



ReSPA
Regional School
of Public Administration



REPUBLIKA HRVATSKA
MINISTARSTVO UPRAVE

EFFICIENCY AND SIMPLIFICATIONS OF ADMINISTRATIVE PROCEDURES AND JUSTICE IN THE WESTERN BALKAN

Zagreb, 29 – 30 January 2014

Discussion Paper and Provisional Programme

Background

In close consultations with its GB members it has been decided that ReSPA should organize further regional events and networking devoted to the Western Balkan Administrative Procedure and Administrative Justice fields to exchange good practices by bringing together participants (three per country) from the Western Balkans (Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Kosovo*) as a follow up of the first meeting in June 2013 in Belgrade. This event will be organized as a continuation of final results presentation of new Croatian GAPA support project by EU (IPA 2008) and in cooperation with the Ministry of Public Administration of Croatia.

This Meeting will take place on 29-30 January 2014 in Zagreb, Croatia.

The topic of the “*Efficiency and Simplifications*” in administrative matters event will be devoted to the ongoing trends in the Western Balkans, highlighting efficiency and simplifications of administrative procedures and administrative justice as the issues identified to be of special interest presently in terms of legal framework and institutional capacity building in the Western Balkan.

Objectives

The purpose of this paper is to provide a basis for contributions from and discussion among the representatives of the selected interested Western Balkan countries on the reflections in the domains of administrative procedures and administrative justice development, recent supra – and national reforms and further challenges.

The Objective of the “*Efficiency and Simplifications of Administrative Procedures and Justice in the Western Balkan*” event in Zagreb on 29 – 30 January 2014 is threefold. The first objective is to analyze development trends and recent legal and organizational progress in the field of administrative procedures’ regulation and its implementation by countries and in the overall Western Balkan region. Secondly, the objective of the networking event is to share best practices and experiences specifically focused on 1) the efficiency and simplification of administrative procedures from e-government and one-stop-shops to decision-making in reasonable time; and 2) the interplay between administrative procedures and administrative justice, namely judicial review over administrative acts in terms of good governance. Thirdly, the objective is to develop organizational and top officials’ capacity on the national level to design further steps of administrative modernization in this and other public sector areas.

By harmonization of efforts ReSPA supports the EU integration policy co-ordination in a wider general policy co-ordination perspective on public administration reforms, as a mode to

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stimulate the success in preparing of the states in the Western Balkan for the EU membership and afterwards for the effective participation in EU policy-making.

The Preliminary Agenda attached will provide additional guidance on the subject matters for this particular meeting. However, it is not intended that the Agenda and the discussion paper limit but rather open up the discussion on all relevant and related topics. Thus participants are invited to provide suggestions, comments and prepare speeches, Power Point Presentations or any other relevant comments.

Content

Reform of (general) administrative procedures and administrative justice has been a common issue in the Western Balkan for a while, within the good governance and good government context required to follow the principles of European Administrative Space, EU and Council of Europe guidelines. All the countries on the territory of the former Yugoslavia took over the Yugoslav General Administrative Procedures Act (GAPA), in the beginning of the 1990s, with Albania adopting its own Code (1999). However, during the 2000s, almost all countries amended their general administrative procedural laws or / and started to prepare the new ones and other closely interrelated measures (namely new LGAP in Croatia passed in 2009 and in Serbia in 2013, followed presumably by Montenegro in 2014 and in between introducing several novelties of present valid laws in FYR Macedonia, etc.).

In order to assess and update the regulation of administrative relations, it is necessary – parallel to GAPA – also to pursue and advance the regulation of the basic forms of judicial control over the legality of individual acts issued in procedures completed pursuant to GAPA, such as administrative dispute, constitutional complaint, and protection before the Strasbourg Court based on European Convention on Human Rights (ECHR), enabling protection of fundamental human rights and better accessibility for the parties with more focus on not purely legality but also appropriateness of administrative decisions. Hence, administrative procedure and administrative dispute (specifically Administrative Dispute Act, ADA) should be regulated and modernized in compliance with each other not to effect contra-productively, most importantly ensuring reasonable time for decision to effectively ensure right and legal interests of parties and protect public benefit.

Therefore, administrative procedural law should not be underestimated as a part of the overall functioning and modernization of public administration since it represents a key tool for public governance to, both: 1) efficiently implement public policies and 2) simultaneously implies the exercise of international and constitutional safeguards (such as the rule of law, equality, legitimate expectations, effective legal remedy, access to court, etc.), of primary interest by “doing business” actors in the common and globalized market.

General administrative procedure is one of the most important formally regulated work processes in public administration. Although general administrative procedure can be classified as a relatively routine technology, it is not very simple. Its complexity is growing

along with regulating new variations, such as regulation of full and shortened procedure, issuing administrative contracts, regulating protection from real acts, etc. However, general administrative procedure is built around the idea of serial interdependence – the next procedural step should follow the previous one, and completing the previous one is a precondition for going further. This makes thing easier, indeed.

Preconditions for effective application of thoroughly regulated administrative procedures are classic legal and administrative knowledge and high education of the respective civil servants. Today, familiarity with detailed rules is not enough, a much wider insight into basic administrative principles, international standards, citizens' and businesses' expectations, and other relevant circumstances is necessary. Administrative procedures are frequently blamed as time-consuming, non-transparent, and bureaucratic. Many technological, structural and legal innovations are to be applied for simplifying administrative procedures. E-communication and other instruments of e-government, points of single contact (one-stop-shops), reducing formalities, result-orientation, one instance decision-making and other measures can release situation with complex legal regulation of administrative procedures and improve citizens' position in their relations with Public Administration.

Heavy, detailed, casuistic regulation of a general administrative procedure do not have the same impact as the more modern regulation focused on wide principles and the most important issues of citizens rights protection. While former can cause red tape and non-transparent situation in public sector, the later can streamline both procedures and administrative control to impacts of administrative procedures.

Legal protection of citizens is a complex system consisting of procedural protection within public administration, national and international court control over administrative acts and actions, court protection of constitutional rights (mostly before the constitutional courts), ombudsman protection, guarantees of open access to public sector information, protection of human rights and fundamental freedoms before the European Court of Human Rights and ECJ, etc.). Changes in administrative justice system cause changes in administrative procedures and vice versa. Effective administrative procedures can relieve the situation in administrative justice, at the same time administrative dispute can cover major procedural errors if fundamental principles breached, and enable simplified (for instance taking decisions without all formal parts by GAPA), consequently also shortened administrative procedures. In administrative dispute, the findings of analysis in the respective territory are similar as identified for GAPA: regulation is in the Western Balkan rather classic (e.g. limited scope in assessing acts with incomplete jurisdiction); however, at least the ADA has been undergoing changes aimed at restricted (e.g. by limiting the type of acts to be challenged, legitimacy or possibility of appeal) or in some cases, such as in question of legality review of general administrative acts, broadening the accessibility to courts. But to reregulate the law only to reduce court caseload and problems concerning the obvious back logs in decision-making does not justify measures due to fundamental rights protected in administrative matters via court control of executive. Standards from Article 6 of the ECHR ask for

administrative dispute in (even if limited) two-tier system of administrative justice with “full jurisdiction” administrative dispute. Additionally, the ECHR asks for “an independent and impartial tribunal established by law”, while administrative bodies acting in administrative procedures have not got such characteristics. The objective is also to balance the citizens' right application efficiency with the necessity for overseeing legal verdicts as a way of preventing the “ping-pong” effect occurrence between public authorities and administrative courts. The two-tier administrative justice systems are being built, with public hearing and the right to appeal to the higher court. According to the new judicature of the European Court, time that has been spent for administrative procedures has been calculated into the period that has to be assessed under the title of “reasonableness”. If so, this is an obvious reason for shortening and simplifying administrative procedures. Thus, for example, the ADA might take into account the need for prompt finality and enforceability of administrative law relations and upgrades GAPA with the principle of two-level decision-making pending finality, thereby limiting the appeal in administrative dispute exclusively to the protection of constitutional rights and freedoms and the establishment of a different state of affairs in court. Or stating that the appellant may invoke administrative silence regardless of the possible continuous performance of procedural actions before administrative bodies if within three or so years no final administrative decision on the merits or no order to suspend the procedure has been issued.

These are the main reasons for current reforms of administrative justices in many SEE countries, some more successful as well as more clumsy attempts of reforms, but mainly the first taking into account holistic legal protection in all levels from administrative appeal to action before ECtHR. The traditional concept of administrative procedure, inherited from Yugoslav times, imitated court procedure with very similar guarantees of public hearing, right to appeal, etc. Such a concept is not needed in the new situation with two-tier administrative justice system. All such efforts mean up-grading rather old, and old-fashioned (acknowledging only inquisitive principle and formal review) administrative justice systems in the region. To conclude, for all these reasons, administrative procedures should be and can be simplified and shortened without risks for citizens' rights, because there are or should be tremendous changes in improving the efficiency and guarantees within administrative justice.

Target audience and participants' role

Three representatives from: Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Kosovo*, from the related ministry or other competent central regulatory body on LGAP and /or the academia or civil society. Theoretical knowledge and practical expertise of selected representatives are expected, with good English communication skills of the case studies' presenter(s).

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Since it is expected that three participants will come from each counter - side, we are kindly asking you to agree whether one person will be delegated a role to make the presentations and present them while the others will support and contribute to the design of the two presentations and to the clarifications during the event if required. The participants are required to provide two presentations on their experience and to actively participate in the discussions and practices exchange. Methods of presentations, case studies and group works will be applied during the working session.

Tasks of the representatives:

- I. *a presentation on the current **GAPA or Public administration reform in terms of efficiency and simplifications** in the respective country, which should focus on presenting the **1-2 case studies** of the selected simplifications (such as one-stop-shop, e-procedures, data exchange as an administrative burden, reduction of legal remedies, removal of formalities regarding administrative act, etc.) - with duration of the presentation of maximum 7 min. highlighting most relevant issues., including the following items:*
 - a) *state of the art of GAPA – novelties in terms of legal framework and capacity building*
 - b) *Current overall GAPA simplification state of the art;*
 - c) *The selected project/initiative objectives in the broader context; what is the selected case study simplification about in detail; the main stakeholders;*
 - d) *Methodology of project work: legal, organizational, IT and other measures with institutional setting; key development steps and their holders and costs; the main obstacles expected, encountered and how overcome?*
 - e) *Results expected and achieved: who (will) benefited, lessons learned; is the initiative sustainable and transferable?*

- II. *a presentation on the understanding and reforms carried out and planned with regard to administrative **procedures and administrative justice regulation (GAPA and ADA) interplay** with duration of the presentation maximum 7 min., focusing on:*
 - a) *Currently valid basic laws GAPA and ADA: when and how (will be) redefined: within harmonized or parallel approach and why so;*
 - b) *Analysis of administrative dispute scope (types of acts under judicial review; subjective or objective concept of AD, the scope of full jurisdiction);*
 - c) *Tiers and duration of protection in administrative matters procedures by GAPA, ADA and constitutional review.*

Workshop experts

Professor Dr. Ivan Koprić has 26 years of professional experience in law, public administration, science, and consultancy. He graduated from the Faculty of Law in Zagreb; took M.Sc. degree in public administration and politics; while his PhD thesis was in administrative law, public administration and organization theory. He is president of the Institute of Public Administration (Croatia) as a national expert non-governmental organization. He is head of the Study Centre for Public Administration and Public Finances at the Faculty of Law, University of Zagreb, Croatia. He is a member of the Scientific Council for the State Administration, Judiciary and the Rule of Law within the Croatian Academy of Sciences and Arts. He is a member of several parliamentary and governmental committees, councils and working groups. He is the editor-in-chief of the international scientific journal *Croatian and Comparative Public Administration*, as well as the editor-in-chief of the book collection *Contemporary Public Administration* with 25 books so far. He teaches at the studies of law, public administration, and social work, including doctoral degrees. He has been engaged in many international scientific and consultancy projects. He is the author or co-author of a dozen of books, as well as of more than 80 scientific papers and more than 140 other articles and papers in Croatia and abroad. Professor Koprić has extensive consultancy and expert experience in public administration, administrative procedural law, and related areas, in Croatia and abroad. He was a member of several working groups in Croatia, and an expert for preparation of the new Croatian General Administrative Procedural Act during 2000s. Recently, he is an OECD-Sigma expert for administrative law and public administration reform engaged with modernization of administrative procedural law in Montenegro and Macedonia. He has been an UN, UNDP, USAID, LGI, and WB expert, acted in all South-Eastern European countries.

Associate Professor Dr. Polonca Kovač finished her PhD Studies in 2006 at the Faculty of Law, University of Ljubljana. She has been employed as a researcher and lecturer at the Faculty of Administration in Ljubljana since 2001, and as an Assistant Professor since 2008. She is specialised in the fields of administrative procedural law and public sector reform. She is the (co)author of numerous scientific articles and conference papers and several monographs, including *Administrative-Legal Dilemmas* (2012), *Commentary on the Slovene Constitution* (2011), *The Administrative Procedure and Administrative Dispute* (2010), *Regulatory Impact Assessment* (2009), and *Legal and Social Aspects of Public Authorisations* (2008). The author is active in many national and supranational committees and networks (in EGPA as a co-director on PSG PA and Law, NISPAcee, TED etc.), and she is an active reviewer for several national R&D and higher education agencies and an OECD and WB expert.

ReSPA staff supporting moderation: Goran Pastrovic, Training Manager

DRAFT AGENDA

Day 1- 29/01/2014

09.30	-	13.30	<i>IPA 2008 – Croatian new GAPA support project's results</i>
13.30	-	14.00	Registration of the participants
14.00	-	14.30	Introduction to the Conference and of the participants
14.30	-	15.15	Administrative efficiency and simplification of administrative procedures, expert presentation and open discussion on: <ul style="list-style-type: none">• Administrative efficiency: concept and instruments• E-government, one-stop-shop and other technological and structural instruments• Legal situation and instruments for fostering PA efficiency
15.15	-	15.30	<i>Coffee break</i>
15.30	-	17.00	AP Simplifications in the Western Balkan - Presentations of the participants (7x10 min.) with Experts' reply

Day 2- 30/01/2014

8.45	-	9.00	Registrations
9.00	-	10.00	Wrapping up Day 1 and continuation of AP Simplifications in the Western Balkan - Presentations of the participants with Experts' reply
10.00	-	10.45	The GAPA and ADA interplay – understanding legal protection in administrative matters through harmonized approach; expert presentation and open discussion on: <ul style="list-style-type: none">• Scope of administrative justice/dispute: acts, subjective/objective concept, full or limited jurisdiction• Tiers of administrative protection by GAPA and ADA, Constitutional and European Courts• Reasonable time of decision-making within due process
10.45	-	11.00	<i>Coffee break</i>
11.00	-	13.30	Efficiency of administrative procedures and justice in the Western Balkan - Presentations of the national representatives <ul style="list-style-type: none">a) National case studies (7x10 min.)b) Experts' reply and open discussion
13.30	-	14.15	Conclusion by experts and final comments by participants (7x5 min.)
			<i>Lunch and departure of participants</i>