



Activity 17010 – Lead Expert

Terms of Reference
Expert in Case Law of
the European Court of Human Rights

Introduction

The Regional School of Public Administration (ReSPA) is the inter-governmental organization for enhancing regional cooperation, promoting shared learning and supporting the development of public administration in the Western Balkans. ReSPA Members are Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia, while Kosovo*¹ is a beneficiary. ReSPA's purpose is to help governments in the Western Balkan region develop better public administration, public services and overall governance systems for their citizens and businesses, and prepare them for membership in the European Union (EU). Since its inception, ReSPA has contributed to the development of human resources and administrative capacities through training programmes and innovative cooperation mechanisms such as the exchange of good practices, peer reviews and development of know-how.

European Commission (EC) provides directly managed funds for support of ReSPA activities (research, training and networking programmes) in line with the EU accession process. The current EC grant supports the main objective of ReSPA work in 2016-2017: Improving regional cooperation in the field of PAR and EU integration, and strengthening administrative capacities in the beneficiaries. This objective is being achieved through the following three pillars of ReSPA Programme of Work for 2016-2017:

- (1) European Integration Pillar: Increased capacity of public administration in the ReSPA Members necessary for successful conducting of the European Integration process;
- (2) Public Administration Reform Pillar: Facilitated and enhanced cooperation and exchange of experience in Public Administration Reform and European Integration activities in ReSPA Members;
- (3) Governance for Growth Pillar: Ensured effective coordination of the implementation of the Governance for Growth pillar of the SEE 2020 Strategy.

Following consultations and expressed interest of the ReSPA Members, it has been decided that ReSPA should organize activities to analyse and contribute towards improvement of Administrative Law and Administrative Justice in the Western Balkan region.

¹ * This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and ICJ Advisory opinion on the Kosovo Declaration of independence

Purpose

In order to implement its Programme of Work for 2016-2017, and to fulfil expectations of its stakeholders, ReSPA will commission, support development, and publish the Study on the Case-law of the European Court of Human Rights (ECtHR). The Study shall deal specifically with the leading cases related to administrative disputes, which are of direct relevance for the Western Balkan countries. The aim of the Study is to contribute towards improvement of the judicial control of administration in the Western Balkan region.

Background

Within the European Principles of Public Administration (PAP) related to Accountability, ReSPA's activities contribute towards development of administrative justice in Western Balkan countries, by supporting ReSPA Members (Albania, Bosnia and Herzegovina, Macedonia, Montenegro, Serbia) and Kosovo* in assessment and application of European principles and standards in this field.

ReSPA Members and Kosovo* are already facing significant novelties in the area of administrative procedures and administrative justice. Most of the countries in the region have enacted new General Administrative Procedure Acts (GAPAs): Montenegro in December 2014, Albania in April 2015, Macedonia in July 2015, Serbia in February 2016, and Kosovo* in May 2016. This process is followed by harmonisation of a significant number of sector specific laws, and drafting of amendments or new legislation in the area of administrative dispute, across the region. These developments have significant impact on the structure, importance and work of administrative justice, and public administration as a whole.

On the other hand, the European Court of Human Rights (ECtHR), established by the European Convention on Human Rights (ECHR), has developed through its case-law important procedural and substantive law standards on administrative justice. As all ReSPA members are parties to the ECHR and have undertaken to give full effect to it, ReSPA believes that it is essential to present and explain the leading ECtHR's cases in administrative disputes with the purpose to bring them closer to the local public agents, administrative court judges and legislators who have an obligation to apply the ECHR on a daily basis.

In order to respond to this need, ReSPA will commission, support development, and publish the Study on the Case-law of the European Court of Human Rights (ECtHR) focused on administrative disputes. Therefore, ReSPA is looking for an Expert in case-law of the ECtHR who will lead the effort in preparing the above-mentioned Study.

Objectives and Scope of the Assignment

The objective of the Assignment is to prepare the Study on the Case-law of the European Court of Human Rights (ECtHR) that shall elaborate specifically on cases related to administrative disputes, and shall focus on cases relevant for Western Balkan countries.

Each of the selected cases shall be thoroughly presented and explained, as to its facts and law, as well as legal reasoning of the ECtHR in it. Cases should be selected on the basis of the challenges that the Western Balkan countries have encountered so far in the application of the ECtHR's procedural and substantive law standards on administrative justice. The Study should help these countries overcome the present challenges and lead them in their further comprehensive and effective integration in the European system of human rights protection.

Cases shall be elaborated in the same format. Methodology and format shall be proposed by the Lead Expert. However, it is expected that each case will be elaborated, and that elaboration will be written in the same or similar style. After the presentation of each leading case, the author(s) should explain it and briefly indicate other relevant ECtHR's cases upon which it had effects.

Overall, the volume of the Study should be up to 100 pages. The language of the Study shall be English. ReSPA will support translation of the Study to languages of the Western Balkan countries. The Lead Expert and regional experts will be asked to review the translation, and therefore fluency in at least one of the following languages is required for the Lead Expert: Albanian, Bosnian/Croatian/Montenegrin/Serbian or Macedonian.

Tasks and Responsibilities

The Lead Expert is expected to perform the following tasks:

- To conduct desk research on the relevant jurisprudence of the European Court of Human Rights;
- To pre-select and suggest to ReSPA approximately 15 cases to be covered by the Study; These should be leading cases in administrative disputes relating to: expulsion of aliens, data protection, child custody, freedom of information, protection of property, and right to free elections. The cases should be typical, in the sense to be able to provide concrete answers to the problems that Western Balkan countries are confronted with in implementation of the European Convention on Human Rights;
- To liaise with regional experts (2 experts to be selected by ReSPA) and clearly define research tasks;
- To coordinate the work of regional experts and to regularly inform responsible ReSPA Programme Manager about progress in fulfilling the task, at least once per month;
- To write detailed analysis of at least 5 cases;
- To review and incorporate cases prepared by regional authors into the Study;
- To write an executive summary, introduction, conclusions and recommendations of the Study;
- To provide comprehensive full text of the Study of publishable quality (in English language) to ReSPA by 25 September 2017;
- To review and approve text in English and one more regional language for publishing after pre-print is completed;

- To support ReSPA in promoting the Study to relevant audience at workshops, conferences and similar events, if needed;
- To prepare the report on completed activities with recommendations for follow up activities – to be submitted to ReSPA in English language (up to 3 pages).

Within the above framework, the Lead Expert is expected to liaise directly with the ReSPA Programme Manager in charge for management of this Activity (no. 17010), and to take into consideration the instructions received beforehand.

Necessary Qualifications

The Lead Expert shall possess the following qualifications:

- PhD in Law / Doctor of Juridical Science (J.S.D.), preferably with specialisation in Human Rights and/or Administrative Law;
- Minimum 5 years of experience in dealing with Human Rights and/or Administrative Law in the Western Balkan region;
- Experience in drafting analytical papers, legislation, academic papers or policy documents related to Human Rights and/or Administrative Law, including published research in the field;
- Excellent written and oral communication skills in English language and at least one language from the Western Balkan region;
- Advanced computer literacy;
- Ability to work with people of different nationalities, religions and cultural backgrounds;
- Excellent organisational skills, proven communication and presentation skills and ability to work in an environment requiring liaison and collaboration with multiple actors including government representatives, international organizations, and other stakeholders.

The Lead Expert shall possess the following competencies and core values:

- Demonstrates professional competence to meet responsibilities and task requirements, and is conscientious and efficient in meeting commitments, observing deadlines and achieving results;
- Results orientation: plans and produces quality results to meet established goals, generates innovative and practical solutions to challenging situations;
- Communication: Excellent communication skills, including the ability to convey complex concepts and recommendations in a clear and persuasive style tailored to match different audiences;
- Team work: Ability to interact, establish and maintain effective working relations with a culturally diverse team;
- Client orientation: Ability to establish and maintain productive partnerships with regional and national partners and stakeholders, and pro-activeness in identifying the needs of beneficiaries and partners, as well as matching them to appropriate solutions.

- Demonstrates integrity and fairness by modelling ReSPA values and ethical standards;
- Displays cultural, gender, religion, race, nationality and age sensitivity and adaptability.

Time-frame, Level of Effort, and Location

The main Assignment is to be completed between 20 April and 15 December 2017.

The Level of Effort (LoE) is estimated at 20 (twenty) working days, as follows:

- 3 (three) days to conduct desk research on the relevant jurisprudence of the European Court of Human Rights and to pre-select and suggest to ReSPA 15 cases to be covered by the Study;
- 1 (one) day to liaise with regional experts (2 experts to be selected by ReSPA) and clearly define research tasks;
- 2 (two) days to coordinate the work of regional experts and to regularly inform responsible ReSPA Programme Manager about progress in fulfilling the task at least once per month;
- 7 (seven) days to write detailed analysis of 5 cases;
- 1 (one) day to review, and incorporate cases prepared by regional authors into the Study;
- 3 (three) days to write an executive summary, introduction, conclusions and recommendations of the Study;
- 2 (two) days to review and approve text in English and one more regional language for publishing after pre-print is completed;
- 1 (one) day for preparation of the report for ReSPA with recommendations for follow up activities.

The Assignment foresees work from home and if necessary, travel to meet with regional experts, to be agreed with ReSPA in advance.

Deliverables and Final Documentation

The following deliverables shall be produced and transferred to ReSPA during the course of the Assignment:

- Brief presentation of the relevant Jurisprudence of the European Court of Human Rights and suggestion of cases to be reviewed - by 15 May 2017;
- Interim report on undertaken activities and recommendation for follow up activities – by 21 August 2017;
- Final text of the Study in English, of publishable quality by 25 September 2017;
- Time Sheets for each month of engagement;
- Boarding passes for travel (if applicable)
- Final report to ReSPA by 15 December 2017.

Quality Control

The Expert should ensure an internal quality control during implementing of the Assignment. The quality control should ensure consistency and coherence between findings, conclusions and recommendations. It should also ensure that findings reported are duly substantiated and that conclusions are supported by relevant judgment criteria.