



ReSPA

Regional School
of Public Administration

“Europeanization of the Western Balkan Laws on General Administrative Procedure”

Belgrade, 10 – 11 June 2013

Discussion paper and provisional programme



Background

In close consultations with its GB members it has been decided that ReSPA should organize the regional event which will be devoted to the Western Balkan Laws on General Administrative Procedure. It will bring in total 21 participants from Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Kosovo*¹, three participants from each counterpart.

The Meeting will take place on 10-11 June 2013 in Belgrade, Serbia .

Objectives

The purpose of this paper is to provide a basis for discussion among the representatives of the selected interested Western Balkan countries on the development and harmonization of national laws on general administrative procedure.

The Objective of the *“Europeanization of the Western Balkan Laws on General Administrative Procedure”* event in Belgrade on 10 – 11 June 2013 is twofold. The first objective is to analyze fundamental development trends in the field of administrative procedural law in the EU and Council of Europe framework within the good administration and good governance doctrines as a ground to pursue redefinition of basic elements in national legislation in the Western Balkan area. Secondly, the objective of the networking event is to share best practices and experiences on the innovations in field of legislation in order to efficiently protect public interest and rights of the parties in administrative relations. 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 stimulate the success in preparing of the states in the Western Balkan for the EU membership.

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.

¹ *This designation is without prejudice to positions on status, and it is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence

Content

Reform of general administrative procedures has been a common issue in the Western Balkans for a while. All the countries on the territory of the former Yugoslavia took over the Yugoslav General Administrative Procedures Act (GAPA), which was a so-called federal law, in the beginning of the 1990s. However, during the 2000s, almost all of them amended their general administrative procedural laws or / and started to prepare the new ones.

Yugoslav General Administrative Procedure Act, adopted in 1956, was amended four times, in 1965, 1977, 1978 and 1986, but remained very similar, in its main institutes, to the first version, even to the old Yugoslav GAPA of 1930. The first Yugoslav GAPA followed the then brilliant example of the Austrian GAPA of 1925, the first successful codification of administrative procedural rules in the World. There was only one previous attempt – Spanish Ley Azcárate of 1889 (*Ley de Bases sobre el procedimiento Administrativo*) can be seen as the first serious attempt in that direction.

Yugoslav GAPA was known as the longest administrative procedural law – it was “the most comprehensive and the most detailed codification in the World”, having not less than 303 articles (Krbek). It offered fairly good protection of citizens’ rights, especially if the circumstances of the then regime are taken into account. It guaranteed the right to appeal and the right to be heard; offered several other procedural guarantees; established duties of state bodies to find out true facts, to equip an administrative act with written explanation of grounds and to deliver it to the concerned party(ies), etc. Because of that, general assessment of that piece of legislation has to be very good.

However, it was casuistic, court-imitated and too complex, with a lot of possibilities for ministries, state prosecutor’s office and other central state bodies to intervene in a final administrative act. Because of the underdeveloped administrative justice system, it was possible for administrative practice to neglect certain procedural rules and guarantees and weaken the protection of citizens. It has to be stressed that the main purpose of the GAPA was to respect the public interest, while the protection of citizens’ rights was second-order goal. At the end, new technologies and new circumstances of democratic society call for serious consideration of the concept, of all institutes, and of each provision of the GAPA.

Similar legal regulation of administrative procedures during almost eighty years has had a profound effect on the generations of lawyers and civil servants in general, but on citizens, also. General administrative procedure has become part of the institutional memory and social capital of the countries in the former Yugoslav territory. It is in a way built into everyday life. However, it also causes rigidity and formalism in practice of administrative bodies.

Because of that, all countries in the former Yugoslav territory reviewed the GAPA and adopted new ones in the first reform round between late 1990s and mid 2000s. The only exception was Croatia. Albania adopted the Code of Administrative Procedures, too (1999). Almost all of the new GAPAs, with the exception of the Albanian Code, were based on the old Yugoslav model. It can be said that current regulation of general administrative procedure

is still based – mainly – on the old Austrian tradition, i.e. on the ideas of classical Weberian public administration.

Because of that, the second round of the GAPA reform started in the second half of 2000s and in early 2010s, with Croatia as a forerunner. OECD-Sigma expert support can be credited for fostering real and thorough GAPA modernisation in Albania, Montenegro and Serbia. Others, starting with FYR Macedonia, will probably join such efforts to implement standards of good administration soon.

Administrative procedures have a three-fold purpose. Firstly, administrative procedures influence the realisation of human rights and determine the level of legal protection of citizens' rights. Secondly, they can contribute to the realisation of certain wider societal values, like the rule of law, legality, curbing corruption, raising the level of transparency in public administration, etc. Last but not least, administrative procedures are a substantial part of administrative technology responsible, to a large extent, for (in) efficiency of public administration – too complex and detailed legal regulation of administrative procedures that imitate formal and complex court procedures can significantly add to public administration's inefficiency. Such a complex purpose of administrative procedural law makes legislative changes and changes in administrative practice difficult to achieve – it asks for a systemic approach in drafting a new law and comprehensive measures to upgrade practice.

Administrative procedures and administrative justice are two of the main pillars of the system of legal protection of citizens' rights. It is very important to thoughtfully plan and coordinate changes in both components in advance. 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 in the constitutional courts), ombudsman protection, guarantees of open access to public sector information, protection of human rights and fundamental freedoms (in the European Court of Human Rights in Strasbourg, etc.).

The main issues that have to be considered while preparing the GAPA modernisation reforms are:

- Changing the purpose of administrative procedures, from the protection of the state and public interest to the protection of citizens' rights;
- Guarantees of proportionality and hearing principles;
- Right to access data, files, web pages and information, and protection of personal data;
- Introduction of administrative contracts as a new form of resolving administrative cases;
- Protecting citizens in cases of the so-called real acts;
- Protecting consumers in their relationships with providers of services of general interest;

- Regulating forms of electronic communication between citizens and public administrative bodies within administrative procedures;
- Simplification of procedural steps and fastening general administrative procedures with providing for the creation of the points of single contact;
- Limitation of legal remedies (pro actione principle) and abandonment of the extraordinary legal remedies;
- Stricter regulation of time limits, to improve administrative case management, and consideration of positive fiction of administrative acts in certain types of cases;
- The role and need of the special administrative procedures in particular administrative fields;
- Alternative dispute resolution (ADR) in administrative matters etc.

Changes of general administrative procedures simultaneously enable and call for changes in the administrative justice systems, because the two (administrative procedures and administrative justice) are strongly connected. Overall administrative reform effects of the changes of general administrative procedures should be taken into account, too. While drafting the new GAPAs, the European Court of Justice Judicature, as well as the European Union's *acquis communautaire* have to be respected.

Target audience

Three representatives from:

- the related ministry or other competent state regulatory body on LGAP and /or
- the academia and /or
- the civil society or from in-service training organization, etc.

Participants' role

The participants will be provided with request for preparation of the short presentations on their countries experience. Methods of presentations, case studies and group works will be applied during the working session.

Tasks of the national representatives (Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Kosovo²):

- I. *a presentation on the current situation with the GAPA reform in the respective country (with duration of the presentation of 10 min.)*

² **This designation is without prejudice to positions on status, and it is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence*

- II. *a presentation on the main directions of the GAPA reform in the respective country (10 min.)*
- III. *a presentation on the prospects of administrative procedural reforms in the respective country (7 min.)*

Additional presentations of the national representatives of Albania, Croatia, Serbia, and Montenegro on the main procedural innovations in their GAPAs in the very last reform circle (10 min.).

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.

Doc. 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 (NISPAcee,

EGPA, etc.), and she is an active reviewer for several national R&D and higher education agencies and an OECD expert.

ReSPA staff supporting moderation: Goran Pastrović, Training Manger

DRAFT AGENDA

Day 1- 10/06/2013

09.00	-	10.00	Arrival and registration of the participants
10.00	-	10.30	Introduction to the Conference
10.30	-	11.30	Europeanization of administrative procedural law (APL): a) Fundamental European principles on APL b) Key European reforms on the field of APL c) Open discussion
11.30	-	11.45	<i>Coffee break</i>
11.45	-	13.00	Short overview of the current situation with the GAPA reforms in the Western Balkans – presentations of the national representatives (7x10 min) with experts' reply
13.00	-	14.15	<i>Lunch break</i>
14.15	-	15.45	The main directions of the GAPA reforms in the selected European countries and the Western Balkans a) Introduction expert presentation b) National representatives' presentations (7x10 min)
15.45	-	16.00	<i>Coffee break</i>
16.00	-	17.00	The influence of the GAPA reforms on the modernization of public administrations a) Introduction expert presentation b) Open discussion
17.00			End of Day 1

Day 2- 11/06/2013

10.00	-	10.30	Registrations
10.30	-	12.00	The main procedural innovations in the Western Balkans' GAPAs a) The scope of GAPA application (types of administrative acts) b) Due process with the administrative silence resolution and ADR in the EU and the WB' GAPAs c) Open discussion
12.00	-	12.15	<i>Coffee break</i>
12.15	-	13.45	Prospects of the administrative procedural reforms in the Western Balkan Presentations of the national representatives (7x7 min) with experts' reply and open discussion
13.45	-	15.00	<i>Lunch break</i>
15.00	-	16.00	Conclusion by experts and final comments by participants (7x7 min)
16.00	-	16.30	<i>Coffee break</i>
16.30			End of Day 2