the Code of Good Administration, which contains 23 articles stating the good administration principles and rules. The most important principles are, in particular: principle of lawfulness, proportionality, legal certainty, taking action within a reasonable time limit, etc. The rules, on the other hand, refer to definitions, initiation of administrative procedures, requests from private persons, right of private persons to be heard, provisions on the contributions to the cost of administrative procedures, the form of the administrative procedures, publication of administrative decisions, rules concerning the legal recourse and the compensation of damages (Đerđa D.: 113).

The importance of the Recommendation Rec(2004)20 on the judicial review of the administrative acts is reflected in the fact that it defines the administrative act, which may be individual or normative, and governs the cases of refusal or omission to act where the administrative authority has an obligation to do so.

The European Convention for Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe in 1950, also contains provisions laying down the standards for the administrative adjectival law that are binding for the contracting parties of this Convention.

Resolution (77)31 on the protection of the individual in relation to the acts of administrative authorities defines specific requirements that have to be fulfilled in the course of the administrative procedure. This Resolution stipulates that the parties in the administrative procedure must be enabled to put forward facts and arguments when a specific decision is likely to affect adversely their rights and legal interests, as well as that, upon their request, they should be provided all information of relevance for the taking of the act, their right to be assisted or represented in the administrative procedure, and that the decision communicated to them must include a statement of reasons and an indication of the remedies against it.

Regulation no. 1 determining the languages to be used by the European Economic Community prescribes that an individual decision which affects the national authorities of a Member State or the private persons from such Member State must be drafted in the language of that Member State.

Regulation (EEC, Euratom) No 1182/71 of the Council of 1971 determining the rules applicable to periods, dates and time limits is also generally applicable in administrative procedures. This Regulation, in fact, establishes uniform general rules on the calculation of the time limits in the procedure and the time of the entry into force of the administrative acts. Regulation (EC) no. 1049/2001 of the European Parliament and of the Council provides for the public access to the documents of the European Parliament, Council and Commission and of the administrative and executive authorities of the Union.

The case-law of the European Court of Justice also contributes to the unification of the principles of administrative procedure in the legislation of the EU Member States. The Judgments of the Court of Justice by rule include a statement of the reasons for each decision so as to improve the possibility for the party concerned to seek relevant legal recourse. Furthermore, the European Court of Justice establishes a set of key principles that have to be adhered to in the administrative procedure: lawfulness, proportionality, legal certainty, prohibition of discrimination, right to legal remedy, equitable access to the competent (administrative) court and the right of the party concerned to request a compensation of damages caused by the actions of the administrative authorities. One of the specific principles that may be found in the judgments of the European Court
of Justice is the precautionary principle in the actions by the administrative authorities. However, despite the case-law of the European Court of Justice, there are difficulties in defining precisely an adequate principles which impedes the application thereof, and is often a cause for commission in the application of different principles to one and the same situation, which cause problems for the authority carrying out the procedure (Đerđa D.: 123).

SIGMA provides its contribution to the harmonization of the administrative adjective law by providing expert assistance to the European Commission and the candidate countries and by establishing the general standards of the administrative procedure, such as: clear definition of the scope of competencies of the administrative authorities, regulation of the main stages of the procedure, proportionality of the administrative decisions and actions, adherence to the legally prescribed time limits, statement of reasons for the administrative decisions, providing the party concerned an access to the documentation, right of the persons to be heard, right on information about the decision, obligation for indication of legal remedies and establishing the reasons for revocation and annulment of the administrative acts.

The European Commission’s initiative to the European Parliament for the enactment of a Resolution with recommendations relating to the administrative procedure at EU level is particularly important; by such Resolution the European Parliament, relying on a series of existing agreements and other regulations, calls for the drafting and enactment of an act governing the European Law on Administrative Procedure (Art. 1. 2012/2024(INI)). In the initiative itself the European Parliament finds a series of deficiencies in the current state of affairs, of which we shall emphasize the following:

• EU citizens often lack legal remedies in proceedings before EU bodies. A situation more and more common as EU inceases scope of competencies;

• citizens are entitled to expect a high level of transparency, efficiency, swift execution and responsiveness from the Union’s administration regardless of the type of request or petition;

• The Unions existing rules and principles on good administration are scattered across a wide variety of sources and the Union lacks a coherent and comprehensive set of codified rules of administrative law which makes it difficult for citizens to understand their administrative rights under Union law;

• the existing internal codes of conduct of the different institutions have a limited effect, differ from one another and are not legally binding;

• the parliament recognized the need for the same code of good administrative behavior to apply to all Union institutions, bodies and agencies, as well as the need for a single code of Good Administrative Behavior that would help eliminate the confusion currently arising from the parallel existence of different codes for most Union institutions and bodies;

• a pressing problem facing the European Union today is the lack of confidence on the part of citizens, which can affect its legitimacy; whereas the European Union needs to address swift, clear and visible answers to the citizens in order to respond to their worries;

• codification of the service principle would help to meet the legitimate expectations of citizens and benefit both citizens and the administration in terms of improved service and increased efficiency;
• taking into account the recommendations of the Group of States against corruption (GRECO) of the Council of Europe, a clear and binding set of rules for the Union’s administration would be a positive signal in the fight against corruption in public administrations;
• a European Law of Administrative Procedure would: help the Union’s administration in using its power of internal organization to facilitate and promote the highest standards of administration; would enhance the Union’s legitimacy and increase the confidence of citizens in the Union’s administration; could strengthen a spontaneous convergence of national administrative law, with regard to general principles of procedure and the fundamental rights of citizens vis-à-vis the administration, and thus strengthen the process of integration; could foster cooperation and the exchange of best practices between national administrations and the Union’s administration, in order to fulfil the objectives set up by Article 298 of the Treaty on the Functioning of the European Union. An appropriate legal basis for the adoption of a European Law of Administrative Procedure is the entry into force of the Treaty of Lisbon.

2.2. The Content of the Future European Law of Administrative Procedure

Prior to commencing the drafting of the future law, three issues shall have to be regulated, in particular: the scope of application of the law, which authorities shall be authorized to act in accordance with the law and what shall be their powers. Furthermore, it shall be necessary to determine the effect of the law as compared to the sectorial instruments in its significance for the EU Member States.

2.2.1. Competent authorities for the enforcement of the ELAP. The application of the law of the Union in the specific cases falls within the scope of competencies of the Member States, which shall apply the national regulations (through their respective national administrations) with an obligation to comply with the principles of the acquis communautaire. However, in particular cases this administrative function shall be discharged directly by the EU institutions and bodies, primarily by the European Commission and a series of European agencies (often having regulatory powers) and other EU bodies. Finally, the EU law is also applied through cooperation between the EU institutions and the national administrations by virtue of various forms of co-contracting.

If a direct analogy is possible, the administrative functions of the Union shall be discharged by the European Commission, in spite of the fact that some of the competencies may be discharged by other institutions and bodies of the Union. The institutional framework of the European Union is made of the European Parliament, the European Council, the Council of Europe, the Commission of the European Union, the Court of Justice of the European Union, the European Central Bank and the Court of Auditors. This implies that defining administration in organizational (formal) terms is difficult in view of the fact that administrative activities are carried out (to a certain extent) by all institutions and bodies of the Union, as well as their administrative functions, with the exception of the judicial authorities. In functional terms, the European Commission acts as an executive body of the Union that also performs administrative activities by applying the EU law to individual cases and specific situations. However, the Commission has no original powers to discharge this function under the founding treaties. The executive and administrative powers are conferred on the Commission by the Council Decision 1999/468/EC, which is established as a general rule, while the
Council, in specific and substantiated cases where the basic instrument reserves such a right, may exercise directly certain executive and administrative activities (1999/468/EC).

We may conclude that the administration, in terms of organization, includes the institutions, bodies, offices and agencies of the European Union. The executive agencies are special legal persons that are regulated by the Council Regulation (EC) no. 58/2003 of 19 December 2002, and the reason for their establishment may be found in the increasing number of programmes that the Commission is not able to implement on its own (Lilić S.: 26). Currently there are 6 executive agencies: Education, Audiovisual and Culture Executive Agency, European Research Council Executive Agency, Competition and Innovation Executive Agency, Executive Agency for Health and Consumers, Research Executive Agency and Executive Agency for Trans-European Transport Networks. A matter of great significance for the Union today is the intensive increase of the administrative apparatus, where a great number of administrative powers are conferred on other bodies, too, of which currently the most important are the executive and the independent agencies.

2.2.2. Principles of the European Administrative Procedure. As regards the section of the Law which shall contain the basic principles of operation, we hold the position that it would be best, when drafting the Law, not only to take into account the administrative regulations that have been referred to above, and which already contain some of the principles of the administrative procedure, but also to comply with recommendations contained in the annex of the initiative for drafting of a European Law of Administrative Procedure (2012/2024(INI)). The Annex includes six recommendations.

The first recommendation guarantees the right of the EU citizens to a good, efficient and independent administration based on the European Law of Administrative Procedure, which the Union's institutions and bodies shall apply in their relations with the public. By this, the scope of the law is limited only to the immediate relations with the "parties" in the procedure.

The second recommendation is relating to a universal set of principles and a procedure applicable as a de minimis rule in the cases where there is no relevant procedure laid down by lex specialis. This shall guarantee a minimum threshold of rights and legal protection in the administrative procedure which, in the national legislations, must not be lesser than the rights guaranteed by the European law.

The third recommendation is relating to the general principles which should govern the administration: lawfulness, non-discrimination and equal treatment, proportionality, impartiality, consistency and legitimate expectations, respect for privacy, principle of fairness, transparency, efficiency and service orientation.

The fourth recommendation is relating to the decision-making process and contains guidelines on: the initiation of the administrative procedure (on initiative of the EU administration or at a request of an interested party), acknowledgment of receipt of requests and an indication of the time limit for the adoption of the relevant decision, impartiality and independence of the competent persons in the procedure (laying down the conditions for exclusion of an official from taking part in the procedure where conflict of interest is found to exist), right of the party to be heard and the right to access one's own file, clearly defined and reasonable time limits, the form and content of the administrative decisions, mandatory statement of reasons in each decision, obligation for notification of the parties and due service of the decisions, clear indication of the available remedies.

The fifth recommendation is relating to the procedure for review of the lawfulness of the decisions and the rectification thereof, both in cases when the administrative body taking the decision corrects clerical, technical or similar errors on its own initiative and following a request by the person concerned.
The sixth, i.e. the last recommendation lays down an obligation for the authorities to draft the decisions in a clear and concise manner that is easily understandable by the general public, and that those decisions should be publicized in the web pages of the EU institutions and bodies, etc.

3. Convergence of the Administrative Procedure in the Republic of Macedonia in Accordance with the European Principles and Standards

3.1. Introductory Remarks Regarding the General Administrative Procedure

In modern democratic States, three main broad goals can be singled out for administrative procedures, namely to provide a formal guarantee to the rights of the individuals through a practical application of the principle of legality; to provide a formal guarantee to the public interest through demanding transparency in public decision-making and consequently allowing for the administrative action to be controllable; and to create the conditions for capital investments and economic development through providing a guarantee of that administrative, and by extension, any public decision will be predictable and will respect the legitimate expectations of individuals. Along with sound administrative procedures an adequate organisation of the administration and a professional merit-based civil service should complete the administrative picture (SIGMA 2009: 3).

On the one hand, the basic objective of the administrative procedure is to introduce an administrative act, to enforce a lawful administrative action or adopt a legal administrative agreement, which shall enable exercise of the rights and obligations for the parties in the procedure, and on the other hand, to protect the public interest. In this context, what is required from the bodies authorized to act within the administrative procedure is not only to conduct it in a legal manner, but, also, to enable conducting the procedure in a simplest way possible (easy and transparent communication with the parties), in as much as possible concise manner (acting within a short period, without any delays), cost-efficient (with less expenses for the parties in the procedure). However, from another aspect, the public authority should be careful not to threaten the quality of the procedure by all this, and not to influence the pending decision, which means that the body should at the same time lead the procedure in a simple, diligent and cost-effective manner, and it should also mind the correct establishment of the factual conditions, which are crucial for realization of the basic principles in the administrative procedure, such as the principle of material truth, the principle of hearing the parties, the principle of legality, etc., which are the guarantee for adopting a lawful administrative act. All this shall contribute to adequate establishment of the rights and obligations of the parties and for the protection of their legal interests in the procedure.

A regards the physical and legal entities participating in the administrative procedure, the Law on General Administrative Procedure should provide for their security in realizing the principle of the rule of law in exercising their rights and realizing their active status in the procedure, which means that the party should be involved during all phases of the procedure, especially in the hearing phase for establishing the facts.

The latest trends and challenges occur in the regulation of the administrative procedure, as stated above in the paper, and the harmonization of the national administrative process legislation, with the principles and standards of good governance of the European Union. Consequently, aside from the fact that since the establishment of the European Community, today, in accordance with the Lisbon Treaty of the European Union, the regulation of the administrative matter has been subject of autonomous regulation by the member-states of EU, still, today, more often than before, there is an influence of the European law and principles on the regulation of the public administration on a national level. Namely, what is required from the candidate countries for membership in the
European Union is harmonization of their legislation with the EU Acquis. Thus, the influence of *acquis communautaire* is even more present in the legal standardization of the administrative procedure in the countries members and candidate countries for membership in EU. However, a characteristic of regulation of the administrative procedure is the double influence, i.e. apart from the influence of the European principles on the national legislation, there have been experiences of the countries-members taken in consideration and incorporated in the provisions of the European legislation.

In addition to SIGMA, here we could mention different bodies of EU and the Council of Europe as some of the institutions which contribute to the process of administrative convergence and harmonization of the administrative legislation of the candidate countries for EU membership, among which is the Republic of Macedonia.

Republic of Macedonia, as a candidate country for EU membership has the obligation to follow the latest European trends and provide for compliance to such trends. In a more narrow context, as regards the achievement of public administration which shall be based and which shall work in accordance with the European principles, Republic of Macedonia, in accordance with the Reports of the European Commission, is constantly instructed for certain disadvantages in the work of the public administration, such as the need to depoliticize, and rationalize the state authorities, to decentralize, tackle and prevent corruption, etc. Furthermore, in order to obtain a European oriented administration in the Republic of Macedonia, we need to change the traditional bureaucratic model, characterized with slowness, servitude, non-efficiency and non-effectiveness in the decision making, and to adopt a new model whose basic objective shall be citizens' oriented administration, which shall entail responsive, transparent, responsible, efficient and depoliticized public administration. Although there have been numerous administrative reforms in the Republic of Macedonia, in order to adopt this new model of public administration, there are still existing challenges and concrete problems which should be tackled in order to reform and modernize the administration.

Currently, one of the objectives of the Republic of Macedonia is the modernization and improvement of the general administrative procedure. Since its independence in 1991, Republic of Macedonia has adopted the first Law on general administrative procedure in 2005, and the amendments thereof in 2008 and 2011, whereas these amendments do not have a conceptual character, but are related to novelities in the manner of communication between the parties, the manner of delivery, the institute of silence of the administration and amendment of the basic principles. (See Official Gazette No. 38/2005, 110/2008 and 52/2011). The current situation with the administrative process law in the Republic of Macedonia is different, i.e. it is expected that the Republic of Macedonia, as a candidate country for EU integration, shall make crucial amendments to the Law on General Administrative Procedure. Namely, there is a need to adopt a new law on general administrative procedure, inspired by the idea for reforms in the public administration, in order approximation thereof to the European legislation. In this context, the simplification of the administrative procedure is one of the key priorities of the public administration reform, whose purpose is to achieve transparent, accountable, responsible and quality public administration, which shall fulfill all public services.

The main reason to amend the Law on General Administrative Procedure is that the current Law is a complex law, with many provisions and articles, and even though it regulates the actions of the public administration bodies within the administrative matters in a detailed manner, still, this detailed regulation negatively affects the parties and causes difficulties in the understanding of this complex procedure. Actually, these are the main disadvantages of the administrative procedure – non-efficient long procedure, with increased expenses. On the other hand, there is another issue, the tendency for increasing the number of material regulations, which regulate special administrative procedures. Representatives from the Ministry of Information Society and Administration,
representatives of SIGMA and experts in the field of administrative law have been involved in drafting the new Law on General Administrative Procedure of the Republic of Macedonia. Acting in accordance with the European requirements and standards, this group is expected to introduce novelties with the new law in relation to precise establishment of the competent bodies which shall enforce the LGAP, to define the administrative matter, to redefine the basic principles, to reduce the legal remedies, to complete the regulation of the institute of administrative silence, to emphasize the electronic communication between bodies and the physical and legal entities during the procedure. Above all, the innovative administrative tools, such as information and communication technologies, one-stop-shop system of operation, the administrative agreement and the effective system of administrative legal remedies can hardly be integrated in the existing legal framework, partially due to the fact that the given structure of the law does not provide adequate systematic position for these, and in part due to the mismatch between the modern requirements and the overall conceptual content, i.e. the “spirit” of the current Law on General Administrative Procedure.\(^4\)

One of the main novelties of the new Law on General Administrative Procedure is that according to the Strategy on Reform of General Administrative Procedure it is expected that the law shall apply even in the case when an administrative body fulfils its obligations in the field of administrative law through other unilateral administrative actions covered in the concept of the administrative act, but related to the rights of citizens, their obligations and legal interests, such as giving information, warnings, notifications, publication of expert’s opinions, or in relation to motions by citizens. Furthermore, the Law on General Administrative Procedure should provide legal protection even when the delivery of the public services (such as for example, telecommunication services, electricity or water supply) hinders the rights of citizens or their economic interest. The privatization of the public service delivery should not reduce the legal protection of the service beneficiaries (citizens).\(^5\)

Furthermore, the redefined Law on General Administrative Procedure is expected to harmonize the procedure on a normative level, with the international standards of operation of the public administration, such as legality, transparency, responsibility, efficiency, etc. Conducting the principles of good administration entails well prepared and firm platform consisting of four components: System of administrative procedures, which shall completely regulate the processes of adoption of the administrative acts; b) clearly structured organization of the public administration and its bodies in all administrative fields and territorial levels; c) professional, competent and independent staff; and d) system of effective judicial control of the administrative actions. In this context, each component is equally important for good administrative practice. Accordingly, in order to practically introduce the principles of good administration, there is a need to establish adequate system of administrative procedure (Davitkovski \textit{et al:} 173-189). Such system shall establish the general rules for the process of conducting the administrative action; it shall secure its quality and its legal correctness. A good administrative procedure system shall protect citizens’ rights and shall promote their involvement. It shall also avoid unnecessary complex, formal and long processes, and shall improve the transparency and accountability, which shall contribute to greater integrity of the public administration, since many cases of corruption have the sole objective to attain an administrative act which shall be in accordance with the law and issued in a reasonable period. At last, the good administrative procedure system shall also reduce the expenses of citizens,


\(^5\) Ibid.
as well as the government expenditures; on the other hand, the system of complex and inefficient administrative procedure is expensive for the citizens and significantly burdens the State budget.\(^6\)

Furthermore, the relevant directives should be taken in consideration, such as the Directive on Services 2006/123/EC, Action Plans “e-Europe”, and “-2010” etc. For instance, the main argument imposed by the Directive on Services is the obligation of countries-members to establish single contact points through which the providers of services shall be able to complete all procedures and formalities required by law in order to gain access to the market of services and complete the services. According to article 13 from the Directive on Services, it is prescribed that decision shall be adopted upon a case of a client as soon as possible, within a reasonable time which shall be determined in advance, and if this term is not respected, it shall be considered that approval has been given.

It is required from the new Law on General Administrative Procedure to be compatible with the European requirements. However, another issue more important than the adoption of a new law is providing the conditions for regular and continuous implementation thereof. In order to accomplish this, officials should be trained on the application thereof; those official which shall conduct administrative procedures should pass a professional exam, to strengthen the inspections of administrative procedures and to review the special administrative procedures (whether an to what extent they derogate from the Law on General Administrative Procedure).

The Law on General Administrative Procedure should ensure protection of the rights of individuals and the public interest, as well as proportionality of the administrative acts; to improve the transparency of the administrative procedures; increase the confidence of citizens in the public administration; to promote administrative practice which shall be oriented towards the services and professional public administration as a key precondition for economic development; to support effective and ethical behavior of State and public servants in the protection of the public interest; to improve the efficiency (cost-effectiveness) of the adoption of the administrative acts in the interest of citizens and the public interest; to pave the way for the start of application of modern information and communication technologies for delivery of the administrative services (e- administration); to harmonize the Macedonian public administration to EU standards.\(^7\)

4. Conclusion

We may conclude from the conducted research that modern tendencies undoubtedly imply that there is a need to codify the rules which regulate acting and decision making by the institutions and other bodies in the European administration in the realization of the administrative function of the Union, in a single unifying regulation, which could be titled as “European Administrative Procedural Act”.

Codification of the administrative procedure is essential for the purpose of efficient conduction of the procedure, which involves two or more bodies of the European Union or the Union and other member-states, for precise legal norming of the authorizations of these bodies in the process of conducting the administrative procedure, the forms of their adjustment and cooperation, as well as the terms imposed to them for undertaking an action. What we want to show is that if this idea is adopted and realized, during the realization of each reform on a national level, and on the level of the European Union, due attention should be taken for correct direction

\(^6\) See more in: Б. Давитковски, А. Павловска-Данева, Е. Давитковска, “Law on general administrative procedure – solution for all the problems of the inefficient administration”, Pravni život, Časopis za pravnu teoriju i praksu, Udruženje pravnika Srbije, 2013, Beograd.

\(^7\) See more in: Б. Давитковски, А. Павловска-Данева, “Правна сигурност грађана у управном поступку”, Рад изложен на међународној научној конференцији „Правна сигурност у условима транзиције”, на Правном факултету Универзитета у Београду 5-6 новембар 2013.
and harmonization of the European administrative procedure with the national procedure of the member-states. This results from the fact that regulation of the administrative matter is essentially an issue, which, according to the acts of the Union, has been left to the independent decision of the member-states, on a national level, in accordance with their political, social, historical and economic circumstances. What is expected from the introduction of this new model of decision making in the administrative matters is above all, unification of the rules of the procedure, which have been incorporated in several legal regulations (the incorporation agreements, decrees, recommendations, resolutions, etc.), simplification of the procedure, simplification of the cooperation between institutions on a national and international level, defining the competences and privileges of the competent bodies, providing greater availability, clarity and transparency of the persons whose rights and obligations are subject of the decision making process, strengthening the confidence of citizens in the institutions, strengthening the responsibility and control as regards the legitimacy of the adopted decisions.

The institutions authorized with the application of this law shall be required to adjust to the new condition, and shall be obliged to adjust the objective and resources they have at their disposal, and when they decide on a concrete administrative matter, they shall be obliged to comply with the principles of the administrative procedure and promote responsible work and quality settlement of the issues.

As regards the national legislations, this unifying regulation would help for simpler convergence of the national administrative process law with the one of the Union. Furthermore, the European law on administrative procedure may be a reason to initiate cooperation with member-states in relation to exchange of good practices between national administrations and EU administration, which would fulfill the provision of article 198 from the Treaty on the functioning of the European Union.

As a conclusion is that our view that the current condition with the administration in the European Union implies a real need of adoption of a European law on administrative procedure, is also supported by the Lisbon Treaty, the recommendations of the Group of States against Corruption (GRECO), whereas the Council of Europe holds the position that a clear and mandatory collection of rules for the administration of the Union shall be a positive signal in the fight against corruption in the public administration.
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CODIFICATION OF EUROPEAN ADMINISTRATIVE PROCEDURE LAW AND ITS REFLECTIONS ON SERBIAN PUBLIC ADMINISTRATION REFORM

Dejan Vučetić

Abstract

In the first part of the paper the author gives a comprehensive analysis of legal sources of EU Administrative Procedure Law, basic standards, principles, directives and recommendations in this domain, and assesses the needs, advantages, possible disadvantages, and the future content of the general EU Administrative Procedure Law. The second part of the paper analyzes the relationship with national systems in the context of possible impact on the national administrative procedure legislation and potential feedback effect on EU general administrative procedure rules. The last part of the paper assesses the current state of affairs in this domain regarding public administration reform in Serbia, and suggests possible improvements of the Serbian administrative law legislation.

Keywords: right to good administration, administrative procedure principles, European Administrative Space, Serbian administrative law.

1. Introductory Remarks

According to the Eurobarometer survey from 2011, for 33% of EU citizens the right to good administration is the most important civil right (European Parliament 2012, 17). The same survey indicated that citizens are dissatisfied with the lack of transparency of EU institutions. These facts clearly point out the importance of administrative procedures for the proper functioning of the Union. On the other hand, the significance of good administrative procedures is reflected in the fact that the likelihood of making good administrative decisions dramatically increases if public authorities act in accordance with certain procedural rules. At the moment, European rules on administrative procedures are highly fragmented, many of their principles are imprecisely applied, and some of them are regulated differently in different sectors of European Administrative Law (European Parliament 2012, 7). There are no horizontally binding minimal standards that would cover all areas of EU Administrative Procedure Law. Such fragmentation of applicable rules reduces their cohesion and availability from the perspective of the citizens, and can lead to their discrimination (Ziller 2012, II-23).

In 2012, the Committee on Legal Affairs (JURI) urged the European Commission, on the grounds of Article 298 of the Treaty on the Functioning of the European Union (TFEU), to propose the Regulation of the general European Law on Administrative Procedure (EU APL), which would be binding to the administration of all EU institutions, bodies and agencies. Results of this new Regulation should be clearly defined principles and standards of good governance, clarification of rights and improved legal certainty of parties in relation to institutions of the EU, more efficient EU administration, and strengthened legitimacy of the EU institutions.

In the following parts of the paper we are going to analyze current state of affairs in this domain of EU APL, its relationship with national administrative procedures and public administration reform in Serbia regarding this particular issue.
2. Current EU Administrative Procedure Law Landscape

Two main driving forces regarding European administrative substantive and procedural law are the European Union and the Council of Europe (Davinić 2013, 108), which jointly contributed to the emergence of the so-called European administrative space (Kavran 2004; Dimitrijević 2010; Lilić and Golubović 2011; Koprić, Musa and Lalić 2011).

The European Union contributes to this process in two different ways. First, there are procedural rules and principles that various agencies within the EU apply to parties from Member States, candidate states and states participating in the EU Neighborhood Policy, which often serve as role models for other rules of administrative procedure. Second, within the EU a set of basic principles has been developed to apply to all matters; it is called the European administrative procedure, and consists of principles existing in Member States as well as principles present in EU legal documents (Koprić 2010, 7). The EU Treaties contain a number of administrative law provisions. For example, the provision of Article 296 of the TFEU contains rules on the publication of acts, notification and entry into force. Articles 10, 18 and 19 of the TFEU establish general non-discrimination principles. Articles 15 and 16 contain provisions on transparency of administrative actions of EU bodies, access to EU institutions' documents and processing of personal data. However, all these provisions establish certain principles in a rather general way that requires their elaboration within appropriate regulations of the secondary legislation. On the other hand, in certain specific policy sectors, there are regulations containing rules of general administrative character (Leino-Sandberg 2012, I-9). From the perspective of EU Administrative Procedure Law, the most important provision is contained in Article 298 of the Treaty on the Functioning of the EU (Davinić 2013, 110): it emphasizes the procedural and legal dimension of the right to good administration - which is also contained in Article 41 of the Charter of Fundamental Rights of the EU adopted in Nice 2000. The right to good administration means that everyone is entitled to an impartial treatment of his or her matter, fairly and within a reasonable timeframe. Because of the rather general way in which the right to good administration is defined in Article 41, future Regulation of general EU ALP should accurately and precisely define all of the elements, primarily through the further development of principles of impartiality and fairness (European Parliament 2012, 8).

In addition to the Charter, the most important role in “shaping” EU APL is the European Ombudsman's “European Code of Good Administrative Behavior” endorsed by the European Parliament, the Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration, and the Directive 2006/123 of 12 December 2006 on services in the internal market. The code drawn by the European Ombudsman provides comprehensive, horizontally applicable standards, which however don't have binding legal force and therefore have limited effect. The Directive on services in the internal market contains requirements regarding: the simplification of administrative procedures, the creation of a single point of contact with the administration (provision of services in one place), the electronic administrative procedure and the institute of administrative silence. Internal documents of the European institutions (Rules of Procedure), and soft law documents (different Codes of good governance), although they contain the most comprehensive rules and principles of EU APL, do not adequately protect the rights of citizens in relation to administration. Only legally binding instruments, sanctioned by the court’s decisions in the case of failure to comply, can establish law applicable in practice (European Parliament 2012, 16).

The Council of Europe creates ‘soft law’ administrative standards, as less strict legal sources, primarily through its recommendations and resolutions and by international treaties (Lilić and Golubović 2011, 45, 94-100). The most important such treaty is the Convention on the Protection of Human Rights and Fundamental Freedoms sanctioned by the European Court of Human Rights.
Keeping in mind the forthcoming accession of the European Union to the Convention, its impact on EU APL, especially regarding the decision-making within a reasonable time and the availability of remedies, should only rise.

Principles of EU APL are being developed by the EU courts, the General Court and the Court of Justice, which quash administrative acts of EU institutions if they contain procedural flaws. However, the problem is that in many respects the EU courts’ rulings interpret certain administrative substantive and procedural principles more narrowly than the Code of the European Ombudsman and other ‘soft law’ documents. The European Court of Justice protects fundamental rights as part of the EU law. But the problem of complicated administrative procedures and legal gaps in their implementation cannot be solved just by asking for protection from the Court of Justice. Case law, in this context, is of limited use, because the Court of Justice hesitates to give further clarity to EU APL principles and explicitly calls upon the legislature to do so (European Parliament 2012, 16).

In-debt comparison of the provisions of the European Code of good administrative behavior and relevant provisions of the Treaty, the Charter of Fundamental Rights, as well as formulations of corresponding solutions in secondary legislation, shows that the latter sources of EU APL lack necessary clarity and precision. Some of the provisions of the Code are not accompanied by corresponding binding law clauses. Some other guarantees and standards of EU administrative procedure are set up only in EU documents or measures that have no binding force. For example, the European Code’s provisions on ‘Courtesy’, ‘Requests for information’ and ‘Keeping adequate records’ are more guidelines of conduct, and do not necessarily generate corresponding rights or obligations sanctioned under EU law (Ziller 2012, II-15).

“The European Code’s article on ‘Legitimate expectations, consistency and advice’ is not matched by any Treaty or Charter provision; the relevant case law of the ECJ overlaps only to a limited extent with the content of the Code. Certain number of European Code provisions such as the articles on ‘Fairness’, ‘Reply to letters in the language of the citizen’, ‘Data protection and’ Requests for public access to documents’ are “matched by similar content of the relevant Treaty or Charter clauses” (Ziller 2012, II-16).

Future Regulation of general EU ALP should confirm a number of basic good governance principles, such as the principle of equality and the principle of impartiality and independence, fairness and legitimate expectations of legality and legal certainty, proportionality and transparency, and the absence of abuse of power. None of these principles is entirely new, but their full implementation requires unified legislative definition of their key elements and the cases when they may be invoked. One additional principle which should have a key place in the future Regulation is the principle of citizen participation (Leino-Sandberg 2012, I-36).

In this respect, at least eight crucial elements of the future EU APL can be distinguished (Leino-Sandberg 2012, I-37). First, the Regulation should contain a provision on the initiation of an administrative process so as to establish when a matter is pending. Second, the Regulation should include the obligation of an administrative body to examine and investigate a matter, specifying that the institutions should clarify the matter adequately and appropriately in order to be able to decide on its merits. Third, a general obligation of the administrative body to act within a reasonable time should include cases of “administrative silence”. Fourth, the obligation of the administrative body to hear a party before taking any individual measure that would affect it adversely in accordance with Article 41(2) CFR should be included, with a possible extension of the provision to those interested in the matter, in light of the requirements of participatory democracy. Fifth, the administration must have an obligation to state reasons for its decisions, and in line with Article 41(2) of CFR, this obligation should be extended to all decisions with possible legal effects, and should include the
obligation to notify all persons concerned with the decision (Leino-Sandberg 2012, I-39). Sixth, there should be an obligation to give an indication of effective remedies available to all parties concerned. Seventh, the provision should be made for a review and correction of own decisions of administrative bodies, both on the grounds of clerical errors and on other grounds in certain specified cases, in the case of evident errors, which have in practice taken long time to correct due to the complexity of the applicable procedures. And finally, there should exist an obligation for administrative bodies to keep registers, and to document the administrative process, and to make these files open to the public in accordance with the principles of open government and transparency (Leino-Sandberg 2012, I-41), because, for many, only open government is good government.

In the end, we should point out that the wording of the future EU Administrative procedure Act should be simple enough in order for any official, even without any legal educational background, to apply it with ease. The wording of the future general EU APL should be sufficiently precise and written in a user-friendly language, and published in all official language versions (Ziller 2012, II-29).

3. Impact of European Administrative Procedure Rules on National Administrative Procedures

There are several parallel traditions (Statskontoret, 2005, 100) which complement each other in establishing the common principles of administrative procedure in the European context (Statskontoret, 2005: 95). In compliance with the principle of subsidiarity, Article 298 of the TFEU leaves room for procedural autonomy of national legislations (European Parliament 2012, 6). Thus, the relationship between EU administrative procedure law and national laws is often analyzed from the perspective of the indirect impact of administrative (procedural) law of the EU on the national legislators (Statskontoret 2005, 93).

In cases in which Member States apply European substantive law (indirect, decentralized implementation of European law), Member States are under special EU scrutiny, and in such situations the application of certain fundamental principles of EU administrative procedure is required. In this respect, the European Court of Justice has established a set of minimum principles that limit Member States’ administrative procedures whenever those procedures have resulted in the impediment of the free movement of persons, goods, services and capital. It is stated by the Court, in its Judgement of 15 October 1987 Heylens Case 222/86, that the decisions of Member States’ authorities that may affect effective application of EU law have to be made subject of judicial proceedings in which its legality under [EU] law can be reviewed, and to ascertain the reasons for the decision for the persons concerned (Ziller 2012, II-49). The relevant case law of the Court, which starts with a Judgment of the Court of 16 December 1976 Rewe-Zentralfinanz Case 33-76, establishes two principles: first, the principle of equivalence, according to which in Member States, when the application of EU law is at stake, the administrative procedures for internal matters must not lead to less favorable results, and second, the principle of effectiveness, according to which the procedures made available in Member State’s law for the application of EU Law must not be deprived of effectiveness. These principles have indeed led to some adjustments in the judicial procedural systems of Member States for reviewing decisions where the application of EU law is at stake, and also in their systems of administrative procedure.

However, one should keep in mind the truly interactive nature of the relationship between the EU and national APLs, and that national APLs have, and will have, significant impact on the General Law on Administrative Procedure of the European Union. There are significant procedural rights that exist in national legislations and are lacking in EU rules on administrative procedure (Ziller 2012, II-25-26). For example, whereas almost all Member States’ laws on administrative procedure include a provision according to which a public authority has the duty to deliver an acknowledgement of
receipt for any request or any other form of formal communication it receives from a citizen, an economic operator or another legal person, no such duty is imposed in general terms by EU law (Ziller 2012, II-111).

4. Reform of Serbian Administrative Procedure Legislation

The basic directions of the current public administration reform in the Republic of Serbia were essentially defined in the Public Administration Reform Strategy of 2004 (Government of the Republic of Serbia 2004). All subsequent strategic documents have complied with this strategy. In addition, the Strategy was based on the commonly accepted principles of the European administrative Space and particular attention was paid to the standards defined in the most relevant SIGMA documents (Sigma 1998a; Sigma 1998b, Sigma 1999). The given Strategy emphasizes the following as the basic principles of public administration reform: the principle of de-politicization and professionalization of the administration, as well as its de-centralization, and, in particular, the need for its rationalization and modernization. For this reason, most regulations that have been adopted in the domain of public administration in the Republic of Serbia in recent years can be said to have been based on European standards to a great extent.

According to the new 2014 PAR Strategy, the next step in the improvement of the previously adopted legal framework is to link the administrative reform process with the process of European integration, in accordance with the National Programme for the Adoption of the Acquis (2013-2016) (NPAA) (Government of the Republic of Serbia 2014, 9). In order to complete the implementation of the EU acquis, Serbian public authorities must conform to EU legislation. Activities necessary for further harmonization of regulations are listed in the NPAA, one of which is improving the capacity of public administration in order to successfully conduct negotiations and the process of harmonization of the regulations.

A part of this process is the reform of administrative procedure (Government of the Republic of Serbia 2014, 38), as a precondition for greater effectiveness, efficiency and predictability of public administration acts. In addition, the reasons for the adoption of the new General Administrative Procedure Act (GAPA) are necessary in order to increase the predictability and legal protection of the legitimate expectations of the parties, reduce the number of sector specific administrative procedures which caused a number of deviations from the GAPA (some of which involve unnecessary costs and duration, as well as lack of legal predictability and protection of legitimate expectations of parties), harmonize decision-making in the administrative proceedings with the principles of the European Administrative Space and other above mentioned contemporary trends in European Administrative Law. This need has been stressed in our national professional circles as well (Dimitrijević 2010; Lončar 2010; Milkov 2012). Unfortunately, the reform of procedural legislation in Serbia has been only partially implemented. The 1997 General Administrative Procedure Act, promulgated in the Federal Republic of Yugoslavia, is still in force. It largely follows the footsteps of the old Yugoslav General Administrative Procedure Act of 1956, which was only slightly amended during more than four decades of its validity. Instead of passing a new General Administrative Procedure Act, after the adoption of the new 2006 Constitution, only the amendments and additions to the current act were passed, so that it could be formally (mostly terminologically) harmonized. A completely new General Administrative Procedure Act was made in 2004, but it remained only a draft. In 2012 a Draft of the General Administrative Procedure Act was adopted, but, due to the election of the new Government on 26 July 2012, it was withdrawn from the parliamentary procedure. Currently, the Preliminary Draft of the Act on General Administrative Procedure is being publicly discussed, and a part of the professional public has expressed negative opinion on this proposal (Milkov 2013).
Contrary to the administrative procedure, in the domain of administrative dispute, important, crucial changes have been made, striving for the harmonization with European legal standards in this domain. However, in spite of the fact that the system of judicial control of the administration has been fully changed by the introduction of the separate Administrative Court, and that the administrative dispute has been substantially reorganized by passing the new Administrative Dispute Act of 2009, one can still find some legal shortcomings which keep the Republic of Serbia away from basic European legal standards (Lončar 2013).

Undoubtedly, the legislative reform of administrative dispute was fully influenced by the core European legal standards. Moreover, from the aspect of formal law, one can even say that the administrative dispute in the Republic of Serbia is today largely harmonized with the basic legal regulations comprising European standards in the domain of judicial control of administrative actions, given in relevant international documents: the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the recommendations of the Council of Europe, such as the Recommendation on Judicial Review of Administrative Acts of 2004, Recommendation on the Execution of Administrative and Judicial Decisions in the Field of Administrative Law of 2003, Recommendation on Provisional Court Protection in Administrative Matters of 1989, etc. Under the influence of European standards, some significant changes have come about in the legal regime of the administrative dispute, especially in terms of jurisdiction for reaching decisions in administrative disputes, where a separate Administrative Court has been established; accordingly, the subject matter of the administrative dispute was significantly broadened to encompass, in addition to the administrative acts, all final individual legal acts deciding on rights, obligations or legally-based interests of a party, when provided for by the law or when there is no other form of judicial protection; oral argument and public court hearings were introduced as basic means for determining facts, based on which the court shall decide in the administrative dispute; and the court was given the opportunity to decide on the postponement of the enforcement of the administrative act, not only when an administrative dispute against it has been initiated, but also before such an initiation, if matters are urgent, and also if an appeal has been submitted to the administrative court of second instance, which does not postpone the decision, and the appeal procedure has not been terminated.

In spite of significant changes in the legal regime of the administrative dispute, a series of solutions have remained which, to an extent, deviate from European legal standards. The basic reason for this lack of harmonization of the administrative dispute in the Republic of Serbia with all European standards primarily lies in the fact that during the 2008 judiciary reform, which entailed the establishment of a separate Administrative Court, insufficient attention was paid to the need to establish all legal standards in the administrative dispute: these were meant to be prescribed in the subsequent Act on Administrative Disputes of 2009 (Lončar 2012; Tomić 2010; Milkov 2011, 134-136). Numerous solutions from the Act on Administrative Disputes had been conditioned by previous establishment of the Administrative Court, which implied just one instance and too few judges compared to the increasing number of cases. Departures primarily pertain to the exercise of right to an effective (regular) legal remedy and some elements of the right to fair trial, such as right of access to court, right to just hearing and right to public hearing, or to the fact that some principles have not been properly regulated, giving the Administrative Court the possibility to depart from them in practice, as is the case, for instance, with determining the facts in an oral argument or with the postponement of enforcement of disputed legal acts, (Lončar 2013, 548-555) which still rarely occur in the administrative dispute case law, although they represent legal standards which should be available as a rule in this type of judicial control of the administration. The case is similar to requests for the postponement of enforcement of disputed administrative acts. This was confirmed
in the Serbia Progress Report 2010 of the European Commission, which clearly stressed that the new Act on Administrative Disputes of 2009 was still not fully harmonized with European standards.

Thus, a change of legislation in this domain of judicial control of administration is necessary. This time, accent should be put on changes that would lead to the establishment of adequate organization of the administrative judiciary, which would be capable of ensuring the implementation of all European standards in the administrative dispute.

5. Concluding Remarks

Whenever there are problems in the functioning of public administration, its efficiency suffers. Thus, proactive approach saves time, eliminates obstacles, and reduces the number of possible disputes that could arise from the maladministration of EU institutions. The only possible drawbacks of the new Regulation of general EU APL could be additional costs regarding its implementation and education of EU public officials for applying these new rules of procedures, as well as possible initial slowdown of administrative procedures (Ziller 2012, II-45).

Horizontally binding minimum standards of administrative procedure would lead to the application of procedural rules in all areas of EU policy, and, at the same time, guarantee fundamental rights in these areas (e.g. the principle of hearing the parties, open records, reasons for the decision), which would ensure EU policy openness, effectiveness and independence. Such codification would particularly come to the fore when it comes to areas where parties currently don’t enjoy strong procedural guarantees and rights, for example, in the area of competition law and Article 258 of the Treaty on the Functioning of the EU.

On the other hand, precisely proscribed rules of administrative procedure ensure the appropriate role of the courts regarding the legality of administrative decisions because their role is not to make administrative decisions instead of administrative authorities, but to judge their legality (Leino-Sandberg 2012, I-35).

The idea of the new Regulation on EU APL as a generally binding source in the sense of Article 288 of the TFUE (Ziller 2012, II-30) is not to replace national regulations, but to fill the gap between the currently available sources, primarily in relation to the EU institutions, bodies and agencies (Leino-Sandberg 2012, I-7). Fear of direct impact of the EU APL on national legislations is unjustified. The Law on Administrative Procedure in the EU can have only an indirect impact on the national administrative procedural legislation, because, as stated by Harden in the Principles of good administration in the member states of the European Union, ‘if you realize the intention to create the highest standards for the treatment of institutions and bodies of the European Union, it will be difficult to explain to people why they have less rights in their countries’ (Statskontoret 2005, 93).
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CONCLUSIONS
from the Regional Conference “EU Administrative Law and Its Impact on the Process of Public Administration Reform and Integration into the European Administrative Space of SEE Countries” held in Zagreb on 4th and 5th of September 2014

Ivan KOPRIĆ *
Anamarija MUSA **
Vedran ĐULABIĆ ***
Goranka Lalić NOVAK ****

Regional conference EU Administrative Law and Its Impact on the Process of Public Administration Reform and Integration into the European Administrative Space of SEE Countries, organized by the Network of South East European Law Schools (SEELS), was held on 4-5 September 2014 in Zagreb, at the Faculty of Law, University of Zagreb. The Conference gathered more than 30 participants from South-Eastern Europe and the Commonwealth of Independent States.

The results of legal research project of the same title were presented at the conference. Representatives of the majority of the SEELS Network members, faculties of law from SEE region, were the members of the project team. They have prepared the papers presented at the conference and will be published in the separate publication by the end of 2014. Two researchers were not able to attend the conference (associate professors Boris Ljubanović from Osijek, Croatia, and Dražen Cerović from Podgorica, Montenegro).

Professor Hrvoje Sikirić, Dean of the Faculty of Law in Zagreb and Dr. Veronika Efremova, Project Manager at GIZ Open Regional Fund for South East Europe-Legal Reform opened the Conference.

The topic of the first session, moderated by assistant professor Goranka Lalić Novak (Faculty of Law, Zagreb), was the European Code of Good Administrative Behaviour. Within this session, the paper Principle of Good Administrative Behaviour in the European Union and Bosnia and Herzegovina, prepared by Professor Zlatan Meškić and assistant Enis Omerović from the Faculty of Law in Zenica (Bosnia and Herzegovina) was presented. Mr Omerović stressed out that, as far as they know, a codification of European Administrative Law in the form of a legally binding instrument has not been initiated yet. The European Code of Good Administrative Behaviour prepared by the European Ombudsman partly fills in this gap, by taking over some of the functions of a binding codification. The conclusion of the conducted analyses shows that, although the principle of good administration is under this term unknown to the legislation of Bosnia and Herzegovina, many elements of its principles can already be found in the administrative law of Bosnia and Herzegovina. Bosnia and Herzegovina has, according to the authors’ assessment, a solid normative framework for good administrative behaviour in the form of various legal principles and requirements in different legal acts and bylaws at the state, entity, and district levels. Several important issues were raised in the discussion. First of all, there is the question of implementation of the standards in administrative

* Ivan Koprić, PhD, Full Professor and the Head of the Chair of Administrative Science at the Faculty of Law, University of Zagreb, and President of the Institute of Public Administration, Croatia, e-mail: ikopric@pravo.hr
** Anamarija Musa, PhD, Assistant professor of administrative science at the Faculty of Law, University of Zagreb, and Information Commissioner of the Republic of Croatia, e-mail: amusa@pravo.hr
*** Vedran Dulabić, PhD, Assistant professor of administrative science at the Faculty of Law, University of Zagreb, e-mail: vdulabic@pravo.hr
**** Goranka Lalić Novak, PhD, Assistant professor of administrative science at the Faculty of Law, University of Zagreb, e-mail: glalic@pravo.hr
practice. The connected issue is the monitoring whether public administration and civil servants adhere to the standards and principles. Moreover, there is the question whether the standards of good administrative behaviour should be codified in a binding instrument. The issue of reasons for introducing the principle of good administration was also raised, whether it is an intrinsic notion of the national legislator or other actors and processes, such as the EU accession process, impose it. Some interesting comparative experiences, from Georgia and Macedonia, were heard, too.

In the session Towards Codification of the EU Administrative Procedural Law, moderated by assistant professor Vedran Đulabić (Faculty of Law, Zagreb), three papers were presented.

Associate professor Dario Đerđa from the Faculty of Law in Rijeka (Croatia) addressed the topic of codification of the EU administrative procedural law. Despite the fact that there is a large number of regulations governing the procedure in special administrative areas of the EU acquis communautaire there is still no single codified administrative procedure that should be followed by the EU’s institutions, bodies, agencies and offices (EU administration). Several attempts have been made in this direction and the most noticeable is the Code of Good Administrative Behaviour initiated by the EU Ombudsman and adopted by a European Parliament’s resolution. Despite that, rules governing the general administrative procedure of the EU have not been codified. There are several important procedural principles that should be pillars of the EU administrative procedure. These are legality, equality of treatment, impartiality and fairness, right to inspect the file, right to be heard and make statements, duty to state ground for decisions, proportionality in decision making and resolving the administrative matter in a reasonable time. There are several other principles that should be respected, such as predictability and transparency, protection of legitimate expectations, consistency of administrative actions, etc.

The second paper continued to elaborate codification of the European general administrative procedure law, and in its second part it was devoted to the reform of general administrative procedure in Macedonia. The paper was presented by associate professor Ana Pavlovska Daneva from the Faculty of Law in Skopje (Macedonia). Macedonia inherits tradition of the former Yugoslavia when it comes to regulation of the general administrative procedure. However, under the influence of OECD-Sigma, new draft LGAP has been prepared and is currently in the parliamentary procedure. According to Pavlovska Daneva, the new draft LGAP contains unnecessary changes because the previously drafted law was of satisfactory quality. She highlighted the existence of two main concepts of regulation of the general administrative procedure. One is the old tradition of detailed legal regulation of administrative procedure, while the other is rather new and consists of regulating mainly the general principles of administrative procedure.

The final presentation in this session was done by assistant professor Dejan Vučetić from the Faculty of Law, University of Niš (Serbia). After presenting the attempts to codify European administrative procedural law, he concentrated on presenting the Serbian case of modernisation of general administrative procedure and of administrative justice. This modernisation has been part of the wider efforts to modernise public administration and to get it closer to the requirements of the prospective EU membership. Due to mainly political reasons such as elections in Serbia, new draft LGAP has been withdrawn from the parliamentary procedure for several times. It is expected that the law would finally be adopted by the Serbian Parliament.

The subsequent debate was concentrated on the new instruments regulated by the new LGAPs in the region, such as administrative contracts, administrative silence, level of detailed regulation, guarantee administrative act, electronic communication in administrative procedure, etc.
It is evident from the presentations in this session and the following debate that a new generation of general administrative procedure acts are emerging on the territory of the former Yugoslavia. This new approach to general administrative procedure has been heavily influenced by the efforts of the countries in the region to become members of the EU. In the process of preparation for the EU membership, OECD-Sigma plays a significant role when it comes to the regulation of general administrative procedure. This process results in two consequences. The first is that the new generation of LGAPs is slowly departing from the old Yugoslav tradition of detailed regulation of the general administrative procedure, although there are very strong elements of tradition that could be noticed in the new laws drafted and adopted in the countries of the region. The second consequence is new harmonisation of administrative procedural laws that is mostly taking place under the previously mentioned efforts of Sigma and the prospects of full EU membership. This is the process of Europeanization that affects public administrations of both the EU member states and accession states.

Parallel to this development, efforts toward codification of the EU general administrative procedure have been taking place. It is still hard to predict which direction these efforts will take, but it is evident that the process is slowly emerging. Many questions are still open when it comes to regulation of the EU general administrative procedure. Will it be detailed or will it contain only general principles of administrative procedure; how much will it be influenced by national administrative traditions; and which concept will prevail when it comes to concrete legal institutes of administrative procedure?

Finally, laws regulating general administrative procedure should correspond to the requirements of societal modernisation, economic development and Europeanization of societies that have taken place since the current generation of LGAPs were adopted for the first time. They should also correspond to technological innovations that affect modern life such as ICT, they need to simplify the procedure in order to make it more understandable to citizens and the general public, and to enable public administration to adapt to new circumstances and provide legitimate and efficient services.

The next session, held on the second day of the conference, was devoted to the Europeanization of the Administrative Law. Moderated by assistant professor Anamarija Musa, Information Commissioner of the Republic of Croatia, the session included three papers.

Professor Stevan Lilić from the Faculty of Law, University of Belgrade (Serbia) presented the paper *Harmonizing Serbia's Administrative Laws with European Administrative Space*. Professor Lilić underlined that the content of the European Administrative Space was created by legal systems of the European Union and the Council of Europe. Faced with the structural and functional problems of public administration and the judiciary, the candidate countries were left to adjust to the political, legal, and operational aspects of the accession procedure, framed within the Stabilisation and Association Agreements. The new legal framework on the administrative procedure is in the focus of the harmonization of administrative law. However, the implementation of the EU standards and rules should not proceed without critical examination. One example is the issue of the silence of administration, which, by the provision on positive fiction at the practical level, leaves open many questions. In sum, the adherence to the EU administrative standards and principles imposes the pressure on public administrations in the acceding countries to relinquish their power and to replace the authoritative and hierarchical position they have traditionally exercised towards citizens with a more balanced position and service orientation.

Professor Ivan Koprić from the Faculty of Law, University of Zagreb (Croatia) presented the paper *Good Administration and Good Governance as the Key Elements of the European Administrative Space*. Professor Koprić discussed the overlapping but yet distinctive meanings of the terms good
governance, good administration, and European administrative space. Although applied in different circumstances, all three concepts share a common idea and basic principles. They also correspond with the theoretical concept of the neoweberian state, which is often used to mark the return to the core values of the traditional administration in the new social, economic and institutional context of the 21st century. The attempt to reconcile two agendas – the economic one, which insists on the capacity, operational strength, professionalism and effectiveness, and the political one, which promotes accountability, participation, transparency and other political values, has found its way in the concept of good governance. Focusing on the European Ombudsman's attempts to determine the content of good administrative behaviour, professor Koprić underlined the effects of the two decades long work of that institution – by searching on maladministration, the Ombudsman has had to determine what the content of good or proper administration is. The principles and standards of good administration as defined by the Ombudsman have found its way in the first European Law on Administrative Procedure, which is now under preparation, and in the previously adopted European Charter of Fundamental Rights, thus comprising a set of the sort of constitutional norms of the EU.

Erlir Puto, Lecturer at the Faculty of Law, University of Tirana (Albania) presented a paper titled Challenges for Public Administration of Candidate States Regarding the EU Law and Constanzo Obligation. In his paper, Mr Puto analysed the relationship between national law and European law and in that respect, the principle of direct application. The obligation of direct application of the EU law will impose various challenges on the administrations of the new and future member states, at different levels and of different types (state administration, independent agencies, local governments). In case of the conflict of laws, public administration resolves the issue by interpreting the provision of national law in the light of the European law. In case the provisions are incompatible, it should directly apply the European law. Such a complex legal exercise poses a great challenge to the public administrators in relation to their expertise level, but also pinpoints the problem of the autonomy of public administration and the relationship between the three powers (the division of powers principle), and raises the problem of accountability of the state and public administration. The competence of the central government to adequately steer and coordinate as well as to transpose the EU law is crucial for the resolution of those problems.

The discussion that followed focused on the role of the hard law and soft law on the harmonization process, the effects of the new European administrative procedure framework, as well as the problematic of the particular provisions of administrative law. In sum, the positive role of the power of legal obligation to transpose and to adjust to the European law combined with the political power to make the accession progress conditional upon the fulfilment of the obligations, is in practice counterbalanced by the relatively strong opposition of public administration and, possibly even more, of the politicians to preserve the traditional logic of administrative behaviour, which grants them the power over society. The harmonisation and acceptance of the EU administrative law principles and standards in essence means that the political and administrative power has to be transformed into participatory, transparent, service-oriented, and effective service to citizens.

Assistant professor Vedran Đulabić presented several tentative conclusions of the Conference. He stressed the fact that almost all the countries in the region have prepared new administrative procedural laws, administrative justice changes and public administration reforms under the strong influence of the EU and under the broader process of Europeanization. Not only EU, but also the Council of Europe, OECD-Sigma and many other actors foster Europeanization in the region. The preparation of new LGAPs is part of such Europeanization efforts. The Europeanization of national administrative procedural laws includes the preparation of modern LGAPs that are shorter and simpler, but regulate all possible relations of citizens and public administrations, including traditional administrative acts, administrative contracts, provision of services of general interest, and other administrative actions (real acts). Many other innovations are to be regulated by the new
LGAPs, from e-government solutions to reduction of so-called extraordinary legal remedies. Finally, he stressed that the necessity to achieve the fit between economic development, societal needs and the new administrative procedural law.

Professor Ivan Koprić mentioned that the next steps include disseminating the presentations from the conference to all participants, which is to be done by the SEELS secretariat. It would be advisable that the project team members prepare the final versions of their papers, in light of the discussions at the Conference. The publication is planned for October 2014. Based on the project’s results and debates at the Conference, he mentioned several ideas for further projects and researches. They can be based on two research approaches, empirical and dogmatic. Empirical researches about the degree of Europeanization of national legal and administrative systems and about the degree of harmonization of administrative law and public administrations in the whole Europe are the most necessary. Without solid and reliable empirical research, only personal impressions and assessments can be presented, but they are not the best source for designing the policies of public administration reforms. One of the very interesting variables for research, critical in many countries, is trust in public administration and the influence of administrative law modernisation on trust in institutions. If administrative law, especially administrative procedural law that regulates administrative technology and relations with the citizens, does not modernise, people can easily lose trust in public administration and perceive administrative law and public administration as the obstacles for businesses and better quality of life in general. Dogmatic, legal research of administrative law and public administration reforms can be conceptualised as qualitative and oriented towards the questions such as: a) how have the administrative and legal systems in the region answered the EU conditionality policy and the need to harmonise with the EU *acquis communautaire* and other, soft legal and administrative standards, b) what are the reasons for specific legal and administrative solutions in particular countries, c) are these specificities justified by the real societal circumstances and needs, etc.?

After a short exchange among the participants, the Conference was closed by good-bye note of Professor Koprić, in the name of the host institution.
EU Administrative Law and its Impact on the Process of Public Administration Reform and Integration into the European Administrative Space of South East European Countries

Contact:
South East European Law School Network (SEELS)
Centre for SEELS
Faculty of Law "Justinianus Primus"
Bul. Goce Delchev 9b
1000, Skopje, Macedonia

www.seelawschool.org
centre@seelawschool.org