MODERNISING ADMINISTRATIVE PROCEDURES, MEETING EU STANDARDS

Foreword

On 12 and 13 April this year ReSPA organised its annual conference that took place under the title "Modernising Administrative Procedures, meeting EU standards".
During this conference presentations were given from different sides and a lively exchange on opinions and experiences in the region and beyond took place.

As it was earlier decided by the Governing Board and taken on board in the Programme of Work for 2011, a ReSPA publication would be prepared that would be in line with the theme of the conference and that can be considered as a follow up of the event.

This publication is the result of these efforts.
It starts with an introduction is given by Wolfgang Rusch from SIGMA, explaining the principles of Good Administration and emphasising the need for advanced administrative procedures when reforming the administration.
The introduction is followed with articles of most of the ReSPA member states in which examples are given of the endeavours that has been made to develop and introduce the modernization of administrative procedures in the administration and the efforts to put this into practice. Some countries have recently made a start with this process, while some other countries can already look back at some first experiences.

A summary is finally given by Mose Apelblat from the European Commission DG enlargement.

I want to express my gratitude to all who have contributed to this publication in terms of coordination, drafting and translation.
It is a piece of evidence of the commitment and involvement of colleagues in the region who subsribe the importance of ReSPA as a body for mutual cooperation.

Suad Music

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GOOD ADMINISTRATIONTHROUGH GENERAL ADMINISTRATIVE PROCEDURES

Wolfgang Rusch, Sigma

Introductory remarks

The purpose of this SIGMA contribution to the ReSPA publication on the status quo of the reform of administrative procedures in the ReSPA region is twofold. For those among the ReSPA members that have already entered the unknown territory of modernising their legislative framework on administrative procedures, the following text may explain, which political goals and legislative principles the reform process was based on. Sigma had the opportunity to actively support the process in all of these countries. For the other group of ReSPA members, the text may provide some basic ideas that could stimulate and guide their plans to review the existing system of general administrative procedures.

Executive Summary

The status of public administration, and its adjustment to rapidly changing needs of society and government, is currently a universal debate in European countries. In this political and social context, "Good Administration" has emerged as an inclusive concept, indicating the overall objective of the modernisation process.

The concept of Good Administration redefines administrative operation and citizen-administration relationships. It responds to the expectation and requirement of a balanced approach to safeguarding the public interest whilst respecting the rights and interests of the citizens. Good Administration serves the community and promotes social trust in the executive power; it thus contributes to political stability and fosters economic development and social wealth.

Putting the principles of good administration into practice requires an appropriate system of administrative procedures. This involves a set of rules that determine the process of making administrative decisions. In many European countries these rules are codified in a single piece of legislation, usually under the name "Law on General Administrative Procedures".

A good system of administrative procedures ensures the legality as much as the quality of administrative decisions; it also protects citizens' rights and promotes citizens' participation. It further enhances transparency and accountability by avoiding unnecessarily complicated, formalistic and lengthy processes. Under these conditions, transaction costs for citizens and per capita government expenditures are reduced. SIGMA's experience has found that governments that move in this direction ensure multiple benefits for their country.

In this text the principles and standards of Good Administration are discussed and the major streamlining issues concerning administrative procedures are addressed. This account integrates principles and standards derived from EU legislation and judicature as well as from good administrative practice in EU Member States. It thus provides policy-makers with baselines, also in the light of EU membership and cross-border administrative cooperation.

However, the paper does not only target policy-makers. Principles and standards of Good Administration enable stakeholders, such as businesses and civil society 'actors', to assess the current state of the national system of administrative procedures and may encourage them to contribute to the public debate on its reform.

Recommendations made in this paper aim at improving the relevant legal framework. They also address strategic issues concerning the implementation of relevant reforms by providing guidelines on how to implement new legislation into every-day administrative practice.

Hence, the paper is organised into 3 sections, each dealing with a separate range of questions. In the first section the following fundamental questions are raised: (1) What are the principles of Good Administration? And (2) What are the benefits of Good Administration? The second section offers the key elements of a good system of administrative procedures. The third section refers to some basic ideas on how to proceed in order to implement new legislation into every-day administrative practice.

I. Good Administration: the principles and their importance

The concept of Good Administration has emerged within the European Union and its Member States as a system of values stemming from the principles of rule of law, democracy and human rights. It comprises a set of procedural rules which translate these principles into concrete standards for administrative operation.

1. Key elements of Good Administration

, The Charter of Fundamental Rights of the European Union proclaims that every person has the right to Good Administration. Some key elements of this fundamental right are stated in the Charter itself, while other principles and standards of good administration derive from other EU legislation and judicature as well as from good administrative practice of EU Member States. Long-time experiences of administrative practice, supported by scientific elaboration also provide important contributions.

These principles and standards have become part of modern administrative systems. Having evolved in the course of time, they present a dynamic character, integrating new developments in order to respond to changing social needs.

a. The challenges

Until recently the main challenges for administrative operation were a) respect for the rule of law and b) predictability. Administrative decisions had to be based on a valid legal provision circumscribing competence and setting its limits. In this way, decisions could be reviewed and controlled by the hierarchy and the judiciary. Predictability and accountability of administrative operation were ensured in this way.

A more recent challenge for Good administration is to respond to fundamental social, cultural and economic changes that have occurred during the last decades. These changes affect all countries and state systems, but are particularly relevant for transition countries and (potential) EU candidate countries.

To single out a core recent change, this can be described as the "horizontalisation" of the relationship between state authorities and citizens. Historically, citizens were regarded as subordinated to public authorities. The top-down and unilateral behaviour of public authorities dominated legal patterns as well as everyday administrative practice. This type of relationship was thought to serve the principle of the rule of law, while it guaranteed – inter alia – the non-interference by the state unless specifically provided for by the law.

However, modern democratic governance transformed both the role of the state and the citizen. The citizen is not passive and a subject to the exercise of state authority but is seen as an asset: the citizen is given space as an active member, a partner who can contribute to the general welfare. His/her input, cooperation and participation is encouraged and sought after as a necessary condition for democratic and efficient governance, and for economic development. His/her status takes up some aspects of the client relationship in the private sector.

In this new context, administrative decision making and provision of administrative services need to adjust. This involves a new place for values such as transparency, simplicity and clarity, participation, responsiveness and "citizen oriented" performance. They redefine the relationship to citizens as more "horizontal". Legal provisions and their administrative implementation need to incorporate this redefinition and keep up with these developments.

b. Current principles of Good Administration

Good administration principles need to respond to old and new challenges. Currently, they include the following elements:

- Good Administration is reliable and predictable. It guarantees legal certainty by respecting the rule of law. Administrative bodies exercise the powers and responsibilities vested in them in accordance with the laws and regulations applying to them. They implement general rules and principles impartially to anyone who fulfils the required conditions taking into account the interpretative criteria elaborated by the courts. When exercising their discretion they remain within the boundaries set by the law, in good faith and in a reasonable and proportionate way, upholding the requirement of equal treatment. They decide in reasonable time. By observing legal rules, administrative bodies realise the minimum requirement of democracy in the form of the rule of law.

- Good Administration is open and transparent; administrative bodies keep matters secret or confidential only in order to protect a legitimate superior interest, e.g. national security or personal data of third parties etc. They even facilitate access in various ways, e.g. by electronic means, where feasible, and through points of single contact.

  Administrative bodies communicate actively about their tasks, duties and responsibilities. They use a language that is simple, clear and understandable for the general public. All public authorities identify the responsible civil servant and take care of improper or impolite behaviour vis-à-vis citizens.

  They encourage participation of everyone affected by its decisions. Accepting citizens as partners in the decision making process is the first step towards the "horizontalisation" of the relationship. A number of rules promote this role and materialise respect for the citizen. Giving any interested party or its legal representative the possibility to present his/her case and arguments by holding a hearing before issuing a decision is an important one.

- Good Administration is accountable. Administrative bodies, their work and its outcome are open to scrutiny and review by other administrative and legislative authorities as well as the courts. Supervision ensures that the principles embedded in administrative law are honoured by the public authorities. Accountable administration further requires the possibility of legal remedies for a decision and the provision of information about them by indicating any preconditions.

  Administrative bodies provide the reasons for the administrative decision, stating the relevant facts and evidence, citing the relevant legal norms and showing how they fit with each other. In case a claim, an argument or some evidence presented by an interested party is rejected, the statement of reasons specifies the grounds for the rejection. Thus, they notify anyone concerned of their decision.

  In order to make accountability and control possible, they document the steps and procedures taken in their records, including the requests and applications, the evidence, minutes, information concerning the delivery of summonses and other documents relevant to the administrative proceedings. They allow access to the relevant files.

  Accountability involves the possibility for each individual citizen to lodge a complaint to an independent body. More and more countries dispose of institutions to defend citizen rights vis-à-vis public administration. Such is the role of an Ombudsman who acts as an external mechanism of control, investigates complaints about maladministration and recommends corrective action where necessary.

- Good administration requires – and is fostered by – an accessible and comprehensive system of judicial control of administrative acts and other actions of the administration. This completes the mechanism for the defense of citizens' rights. Courts are provided with adequate power to fully scrutinise the legality of the administrative acts/actions in order to pronounce a final decision on the dispute. In certain cases, this control may even extend to controlling the margins of discretion, without however fully substituting the administration.

- Good Administration is effective and efficient. Public authorities need to be successful in achieving the goals and handling the public problems set for them by law and government; they need to use public resources in a way proportional to the results attained; they set clear objectives, evaluating past experience as well as the future impact of their action.

Administrative procedures are a means to serve all of the above. They constitute a crucial part of the quality of public administration, which in turn is a prerequisite for political and economic performance. Awareness of their importance grows among countries which reflect on missed opportunities.

2. Benefits of Good Administration

Good Administration presents multiple advantages and benefits: (a) it enhances democratic governance and political efficiency; (b) it fosters economic development and (c) – for EU candidates countries – prepares accession and future membership.

a. Impact on political efficiency and democratic governance

Reliable, fair, open, accountable and efficient administration means proper implementation of political decisions and legal rules. The public interest is properly and efficiently pursued and the

rights and interests of the citizens are respected. This is to the benefit of government, the citizens and more generally, democratic governance. Furthermore, by creating predictability, enhancing political legitimacy and promoting democratic governance, Good administration principles promote political efficiency.

Predictability is important for government in order to make sure its decisions will be implemented. It is also important for citizens, who are able to know their rights and obligations, act accordingly and know what to expect from public administration when deploying their activities.

Fair treatment of citizens' interests, through possibilities of hearings, consultation and participation, as well as accountability, shape favourable conditions for the acceptance of administrative decisions and more generally government policies by those affected as well as by the general public. Good Administration fosters trust in institutions, a vital precondition for low compliance costs, social peace and political stability.

On the contrary, the lack of such conditions results in weak administration, weak state institutions and, in the end, a low capacity of a society to promote its well being. Delays, inefficiency, partiality, arbitrariness, corruption, nepotism, patronage, and other forms of maladministration lead to citizens' resentment, resistance and protest against the state and its institutions; they undermine the legitimacy basis of the government and lead to a failing State.

All this is important at the international level as well. A well performing administration invites respect and acceptance among other states and supranational organisations. Cross border cooperation needs to be based on clear and predictable rules and on efficient domestic institutions. These conditions promote the political and economic position of a country in the EU and the globalised markets.

b. Impact on economic development

The administrative, legal and court systems of a country form the most important part of its institutional infrastructure. Their importance for the development of the economy is universally acknowledged. They constitute the basis for the operation of the market and the encouragement of the most dynamic parts of society to contribute to its general welfare. Economic success requires institutions that encourage individuals to engage in productive and innovative activities, to look for opportunities and take up challenges. Foreign investors assess the risk by the chief criterion of predictability and stability of the political and institutional environment. It is a primary role of the State to define and follow up the respect of the rules of the game ensuring predictability for the deployment of economic activities.

All this is served by Good Administration principles as described above. State institutions need therefore to reduce uncertainty regarding the behaviour of other market participants and the economic and social environment in general. Reliable, efficient and transparent administration and a legal system that guarantees economic rights by making sure the law is properly enforced are a condition sine qua non for important long-term investments, either private or public.

Where such institutions are missing, transaction costs for market participants are high and constitute counter-incentives for productive economic initiatives. Economic agents tend to adopt opportunistic behaviour concentrating their activities on less productive investments, e.g. in projects with little fixed capital and short payback periods. Maladministration in the form of administrative deficiencies and obscure, lengthy and unnecessary complex administrative

procedures yield the field to partiality and corruption. In these conditions the courts will be unable to play their role guaranteeing the rule of law. Such conditions obstruct economic initiatives of domestic or foreign potential investors, with a negative impact on unemployment, and a potential negative impact on political stability.

Public administration is the institution that represents the public interest. Good Administration principles aim at balancing the needs of society and economic actors in view of the common good. They help to shape strong institutions based on which a country can achieve welfare objectives while preserving individual –including economic- rights and freedoms. They encourage and support socially beneficial economic activities and assess the impact of administrative procedures and regulations on them. Good administration therefore strives to reduce the economic costs necessary to adhere to administrative requirements, to reduce unnecessary "red tape". Efforts to facilitate this encounter and communication with public bodies include the use of IT-based communication means, the introduction of single contact points ("one-stop-shops") etc.

c. Impact on European integration: the non formalised acquis communautaire

It is not a coincidence that the principles of Good Administration form an integral part of the value system of the European Union. The EU constitutes a complex political and economic environment in which predictability is of utmost importance either for joint decision making or for achieving its economic and social goals. This is why these principles are common to all member states of the European Union, and to the institutions of the European Union itself. They represent part of the "non-formalised *acquis communautaire"* that has to be adopted by candidate countries.

The right of the citizens of the European Union to Good Administration is laid down in Article 41 of the Charter of Fundamental Rights of the European Union. Furthermore, the Council of Europe in its Resolution 77 (31) also acknowledges the right of the European citizens to an administration that follows principles of Good Administration ensuring the protection of the individual's fundamental rights and freedoms and promoting fairness in citizen-administration relations. Additionally, the European Court of Justice has shaped general administrative principles on the basis of those created and refined by national administrative courts of the Member States of the EU; they came to form a core of common European values.

Not least because of the ever-increasing extension of the corpus of European law and the rulings of the European Court of Justice, the legal systems of the member states of the European Union are undergoing a process of constant approximation. This includes more and more fields of the material law as well as the procedural law. As a result, quite a large number of the principles of Good Administration are not only widely accepted among the Member States, but also enacted as general and legally binding rules in their national constitutional or statutory legislation, even though the specific material embodiment of the rules may differ between the Member States.

In terms of European integration Good Administration serves first and foremost the national interest of each member state. It allows coping with the pressure of economic competition and the forces at work on the common market. Accession states that wish to contribute to and benefit from the common market can do so for their own benefit only if they possess a functioning market economy as well as corresponding state institutions supporting it. A degree of compatibility of their administrative systems with the other EU countries is required for administrative cooperation, which in turn reduces transaction costs for cross-border business and investments.

Additionally, the European Union requires all accession states to be able to assume the obligations of the membership. This requires in particular adherence to the objective of the political, economic and monetary union, guaranteed by stable institutions that uphold democracy, the rule of law, human rights as well as respect for, and protection of, minorities. The accession states need furthermore to adopt the entire body of the European legislation, the *acquis communautaire*, and implement it effectively through appropriate administrative and judicial structures. The extent to which a country has implemented the non-formalised *acquis communautaire* is indicative of and correlates with the capability of this country to effectively adopt and implement the formal *acquis communautaire*.

The European Commission is more and more interested to ensure that accession countries fulfil the Copenhagen and Madrid criteria. This includes the readiness and the ability to follow the principles of Good Administration in all its aspects, including administrative and judicial reform, the rule of law, and the fight against corruption. From the accession countries perspective, this represents an opportunity to benefit from the collective prior experience of other EU countries in order to either shape or streamline and rationalise existing rules and administrative procedures.

II. Administrative procedures: Good Administration in practice

The implementation of the principles of Good Administration requires a well-designed and solid platform consisting of four components: 1) a system of administrative procedures regulating the administrative decision-making process; 2) a clearly structured organisation of the public administration and its bodies in all policy areas and territorial levels; 3) professional, competent and independent personnel; 4) a system of effective judicial control of administrative actions. Each of them is equally indispensable for good administrative practice.

In the following sections the paper will focus on one of these - the system of administrative procedures as prescribed by procedural law. In order to put it in perspective, it will also deal with its necessary links to judicial control as well as with some practical aspects important for the implementation of relevant reforms.

1. Key elements of a good system of administrative procedures

Administrative procedures are not an end in themselves. They are the means and ways by which a substantive end, in the form of an administrative decision or other form of action, is achieved. In public issues, right decisions are those which serve the general interest and are reached through the prescribed procedures. Administrative action draws its legitimacy from these two sources. Procedural legitimacy is therefore important. This is why procedures need to incorporate and materialise basic values stemming from democracy and the rule of law.

Though they appear sometimes as formal(-istic) requirements, procedures have a real and important impact. Their quality is directly linked to the legality and the legitimacy of the substantive results of administrative action. In modern administration, these are the primary criteria for effectiveness and accountability, and standards for judicial review.

a. Characteristics of a good system of administrative procedures

A good system of administrative procedures is first and foremost a system of general and standardized administrative procedures. Such a general system is valid in its basic principles for

every action of the executive; its rules apply to the large majority of administrative actions. Its existence is critical for an effectively and efficiently acting public administration and the quality of services provided to citizens.

Such a general and standardised system sets simple and clear guidelines for public administration and civil servants in their everyday activities. It is phrased in a simple, clear and understandable manner and can thus be accessible and commonly known to citizens. It is "citizen oriented", taking into account their expectations and providing guarantees for their procedural rights. It further defines the standards of ethical and practical conduct of civil servants, thus ensuring the proper functioning, the efficiency and quality of the services delivered to the public.

The existence of such a general system ensures better compliance while allowing better control of the administrative operation. It facilitates oversight and control by superior levels in the chain of command (such as the legislator, politicians and the ministry exercising oversight), who can make sure that the competent public body adheres to law and statute.

A standardised system of administrative procedures favours the transparency of the decision making process and enhance the legitimacy of its product. All participants in administrative action, politicians, civil servants and interested parties ("stakeholders") benefit from its existence. More specifically, citizens and businesses directly involved in an individual administrative procedure are able to assess if the administrative body acts within its legal boundaries, to follow the steps the public body has to take, and more generally to predict the course of administrative process. They have the chance to express their respective interests and views during the process, thus facilitating clarification of interests and improving the rationality of administrative operations.

By prescribing the procedural rights to respect, a general system of administrative procedures sets the standards for a fair decision-making process. It provides for the respect of the rights of all participants in the process (citizens directly or indirectly affected i.e. the neighbour in a building case, a competitor in a procurement or recruitment procedure, the market etc.). It thus ensures impartiality and equal treatment. It guarantees among others the right to be heard, to receive an answer by an administrative authority, the right to information and access to files; the right to protect personal data, the right to a motivated decision, the right to review decisions and legal remedies.

A standardised system ensures efficient operation by providing deadlines by which the administration has to respond or make a decision and by clearly defining responsibilities (who does what). It makes sure that there are no unnecessary steps resulting in complexity and delay, nor costs involved. Exceptionally, when charged, the cost should be affordable and reasonable. Such a system encourages the use of citizen-friendly forms of communication, such as e-government or single contact points. Thus administrative procedures become easier and faster, for citizens and economic actors inside the country and from other EU Member States.

The establishment of the basic guidelines provides the principles for any special, new or complex procedure and allows possible gaps to be filled. Thus existing procedures can be rationalised and streamlined while new ones benefit from the existence of general framework rules.

In sum, a system of general administrative procedure materialises the concept of good governance, basic elements of which include openness, participation, accountability, effectiveness, and coherence of administrative action.

b. Why regulate administrative procedures in one piece of legislation?

It is recommendable to regulate general administrative procedures by law and statute as is the case in many EU Member States and other countries of the Continental European legal tradition. There are very few countries where the principles of administrative procedures are not organised in one specific comprehensive piece of legislation. In these cases, the need for codification of procedural rules has in the past become equally apparent.

During the past two decades the reduction of the "administrative burden" on citizens and businesses has become a first priority issue. This objective is inherently linked to the quality of administrative procedures and involves, above all, simplicity and standardisation. The lack of a basic system of administrative procedures along the aforementioned lines leads to the ever increasing complexity of administrative operation. For services and civil servants as much as for citizens, this entails higher administrative costs, a lack of transparency and, worse, may even become a source corruption.

Given that modern administration needs to adjust fast to changing requirements, a general law is undoubtedly more easily amended than a host of diverse, special procedures (e.g. introduction of new technologies, single contact points etc.). This also applies to adjustments to the developments of jurisprudence. The administration needs to take cognisance of the way various provisions, requirements and guarantees are interpreted by courts when reviewing administrative decisions. Civil servants and judges can more efficiently comprehend and implement its provisions, compared to a labyrinth of special procedures.

Special procedures will, however, be inevitable in certain cases. The existence of a general law will still provide guidelines and standards according to which they will have to operate. Exceptions to general guidelines and rules should be well thought out and used parsimoniously.

c. When a Law on Administrative Procedure already exists - why not amend it rather than create a new piece of legislation?

In recent years Albania, Croatia, Montenegro and Serbia made successful efforts to start modernising their systems of general administrative procedures. The Croatian Parliament adopted a new Law on General Administrative Procedures (LGAP) that entered into force on 1st January 2010; in Albania and Serbia new drafts LGAP are expected to be adopted in 2011 (Serbia) and 2012 respectively (Albania); and in Montenegro the Government decided in July 2011 on a policy paper as a basis for a new LGAP. For all these reform processes, the Governments opted for creating a new Law rather than amending the existing one.

The decision to undertake the challenge of creating a new Law was particularly difficult in the three countries. These countries have in common an eighty-year long tradition of legislation and academic doctrine related to administrative procedures that goes back to the Austrian administrative procedure law of the1920s, adapted in pre-communist Yugoslavia (1930) and adjusted twice in communist times (1956 and 1986). This "old ZUP", in all the three countries, marginally amended in the post-Yugoslav period, had been considered and respected by generations of professors, law students and administrative practitioners as a model of a very good piece of legislation.

And indeed, in 1956 the Yugoslav ZUP belonged to the most modern European legislation in this field; by way of comparison, in Western European countries the codification of administrative

procedural rules followed twenty to thirty years later. Therefore, there is no doubt that the "old ZUP" had its merits in the past.

However, more than 50 years after the adoption of the first ZUP in socialist Yugoslavia, the understanding of public administration in a democratic state, the requirements of a good, citizen-oriented administrative practice, the culture and technical means of communication between citizens and administrative authorities, and the legislative methodology for creating an appropriate regulatory framework for administrative actions have substantially changed. The "old ZUP" is not an appropriate legislative means anymore to serve the demanding new situation of a modern state: it reflects the notion of a bureaucratic administration and not the administration of a country, which has to deliver large and complex public services.

Due to the high reputation of the "old ZUP" in these three countries, their Governments and legal experts were initially reluctant to abolish this classical piece of legislation and replace it with a completely new one. A "face-lifting" of the tried and trusted law by amendments appeared to be the better and easier approach. However, after a more in-depth involvement in the subject matter national legal experts and political decision-makers decided to fundamentally change the system by creating a completely new Law. This decision was based on the following arguments:

- repeated mending of the old text would entail an imperfect and illegible patchwork rather than a good, consistent, and comprehensible law;

- the old Law's legislative method, i.e. its formalistic and casuistic way of (over)regulating every technical detail, that would be dealt with better through secondary legislation or internal administrative rules, pervades every section and provision of the old legal text; this is a structural problem that cannot be repaired by selective amendments;

- some regulatory elements of the old ZUP were modelled on a court procedure and did not make sense anymore, because over the recent years a new administrative court system had been established;

- new administrative institutes such as IT-based communication, point-of-single-contact approach, administrative contract, and a legal remedy against incorrect delivery of public services do not find an appropriate systematic place in the old Law.

d. Administrative procedures and judicial control

General procedural rules constitute standards according to which the legality of a decision is assessed. Especially when it comes to judicial review, they facilitate the review process providing benefits in terms of time, equal treatment and coherence of jurisprudence.

These, in turn, allow a) easier formulation of principles of jurisprudence and b) easier incorporation of these principles into the law on general administrative procedures.

It should not be underestimated that the enforcement of court rulings becomes easier, since the administration as well as the parties involved in the dispute benefit from clearer guidelines to redress procedural faults.

III. How to promote proper implementation

The introduction of a General law of administrative procedures serving the above purposes is a legal, but also a practical, issue. Successful formulation and implementation depend on a number of preparatory steps. These include initiatives to be taken during the drafting process as well as measures to create favourable conditions for efficient implementation.

1. The drafting process

Ensuring proper implementation of the new system starts already with the drafting process. It is not necessary for every single country to start from scratch. International institutions like the EU, OECD and the Council of Europe have developed standards and formats on the legislative and operational aspects of good administration that conform EU and ECHR criteria. This means that the burden of drafting a law on general administrative procedures is not necessarily heavy. Each country could easily opt for following existing standards and formats, and adapt it to its specific national legal, administrative and cultural context. In this way, time is saved but also the harmonisation of systems of general administrative procedures of the countries is achieved and contributes to the further development of a so called "European Administrative Space".

However, the provisions to be adopted need to be assessed with regard to their 'implementability' in the respective national context, i.e. the capacity of public administration to observe the procedural obligations they introduce. This is particularly important, when it comes, for example, to deadlines for response, and, consequently, deadlines for appeal and review of decisions. There needs to be a balance between the requirement for speed and that of accuracy and fairness of administrative replies and decisions.

It is important that at the preparatory stage, stakeholders (i.e. courts, administrative practitioners [civil servants], the Ombudsman, NGOs, business community and legal experts) are substantially involved. Their participation ensures that they contribute their experience and point of view but also allows a) to reach realistic compromises between the principles to respect and their practical formulation; b) to be, from the start, aware of possibilities offered and limits to respect; and c) to be better prepared to support the implementation process, particularly by providing the relevant information to the groups they represent.

Eventually remaining special procedures have to be screened against the general principles and guidelines of good governance adopted by the general law. Too many special procedures create unnecessary complexity and red tape, and raise administrative costs. Depending on the stage of development of administrative processes more generally, in some cases the introduction of a general law may involve a partial or total reform. The most important part however is to lay down clearly the principles and guidelines and provide for the solution in case special laws include diverging provisions.

Last, the general law may be accompanied by manuals of administrative operation that streamline processes while taking into account the requirements of good administration, as laid down in the law. Similarly, manuals for training but also for implementation will be needed (see below). In any case, one should avoid mixing in the general law legal provisions and description of administrative operation. These two subjects belong to different documents.

2. Putting new legislation on general administrative procedures into practice

Planning in terms of time and financial resources is very important for successful implementation of such a reform. It is recommended that at least one year is allowed between adoption of the law and its entry into force in order to prepare implementation. Monitoring the implementation for a period of up to 5 years may also be necessary.

Furthermore, it might be useful to set up a standing advisory committee (of experts and civil servants) to which the various services implementing the law can refer in order to clarify their practice and seek solutions. This committee could also monitor and evaluate annually the implementation progress. This will allow enough time until courts come to examine relevant cases and make their contribution to the implementation of the general law, by applying, interpreting and completing the legislative provisions.

A budget will be necessary for the training of civil servants and judges and for informing citizens and businesses, in order to make the implementation of the law as effective as possible. Training of civil servants is an essential part of smooth and correct implementation. This may involve manuals to which they may refer in everyday practice.

Cooperation with law faculties may help not only in the training of civil servants but also in terms of introducing good administration procedural requirements in the training of future lawyers and administrative employees.

In parallel to the training of practitioners, it is important to undertake actions for raising citizens' awareness of their rights and strengthen their trust in effective legal protection. Public promotion campaigns, leaflets, modern technology (social networks, twitter) and cooperation with NGOs and the media are some ways to achieve this. It goes without saying that administrative courts should equally be prepared for handling cases of this nature. Training of judges will offer a common starting point for the consideration of procedural disputes.

II THE STATE OF AFFAIRS ON THE REFORM OF ADMINISTRATIVE PROCEDURES IN ALBANIA.

Evis Taska

The Albanian government has committed itself to walk into the path of European integration. With its aim of EU membership, the Government and the EU have identified public administration reform as a basic priority to achieve this membership.
Under this reform, and also in view of the necessity of establishing Administrative Courts, a whole set of new laws like the Code of Administrative Procedure, the draft law "On Organization and Functioning of Administrative Courts and Judgment of the Administrative Disputes ", the new law on "Status of the Civil Servants ", the new law "On Organization and Functioning of Public Administration", have gone through a series of important changes to fit as much EU requirements. This has been analyzed as following.

I. The new Code on Administrative Procedure

The new Administrative Procedure Code project, aims to address the existing shortcomings. The new code tries to maintain the same overall structure (establishing/correcting the existing structural problems) and the same legal terms with the current code, trying to facilitate familiarization with the core without causing problems, due to having a generation of entire professionals trained under the current code. However it is important to underline that some necessary changes were done in the reversal of new concepts and arrangements.

Some of the accomplishments and updates of this Code achieved until now may be mentioned briefly as follows:

• Structural clarity on grouping dispositions;
• Introduction of new legal regulations on electronic communications, and service centers with a ONE Stop;
• Better regulation of principles of administrative proceedings;
• Introduction of the principle of non-formalism and efficiency
• Regulation of the procedural delegation;
• Regulation of the parties and their representation;
• Regulation of the union and signing documents;
• Strengthening the principle of inquisitorial and of cooperation in administrative proceedings;
• Full adjustment of the concept of administrative acts and its forms;
• Complete adjustment of the concept of legality and validity of administrative acts;
• Full adjustment of the revocation of the act;
• Regulation of a new institution, the one of the administrative arrangements;
• Full adjustment of administrative remedies;
• Complete adjustment of the notification forms and procedures;
• Full adjustment of executing of the administrative act.

II. The draft law **"On Organization and Functioning of the Administrative Courts and Judgments on Administrative Disputes."**

The basic purpose of this law is to reform the judicial system. The reason behind creating the Administrative Court is to guarantee effective protection of subjective rights and legitimate interests of the people through a fair and reasonable time. This project aims to create proper conditions for effective processing of cases by establishing the rights violated by the actions and / or administrative acts by public authorities.

Legal review of administrative decisions by independent courts is an accepted democratic principle, and an important contribution to ensure public order, particularly to protect individual rights versus administration. Efficient administrative court also increases the transparency of administrative decisions and can play an important role in the fight against corruption. And last but not least, judicial control of public administrative action by an administrative court that is working well - except for a strictly legal point of view of individual cases - a stimulating force for modernization of public administration, improving so the quality of services and consequently it increases the confidence of citizens to state institutions.

In this context, the project brings the necessity of equality of public interest on one side with subjective rights and legitimate interests of the person on the other. Also in terms of administrative relationships between individuals and public bodies, it aims to strengthen the active role of administrative bodies and to respect the subjective rights of persons.

At the same time, this project aims to simplify the relevant procedures regarding the trial and execution of judicial decisions that are subject to administrative resolution of disputes between individuals and public bodies. The draft also brings an innovation in the context of administrative adjudication of disputes concerning the liability of public bodies to present evidence that enabled the issuing or administrative actions that subsequently brought infringement of lawful rights of individuals. The project law provides an innovation in the context of administrative disputes adjudication concerning the liability of Administrative Court judge to present evidence that enabled the administrative actions. That is reffering to those who subsequently brought infringement of rights of individuals. The draft also provides that every citizen regardless of the situation of his / her financial position, has access to administrative justice.

The new law on "Civil Servant Status".

Drafting a new Law on Civil Servants is one of the priorities of the Inter-sectoral Strategy for Public Administration Reform (SPAR) of the Albanian Government and serves the country's ambition to integrate in the European Union (EU). After almost 12 years of actual implementation of civil service law, series of problems are encountered by its application, such as:

a) recruitment not based on merit mainly due to the use of temporary contracts and lack of transparency and accountability in appointments

b) politicization and instability reflected in politically motivated movements and

c) poor management and control over the implementation of civil service law.

The Albanian government has explicitly recognized these problems and the importance of civil service reform in terms of the need for an impartial, efficient and professional civil service. The goals of this reform should be to increase the capacity of the state to continue reforms in the country's development and to prepare Albania for association with the EU and beyond for its full membership.

In this context, special attention is given to strengthening the role of DoPA (Directorate of Public Administration) as a central policy unit and civil service management, a role which should be clearly differentiated from that of CSC (Civil Service Commission)

The law for the organization and functioning of public administration

The draft law aims to reinforce the notion of "good-management" in the organization and administrative practice. This notion developed in a number of principles that are distinguished from the principles of the procedure (procedure) administrative and budgetary management principles.

The purpose of this draft is:

1. To create a general legal framework for the organization of state administration that can and should be used for all sectors of state activity, and avoid organizational development solutions on a case by case basis, leading to fragmentation, coordination problems, lack of accountability and abuse of resources

2. To strengthen the overall capacity of the central government to direct the implementation of state functions to resolve and implement national policies and to adjust deviations in the implementation process;

3. To strengthen the accountability of senior civil servants through a clear structure that defines the tasks and responsibilities;

4. To establish basic principles for the functioning of public administration in order to guide all directors, according to the principles of "good-management" when performing their duties.

Care has also been shown to improve procedures and processes of decision-making and service delivery in public administration. In this regard, and in line with the reforms in the Code of Administrative Procedure and the draft law on administrative disputes and the courts, innovations are related to:

• Continue the reform of simplifying the administrative procedures for permits and licenses;
• Creation of an electronic registration of administrative decisions (official electronic publications);
• Improving the procedural process of policy making and normative acts, enriched with the involvement of stakeholders;

• Review the law on administrative procedures so that the administrative decision will be transparent, fast and responsive while maintaining at the same time the interests and rights of the parties concerned;
• Expansion of space to review internal administrative acts and appeal as a result of delegation of decision-making as follows:
• Preparation of a law on administrative disputes in order to establish an accurate judicial review of administrative decisions and creating a two-instance system of administrative courts .

Regarding the legal context, the draft has taken into consideration the impact it can have on other pieces of legislation. This has three aspects:
1) care on the coordination on the new draft legislation that it also covers any related aspects,
2) attempts to forecast the impact of the new law that it may have on other parts of legislation,
3) prediction of future changes in legislation like considering other drafts which are under preparation.

In the context of the difficulties faced for the application of these reforms it should be mentioned that in order to pass all these draft laws in the Parliament a qualified majority - 3 / 5 of all members of the Assembly is required- which is at the moment difficult to achieve due to political differences existing in the country, but international intervention will probably soon have a new legal package and quality. Until then, all stakeholders, experts and specialists with the best in this field who work in public administration should work together, to reflect as many views of the parties involved in this process.

III NOVELTIES IN THE GENERAL ADMINISTRATIVE PROCEDURE ACT AND ITS APPLICATION IN CROATIA

Goranka Hus,
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1. Introduction

After more than two years of preparations and discussions, the new General Administrative Procedure Act was adopted in April 2009 and entered into force on 1 January 2010, thus replacing the previously valid 1956 General Administrative Procedure Act. As regards the area of application of the said Federal Yugoslav law, which had been taken over in 1991 upon the establishment of the new autonomous state as one of the laws of the Republic of Croatia, it was based on valuable Austrian arrangements for legal regulation of administrative procedure dating from 1925 and on the old Yugoslav General Administrative Procedure Act from 1930. Despite some criticism of its long duration, complex application of administrative procedures and a punctilious approach to standardisation of the matter at hand, the law was generally considered a quality modern legal regulation for that time. However, in view of the historical legacy, and since its provisions regulated administrative proceedings in the Republic of Croatia for over fifty years without any major or more significant changes, a need for new principles occurred, a need for a different scope of application, more modern modes of deciding matters and for contemporary institutes, and that need became further strengthened after the goal was set to become a Member State of the European Union.

In the process of accession of the Republic of Croatia to the European Union and the alignment of Croatian regulations with the Community *acquis* reform of administrative procedure and administrative judicature was initiated, with a requirement that the new General Administrative Procedure Act (hereinafter: GAPA) be clear and easily comprehensible to persons it refers to, i.e. persons which exercise their rights and protect their legal interests in administrative areas, taking into consideration the role of public administration and citizens in democratic societies. Public administration of the modern age is namely not a classic instrument of power, but a socially beneficial and necessary service, while citizens as service users are becoming active participants in an increasing number of administrative areas. There was a further requirement for new GAPA to be devoid of excessive detail and formalities, and to cover as many administrative procedures as possible, in order to avoid a multitude of special administrative procedures which are often unnecessary, since uniformity in procedural rules contributes to transparency and enables citizens and official persons who apply them to comprehend them more easily and quickly. It should be emphasized that the administrative procedure must not replace the judicial procedure or replicate it.

This project is financed by the European Union

2. Novelties in the 2009 General Administrative Procedure Act

From a formal point of view, the new GAPA contains fewer provisions than the old law, but at the same time covers a wider range of social relations, as in addition to procedure in administrative matters it also applies to certain procedures of public service providers and to the conclusion of administrative contracts. New terminology was introduced, the number of casuistic provisions was significantly reduced, the language was simplified, an administrative matter was defined, new principles established, the legal remedy system amended, second instance bodies in appellate procedure were given wider powers, new institutes were regulated such as the administrative contract, the guarantee of attainment of rights and the presumption that the party's application is granted when a decision is not rendered within the prescribed time limit, electronic communication between parties and public authorities was introduced, the authority to decide matters and render decisions in administrative proceedings is now attached to an official person, and a lot more. It is impossible to present a short analysis of all the novelties here, hence only some basic explanations of the mentioned novelties are provided below.

The concept of a public authority now includes all those obliged to proceed in accordance with this Act (state administration bodies, other state bodies, local and regional self-government units, legal persons vested with public powers) when deciding on the rights, obligations and legal interests of parties in administrative matters. In addition, the GAPA must be applied accordingly in the conclusion of administrative contracts and in any other proceedings by public authorities in the field of administrative law, which have a direct effect on the rights, obligations or legal interests of parties, unless otherwise prescribed by law, and lastly, in proceedings to protect the rights or legal interests of parties in cases in which legal entities performing public services (public service providers) decide on their rights, obligations or legal interests, if no judicial or other legal protection is prescribed by law (e.g. when a school decides on children's diet, a doctor prescribes the wrong treatment to a patient etc.)

Altogether ten administrative procedure principles had been established as the fundamental postulates serving as the basis for further elaboration of other GAPA provisions. Some of them are still in place but somewhat amended (principle of legality, principle of establishing substantive truth, principle of independence and discretion in assessing evidence, principle of efficiency and economy, principle of assistance to the party, principle of the official use of languages and scripts), some were left out in the sense that they are not expressly stated, but have not been relinquished (principle of hearing the party), some have amended titles (principle of protecting rights attained by parties is equivalent to the previous principle of res judicata, and the proportionality principle was added to the principle of protection of parties' rights and public interest), and some are new (principle of the right of parties to legal remedy, principle of data access and protection).

With a view to depoliticisation and greater responsibility, the official person authorised to decide an administrative matter is a person whose job description includes the conduct of such proceedings or deciding in administrative matters, in line with regulations on the structure of public authorities, whereas the head of a public authority will decide an administrative matter

only if nobody else in the public authority is authorised to decide the matter. In other words, it is no longer possible for civil servants to conduct proceedings and/or decide administrative matters on the basis of authorisation by the head of their public authority, and the heads of public authorities render decisions only by way of exception.

With the provisions on single administrative location, stipulating that a party may submit all applications in a single administrative location within a public authority if several administrative or other proceedings are necessary for the exercise of the party's right, preconditions were secured for the exercise of the one-stop-shop principle. For its full application, however, it is necessary to ensure the establishment and operation of new internal organisation units within public authorities for that purpose. It is envisaged that in that location parties and other interested persons will be able to receive prescribed forms, notifications, advice and other assistance within the jurisdiction of a particular public authority, and also that the receipt of applications in a single administrative location will not affect the jurisdiction of public authorities, but rather that the applications will *ex officio* be delivered to the public authorities with jurisdiction without delay.

Electronic communication between parties and public authorities contributes to the simplification of certain actions and speeds up the entire procedure. However, although the GAPA contains provisions on this type of communication, it also refers to special laws on electronic documents and electronic signature.

The concept of "presumption that the party's application is granted" refers to the positive presumption regarding a legal act in case of the silence of administration, whereby a party's application is deemed granted if a public authority which has jurisdiction for immediate resolution of the administrative matter, in the proceedings instituted after a proper application of the party, fails to render a decision within the prescribed time limit. If all the conditions for the application of this principle are met, the right is attained at the moment of expiry of the time limit within which the public authority should have decided on the party's application, and the party is entitled to request that the public authority render a declaratory decision establishing the party's application as granted. However, the application of the presumption is possible only in cases envisaged and prescribed by a separate law.

The system of legal remedies was amended, and it now includes: appeal, objection, reopening of proceedings, declaring a decision null and void, annulment (*ex tunc*) and repeal (*ex nunc*) of a decision.

In regard to the appeal, the possibility of a waiver of the right of appeal is envisaged, which instantly makes a decision enforceable, as if no revocation of the waiver of the right of appeal or withdrawal of the appeal were possible. In appellate proceedings, the second instance body is obliged, whenever possible, to decide the administrative matter in entirety, without returning the case to the first instance body for a repeated proceeding. The latter may be done only in cases when the second instance body establishes that the decision should be annulled, and

immediate resolution of the matter by the first instance body is necessary due to the nature of the administrative matter.

As opposed to the appeal, which is a regular legal remedy against the first instance decision, the objection is prescribed as a legal remedy which may be lodged for failure of the public authority to meet its contractual obligations arising from an administrative contract, for protection from the actions of public authorities in cases when no decision as a legal act is rendered and from the actions of public service providers which affect the rights, obligations or legal interests of natural and legal persons which are not decided through administrative procedure, and if a public authority decides not to take into consideration the initiative to institute proceedings *ex officio*, put forward by lodging a complaint. An objection is to be decided by the head of a public authority or the body which conducts supervision over that public authority, i.e. which has jurisdiction to conduct supervision over the performance of certain public services, depending on what is prescribed in a given type of case.

Finally, a few remarks on the administrative contract, which may be concluded between a party and a public authority only in written form, solely in specific administrative areas, and once again, only if thus prescribed by a separate law. An administrative contract must not be contrary to the enacting terms of the decision, coercive regulations, public interest or be concluded to the detriment of third persons. The invalidity of an administrative contract is established by the court competent for administrative disputes upon a legal action brought by a party or a public authority, there is a possibility of unilateral amendment and termination, and legal protection is ensured through the possibility of lodging an objection for failure to meet contractual obligations arising from the administrative contract, in which one may claim compensation of damages incurred by the failure to fulfil the contract. Such objection is to be decided on by the authority which, under law, conducts supervision over the public authority with which the party concluded the administrative contract.

3. Alignment of the General Administrative Procedure Act with the laws regulating individual administrative areas and its application

During the first year of application of the new General Administrative Procedure Act it was perceived that the Act needed alignment with the laws regulating individual administrative areas. This is due to the fact that the most important novelties introduced by the new GAPA concern the structure and terminology, area of application, somewhat differently regulated principles of administrative procedure, introduction of electronic communication and a different regulation of the basic postulates of general administrative procedure.

There are some differences which become visible through comparison of the GAPA with special laws regulating individual administrative areas. One of the most important changes is the fact that there are no longer any rules in the GAPA which would prescribe subsidiary application of the GAPA for other regulations. For that reason, the provisions to that effect contained in a majority of the laws regulating individual administrative areas must be deleted.

Due to the perceived inconsistencies, at the session of 6 October 2010 the Croatian Government adopted a Conclusion on the obligation of alignment of the provisions within laws regulating individual administrative areas with the General Administrative Procedure Act.

Acting in accordance with the said Conclusion, the Ministry of Health and Social Welfare conducted an analysis of over 100 regulations covering the scope of work of the Ministry. The analysis had to take into account the most frequent points of inconsistency with the GAPA. Along with the mentioned impossibility of prescribing subsidiary application of the GAPA, very often it was stipulated that, in case of deciding an appeal, the second instance body was to be established as an internal organisation unit within the same public authority. Such inconsistency with the GAPA may be remedied in such a manner that new, independent bodies (commissions) get to decide on appeals, bodies which would naturally be outside of the organisational structure of the body which rendered the first instance decision.

Moreover, a very common inconsistency regards the time limit for appeal, which was often shorter than the 15-day time limit prescribed by the new GAPA.

Furthermore, laws regulating individual administrative areas, the Mandatory Health Insurance Act among others, stipulated that procedural issues could be regulated by secondary legislation. This is no longer possible. Individual issues may be regulated differently only by a law.

After a detailed analysis of regulations in the administrative areas of healthcare and social welfare, it was perceived that the valid Mandatory Health Insurance Act and the Chemicals Act needed alignment.

In addition, new professional laws from the social welfare area are currently in the adoption process, including: the Draft Proposal of the Act on Social Work Activities, the Draft Proposal of the Act on Education and Rehabilitation Activities, the Draft Proposal of the Act on Speech Therapy Activities, and the Draft Proposal of the Act on Social Pedagogy Activities. In the course of drafting the legislative draft proposals their alignment with the provisions of the GAPA was taken into account.

In the administrative area of healthcare, the current Chemicals Act and the Mandatory Health Insurance Act needed amendment because of some procedural provisions which required alignment with the GAPA.

During alignment, special emphasis has been given to the procedure for the exercise of rights arising from mandatory health insurance. This is due to the fact that a currently valid provision of the Mandatory Health Insurance Act stipulates that the Croatian Institute for Health Insurance generally decides on the rights arising from mandatory health insurance without issuing a decision, and that a decision is to be issued when thus stipulated by a general legal act

(regulation of procedural issues by secondary legislation, which is not possible under the new GAPA) or upon request of the insured person.

Also, a provision of the same Act, valid thus far, stipulates that the General Administrative Procedure Act is to be applied in proceedings in which rights arising from mandatory health insurance are decided on, unless otherwise prescribed by that Act (hence, subsidiary application of the General Administrative Procedure Act, which the new GAPA does not provide for).

As regards the process of Croatia's accession to the European Union and alignment of Croatian regulations with the Community *acquis*, one of the benchmarks in Chapter 23 – Judiciary and Fundamental Rights envisaged the analysis of alignment of other legal provisions with the provisions of the GAPA (Official Gazette no. 47/09).

A comprehensive analysis was conducted and it indicated the need to align the said provisions of the Mandatory Health Insurance Act, which regard the procedure for exercising rights arising from mandatory health insurance and ensuring protection of the rights through first and second instance administrative procedures.

The laws regulating the administrative area of healthcare and social welfare are now in the process of alignment with the valid administrative procedure arrangements under the new GAPA in the manner described.

(Translation: Martina Dananić)

IV REFORMING THE ADMINISTRATIVE PROCEDURES IN THE REPUBLIC OF MACEDONIA

Martin Todevski

Abstract

One of the most vulnerable social segments in the Republic of Macedonia is the public administration. The impression in regard to the public administration in the country is that there is too much bureaucracy, long and unnecessary administrative procedures and generally poor performance in that direction. Considering that in the countries with developed democracy and a market economy, modernisation of the public administration system is a necessary and continuous process, the Government of the Republic of Macedonia has set the reforms in this sector as one of its strategic priorities and commitments.

The reforms of administrative procedures are identified as one of the most important segments in the overall reform of the public administration in the country. Given that, the subject of this paper is a brief elaboration of current and future projects and activities in that direction and with proper implementation will ensure the building of a modern, professional and apolitical public administration.

1. Introduction

The core of the process of public administration reformation, and reformation of administrative procedures as a key segment, are the strategic documents for reform of public administration, or the Public Administration Reform Strategy 2010-2015 and the Action Plan for Implementation of the Public Administration Reform Strategy, adopted by the Government of the Republic of Macedonia. In the beginning of 2011, the Government of the Republic of Macedonia has entrusted the competence for full implementation of the process of the reform to the Ministry of Information Society and Administration (MISA), according to which it assumes responsibility through modern information processes to carry out tasks in the management of these reforms.

Further down in this paper, the main areas of the reforms of administrative procedures are shortly elaborated.

2. Introduction of a One-Stop Shop

One of the main problems in the administrative procedures in the Republic of Macedonia is unnecessarily long and inefficient administrative procedure, which often means walking a citizen from one institution to another, waiting at the desk to receive documents that are required to obtain certain administrative service in another state body. There appears an illogical process, citizens seek documents whose usage is a proof of certain information which other state institutions already possess and can share with each other.

This project is financed by the European Union

Because of that, at the beginning of 2011 amendments to the Law on General Administrative Procedure were introduced, according to which the official is obliged to collect, in line of duty, the documents for which official records are kept by the same or other body. The introduction of this strict rule means, in the true sense of the word, establishing a one-stop shop. Thus, citizens need only to submit an application, and all necessary documents concerning the required subject are provided by the state officials in line of duty. State authority, or entity that keeps the official record, is obliged to submit the requested data within three days of receipt of the request.

In order to improve the mechanism of data and documents exchange between the institutions, which is set up as needed with the new amendments to this law, MISA established a central electronic system which mediates the electronic data and documents exchange between the institutions, or the so-called interoperability system was established. This system was established under the Law on Electronic Management (published in Official Gazette of RM, No.105/09), which regulates the work of the authorities in data and documents exchange, as well as electronic administrative services. This interoperable infrastructure will be used with the current project E-Documents, for implementation of fully automated electronic backend processes of data and documents exchange according to the needs of existing administrative procedures. On the other hand, this system also includes introduction of electronic services, as a frontal element of the resolved backend processes required to introduce one-stop electronic service. In the second half of 2011, MISA will completely implement 18 new electronic services, with resolved backend electronic processes; during 2012, with a new needs analysis, new services will be implemented on the same principle.

3. Silence means Consent

Mechanism 'silence means consent' was introduced in 2008, with amendments of the Law on General Administrative Procedure, and it was properly enhanced by the amendments of the Law in 2011. With these amendments, the general deadlines for acting on the requests of citizens or legal entities of two and one month were reduced to one month and 15 days respectively.

The entire mechanism now works as follows: if decision within the prescribed period is not made within three days, the citizen may submit a request to the head of the authority for making decision on his request. If the solution is not reached within five days, the applicant will have a right to inform the State Administrative Inspectorate, which is obliged to carry out surveillance in the authority and to oblige the authority to decide on the application within ten days. Otherwise, follows infringement procedure and an additional period of five working days will be set for the official to decide on the application. If he doesn't decide again, the inspector will submit a claim to the competent Public Prosecutor within three working days. If the inspector does not submit the complaint, the applicant may submit a complaint to the Director of the State Administrative Inspectorate, who can initiate an infringement procedure for the inspector, or appropriately to submit a claim to the Public Prosecutor. If the Director does not act, the applicant may submit a request to the Public Prosecutor, or to initiate an administrative dispute before the competent court. The amendments to the Law on Administrative Procedure provide responsibility of the head of the authority, the official of the authority or the authorised officer for exceeding the

powers or non performance of duty if a decision is not made under conditions and procedures prescribed by law. High fines are determined in case of violation of the procedure and failure under the law.
Additionally, all relevant material laws are being changed to fully incorporate this mechanism.

4. State Administrative Inspectorate

According to amendments to the Law on the State Administration Organisation and Work (published in Official Gazette of RM, No. 167/2010), the State Administrative Inspectorate of the Ministry of Justice moved as a body within the MISA. State Administrative Inspectorate is a major control mechanism for the implementation of legal principles in the field of administrative procedures, with particular emphasis on reforms aimed at one-stop shop and mechanism 'silence means consent'. With the proposed amendments to the Law on Administrative Inspection, the State Administrative Inspectorate will assume competences for implementation of the Law on Civil Servants and the Law on Public Servants.

5. Administrative disputes

Administrative disputes are resolved according to the Law on Administrative Disputes. Appeals are resolved by Administrative Court in the first degree, Higher Administrative Court in the second degree, and the Supreme Court in exceptional cases according to law. Higher Administrative Court is established under the Law amending the Law on Courts (published in Official Gazette of RM, No. 150/10), as an additional instance in resolving administrative disputes, despite the State Commission for Decisions in Administrative Procedures and Procedures of Employment in Second Degree. The higher Administrative Court commenced on 30 June 2011.

5. Improving counter services

Administrative procedures will be improved on a frontal level with permanent assessment of administrative services and the counter officials by the citizens. Thus, citizens can express their opinion by filling in the forms of the 'Citizen Charter', available in state institutions. The evaluation of the administration is enabled by the introduction of devices, so called 'Traffic Lights' that are placed on counters, by which citizens can directly express their satisfaction or dissatisfaction with the services received, by pressing buttons that mean satisfactory, average or unsatisfactory. Currently 'Traffic Lights' in the pilot implementation are set in five state institutions. External verification of the counter services performance will be periodically performed through so-called 'Mystery shopper'. The mechanism 'No wrong door' is being introduced as a principle of providing services to end users regardless of where they have asked to get the service, and it assumes commitment by all civil servants to respond the needs and demands of citizens directly, through the completion of certain service on spot, or indirectly through connection with the competent person.

There is ongoing training of the counter workers to improve their approach in relation to the end users of administrative services. Trainings began in June 2011 and will last on a permanent basis.

7. E-Government

E-Government is one of the main drivers in public administration reforms, and certainly in the part of administrative procedures. There has been considerable progress in this area with the implementation of several important electronic services, such as electronic procurement, electronic registration and deregistration of employees, electronic filing of annual tax returns, electronic distribution of international permits for carriage of goods, electronic application and issuance of licenses and import/export quotas etc. With the implementation of the projects e-Documents and e-Forms, the upgrade of the central government portal, as well as the implementation of e-services on an individual basis, according to the National Strategy for e-Government 2010-2012, there is a plan for relatively large number of additional services to be introduced, according to the recommendations of the European Commission as well. In this respect, MISA also established a system for electronic payment of administrative services. The same is now enabled via SMS, but also payment gateway is set up for payment services by credit card, which will be integrated into existing and future electronic services.

In line with the administrative procedures reform, it is important to emphasise that Document Management System (DMS) in all ministries and secretariats is introduced, thus the internal processes of reception, processing and response on documents are fully electronic, and so it will enable to follow the process of the flow of documentation and the process of solving cases. This system provides greater efficiency and transparency in administrative procedures within an institution. The Government adopted a Decree on the DMS that regulates the establishment and use of this system.

8. Conclusion

It may be noted that the Republic of Macedonia has really made significant progress in reforms in administrative procedures. The introduction of the full one-stop shop system, as well as the mechanism ‘silence means consent’ will have a major impact on achieving more simplified, efficient and quality administrative services. The introduction of the inter-institutional, automated data and documents exchange electronically will support this process as well as the process of introducing e-services. Significant investment is made in the development of e-government with implementation of a number of electronic services and IT systems that will improve processes related to administrative procedures. The face of the administration or the operation of the counter workers will be improved directly and indirectly by the introduced mechanisms for measurement of end users satisfaction, and through training to improve their attitude towards the citizens. The control mechanism of administrative procedures is improved by increasing the competence and enhancement of the function of the State Administrative Inspectorate. The mechanism of administrative disputes advanced through the introduction of a new instance, the Higher Administrative Court, which will be controlling and relieving point of the Administrative Court of first Instance.

The ultimate goal of the efforts of the Government of the Republic of Macedonia is to ensure continuity in the reform of public administration, through adjusting and developing the administrative process, due to rapid changes in modern society and the EU integration process. This process supports the efforts for achieving a competent and well organised administration and effectively supporting the development of the business climate in Macedonia. Through this process, the public administration becomes responsive, accountable and competent, and above all citizen-oriented, so that it changes into a true public service for citizens and businesses.

V PUBLIC ADMINISTRATION REFORM IN THE FRAMEWORK OF ADMINISTRATIVE PROCEDURES IN MONTENEGRO

Blazenka Dabanovic

"Completing the essential steps in the Public Administration Reform in the Montenegro including amending the Law on General Administrative Procedure and Law on Civil Servants and state employees "is on top of the key priorities according to the European Commission which Montenegro must fulfill , to enable to open negotiations on EU accession.
Regarding this, one of the aims of the Government of MNE , recognized by the Public Administration Reform Strategy (adopted in March 2011) is to continue the Reform of Public Administration started in 2003, which is reflected in:

- Structural adjustment of state administration system according to the best European standards, including rationalization of state administration, increasing efficiency and savings, improving coordination within the state administration, its openness, availability and participation of citizens in public affairs;
- Stabilization of public finance, leading unique payment policy in public administration and remuneration according to merit, as well as better planning and enforcing the control of spending the budget funds.
- Improving the Civil Service system through further development and management of human resources, applying merit system when employing and promoting, improving the education system and specialization of public servants due to gaining knowledge skills and competences as well as encouraging continuous training
- Achieving better quality of regulation and strategic documents due to enforce consistent normative system. This includes measures on mandatory regulatory impact analysis on the legal system, enforcing regulatory reforms, drafting laws and strategic documents as well as better coordination of public policies.
- Improving the system of E –management in public administration bodies
- Improving the inspection systems, establishing adequate organization, precise jurisdictions and enforcing human resources and technical capacities of inspection bodies.
- Improving the administrative procedures in order to enforce quality of administrative services towards the citizens and other subjects.

REFORMING ADMINISTRATIVE PROCEDURE

The current Montenegrin system of general administrative procedures is based on the Law on General Administrative Procedures (ZUP). Since its implementation started in October 2003, certain inconsistencies and weaknesses appeared thus certain statements of the actual ZUP proved to be the limiting factor in the administrative procedures on rights and legal interest of citizens and legal bodies.

This project is financed by the European Union

The current Law stipulates relatively complicated lengthy and costly administrative procedures and does not provide necessary legal framework for e -government. It contains numerous details which could be worthy as a part of drafting the by-laws.

After a thoroughly review of the current system of the administrative procedures the need for the new ZUP is inevitable and shall be in the line with European administrative procedures.

General goals of a new ZUP[1]

- Ensuring the protection of individual rights and the public interest as well as the proportionality of administrative decisions;
- Improving the transparency of administrative procedures;
- Increasing the confidence of the citizens into public administration;
- Promoting a service-oriented administrative practice and a professional public administration as an essential condition for economic development;
- Supporting the effective and ethical behavior of civil servants in the protection of the public interest;
- Improving the efficiency and cost-effectiveness of administrative decision-making to benefit the public administration and citizens;
- Paving the way and openness to use the modern information-communication technologies for the delivery of administrative services (e-administration);
- Harmonization of public administration in MNE with EU standards.

The Scope of the new ZUP

The principles of the new ZUP shall be applied – as a rule – to every administrative action in order to ensure unified administrative procedures. Transparency, predictability and legal certainty in decision-making, as well as the standards of good legislation, require a coherent, unified system of administrative procedures with a minimal number of special procedures.
Such uniformity also reduces administrative costs, speeds up administrative decisions and increases the effectiveness and efficiency of public administration. It is also very useful for both citizens and civil servants to have all procedural rules in the same law**.** Therefore special administrative procedures shall be subject to very strict scrutiny and their number reduced as much as possible. If more administrative procedures are covered by the general administrative procedures law, it is more likely that the procedures are known and followed.
Some special procedures may be appropriate to specific areas, but they must be special only as much as it is absolutely necessary. Those institutions which propose enacting of special procedures shall bear the burden of explaining why special legislation is needed. If special administrative procedures cannot be avoided, the degree of such deviation from general procedure

[1] **Draft Policy paper on major elements of a new Law on General Administrative Procedures for Montenegro**

must be minimized and special procedures, as far as possible, combined with the legal institutes of the ZUP[2].

In order to enhance effective implementation of new ZUP, it is predicted that the solutions stipulated by new ZUP should be observed from the aspect of their implementation concerning the capacity of public administration to realize procedures which are stipulated. This concerns in particular for the deadlines for repay and as the consequence the deadline for appeal and reconsideration of decision. There should be the balance between demand for speed and demand for accuracy and rightfulness of administrative replays and decisions.

It is very important that in the preparatory phase already all interested parties shall be included (courts, administrative servants-public servants, ombudsman, NGOs, legal experts….) who will contribute with experience and points of view.

Working groups on drafting the new ZUP will start to work by the end of September of this year. Enacting the Law is planned for 2012.

WHERE WE ARE NOW ?

In other to bridge the period necessary to change complete administrative system, certain amendments of ZUP are adopted in 2011.

The most important amendments of ZUP refer to:

- Introducing the institute of a unique place for contact and coordination

Suggesting this regulation the administrative bodies are obliged to provide at the unique post the possibility of gaining information, notes and advise on administrative matters.

- significant shortening of deadlines in administrative decision-making

This is very important to emphasize because on one side there are greater responsibilities of public administration as well as on the other hand the interests of the citizens.

- To enhance legal protection of citizens by establishing the institute of positive fiction, as an exception.

In this way special conditions and cases shall be prescribed by the specific law in order to implement positive fiction as additional form of legal protection of citizens against the silence of administration.

If the public authority doesn't make a decision upon a party's request, it will be considered as adopted.

TRAINING OF CIVIL SERVANTS WHO ACT UNDER THE LAW

In other to introduce civil servants who will act under the Law (ZUP), HRMA is implementing continuous training. There is a significant number of participants on the local and the national level involved.

[2] **Draft Policy paper on major elements of a new Law on General Administrative Procedures for Montenegro**

VI PUBLIC ADMINISTRATION REFORM IN THE REPUBLIC OF SRPSKA

Ljiljana Todorovic

One of the major priorities in the Republic of Srpska is the modernization of public administration because only "good administration", can provide high quality services to citizens and create a public administration that will significantly contribute to economic stability and quality of living standard of citizens, which is crucial for quality and efficiency of economic and social reforms in each legally regulated country.

The process of public administration reform has been recognized and followed by the adoption of a series of reform laws which were proposed by the Government of RS, such as the Law on Salaries of Employees in the Republic of Srpska Government, which is the first time that salaries of employees in ministries and other republican administrative bodies are determined in a legally defined way, then the Law on Government, the Law on the Republican Administration, the Law on Civil Servants, the Law on Administrative Inspection, the Law on Registers, the Law on Amendments to the Citizenship Law, the Law on Amendments to the Law on Administrative Procedures. They are all system regulations which have made the organization and operation of government as the executive authority in the Republic of Srpska, as well as ministries and other republican administrative bodies as part of the executive power, more efficient and closer to the citizens as end users of their services.

The implementation of several projects in the area of public administration reform is underway in all reform areas as follows: "Outline for the development of central government authorities in Bosnia and Herzegovina", "Improvement of rules and procedures for drafting laws, other regulations and general acts in Bosnia and Herzegovina", "Information System for Budget Management "," Training of Civil Servants for the application of information technology and work on computers", "Development of Performance Management System in the structures of civil service in BiH"," Creating a program to improve the quality of administrative decision-making in BiH "," Establishment of the network of info stands " , "Training for Public Relations"; "Strategic Communication", "Creating and establishing a framework of interoperability and standards for data exchange", "Transposition of EU legislation into the legal system of BiH", "Establishment of modern human resources management departments in administrative bodies in Bosnia and Herzegovina ";" Publishing information materials from the Council of Ministers of BiH, FBiH Government, Republic of Srpska Government and the Government of Brcko District "

Reforming administrative procedures

Law on General Administrative Procedures of the Republic of Srpska regulates procedures which the republic authorities are required to follow in administrative matters when deciding on the rights, obligations and legal interests of individuals, legal persons or other parties. This Law applies to bodies of local self-government, as well as companies, institutions and other

organizations, when they decide on administrative matters in the exercise of public power entrusted to them by law.

Despite many positive aspects of this law (long use, good procedural protection of parties, obligation to assist illiterate clients, oral hearing, wide possibilities of proving facts, etc), certain vagueness and ambiguities of individual solutions were identified during its application, and it was necessary to improve the same, in terms of modernization of public administration that assumes a different attitude towards clients and simplification of decision-making process.

Having this in mind, the amendments to the Law on General Administrative Procedure were adopted in June 2010. Provisions that are new in this law, and most directly concern citizens, are surely the provisions that prescribe that authorities and parties and other participants in the process can communicate in electronic form, in accordance with the regulations governing e-business activities, which will make the procedure more efficient and economical.

In order to avoid unnecessary delay in the proceedings, which in some cases lasted for several years due to return of cases from one to another authority, there is a provision according to which, if the first instance body, after annulment of the decision by the second instance authority, provides a new decision contrary to the legal interpretation of the second instance body or comments regarding the procedure, and the party makes a repeted appeal, socond instance authority shall cancel the first instance decision and solely resolve the administrative matter, and the actions of the first instance body will be reported to the the administrative inspection in order to initiate infringement proceedings.

Also, the possibility is given that the head of a body can authorize another official from the same body for decision, except for the act to postpone enforcement of a decision. This speeds up and simplifies the process, especially in bodies that are territorially separated, or displaced organizational units.

In order to ensure the best possible expertise of officials who conduct administrative proceedings, the law lays down minimum requirements regarding the qualifications one must meet, namely a university degree of appropriate profession, at least three years of experience in the required level of education and passed the professional exam for work in administrative bodies.

Modernization of public administration, as a continuous process, continued through implementation of the project "Development of programme to improve the quality of administrative decision-making in Bosnia and Herzegovina". The programme developed will be offered to the Governments of the Republic of Srpska, Federation of BiH, and Brcko District and the BiH Council of Ministers. The programme focuses on four interrelated areas: improving administrative decision-making process, improving organizations and personnel, strengthening of administrative supervision and the introduction of information technologies, and presents guidelines for amending the Law on General Administrative Procedures.

Some of the measures envisaged in the said program:

- Continuing education and certification of administrative procedures workers and inspectors, in order to improve the quality of administrative decision-making.

- Prescribing the institute - waiver of right to appeal, which gives the possibility to the party to exercise its right immediately after the creation of an administrative, without waiting for the expiration of the appeal period.

- In order to reduce the number of extraordinary legal remedies, an analysis of their application was done and it was determined that the request for protection of legality is used very rare, and deletion of this remedy from the law was proposed.

- To improve timeliness in administrative cases, it is proposed that the relevant material laws (Law on the Republican administration at the level of the Republic of Srpska), incorporate a provision by which the republican authorities are obliged to report on the status of administrative cases in their field of work.

- To ensure legal security and protection of citizens' rights, the Law on General Administrative Procedures should be the foundation of most administrative procedures, while the specific regulations would apply in exceptional and duly justified cases. For this reason, the reduction in the number of specific administrative procedures is proposed and their compliance with the the Law on General Administrative Procedures.

Significant attention in the reform of public administration is committed to addressing the personal status of citizens and civil registration, which was marked with significant progress in accomplishing the above issues through passing the Law on Registry Books, Guidelines on the Keeping of Registry Books and the Regulations on registry books forms, registries of registry books and statements and certficates which are issued based on registry books and the format of statements and certificates, and in particular:

- that the issued birth certificates will be uniform for the entire territory of the Republic of Srpska,
- birth certificates will not have a limited validity period starting from 01 September 2010,
- electronic keeping of registry books will be possible,
- preconditions have been created for establishing a central database containing data on citizens of the Republic of Serbian (births, marriages, deaths)
- preconditions have been created for birth certificates to be issued in a place where request had been submitted regardless of where he/she was born in the Republic of Srpska,
- there has been progress on security of documents which are issued based on registry books, because the forms will not be sold in the free market and also formal and technical requirements to be met by each form have been prescribe,
- the issue of double registration in registry books in BiH has been solved,
- the expert recommendations of the European Commission regarding improvement of legislation about keeping the books, have been fulfilled,
- obligations under the Roadmap on Visa Liberalization with BiH have been fulfilled.

VII ADMINISTRATIVE PROCEDURE REFORM IN THE LEGISLATION OF THE REPUBLIC OF SERBIA

Vladana Jovic

The Republic of Serbia demonstrated clear intention to establish a modern and efficient state administration in service of here citizents by the adoption of the Strategy of State Administration Reform in 2004, as precondition for upholding democratic state, ruled by law, human rights and freedoms with clear aim to join EU, in the foreseeable future. The current Law on General Administrative Procedure dates back to 1997 ("Official Gazette of FRY", nos. 33/97, 31/01; "Official Gazette of RS", no 30/10, hereinafter: LGAP) with changes and amendments of minor consequence. Although the Law has been a reliable legal tool for legitimate work of the administration and ensured legal certainty in administrative decision making process, over a long time span, the understanding of public administration and its role in society fundamentally changed. The advancement of social and economic relations, ICT, overall social progress and evolution of new areas of public services called for LGAP increased and broadened application. Under the circumstances, some solutions of the current LGAP could not have adequately responded to the requirements of a modern European society. Hence, it became necessary to make a new law.

Having in mind that LGAP and the Law on Administrative Judicature (LAJ) are very closely interconnected, both in terms of procedural and substantive law, it my be stated that certain reforms in the area of the administrative conduct were introduced as early as January 2010 when new LAJ came into force. The promulgation of new LAJ at the mentioned moment, which preceded the reform of the administrative procedure, was initiated by already effectuated reforms in the area of judiciary. The reforms in the area of judiciary brought about, inter alia, the novelties in court organization. In addition to the organizational changes, the provisions of new LAJ were adjusted to the Constitution of 2006 and standards and principles of the European administrative legislation. Although the mentioned interventions in the regulation of administrative judicature have some implications on the reform of administrative procedural legislation, it could be said that essentially the reform in the administrative conduct started in March 2010, when the then minister of state administration and local self government formed a working group for drafting LGAP. The working group tasked with this complex assignment has been supported by the expert team of SIGMA.

The Working Group consisted of administrative law practitioners from various state authorities, while SIGMA team was made up of the international and local experts, mainly professors of Law Schools in Germany, Croatia and Serbia. The creation of such a team to produce draft LGAP enabled from the onset, the reliance on practical and theoretical expertise and comparative law solutions, which is of great importance for the quality of the legal text and its subsequent application.

The Working Group, in cooperation with SIGMA, laid down the guidelines for new LGAP, approved by the Ministry in July 2010 as a starting document for the future solutions of new LGAP.

The aim of new LAP, in line with the approved guidelines, was to ensure proportionality in meeting and protecting private and public interest in administrative matters, better transparency

and higher efficiency and cost-effectiveness of the procedure. Also, future solutions of LAP should be in the function of regaining the confidence of the citizens in the public administration, providing conditions for the use of modern information-communication technologies and standardization of conduct and work of the administration of the Republic of Serbia along the lines of the European administrative practice.

Within the drafting activities a workshop was organized in May 2011, concerning "e-administration and one stop service under LGAP". WG members and the experts of SIGMA presented new solutions in the Draft and an analysis in the context of implementation of e-administration and service at one place under LGAP to the representatives of the relevant bodies of state administration. The workshop was rather helpful in focusing on those two issues and their respective incorporation into LGAP draft. In early September, WG agreed on the final text of the draft LGAP, which the Ministry delivered to the Government to determine the public debate schedule. The debate started 9 September to last till 16 October, current year. It is expected that the Government submit the adopted Draft, in early December for further deliberation in the National Assembly and enactment.

The major novelties in the Draft LAP are as follows:

1) The text of the Draft was considerably shortened, reduced from over 300 to only 168 Articles, which makes it more handy and easy to adopt new legal solutions. The volume reduction was achieved at the expense of excessive regulation characteristic of the LGAP in force. The excessive regulation had been aimed at the protection of public interest, sensible at the time of the underdeveloped system of legal protection before the administrative tribunal. In the situation of adequately regulated court protection there is no need for detailed provisions for general administrative procedures. These procedures should become faster and more expedient with less formality. In the same vein, the Draft Law is shorter because some matters already stipulated in other laws are referred to subsidiary or related application thereof.
2) Definition of new principles as: ***the pro rata principle***, which results in greater responsibility of the authorities for law enforcement; ***the principle to protect legitimate expectations of the parties,*** which binds the authorities to act in keeping with the earlier decisions rendered in the same or similar cases, resulting in higher legal certainty and security for the parties; ***investigative principle*** which inter alia relieves the party of the duty to obtain data kept in the official records of the public bodies of authority; ***the principle of accessibility of data and data protection,*** which provides access to the information of public significance in compliance with the Law on Accessibility of Information of Public Importance and Data Protection.
3) Much broader scope of application of LAP: in addition to the legal enactment LAP is now applicable to the administrative agreements and other administrative activities, where the notion of administrative matter was given wider substance; an important novelty concerning administrative enactments is the **Guarantee Act.** The Guarantee act is the decision by which the authority may conditionally recognize some future right to the party, if so prescribed by the law. That decision shall be in writing and must not contravene public interest or stand against the interest of the third parties. The guarantee act shall not bind the authority in the case that the legal grounds or facts shall essentially change. **Administrative Agreement** is a new kind of administrative activity subject to LAP. This institute has been

rather cautiously introduced as it is a major novelty in the domestic legal system. The Administrative Agreement is defined as a two sided legal enactment where one side is the body where a concrete legal relationship is established, changed or terminated in the administrative matter. A body may conclude administrative agreement, acting in the public interest, without undermining the right of the third parties, in the areas as concessions, public services and in other areas anticipated in the law. The court protection is offered by the Administrative Tribunals. Extended application of LGAP to other administrative activities of the bodies of authority which directly affect the rights, obligations or legal interest of the parties (delivery of information, warnings, reporting...).

4) The administrative procedure shall be considerably speedier and the ruling faster thanks to impossibility of submission of independent legal remedies against most procedural decisions (conclusions), as has been the case so far. Such decisions shall be subject to challenge in the appeal procedure against an administrative enactment which shall speed up the administrative procedure to a great extent. The provisions on delivery of information have been simplified, too.
5) Easier and simpler exercise of rights of the citizens and commercial entities shall be possible thanks to the provision on legal presumptions for the set up of one administrative point, obligation to forward the application to the competent body if the body that received the same has no jurisdiction to act, release of the party of the requirement to obtain the data kept in the official records by the bodies of public authorities, and numerous other simplified procedures.
6) Provision of legal protection in rendering public service: an increased number of public services and state administration affairs are delegated to different public and private entities, which necessitates prevention of lower legal protection of the users of public services compared with the situation when such a service was provided directly by the public authority. To that end the Draft stipulates that if the user of public services deems that his rights were violated by the actions of the provider of public services or his/her legal interests, he/she may file a complaint to protect the rights that is legal interest, with the body competent for surveillance over such public services.
7) Improvement of the provisions on communication between the bodies of authority and the parties in the process (separate rules on e-communications), and first of all the part regarding the delivery of documents; the formal way of delivery shall be exceptional; generally it shall be rather informal for the sake of speedy processing wherever formalism is unnecessary, as it is in most cases.
8) The novelty is the legal regulation of the administrative silence ***(non rendition of decision in the prescribed time limit***). If the procedure is instituted before the first instance body by an orderly and complete application in one-party administrative matter, the silence of the administration shall be deemed as approval, unless otherwise provided for in a separate law. Taking the above into account and in the function of legal certainty, the right of the party is to ask for the confirmation of approval of its request. If the body shall fail to act, the party may file an administrative dispute to obtain the said certification.
9) Crucial simplification of the system of legal remedies with concomitant expansion of legal protection to quite a number of administrative activities: appeal continues to be central in the system of legal protection of the parties in the administrative procedure. The Draft

introduces another regular recourse – complain. The complain may be deposited against the administrative agreement, concluded settlement, administrative act and other administrative activities and conduct of the administration and organizations offering public services, and when these activities and conduct have no character of administrative act.

In view of many novelties introduced in the Draft Law it was necessary to accommodate a learning period, for the administrative staff who shall apply, it and informing the citizens of the rights and possibilities opened to them. For complete implementation of the anticipated solutions in the Draft Law it is important to raise the awareness of the possibilities opened by the Law not only of employees in the public administration but also the citizens who approach the competent administrative bodies in pursuit of their rights. That is why the Law shall become applicable one year after its promulgation.

Reflections on reforms of administrative procedures in Western Balkans

By Mose Apelblat[1]

Introduction

The following contains some reflections on the current situation with regard to the reform of laws on general administrative procedures (LGAP) in the Western Balkans. The intention is not to summarize the reform process or to describe on-going or concluded legislation in detail – either new LGAPs or amendments to LGAPs – but rather to highlight some common issues, ideas and challenges facing all countries.

Questions which can be asked are: How are the European standards on good administration reflected in the LGAP? Which are the common problems or issues which the new or amended LGAPs are trying to solve? How are legislation and the implementation of the LGAP carried out? Are there any remaining problems?

The note is mainly based on the descriptions received from the countries who participated in the 5th ReSPA annual conference: "Reforming administrative procedures to meet EU standards" (11 – 12 April 2011). The text is intended both for the participants in the conference and for policy makers in the partner countries and in the European Commission involved in public administration reform (PAR).

Overall, the reform of LGAP is on the right track and is supported by the Commission with the assistance of SIGMA. The majority of countries are in the process of reviewing and/or implementing new or amended legislation.

The standards or principles of good administration are explained by SIGMA in this publication. Overall, he LGAP can be described as a kind of framework law which prescribes the decision-making process in the public administration and its inter-action and communication with citizens and enterprises.

An adequate LGAP is a prerequisite for the rule of law since basically it requires all administrative decisions and actions to be based on and in conformity with the law, to be proportional to the intended purpose and to offer legal remedies such as the right to appeal to a court. The LGAP should also promote transparency, accountability, efficiency, and service-orientation in the public administration.

The importance of LGAP in PAR

The reform of general administrative procedures is a key element in the public administration reform (PAR) process. By its horizontal nature, affecting the decision making in all sectors of the public administration, LGAP is a driver for "good administration" in every ministry, government agency and local municipality. By adhering to the rules in the LGAP, civil servants are internationalising a culture

[1] The author is policy coordinator in DG Enlargement for public administration reform in the potential candidates and candidate countries. The note represents solely the views of its author and cannot in any circumstances be regarded as the official position of the Commission.

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of administrative behaviour. It's therefore no wonder that the reform of LGAP figures prominently in all national strategy papers on PAR, most of which have been updated lately.

LGAP is one of the legal pillars in public administration; however the review of the LGAP is not taking place in a vacuum. A number of other laws which are linked to LGAP or do influence its proper implementation have also been drafted or amended in the PAR process. Most obvious are the laws on administrative courts and administrative disputes. Laws on administrative inspection could also be affected in case such inspectorates are assigned a role in investigating delays in taking and communicating decisions.

Horizontal laws concerning the civil service, the organisation of the public administration and the right to access to public information are also closely connected with LGAP. The contributions from the countries do refer to the need to revise them as well.

In principle all civil servants are affected by the LGAP as they may handle requests from the public and take decisions in individual cases. Their rights and obligations as prescribed in civil service legislation and accompanying codes of conduct will largely determine how they'll carry out their duties with regard to the LGAP.

Laws on the right of access to information and on data protection are also important for LGAP. For the implementation of LGAP to be transparent, the parties concerned by the administrative decisions and actions must have a right to access to information in the files. The public at large or non-concerned parties have also in principle a right to know. [2] In fact the laws are inter-related. Requests for public information, e.g. on government decisions and budgets, need to be handled according to the procedures laid down in the LGAP.

Current situation

First an overview of the situation by country could be useful:

Table 1[3]

Country	**Direction**	**Status**
Albania	New law	Expected 2012
Republica Srpska[4]	Amended law	Amended 2010
Croatia	New law	Enacted 2009.
Former Yugoslav Republic of Macedonia	Amended law	Amended 2011

[2] See http://www.oecd-ilibrary.org/governance/the-right-to-open-public-administrations-in-europe_5km4g0zfqt27-en SIGMA Papers no 46: The right to open public administrations in Europe: Emerging legal standards. Paper prepared for SIGMA by Prof. Mario Savino, Tuscia University of Viterbo, Italy (2010)

[3] No contribution to the ReSPA publication was received from Kosovo (under UNSCR 1244/1999). See also extract from 2011 progress reports, table 2 below.

[4] No information was received from the state level or from the Federation of Bosnia and Herzegovina

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Montenegro	New law	Amended 2011. Policy paper 2011. New law expected 2012.
Serbia	New law	Expected 2011. Policy paper 2011.

A common element in all countries besides Albania is that previous or current versions of LGAPs are relatively old, often dating back to previous regimes, even until Austrian arrangements from 1925 or the old Yugoslav LGAP (ZUP) from 1930. Notwithstanding their qualities, there is now a common understanding on the need to review and modernize them, especially in the context of accession to EU and in view of European standards which didn't exist in the past.

Most countries have opted for a total review of the old LGAP. The former Yugoslav Republic of Macedonia decided in 2011 to amend the old LGAP and to introduce a number of important changes in the law while not excluding the possibility of later replacing it by a new law.

It could be mentioned that also Member States are reviewing their legislation. Sweden for example has a LGAP (in Swedish "Förvaltningslagen") dating from 1986. A government commission proposed in 2010 a new LGAP which is estimated to enter into force on 1 January 2012. Although the old LGAP had served Sweden well for many years there was a need to update it to meet new technical and legal requirements, and administrative principles stemming from the Charter of Fundamental rights of the European Union, secondary EU legislation, Court of Justice case law and commonly accepted standards on good administration.

Legislation and implementation

The legislative process is relatively lengthy and seems to have been more or less the same in all countries. Gradually an ideal process has emerged. It starts with the establishment of a working group consisting of legal experts. To ensure ownership and anchorage in the legal tradition of the country, the experts are drawn from the academia, judiciary or public administration of the country concerned.

The work is done in collaboration with the Commission's partner, SIGMA, which can offer information on and insights in prevailing European legal standards and lessons learned from Member States and other enlargement countries. It still leaves a range of options to the policy makers and legislators in each enlargement country.

The working group produces a policy paper outlining the required changes in the LGAP. During e.g 2011 such policy papers have been drafted in Serbia and in Montenegro. While each policy paper is the output of a specific legislative project and reflects the legal and administrative tradition in respective country, the challenges in legislating on common European standards are mostly the same in the region; countries can therefore benefit from sharing the information in the policy papers once they have been finalised and adopted.

Next step might be a workshop organised by SIGMA where the policy paper is presented by the government for civil society, as recently took place in Montenegro (September 2011). The involvement of civil society (NGOs) is itself an expression of good administration which might be

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embedded in the final LGAP.[5] This preparatory work has until now taken place country by country with limited exchange of experiences among them. The ReSPA conference in April 2011 seems to have been the only multi-country event until now on LGAP.

Based on the policy paper and the workshop a first draft LGAP is drafted and then normally subject to wide public consultation, as currently is the case in Serbia (September – November 2011). A final version of the LGAP will then be adopted by the government and presented to the parliament for enactment.

But the work doesn't stop there. The LGAP needs to be implemented and this might require training of civil servants and awareness raising campaigns targeted to both government agencies and the public at large. It becomes even more complicated if, as normally is the case, by-laws, implementing regulations or other laws need to be adopted or harmonized with the new LGAP. The purpose of the LGAP is to put into place general procedures; redundant procedures in special legislation need therefore be cancelled.

For this reason the formal entry into force of the new or amended LGAP might have to be postponed for quite some time (a year or more). In the case of Croatia the new LGAP was adopted by the Parliament in April 2009 and entered into force on 1 January 2010. However, provisions in about hundred laws regulating individual administrative areas needed to be deleted or harmonised with the new LGAP. This work isn't finished yet.

Monitoring of the implementation of LGAP after its entry into force is also important. The Ombudsman institutions, whose current workload often is dominated by complaints against delays in administrative decisions and abuses of the current legislation, will no doubt be affected. The Ombudsman will also by its recommendations and rulings contribute to the good administration standards which the new LGAP is supposed to reflect.

The postponement of the entry into force of the new LGAP might seem as a dilemma since civil servants will have to continue to apply the old LGAP while starting to learn about the new LGAP. However, the best learning is in the doing once the LGAP has entered into force and put into practice.

The new LGAPs have been considerably shortened and will for that reason, if not other reasons, be easier to implement than the old ones. The old LGAPs used to include old-fashioned and detailed rules which don't need to be subject to legislation. While the new LGAPs might still seem as quite extensive documents, the fact that they have become half as long as the old laws indicates that the tendency of over-regulation has been addressed. The draft LGAP in e.g. Serbia has been reduced from over 300 to 168 articles. The new LGAP Croatia consists of about the same number of articles. While following the example of Croatia, which was the first country to adopt a new LGAP, the challenge for the other countries in Western Balkans is to implement their new or amended LGAPs in an efficient way.

[5] This would also be in line with the principles of the so-called Aarhus convention on Access to information, public participation in decision–making and access to justice in environmental matters. See further http://ec.europa.eu/environment/aarhus/

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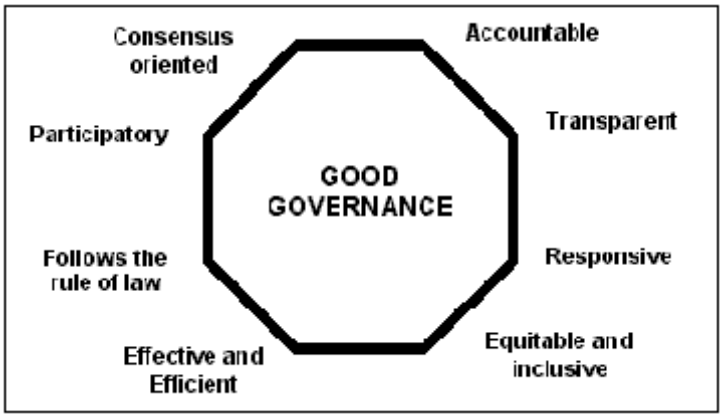
Objectives and principles

The review of the old LGAPs starts with determining the general objectives of a new law: for example ensuring individual rights, striking a balance between public and private interests, ensuring efficiency and compliance with law, and simplifying and streamlining old-fashioned administrative procedures. Efficiency and compliance with law are often portrayed as opposite principles but in practice they need both to be protected and adhered to in the LGAP.

Often a list of basic administrative principles, which weren't part of the old LGAPs, is included as a kind of preamble in the new or amended LGAP. Not all country contributions have stated the principles, neither is it always clear what is meant by some of the principles. The reader is therefore referred to the legal texts. What matters is how they are going to be applied in practice.[6]

An illustrative graph on good governance, or good administration, was recently included in a paper by EUPAN (European Public Administration Network). In this graph good governance has 8 major characteristics. It's participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of the minorities are taken into account and that the voices of the most vulnerable in society are heard in decision making. It's also responsive to the present and current needs of society.

Figure 1: Characteristics of good governance[7]



[6] To take the example of Sweden: the new Swedish LGAP lists the following basic principles of good administration: Legality (only actions/decisions supported by law or regulation may be taken), objectivity and impartiality, proportionality (interventions affecting private interests must result in the intended output and the costs must be proportional to the result), service-friendliness (a public authority should enable smooth and simple contact and reply to questions without unnecessary delay), availability (a public authority must be available for contact, incl. access by e-mail), cooperation (authorities shall cooperate with each-other and assist the public to solicit information from other authorities).

[7] Ch.Demmke & T.Moilanen: Effectiveness of Good Governance and Ethics – evaluating reform outcomes in the context of the financial crisis, June 2011. From Statskontoret (2005): *Principles of Good Administration.* Stockholm. United Nations Economic and Social Commission for Asia and the Pacific: *What is good governance?* http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp, 18.4.2011

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Not all major characteristics are equally important or relevant for LGAP. As already mentioned in the introduction, principles and standards relating to the rule of law, efficiency and effectiveness, responsiveness and transparency should be directly reflected in the LGAP while other principles will be affected, and indirectly promoted, by a proper implementation of the LGAP. "Rule of law" comprises a number of legal principles such as legality, predictability, proportionality and due process. Overriding principles could be broken down in a number of concrete and operational standards which in some way or another are included in all LGAPs:

- Right to access to documents in file
- Obligation on part of authority to carefully examine file
- Obligation on part of authority to communicate documents in the file
- Obligation on part of authority to communicate final decision
- Obligation on part of authority to state reasons for decision
- Right to appeal to administrative court against decision taken by authority

Novelties in LGAP

Firstly, the scope of the LGAP has been broadened and usually includes central government, regional government and municipal-local authorities.

Secondly, the new or amended LGAPs include new types of administrative actions such as "administrative contracts". The system of legal remedies will be extended to cover regular administrative actions such as provision of information and expert opinions. This note is not the place to dwell on the legal technicalities of these new types of administrative actions and legal remedies. Suffice it to state that they are intended to provide legal protection against all types of modern administrative actions, to complement the normal administrative acts (decisions) and to introduce a measure of flexibility in the administration's decision making and in providing public services.

Thirdly, the right to legal remedy is (or should be) thoroughly regulated in the LGAP. This encompasses the right to file an appeal to an administrative authority and the judiciary control of the administrative decision on the appeal through an administrative court. The courts should have full jurisdiction and the right to decide on the substance of the matter and not only on the formal procedures; otherwise will files "walk" back and forth between administrative bodies and courts.

Legal remedy is also a tool for the administration to control and correct itself. This implies that manifest legal errors or omissions in administrative practice or in a specific administrative act should be corrected by the administrative body on its own initiative. To be impartial and effective, self-correction when requested by the party concerned should be done by another civil servant or department than the first one who dealt with the file. Administrative legal remedy is a tool for

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improvement of the quality of administrative practice and will reduce the number of cases submitted to the courts.

The following elaborates on some other important novelties in the legislation.

Points of single contact

The LGAP introduces one-stop shops or points of single contacts based on the Services Directive. The idea is that citizens and enterprises could turn to one dedicated agency for all types of requests to the public administration and this agency would in turn direct the requests to the competent authority.

According to the Services Directive, governments are obliged to install "points of single contact" in order to facilitate cross-border establishment of service providers. Among Member States the Service Directive has normally been transposed by a separate law – as also was the case in Croatia - or by harmonisation of those special laws which are directly concerned by the Directive.

The Services Directive does aim at administrative simplification by removing obstacles for efficient and expeditious handling of cases. The idea of administrative simplification through the creation of "points of single contact" and electronic procedures could thus be generalised to all areas of the public administration. From that point of view the directive's administrative procedural requirements could be incorporated in the new or amended LGAP as seems to have been the case in all Western Balkans.

Whether the new LGAPs obliges the government to establish points of single contact in case they don't already exist or only refers to them as an option is open to interpretation.

Electronic procedures and ex-officio investigations

In the past the need for sending missing documents resulted in long delays. In the new or amended LGAP, applicants are normally relieved from the burden of complementing their applications with all kinds of formal documents or certificates if this information is already available somewhere in the public administration. In the same vain, authorities are obliged to investigate on its own initiative (*ex officio*) all the relevant facts required for an administrative decision.

The new rules also imply that public authorities should be inter-connected (e-government). They should have access to public databases where this information is stored if the information is required for them to carry out their duties.

Another aspect of e-government is e-communication. It plays an important role in all LGAPs and will save costs for both the administration and the public. In the past all communication had to take place through regular mail and often letters had to be registered. Nowadays people, companies and agencies communicate easily by e-mail. In the new LGAP, exchange of information and notification of decision will be simplified. However, this requires a regulatory framework, incl. accepted standards for e-signatures.

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Administrative silence

A very important issue in all new legislation is the regulation of "administrative silence". In the past the absence of any response or decision by a public body meant that the request, appeal or application had been rejected. This happened quite often and the citizen couldn't even be sure that his/her request had been treated by a lazy and ineffective administration.

If a citizen wasn't informed about any decision, neither positive nor negative, not to mention the reasons for the decision, he/she was hardly capable of filing any appeal against the administrative inaction. It goes without saying that the principle of "administrative silence means rejection" doesn't belong in a service-oriented and transparent administration; more importantly it doesn't comply with the principles of the rule of law.

However, the opposite principle, "silence means approval", is hardly much better. It was exceptionally introduced in the Services Directive in order to facilitate the licensing procedure in the establishment of cross-border businesses. It appears that the way how most countries until now have tackled "administrative silence" in the new or amended LGAP is to interpret it positively, as tacit approval, but to limit it to exceptional cases if prescribed in special legislation as the case may be. It remains to be seen if it will become the exception to the rule.

"Silence means approval might be a bit more citizen–friendly than "silence means rejection" as the citizen will always be right and get his/her way in the absence of a decision. It could also induce the administrations to hurry up and take decisions before the deadlines have expired. Still there are risks that might outweigh any desirable advantages.

By not taken an explicit decision, documented and supported by documents in a file, corrupt civil servants could allow requests, which wouldn't have been approved if they would have been properly dealt with, to get through "in silence". Imagine for example requests for building permits or projects with environmental consequences. There is awareness that acceptance of the principle "silence means approval" could open up the door for more corruption in the public administration. Some precaution has been taken to mediate this risk but it might not be enough. It could be noted that e.g. according to the Ombudsman 2010 report in the former Yugoslav Republic of Macedonia a significant number of cases concerned abuses of the institution of silence of the administration.

Assessment of LGAP

Last but not the least it should be mentioned that LGAP reform is assessed in the European Commission's annual progress reports or opinions on EU membership applications, in the section dealing with PAR under the Copenhagen political criteria. Alignment of legal provisions in LGAP with European standards has also been a benchmark in chapter 23 on "Judiciary and fundamental Rights".

The following table summaries the assessments of the WB countries in the latest 2011 reports. In some reports there is no explicit assessment of the LGAP or the text doesn't go into any details. In the table also indirect references to LGAP have been quoted.

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Table 2.Summary of assessments of LGAP in 2011 progress reports and opinions

Albania	Important legislative acts requiring a three-fifths majority in Parliament, such as the law on general administrative procedures, the law on functioning of public administration and the law on administrative courts, are awaiting adoption.
Bosnia & Herzegovina	The Ombudsman of Bosnia and Herzegovina has issued several recommendations concerning lengthy administrative and judiciary proceedings.
Croatia	In order to allow full application of the General Administrative Procedures Act (GAPA), the process of harmonising the relevant sectoral legislation has continued, with the majority of acts now adopted by the Croatian Parliament.
Kosovo[8]	Implementation of the laws on state administration and on administrative procedures has been limited.
Former Yugoslav Republic of Macedonia	The Law on general administrative procedures was amended to increase accountability by streamlining administrative and appeal procedures, including the procedures for the setting-up and functioning of second-instance appeal commissions. A State second instance Commission for decision-making in administrative procedures and labour relations procedures were established. In general, however, the amendments to the Law have not rectified all its shortcomings. The law does not define the right to an administrative appeal as a principle with clearly defined exceptions. The principle of 'silence is consent' is subject to a complex appeal procedure which undermines the application of the principle in practice. To bring about a systemic change, a new, contemporary and well-structured law would be necessary.
Montenegro	Amendments to the Law on general administrative procedure were enacted by the parliament in June 2011. These amendments constitute a first step towards the reform of administrative procedures. Work has been launched to prepare a comprehensive reform with a view to laying the foundations for a modern,

[8] Under UNSCR 1244/1999

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	citizen-oriented administration. To this end, in July the government adopted a policy paper, containing the main principles and elements for a new law on administrative procedures in line with European values, legislation and practice. It simplifies processes in public administration in line with the principles of efficiency and effectiveness, enforcing transparency and objectivity, accessibility to citizens and NGOs and openness to the use of modern information and communication technologies.
Serbia	The adoption of a new Law on Administrative Procedures, aimed at introducing simplified procedures in order to reduce the caseload, is still pending.

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