

Conference

EU Administrative Law and Its Impact on the Process of Public Administration Reform and Integration into the European Administrative Space of South East European Countries

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Regional conference *EU Administrative Law and Its Impact on the Process of Public Administration Reform and Integration into the European Administrative Space of SEE Countries*, organized by the Network of South East European Law Schools (SEELS), was held on 4–5 September 2014 in Zagreb, at the Faculty of Law, University of Zagreb. The Conference gathered more than 30 participants from South-Eastern Europe and the Commonwealth of Independent States.

The results of legal research project of the same title were presented at the conference. Representatives of the majority of the SEELS Network members, faculties of law from SEE region, were the members of the project team. They have prepared the papers presented at the conference and will be published in the separate publication by the end of 2014. Two researchers were not able to attend the conference (associate professors Boris Ljubanović from Osijek, Croatia, and Dražen Cerović from Podgorica, Montenegro).

Professor Hrvoje Sikirić, Dean of the Faculty of Law in Zagreb and Dr Veronika Efremova, Project Manager at GIZ Open Regional Fund for South East Europe-Legal Reform opened the Conference.

The topic of the first session, moderated by assistant professor Goranka Lalić Novak (Faculty of Law, Zagreb), was the European Code of Good

Administrative Behaviour. Within this session, the paper *Principle of Good Administrative Behaviour in the European Union and Bosnia and Herzegovina*, prepared by Professor Zlatan Meškić and assistant Enis Omerović from the Faculty of Law in Zenica (Bosnia and Herzegovina) was presented. Mr Omerović stressed out that, as far as they know, a codification of European Administrative Law in the form of a legally binding instrument has not been initiated yet. The European Code of Good Administrative Behaviour prepared by the European Ombudsman partly fills in this gap, by taking over some of the functions of a binding codification. The conclusion of the conducted analyses shows that, although the principle of good administration is under this term unknown to the legislation of Bosnia and Herzegovina, many elements of its principles can already be found in the administrative law of Bosnia and Herzegovina. Bosnia and Herzegovina has, according to the authors' assessment, a solid normative framework for good administrative behaviour in the form of various legal principles and requirements in different legal acts and bylaws at the state, entity, and district levels. Several important issues were raised in the discussion. First of all, there is the question of implementation of the standards in administrative practice. The connected issue is the monitoring whether public administration and civil servants adhere to the standards and principles. Moreover, there is the question whether the standards of good administrative behaviour should be codified in a binding instrument. The issue of reasons for introducing the principle of good administration was also raised, whether it is an intrinsic notion of the national legislator or other actors and processes, such as the EU accession process, impose it. Some interesting comparative experiences, from Georgia and Macedonia, were heard, too.

In the session *Towards Codification of the EU Administrative Procedural Law*, moderated by assistant professor Vedran Đulabić (Faculty of Law, Zagreb), three papers were presented.

Associate professor Dario Đerđa from the Faculty of Law in Rijeka (Croatia) addressed the topic of codification of the EU administrative procedural law. Despite the fact that there is a large number of regulations governing the procedure in special administrative areas of the EU *acquis communautaire* there is still no single codified administrative procedure that should be followed by the EU's institutions, bodies, agencies and offices (EU administration). Several attempts have been made in this direction and the most noticeable is the Code of Good Administrative Behaviour initiated by the EU Ombudsman and adopted by a European Parliament's resolution. Despite that, rules governing the gen-

eral administrative procedure of the EU have not been codified. There are several important procedural principles that should be pillars of the EU administrative procedure. These are legality, equality of treatment, impartiality and fairness, right to inspect the file, right to be heard and make statements, duty to state ground for decisions, proportionality in decision making and resolving the administrative matter in a reasonable time. There are several other principles that should be respected, such as predictability and transparency, protection of legitimate expectations, consistency of administrative actions, etc.

The second paper continued to elaborate codification of the European general administrative procedure law, and in its second part it was devoted to the reform of general administrative procedure in Macedonia. The paper was presented by associate professor Ana Pavlovska Daneva from the Faculty of Law in Skopje (Macedonia). Macedonia inherits tradition of the former Yugoslavia when it comes to regulation of the general administrative procedure. However, under the influence of OECD-Sigma, new draft LGAP has been prepared and is currently in the parliamentary procedure. According to Pavlovska Daneva, the new draft LGAP contains unnecessary changes because the previously drafted law was of satisfactory quality. She highlighted the existence of two main concepts of regulation of the general administrative procedure. One is the old tradition of detailed legal regulation of administrative procedure, while the other is rather new and consists of regulating mainly the general principles of administrative procedure.

The final presentation in this session was done by assistant professor Dejan Vučetić from the Faculty of Law, University of Niš (Serbia). After presenting the attempts to codify European administrative procedural law, he concentrated on presenting the Serbian case of modernisation of general administrative procedure and of administrative justice. This modernisation has been part of the wider efforts to modernise public administration and to get it closer to the requirements of the prospective EU membership. Due to mainly political reasons such as elections in Serbia, new draft LGAP has been withdrawn from the parliamentary procedure for several times. It is expected that the law would finally be adopted by the Serbian Parliament.

The subsequent debate was concentrated on the new instruments regulated by the new LGAPs in the region, such as administrative contracts, administrative silence, level of detailed regulation, guarantee administrative act, electronic communication in administrative procedure, etc.

It is evident from the presentations in this session and the following debate that a new generation of general administrative procedure acts are emerging on the territory of the former Yugoslavia. This new approach to general administrative procedure has been heavily influenced by the efforts of the countries in the region to become members of the EU. In the process of preparation for the EU membership, OECD-Sigma plays a significant role when it comes to the regulation of general administrative procedure. This process results in two consequences. The first is that the new generation of LGAPs is slowly departing from the old Yugoslav tradition of detailed regulation of the general administrative procedure, although there are very strong elements of tradition that could be noticed in the new laws drafted and adopted in the countries of the region. The second consequence is new harmonisation of administrative procedural laws that is mostly taking place under the previously mentioned efforts of Sigma and the prospects of full EU membership. This is the process of Europeanization that affects public administrations of both the EU member states and accession states.

Parallel to this development, efforts toward codification of the EU general administrative procedure have been taking place. It is still hard to predict which direction these efforts will take, but it is evident that the process is slowly emerging. Many questions are still open when it comes to regulation of the EU general administrative procedure. Will it be detailed or will it contain only general principles of administrative procedure; how much will it be influenced by national administrative traditions; and which concept will prevail when it comes to concrete legal institutes of administrative procedure?

Finally, laws regulating general administrative procedure should correspond to the requirements of societal modernisation, economic development and Europeanization of societies that have taken place since the current generation of LGAPs were adopted for the first time. They should also correspond to technological innovations that affect modern life such as ICT, they need to simplify the procedure in order to make it more understandable to citizens and the general public, and to enable public administration to adapt to new circumstances and provide legitimate and efficient services.

The next session, held on the second day of the conference, was devoted to the Europeanization of the Administrative Law. Moderated by assistant professor Anamarija Musa, Information Commissioner of the Republic of Croatia, the session included three papers.

Professor Stevan Lilić from the Faculty of Law, University of Belgrade (Serbia) presented the paper *Harmonizing Serbia's Administrative Laws with European Administrative Space*. Professor Lilić underlined that the content of the European Administrative Space was created by legal systems of the European Union and the Council of Europe. Faced with the structural and functional problems of public administration and the judiciary, the candidate countries were left to adjust to the political, legal, and operational aspects of the accession procedure, framed within the Stabilisation and Association Agreements. The new legal framework on the administrative procedure is in the focus of the harmonization of administrative law. However, the implementation of the EU standards and rules should not proceed without critical examination. One example is the issue of the silence of administration, which, by the provision on positive fiction at the practical level, leaves open many questions. In sum, the adherence to the EU administrative standards and principles imposes the pressure on public administrations in the acceding countries to relinquish their power and to replace the authoritative and hierarchical position they have traditionally exercised towards citizens with a more balanced position and service orientation.

Professor Ivan Koprić from the Faculty of Law, University of Zagreb (Croatia) presented the paper *Good Administration and Good Governance as the Key Elements of the European Administrative Space*. Professor Koprić discussed the overlapping but yet distinctive meanings of the terms good governance, good administration, and European administrative space. Although applied in different circumstances, all three concepts share a common idea and basic principles. They also correspond with the theoretical concept of the new Weberian state, which is often used to mark the return to the core values of the traditional administration in the new social, economic and institutional context of the 21st century. The attempt to reconcile two agendas – the economic one, which insists on the capacity, operational strength, professionalism and effectiveness, and the political one, which promotes accountability, participation, transparency and other political values, has found its way in the concept of good governance. Focusing on the European Ombudsman's attempts to determine the content of good administrative behaviour, professor Koprić underlined the effects of the two decades long work of that institution – by searching on maladministration, the Ombudsman has had to determine what the content of good or proper administration is. The principles and standards of good administration as defined by the Ombudsman have found its way in the first European Law on Administrative Procedure, which is now

under preparation, and in the previously adopted European Charter of Fundamental Rights, thus comprising a set of the sort of constitutional norms of the EU.

Erlir Puto, Lecturer at the Faculty of Law, University of Tirana (Albania) presented a paper titled *Challenges for Public Administration of Candidate States Regarding the EU Law and Constanzo Obligation*. In his paper, Mr Puto analysed the relationship between national law and European law and in that respect, the principle of direct application. The obligation of direct application of the EU law will impose various challenges on the administrations of the new and future member states, at different levels and of different types (state administration, independent agencies, local governments). In case of the conflict of laws, public administration resolves the issue by interpreting the provision of national law in the light of the European law. In case the provisions are incompatible, it should directly apply the European law. Such a complex legal exercise poses a great challenge to the public administrators in relation to their expertise level, but also pinpoints the problem of the autonomy of public administration and the relationship between the three powers (the division of powers principle), and raises the problem of accountability of the state and public administration. The competence of the central government to adequately steer and coordinate as well as to transpose the EU law is crucial for the resolution of those problems.

The discussion that followed focused on the role of the hard law and soft law on the harmonization process, the effects of the new European administrative procedure framework, as well as the problematic of the particular provisions of administrative law. In sum, the positive role of the power of legal obligation to transpose and to adjust to the European law combined with the political power to make the accession progress conditional upon the fulfilment of the obligations, is in practice counterbalanced by the relatively strong opposition of public administration and, possibly even more, of the politicians to preserve the traditional logic of administrative behaviour, which grants them the power over society. The harmonisation and acceptance of the EU administrative law principles and standards in essence means that the political and administrative power has to be transformed into participatory, transparent, service-oriented, and effective service to citizens.

Assistant professor Vedran Đulabić presented several tentative conclusions of the Conference. He stressed the fact that almost all the countries in the region have prepared new administrative procedural laws, adminis-

trative justice changes and public administration reforms under the strong influence of the EU and under the broader process of Europeanization. Not only EU, but also the Council of Europe, OECD-Sigma and many other actors foster Europeanization in the region. The preparation of new LGAPs is part of such Europeanization efforts. The Europeanization of national administrative procedural laws includes the preparation of modern LGAPs that are shorter and simpler, but regulate all possible relations of citizens and public administrations, including traditional administrative acts, administrative contracts, provision of services of general interest, and other administrative actions (real acts). Many other innovations are to be regulated by the new LGAPs, from e-government solutions to reduction of so-called extraordinary legal remedies. Finally, he stressed that the necessity to achieve the fit between economic development, societal needs and the new administrative procedural law.

Professor Ivan Koprić mentioned that the next steps include disseminating the presentations from the conference to all participants, which is to be done by the SEELS secretariat. It would be advisable that the project team members prepare the final versions of their papers, in light of the discussions at the Conference. The publication is planned for October 2014. Based on the project's results and debates at the Conference, he mentioned several ideas for further projects and researches. They can be based on two research approaches, empirical and dogmatic. Empirical researches about the degree of Europeanization of national legal and administrative systems and about the degree of harmonization of administrative law and public administrations in the whole Europe are the most necessary. Without solid and reliable empirical research, only personal impressions and assessments can be presented, but they are not the best source for designing the policies of public administration reforms. One of the very interesting variables for research, critical in many countries, is trust in public administration and the influence of administrative law modernisation on trust in institutions. If administrative law, especially administrative procedural law that regulates administrative technology and relations with the citizens, does not modernise, people can easily lose trust in public administration and perceive administrative law and public administration as the obstacles for businesses and better quality of life in general. Dogmatic, legal research of administrative law and public administration reforms can be conceptualised as qualitative and oriented towards the questions such as: a) how have the administrative and legal systems in the region answered the EU conditionality policy and the need to harmonise with the EU *acquis communautaire* and other, soft legal and

administrative standards, b) what are the reasons for specific legal and administrative solutions in particular countries, c) are these specificities justified by the real societal circumstances and needs, etc.?

After a short exchange among the participants, the Conference was closed by good-bye note of Professor Koprić, in the name of the host institution.

*Ivan Koprić**

*Anamarija Musa***

*Vedran Đulabić****

*Goranka Lalić Novak*****

* Ivan Koprić, PhD, Full Professor and the Head of the Chair of Administrative Science at the Faculty of Law, University of Zagreb, and President of the Institute of Public Administration (redoviti profesor i predstojnik Katedre za upravnu znanost Pravnog fakulteta Sveučilišta u Zagrebu, predsjednik Instituta za javnu upravu, e-mail: ikopric@pravo.hr)

** Anamarija Musa, PhD, assistant professor at the Chair of Administrative Science at the Faculty of Law, University of Zagreb, and Information Commissioner of the Republic of Croatia (docentica na Katedri za upravnu znanost Pravnog fakulteta Sveučilišta u Zagrebu, povjerenica za informiranje Republike Hrvatske, e-mail: amusa@pravo.hr)

*** Vedran Đulabić, PhD, assistant professor at the Chair of Administrative Science at the Faculty of Law, University of Zagreb (docent na Katedri za upravnu znanost Pravnog fakulteta Sveučilišta u Zagrebu, e-mail: vdulabic@pravo.hr)

**** Goranka Lalić Novak, PhD, assistant professor at the Chair of Administrative Science at the Faculty of Law, University of Zagreb (docentica na Katedri za upravnu znanost Pravnog fakulteta Sveučilišta u Zagrebu, e-mail: glalic@pravo.hr)