



## **Terms of Reference**

### **Expert on Administrative Law of Montenegro**

#### **Introduction**

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

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

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

Within the Public Administration Reform pillar, ReSPA is, among other areas, supporting efforts in the field of Administrative Procedures and Administrative Justice (APAJ). Under the Public Administration Principle on Accountability, particular attention is paid to the development and improvement in the area of Administrative Justice.

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

In addition to region-wide activities, ReSPA is supporting urgent needs of its members, within the framework of its Programme of Work. Montenegro is in urgent need to prepare its Administrative Court for implementation of new legislation in the area of general administrative procedures and administrative justice.

## **Purpose**

The purpose of the consultancy is to support the Administrative Court of Montenegro in preparation for implementation of the new Law on Administrative Procedures and the new Law on Administrative Dispute that are enacted, but their implementation will start from July 2017.

## **Background**

The Parliament of Montenegro adopted the new Law on Administrative Procedures in December 2014. Its implementation is starting from July 2017. In July 2016, the Parliament of Montenegro adopted the new Law on Administrative Disputes, whose implementation is to start simultaneously with the new Law on Administrative Procedures, i.e. in July 2017. The Law on Administrative Disputes is one of the key pieces of legislation for the establishment of the effective system of public administration. It is considered that administrative dispute is a legal mechanism for control of administration, and effective tool for the application of legality of administrative work of public bodies and protection of rights and interests of citizens.

The new Strategy for Public Administration Reform of Montenegro for the period 2016 – 2020, adopted in July 2016, envisages strengthening the capacities of the Administrative Court for the implementation of the new Law on Administrative Disputes. Genuine new solutions introduced by the Law on Administrative Disputes are reflected in deciding by a single-judge in cases prescribed by the law, in connection to procedural reasons (determined by Art. 16). In addition to that, the Administrative Court's obligation to decide in full jurisdiction is introduced as well, in cases where the decision has been once revoked, if the state of matter allows.

Considering that the new Law on Administrative Procedures indirectly determines some new solutions for the new Law on Administrative Disputes which strengthen administrative and judicial protection of citizens in the administrative dispute, it is necessary, from the organisational and functional aspect, to analyse correlation and effects of these two new laws in relation to the protection of rights and legal interests of citizens in administrative disputes. Besides that, the new institutes in the Law on Administrative Procedures - such as the administrative contracts, protection of rights of users of public services, other administrative activities, etc. - at the same time open the possibilities for the extension of competences of the Administrative Court and it also requires additional forms of training of Administrative Court's staff.

## Objectives and Scope of the Assignment

The main objective of the Assignment is to conduct analysis of the new administrative legal framework and its impact on the organisation and functioning of the Administrative Court of Montenegro.

The analysis should encompass:

- The current state of functioning of the Administrative Court in Montenegro (legal and organizational aspects) and possibilities and recommendations for improvement;
- Number and types of cases (from current cases) in which single-judges could make decisions;
- Organizational aspects of the Administrative Court, in accordance with the new requirements and competences;
- Functional aspects, manner of decision making process, meritorious decisions, public hearings, enforcement of decisions of the Administrative Court, etc.

## Level of Effort, Tasks and Deliverables

The Expert is expected to perform the following tasks:

Expert Day	Tasks	Deliverables
1	Meeting with the Administrative Court representatives and determination of the content and methodology for analysis	Minutes of the meeting Defined methodology and content of the analysis
1	Meeting with the President and judges of the Administrative Court – interviews regarding the organisation, means of work, efficiency, possible problems in Administrative Court functioning and open questions arising from the new Law on Administrative Dispute	Minutes of the meeting
2	Analysis of legal documents – new Law on Administrative Procedure and new Law on Administrative Dispute	Report on conducted analysis
1	Analysis of the organization of work of the Administrative Court	Conducted analysis

1	Analysis of the work of the court administration of the Administrative Court	Conducted analysis
4	Analysis leading to the estimation of the volume of work (number of cases) in which a single-judge will have a mandate to take decisions in cases prescribed by new legislation	Report on conducted analysis
3	Analysis of decisions of the Administrative Court in relation to the Law on Civil Servants and State Employees, particularly regarding cases when the Administrative Court is deciding in full jurisdiction	Report on conducted analysis
1	Writing of the Draft report with recommendations;  Presentation of the document to the judges and court administration of the Administrative Court	Draft report
1	Summarizing feedback received by the Administrative Court staff, finalizing the Report	Final Report
1	Presenting the Report at ReSPA Regional Conference on Administrative Justice in Podgorica on 22-23 November 2016	Presentation

## Necessary Qualifications

The Expert shall possess the following qualifications:

- Advanced degree in Law (LL.M. or MA)
- At least 8 years of experience in Administrative Law and Public Administration System
- Knowledge of Montenegrin language, and at least basic knowledge of English;
- Advanced computer literacy;
- Ability to work with people of different nationalities, religions and cultural backgrounds;

- Excellent organisational skills, proven communication and presentation skills and ability to work in an environment requiring liaison and collaboration with multiple actors including government representatives, international organizations, and other stakeholders.

The Expert shall possess the following competencies and core values:

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

### **Time-frame and Location**

The main assignment is to be completed by 21 November 2016. The Expert is expected to participate at the Regional Conference on Administrative Justice to be organized by ReSPA on 22-23 November 2016 in Podgorica. After the Conference, the Expert shall submit the Final Report by 25 November 2016.

The Assignment foresees work in Podgorica, Montenegro. No travel costs are envisaged.

### **Final Documentation**

In addition to all Deliverables listed above, the Expert should submit to ReSPA the Final Report about activities undertaken in English language.

### **Quality Control**

The Expert should ensure an internal quality control during implementing and reporting phase of the assignment. The quality control should ensure that the draft research report complies with adequate quality standards before sending them to stakeholders for comments. The quality

control should ensure consistency and coherence between findings, conclusions and recommendations. It should also ensure that findings reported are duly substantiated and that conclusions are supported by relevant judgment criteria.

## **Application Information**

Eligible experts are required to submit an application to ReSPA that includes:

- CV including relevant knowledge and experience, as well as list of relevant publications and contact details (e-mail addresses) of referees;
- Cover letter explaining motivation for the assignment.

## **Other**

Relevant Websites:

1. <http://respaweb.eu>
2. <http://sudovi.me/uscg>

ReSPA, 18 October 2016