

A Need for a Comprehensive Administrative Reform in Bosnia and Herzegovina with an Emphasis on the Modernisation of Administrative Procedure

*Zarije Seizović**

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Public administration reform is a precondition for the integration of Bosnia and Herzegovina (BH) into the European Union. The paper describes the administrative framework at four separate levels in six horizontal areas (policy-making and coordination, public finances, human resources management, administrative procedure, institutional communication, and information technologies). It presents the state of affairs, pointing at the need for a comprehensive PAR with an emphasis on the modernisation of administrative procedure. Administrative procedural laws are not fully in line with common European standards. A considerable number of special administrative procedures leads to a lack of transparency and creates needless legal

* Zarije Seizović, PhD in Law, Associate Professor at the Faculty of Political Science, University of Sarajevo, Bosnia and Herzegovina (izvanredni profesor Fakulteta političkih nauka Univerziteta u Sarajevu, Bosna i Hercegovina, e-mail: zarijes@gmail.com)

complexity. Modernization of administrative procedure should make it a functional, reliable, efficient, transparent, accountable and coherent tool of a modern, client-oriented, countrywide public administration able to join the European administrative space.

Key words: public administration reform, modernization of administrative procedure, policy-making and coordination capacities, public finances, human resources management, administrative procedure, institutional communication, information technologies

1. Introduction – The Need for Reform

Over the last 16 years, upon signature and implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Accords) public administration in BH has grown, along with citizens' expectations.¹ Providing for fundamental government functions has become insufficient: citizens need a sustainable economic and social development, within the framework of the EU integration processes – this demand calls for a comprehensive administrative reform throughout the country to bring about the flexible, modern and open-to-public administration.

The need for such reform has been recognized and endorsed by all the government levels. The administration at all levels is considering various plans for restructuring and rearrangement of their governments. However, there is a clear tendency of the reform to develop as a separate project within each government level, which is seen as a strong hindrance to effectiveness in pursuing common reform objectives.

¹ Despite the Dayton Accords' »glorious achievements« in stopping the war on one hand, it produced a rather bizarre constitutional settlement of the country on the other. The State of BH – legally, politically and ethnically torn up to the utmost – has been subject to synthetic institutional resurrection under the patronage of the international community ever since 1995. The country re-appeared as re-integrated in the form of a rather strange creature based on the principle »one state – two entities – three nations«, which is still playing an outstanding role in a long-lasting and on-going disintegration processes throughout the country. BH, a country that is neither a Republic nor a Federation, consists of one Republic and one Federation, and both of them are called Entities. Brčko District was added to the structure after the Final Award of the International Arbitration granting the District an attractive, good-looking and seductive independent status.

The EU membership inevitably places enormous demands on public administrations of the candidate countries, which have to develop capacities to stand the test of implementing numerous reforms, one of them being PAR. Public administration reform itself has to include both general and sectoral administrative capacities. Apart from general administrative capacity, (the way a national administration is organized and functioning), sectoral adoption of the EU-accommodating legislation (e.g. internal affairs, agriculture, environmental protection, etc.) requires particular institutional settlements as well as special expertise (Guide, 2005). The very extent to which a candidate country adheres to common EU administrative standards (European Administrative Space), is an indication of the capacity of its national public administration to effectively implement the *acquis*, in accordance with the criteria set by the European Council in Copenhagen and Madrid.² Experience from the new EU Member States points at the crucial importance of robust investment in general administrative capacity: it is a pre-condition for public administrations attaining EU Member States' standards, and the essential foundation for any sectoral reform.

2. The Progress of Public Administration Reform

The European Commission's Report on Progress of Bosnia and Herzegovina for 2010 stressed, »Little progress was made in the area of public administration reform (PAR), a European Partnership priority.«³

² The EU accession criteria were set by the European Council in Copenhagen in 1993, and reinforced in Madrid in 1995. Those criteria assume and require sufficient administrative capacity as a key requirement for the EU membership, as the EU operates first and foremost by means of its member states' administrations. It is therefore essential for candidate countries to prove the ability to adopt 35 chapters of the EU legislation (*acquis communautaire*), as well as competence and capability to implement them completely.

³ »Resources for monitoring the implementation of the PAR strategy ... have improved. Resources at Entity and Cantonal level for PAR implementation are insufficient, except in Brčko District. Furthermore, the ability of the State office to influence the process is constrained. Stronger political will and increased resources are crucial for the future success of PAR. The administrative capacity of Bosnia and Herzegovina to implement SAA and IA commitments is slowly being strengthened. However, the country's administrative structures are still not capable of responding effectively to the requirements of EU integration. They remain cumbersome, fragmented and with an unclear division of powers across the various levels of government ... Overall little progress was achieved in the area of public administration reform ... Significant further efforts are needed towards developing a professional, accountable, transparent and efficient civil service based on merit and competence

PAR in BH aims at creating a public administration that would be more efficient and responsible, client-oriented, and that would serve citizens with high quality service they pay for at low cost. Furthermore, the new, yet-to-be-created public administration should operate by applying transparent procedures in each of its segments, and should be able to meet the European integration criteria and thereby become an important part of the continuous and self-sustainable socio-economic development of the country in general.

Based on the System Review (2004) Recommendations, in order to execute commitments set forth in the Review's Recommendations, the Public Administration Strategy and the Action Plan 1 (AP1) were adopted in 2006. The first document constitutes a comprehensive paper offering strategic framework for the reform, while the second one suggests concrete measures and activities to be undertaken to implement the Strategy in six horizontal areas (policy-making and coordinating capacities, public finance, human resources management, administrative procedure, information technologies, and institutional communication).

Implementation structure for the Action Plan 1 was defined by the document titled the Joint Platform on the Principles and Implementation of the Strategy of Public Administration Reform in BH Action Plan 1 in Bosnia and Herzegovina, adopted by all government levels in 2007. The Platform represents a political and legal framework and a basis for cooperation between administrative bodies at all government levels assigning their representatives to the working bodies for supervision and implementation. It is related to the implementation of AP1 measures in order to achieve the goals in the area of public administration in BH.

The Public Administration Reform Fund (PAR Fund), created in 2007, are actually finances intended by the donor community for implementation of PAR in BH. The Fund is meant to finance concrete measures of the Action Plan 1 for PAR only. Memorandum on the establishment of the PAR Fund was signed by the prime ministers of BH, the Federation of Bosnia and Herzegovina (FBH) and the Republic of Srpska (RS), the Mayor of the Brčko District (BD BH), the Minister of Finances of BH, ambassadors of the donor countries; Great Britain, the Netherlands and Sweden; and the Chief of the Delegation of the European Commission in BH. The Memorandum contains detailed remarks on the usage of the

at all levels of government. The country's complex and cumbersome institutional structure continues to undermine efficiency.«

Fund assets. In December 2009, all the governments adopted the proposed Annex to the Memorandum. The Annex was signed by the representatives of local authorities and donors.

3. National Legal Framework

The Strategy for Public Administration Reform aims to be guidance to PAR. It is brought into line with key documents and commitments of BH, such as the European Partnership, the Strategy for European Integration, as well as the Mid-Term Development Strategy. The Strategy shapes a clear picture as to how to develop a more effective, efficient, and accountable administration that will serve citizens better for less money, an administration that will operate with transparent and open procedures, in order to become a facilitator for permanent and viable socio-economic development. Intending to fulfil this concept, the Strategy focuses on improving general administrative capacity through the reform of core government horizontal systems and structures. It also focuses on creating concrete directions for the establishment of coherent administrative structures inside and amid various government levels, and at setting foundations for managing changes toward the goals of each sector.

The Strategy also aims at improving administration at the central state level, at the level of the Entities' and at the Brčko District Level. Such a reform unavoidably has impact on the municipal and cantonal administrations. The Strategy is operationalised in Action Plans meant to be implemented in two subsequent stages. The first Action Plan lists measures, timelines, and responsible institutions.

According to PAR Strategy, the reform was envisaged to go through the following three stages:

- Stage I – *By the end of 2007* – Short-term objective, generally meant to initiate, or consolidate the reform of key horizontal systems and structures of governance. To this end, implementation of many measures in the Action Plan 1 was to start immediately – to maintain motion, and to secure early benefits from the reform for all institutions, at all levels.
- Stage II – *Late 2007 – end of 2010* – Medium-term objectives by 2010 were to have the basic horizontal systems in place, strengthened and harmonized, and to streamline sectoral and vertical functions: to meet citizens' expectations for more effective and

efficient institutions, and to achieve the general and sectoral ability to adopt and implement the *acquis* uniformly in BH.

- Stage III – *January 2011 – end of 2014 – Implementation of long-term objectives*. At this stage, the European integration process will require increasingly higher standards of public administration. BH's objective is to reach the quality level of the European Administrative Space by the end of 2014, to adhere to common standards of the EU Member States, and to implement the *acquis*. To achieve these goals, an assessment of implementation from the previous period was to be carried out in the second half of 2010. New activities will be planned in key areas of administrative reform, including the areas where progress has not been sufficient.

The PAR demands development of general administrative capacities through the reform of central horizontal systems and structures of government indicated and explained herein below.

3.1. Policy-Making and Coordination Capacities

The reform goal is to improve the very structure, capacity and performance of the secretariats of all governments thereby strengthening policy-making systems at all levels. The secretariats should turn into primary coordinating bodies, whose main goal is to ensure that specific ministries and other administrative organs function in the most efficient manner. The system includes the development of capacities for coordination between different government levels. The central capacity unit reform should be undertaken along with increasing the policy capacity of individual ministries that are main policy-making and implementation bodies with regard to both policy and legislation. The priorities should be those related to approximation with EU legislation, among which the activities of developing proper proposals, of consultations and of assessment of possible regulatory impacts should be given a prominent place.

The progress in this reform area was achieved through joint activities of all administrative levels in BH, i.e. through joint projects. During 2010, some progress was made, considering that four projects were in the phase of implementation that year, three of which were financed from the PAR Fund. In 2009, there were no projects financed from the Fund in this reform area. Implementation of the project »Transposing EU Legislation in the Legal System of BH« started in December 2010 (Annual Report, 2010: 10).

In 2011, the PARCO continued undertaking its activities related to the development of the following projects: »Blueprint of Development of Central Bodies of Governments in BH – Implementation of the Phase II«, »Better Regulation/Management in Bodies of Public Administration in Bosnia and Herzegovina« and »Design of Software for Support in Drafting Laws and Monitoring their Implementation«. Project »Strengthening BH Capacities for Strategic Planning and Policy Development – SPPD«, also generated progress in this reform area in 2010 (Annual Report, 2010: 11).

3.2. Public Finance

The Public Finance (PF) system is substantially connected to EU integration, as it is dealing with budgeting process, standards and mechanisms of public internal financial control in compliance with EU requirements. Thus, the PF system had undergone several reforms that were not carried out in an all-embracing manner with a strategic approach. PAR includes the strengthening of PF sector, *inter alia*, by establishing an efficient financial management and administrative control system. The PF system reform should promote both competence and effectiveness of budget management and should improve the accounting and treasury systems. The reform should also encompass activities related to improving the capacity of the ministries of finance and of the budget users and fiscal authorities at different levels.

In the course of 2011, joint activities on the implementation of measures from the AP1 were demonstrated through implementation of the projects: »Support to Introduction of Public Internal Financial Control (PIFC)«, financed by the EU Delegation and »Strengthening Public Expenditure Management in BH – Phase 3 (SPEM 3)«, financed by the DfID. During 2010, the PARCO prepared the project »Budget Management Information System (BMIS)«, which would be financed by the PAR Fund (Annual Report, 2010: 15).

3.3. Human Resources

A well-set and consistent Human Resources Management (HRM) system throughout the country is the main feature of the PAR. The system should be functional, transparent, and fair; it should promote professionalism and provide incentives to staff according to precise, well-defined criteria.

The principal goal should be the development of a qualified, politically non-biased, nationally well-balanced, decent and responsive public service that is capable of delivering efficient services to citizens and of being reliable facility to governments. The management should ensure permanent harmonization, improvement and upgrading of human resources management policy. The focal point should be reinforcement of the policy capacity the Civil Service Agencies, underpinning capacities in individual bodies and institutions, and providing for the understanding of modern HRM polices. More efficient and low cost application procedure in public administration, adjustment of the salary structure, a uniform approach to transfers and harmonization of salaries should be the areas of particular consideration.

In this reform area, a significant progress was achieved, taking into consideration that five projects were in the phase of implementation, two of which were financed by the PARF. The implementation of the project »Training of Civil Servants for Application of Information Technologies and Work on Computers« started in late December 2010. In addition to the projects that were in the implementation phase, the PARCO also prepared the project »Establishment of Modern Departments for HRM in the Bodies of Administration in BH« (Annual Report, 2010: 19–20).

3.4. Institutional Communication

Institutional communication (IC) is aimed at improving the accountability of government to citizens. The reform in this area should increase PR capacities in administrative bodies, obtain citizens' support, and build up a constructive viewpoint towards the state administration. The reform should also urge active participation of citizens in the decision-making processes, and should encourage the implementation of legislation related to free access to information, in accordance with Contemporary EU Standards. Therefore, fresh and innovative functions and tools should be established and introduced in the area (interactive web sites, intranet, email networks, as well as talk-sessions, public events, round tables, etc.).

In 2010, implementation of three common projects funded by the PAR Fund was completed. The implementation of two of the said three projects started in 2009. The projects made certain progress in implementing measures of the AP1 in 2010. In addition, the PARCO develops the project "Publication of Information Materials of the CoM BH, the

Government of the FBH, the Government of the RS and the Government of the BD BH” (Annual Report, 2010: 32–33).

3.5. Information Technologies

Information technology (IT) is continuously altering the way governments do their job, what they do as well as how they communicate with citizens and broader communities and society. A more intensive use of IT in the state agencies and bodies should make government more effective, more accountable and more transparent. The reform in this area should consider the policy; organization, human resources, IT infrastructure (including security); and automation of state administration and businesses and e-services.

In late December 2010, implementation of the project »Training of Civil Servants for Application of Information Technologies and Work on Computers« started. The Project was financed by the PAR Fund. Its contribution to the implementation of measures from the AP1 in the area of Information Technologies was expected in 2011. During 2010, it was planned to start with implementation of the project »Design and Establishment of Interoperability Framework and Standards for Data Exchange«, which was also prepared by the PARCO (Annual Report, 2010: 37–38).

4. Administrative Procedure

PARS states that »administrative decision-making is central to ensuring efficiency, effectiveness, and predictability of public administration in delivering public services to society. The reform will strengthen administrative decision-making, as key component of interaction between public administration and the citizens; and make it a functional, reliable, efficient, transparent, accountable and coherent tool of a modern, client-oriented public administration, better able to join the European Administrative Space.« Administrative procedure framework can be analysed at the various governmental levels, having in mind recent developments.⁴

⁴ Each of the entities has its own LAP. State level bodies apply its own LAP when they decide in administrative matters on the rights, responsibilities or legal interests of citizens, legal entities or other parties in the administrative matters that are in the competence of the institutions of BH.

4.1. State Level

State-level authorities decide by applying the Law on Administrative Procedure (LAP, 2002), which is similar to the ones that are in force in the Entities. Most of the differences are caused merely by the respective territorial/political organization. All these laws are part of the same, solidly established practice dating back to the Yugoslav Law of 1956. Most of the problems in application of the State LAP seem to arise from the actual capacity of the newly established state administration to live up to the high standards of decision-making required by the LAP, as well as from the interaction between this general procedural law and material legislation (special procedures, *lex specialis*) dictating the issues to which the procedure should be applied.

4.1.1. Recent Developments

- In December 2009, the Council of Ministers of BH adopted the Decision on Electronic Operations and e-Government in the Council of Ministers of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, OG, No. 7/10). This decision defines electronic operations that include working with clients, equipment use, documents handling, communications with clients and other public entities and performing clerical tasks, and the basics of e-Government in the Council of Ministers of BH.
- In October 2010, the Council of Ministers of BH prepared the Amendments to the Law on Registration of Legal Entities Established by the Institutions of BH. The new Law provides for amendments defining competences in the procedure where registration applications are decided upon, and the procedure concerning changes and/or supplements of registrations and deletion from the Registry. All the changes were proposed in order to overcome inconsistencies spotted in the course of implementation of laws in force. Changes, once adopted, would render possible implementation of the principles set out in the fundamental procedural law, i.e., the Law on Administrative Procedure of BH.
- The Parliamentary Assembly adopted the Amendments to the Labour Law in the Institutions of BH (OG 60/10). The Law made progress in the fields of labour discrimination; horizontal harmonization of regulation; harmonization with the Law on Salaries and Remuneration in the Institutions of BH as well as with

the Civil Service Law in the Institutions of BH. It also introduces new obligations related to performance appraisal.

- The Council of Ministers of BH adopted Amendments to the Rulebook on Disciplinary Responsibility of Civil Servants in the BH Institutions (OG 94/10). Besides introducing improvements related to existing arrangements, the new Rulebook imposes precise and efficient sanctions for various violations of official duty, including civil servants' degradation to a lower working position.
- The Civil Service Agency of BH adopted the Rulebook on Conditions and Method of Publishing Competitions, Internal and External Transfers of Civil Servants in the Institutions of BH (OG 96/10). The Rulebook puts out of force the Instruction that used to regulate this area. It defines the procedures of transfers, internal competitions, external transfers and the issue of supernumerary labour, by which it additionally regulates horizontal mobility of civil servants within this administrative level.
- In November 2010, The Council of Ministers adopted the Communication Strategy and Action Plan thereto. The project »e-Government in the Council of Ministers of Bosnia and Herzegovina« improved web pages and on-line communication in general, connecting Council of Ministers' institutions in a single intranet system.
- Significant progress in the implementation of the Action Plan 1 (AP1) measures has been made in relation to access to both primary and secondary legal sources. The PARCO office signed an Annex to the Memorandum of Understanding with the UNDP. The Memorandum relates to full implementation of the earlier UNDP project titled »Legal Data Base«, by which the PARCO office got hold of the right to transfer the LDB usage right to institutions willing to establish, use and grant access to laws and regulations through the web portal.
- The PARCO Office also prepared the Draft Memorandum of Understanding, based on which PARCO would transfer software and licences for LDB usage to Legislation Office/Secretariat at the State, Entity and the BD level. Due to their limited capacities, the CoM, Entity Governments and the BD Government did not express their readiness to update a joint legal database, so the measures and implementation activities have been limited to individual level approach.

4.2. Federation of BH

The whole set-up was made complex by the existence of areas of overlapping responsibility, mostly as a result of historical developments when it comes to material legislation. While the BH Constitution leaves all responsibilities not explicitly granted to BH to the institutions of the FBH, the progressive implementation of the constitutional set-up somehow resulted in the areas of joint concern of Entity and State institutions. In the transition of certain matters towards the sphere of State responsibility, it may happen for State institutions to decide on appeals filed against the decisions of the FBH. This same phenomenon is to an extent replicated in the relation between the FBH and the ten federated Cantons. While Chapter III of the FBH Constitution grants the Cantons relevant exclusive responsibilities, others are shared between them and the Federation (e.g. welfare, healthcare, or environment), resulting in some degree of applicable legislation from both sides. Against this background, there are cases in which FBH institutions decide on appeals against decisions made by the Cantons. The double-layered federal structure impacts on administrative procedure by distributing decision-making responsibility on one side of, and sometimes across the federal dispensation. From the procedural point of view, the relations between levels of government are fully asymmetric. The FBH has its own LAP (1998), which is a separate piece of legislation and even pre-dates the analogous one for the state level that has already been mentioned. The same FBH law regulates general administrative procedure at both federal and cantonal levels – the latter not having enacted legislation in this realm. The solution has practical advantages, because it secures uniformity of standards in the protection of the rights of parties throughout the FBH territory and renders possible easier management of the procedure across government levels, regardless of the territorial-administrative subdivisions.

4.2.1. Recent Developments

- The Government of the FBH and International Financial Corporation (IFC) have begun implementation of the Regulatory Reform Project.
- In April 2010, the Federation Government reiterated its conclusion made in the course of 133rd Session in February 2010. The conclusions concerned the Decision on Adopting the Report on the Implementation of Phase I of Regulatory Reform in the Fe-

deration. Federation ministries and other administrative bodies were tasked to submit amendments and supplements of laws in conformity with recommendation package of the Federal Administration for Inspection Affairs. The reason for such a task is to enable the Federation Government to examine and forward them to the Federation Parliament to undergo further procedure.

- Phase II that is currently being implemented is related to a comprehensive analysis, simplification and improvement of administrative procedures in the FBH. Phase II encompasses a broader spectrum that includes harmonization of regulation with regard to administrative simplification (licences, approvals, certificates etc.) in the business sector.
- In September 2010, the Federation Government defined the Draft Law on Registers (of Births, Marriages and Deaths). New provisions reflect the necessity to conform to new technologies and options they offer, in order to provide high quality services to citizens. The Law creates preconditions for better protection of personal information, which is an obligation of BH on its way to European integrations. Once the Law is adopted, the Federation citizens will be able to get simpler, better and cheaper services related to personal statuses.
- In April 2010, the Constitutional Court of the FBH pronounced the provisions of the Federation Civil Service Law related to Cantons, Municipalities and Cities unconstitutional (decision published in the OG FBH 34/10).
- In March 2011, the Federation Government adopted the Report of the FBH Civil Service Agency (CCA), which dealt with the state of affairs in the Federation civil service bodies in 2010. The Government also adopted several conclusions. These were, *inter alia*, the following:
 - Federal Ministry of Justice was tasked to set standards and criteria to determine optimal number of civil servants and support staff in the civil service institutions. The Ministry was also to prepare a comprehensive analysis of the state of affairs in the civil service institutions as well as to propose directives regarding human resources management (HRM) with view to reducing the number of civil servants and support staff.
 - All civil service institutions were to improve human resources management capacities by means of establishing HRM units.

- Rulebook on Documents Proving Foreign Language Skills in the Course of Competitions Being Held Within the Civil Service Institutions in the FBH (OG FBiH 37/11) with a single aim to improve recruitment procedure.
- Draft Law on Registries was prepared and submitted to the Federation Parliament and Government, which supported the new Law with some amendments. The Draft passed both Houses of the Parliament and was put forward to the public debate.
- Amendments to 34 laws in the Federation have been prepared. These laws are currently undergoing the parliamentary procedure, having been adopted by the House of Peoples. The Government has decided to return those Drafts to the competent ministries in order to get their option on Drafts.
- The Federation Government prepared the Draft Law on Amendments to the Law on Misdemeanours. The Law could be crucial as it would allow for more effective work of the Federal Inspection Administration.

4.3. Republic of Srpska

The situation in the RS related to administrative decision-making is very similar to the one in the FBH. The only substantial difference derives from the different administrative-territorial set up – the FBH consists of ten cantons whose existence introduced a double-layered decision-making system throughout the Federation. However, the key features of the LAPs are quite comparable. The authorities in the Republic of Srpska decide on administrative cases applying the Law on General Administrative Procedure (LGAP; 2000).

4.3.1. Recent Developments

- In May 2010, the National Assembly of the RS adopted the Law on Amendments to the LGAP (OG RS 50/10). The new Law has provided for delegation of power, i.e., heads may authorise other civil servants to conduct administrative procedures and decide in the case matter. It has also prescribed the duty of a second-instance decision-making body to, in case of re-deciding on the case, decides by itself *in merito*. The amendments have introduced elec-

tronic communication of administrative bodies and parties in the procedure, as well as conditions to be met by the official in charge of conducting the administrative procedure and deciding on an administrative matter in the course of administrative procedure.

- The administrative bodies of the RS have filed with the Government of the RS the Report on State of Affairs in the Area of Administrative Decision-Making as well as the Plan on Deciding on Unresolved Cases from the Previous Period.
- In October 2010, the Government of the RS adopted the Draft Law on Amendments to the Law on Foreign Investments. The new Law to be passed has been aimed at harmonization of the Law on Foreign Investments with other laws, particularly with the Law on Amendments to the Direct Foreign Investment Policy as to further liberalization in some restrictive sectors, provided the consent of the RS Government has been obtained. The ultimate aim would be to increase the interest of potential foreign buyers of the state capital in some industry areas. The new Law shall facilitate foreign investment registration procedure by abolishing one of the registration steps. The deadlines shall also be shortened, in order to promote business environment.
- In November 2010, the RS Government adopted the Information on Implementation of the Electronic Law-Making Project (e-Law-making). The Project encompasses the establishment of a database of all laws and regulations in the RS to be accessed through the integrated internet portal. The database shall contain all the laws and decrees adopted since 1992, i.e., around 400 laws and 130 decrees. The RS Secretariat for Legislation has presented the database. The future up-grade shall include Rulebooks and other by-laws.
- The RS Ministry of Administration and Local Self-Government issued the Instruction on Implementation of Law on Authentication of Signatures, Handwritings and Copies in 2010 (OG RS 97/10).
- In December 2010, the National Assembly of the RS adopted amendments to the Law on Salaries of Civil Servants and Employees Employed in the Republic of Srpska's Administrative Bodies. These amendments reaffirmed salary cuts introduced in 2010, i.e., it was laid down by the amended Law that the same reduction was to be applied in 2011.

- Web Portal of RS Government has been set up. It contains over 200 pages and 600 service pages. All Ministries presented by the Portal are introduced by info section that contains contacts, info registries, access guides, etc. The Portal offers easy access to information and by-laws regulating communication and information.
- In the course of its session held on 30 June 2011, the RS Government prepared the Draft Law on Amendments to the Civil Service Law. Those changes introduced significant improvements in the civil service recruitment process. The Law was forwarded to the RS National Assembly and was expected to be considered in the following months.
- The 2011–2014 Civil Servants Training Strategy was adopted in the course of the Government session of 19 January 2011 (OG RS 7/11). Adoption of this document was a step forward in the process of maintaining strategic documents and policies related to civil service development and capacity building.
- The RS National Assembly adopted the Law on Information Security. The law has defined information security and provided for the implementation of measures and standards thereof.

4.4. Brčko District of BH

The most important role in the BD administrative procedure is played by the Legal Service, which is competent for the first-instance administrative decision-making for all departments of the District government. Such a solution is hardly corresponding to good practice, since it frequently divides evidence gathering from decision drafting, and severs the accountability link between those carrying out part of the relevant activities, and the competent department head. It would also appear that the arrangement is scarcely successful in practice.

Besides the Legal Service, a different experience concerns the centralization of administrative appeals into an Appellate Commission, which is a positive approach to building an effective recourse within the centralized structure of the Brčko Government. One of the most important changes in the BD LAP was the one of 2005, when the Appellate Commission was rearranged to make sure that most of its members had substantial knowledge of the subject matters decided upon.

There is the increasingly important role played by the information technology (for instance, through the Public Registry Network), which displays obvious potential for improved service delivery. All data related to civil status of the citizens (citizenship, birth certificates, etc.) have been gathered and entered into database. A new case-management system is being deployed is an innovation of the potential interest for other government levels.

4.4.1. *Recent Developments*

- A new Organizational Chart of the BD Mayor's Office has been assumed. The Government Secretariat organization has been fully harmonized with the Action Plan 1. The 2011 Budget provided for the position of the Government Secretary General.
- In accordance with the Government Organizational Plan (December 2009), the Central Information Unit has been established. Along with the implementation of the PARF Projects, it is considered to be a mayor progress generator.
- The Law on Electronic Document has been adopted (OG BD 39/10). It regulates the right of BD administrative bodies, legal entities, independent entrepreneurs, and physical persons to use electronic documents in their business transactions and activities. They can also use them in the course of procedures conducted before the competent bodies in which electronic equipment and programmes can be applied in creating, transmitting, receiving and keeping electronic data. Eventually, the Law regulates the validity of electronic document, the use and the transactions done by virtue of electronic documents.
- The Law on Electronic Signature has been adopted (OG BD 39/10). It regulates the use of electronic signature in legal transactions, administrative, judicial and other proceedings, as well as duties and responsibilities of the legal entities, independent entrepreneurs and physical persons in connection with electronic certificates on the territory of the Brčko District.

5. Discussion

There is a clear need for a modern law on administrative procedure valid on the whole territory of Bosnia and Herzegovina. The unnecessary exist-

ence of four laws seriously hinders transparent, effective and coherent administrative action. Enacting a single procedural law in BH, as a matter of distribution of constitutional competences between the state and the other governmental levels, seem to be highly political, as it requires political consent of all the parties/levels involved. Namely, the changes that would introduce a single LAP to be applied throughout the country would entail substantive constitutional changes. Current constitutional set up regulates the matter in the way that the competence to enact the LAP is left to the country's constitutional parts (i.e. the Entities and the District). The adoption of a single procedural law would thus presume changes of the Bosnian Constitution requiring agreement of a specific majority within the Parliamentary Assembly of Bosnia and Herzegovina.⁵

Furthermore, the existing LAPs are not in full compliance with the European rule of law standards.⁶ The existence of a large number of special administrative procedures at all levels reveals transparency deficiencies and causes pointless legal maze for citizens. The existing arrangements encourage a decrease in the accountability of public services, and hinder full implementation of the principle of legal certainty, which causes a real problem for proper functioning and transparency of public administration in BH as a whole. Citizens have problems in identifying whether in a particular case, the general procedure applies or if a special procedure is favoured; which situation runs counter equality before the law, counter efficient and predictable application of justice and is a breach of human rights, to mention but three of the common principles of the rule of law. It also violates citizens' right to just and sound administrative decisions that are in line with basic European principles, which violates the principle of efficient and predictable application of justice. Therefore, all LAPs should be reviewed.

As far as the implementation of legislation is concerned, the administrative decision-making practice sometimes diverges from what is prescribed

⁵ Article III 2 (a) of the Constitution of BH (Annex IV to the General Framework Agreement for Peace in Bosnia and Herzegovina), states that »All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities«.

⁶ There are some common principles, such as: (1) government bound and ruled by law; (2) equality before the law; (3) establishment of law and order; (4) efficient and predictable application of justice; (5) the protection of human rights.

by law,⁷ which also has to be changed. The current state of affairs represents the violation of efficient and predictable application of justice. The reform should address both the norms and their implementation by amending the existing legislation as well as by organizing trainings of the officials in charge of conducting administrative procedures. The trainings should be organized with an aim to build up their overall and specific capacities to conduct efficient and lawful administrative procedures that will result in legal decisions.

The new system should ensure predictability and impartiality of administrative decision-making, while the overall reform should reinforce the administrative decision-making, as the main element of interaction between the service providers and their clients, providing for a functional, reliable, efficient, transparent, accountable and coherent instrument of a modern, client-oriented country-wide public administration system able to cope with quality requirements of the EAS.

An effective and client-oriented administration, including decision-makers, should rely on a simple and speedy administrative decision-making. In BH, all four administrative procedure laws have been drafted and are implemented in a fairly formal way, which runs counter the requirement for smooth and less formalised provision of public services to citizens. Formalized, time-consuming and court-like administrative decision-making framework entails, *inter alia*, additional costs. From the point of view of resources, such procedures involve excessive personnel the system does not really need. Lengthy and expensive procedure is a repeated disadvantage to any kind of business initiatives either domestic or international.

Simple and speedy administrative procedure should not deal, to the largest extent possible, with technicalities and/or strict and formal procedural forms (it is often referred to as »minimum procedural requirements«). The administrative procedure act should make positive balance between the technical side of the procedure and the discretion administrative decision-makers.

The efficient and operational administrative procedure act should provide for the use of information technology (IT) both for the purpose of submitting an application by a party to initiate a procedure and for the purpose

⁷ E.g., the administrative decision-making authority very often requires from the party to submit papers that, according to the law, the body itself has to provide. The illegitimate action of the administrative authority puts unnecessary burden upon the parties and as such, may cause undue delays of the procedure that would be found in violation of principle of efficient and predictable application of justice.

of the decision-making process itself. The IT should be used to the maximum possible extent in the course of overall communication between the party and public administration authority.

6. Conclusion

The need for a comprehensive public administration reform has been recognized and endorsed by all government levels in BH. Ever since the Dayton Accords were signed, public administrations at all government levels have been considering various plans for restructuring and rearrangement of their governments. It is not questionable that the country is in desperate need of reform. However, there is a clear tendency of the reform to develop as a separate project within each government level, which is seen as a significant obstacle to effectiveness in pursuing common reform objectives.

After the signing of the SAA between the EU and BH, public administration at all levels needs to have the capacity to commence adoption of the *acquis*, and to ensure sufficient coordination on EU integration matters within and across various government levels. The objectives are to have the basic horizontal systems in place by 2014, strengthened and harmonized, and to streamline sectoral and vertical functions: to meet citizens' expectations for more effective and efficient institutions, and to achieve the general and sectoral ability to adopt and implement the *acquis* uniformly in BH.

In the course of further implementation of AP1, based on the analysis of the current state of affairs in six reform areas, the Draft Revised Action Plan 1 for the Period 2011–2014 was prepared. It redefined the content, the aims, the activities, the indicators and the time frame for the implementation of the PAR Strategy in the period 2011–2014.⁸

The revised (modernised) AP1 has been made as a logical continuation of the modernization of public administration in BH. Its origins can be

⁸ It has been approved at all government levels. The most significant progress so far has been achieved in the reform area of Institutional Communication (64.57 per cent), while Information Technology has achieved the smallest progress (3.70 per cent). The highest level of AP1 implementation has been noted in the Republic of Srpska and the Brčko District of BH (over 53 per cent). The Implementation progress of the Action Plan 1 (AP1) for the year 2010 amounted to 10.16 per cent, while overall implementation of the AP1 was 49.23 per cent.

found in the Analysis of the Implementation of Action Plan 1 for the Implementation of PAR in BH for the period January 2009 – June 2010. The revised document constitutes an action platform that seems to be real when it comes to its aims and defined activities, and workable when it comes to implementation. General approach to the revision of AP1 was to delete all those aims and activities that had not been reached/undertaken, that had been set up as unclear or too abstract (theoretical), unrealistic and/or too ambitious, and those that seemed not to have brought about concrete »added value« to their addressees. The revised document contains a very important novelty: success indicators, priority ranks and timeframe for realization. A new approach to AP1 is to bring about effective and substantive changes that are seen as crucial components of the reform within key horizontal systems of all levels.

Within the realm of decision-making, there is a clear need for a modern, all-encompassing law on administrative procedure. The unnecessary existence of four laws does not bring about transparent, effective and coherent administrative action. Enacting a single procedural law in BH, as a matter of distribution of constitutional competences between the state and the other governmental levels, currently seems to be highly political, as it would require political consent of all the parties/levels involved as well as constitutional changes with regard to rearrangement of competences of different administrative levels in the country. Therefore, an interim and unquestionable measure is to review all existing LAPs and bring them into internal harmony in a manner that, from external point of view, meets the common European administrative decision-making standards.

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A NEED FOR A COMPREHENSIVE ADMINISTRATIVE REFORM
IN BOSNIA AND HERZEGOVINA WITH AN EMPHASIS
ON THE MODERNISATION OF ADMINISTRATIVE PROCEDURE

Summary

Public administration reform is a precondition for the integration of Bosnia and Herzegovina into the European Union. It is related to the development of sufficient administrative capacity, and the ability to adopt and implement the EU's legal order (acquis communautaire). The paper provides the present-day administrative framework at four separate systems (levels) in six horizontal areas (policy-making and coordination capacities, public finances, human resources management, administrative procedure, institutional communication, and information technologies). It presents, briefly, state of affairs, pointing at a clear need for a comprehensive PAR whose emphasis should be on the modernisation of administrative procedure. The state of affairs is broken down by the systems (levels), providing recent developments related to administrative decision-making within the respective administrative framework. None of the four procedural laws is fully in line with common European standards and the principle of the rule of law. A large number of special administrative procedures leads to the lack of transparency and creates a kind of needless legal complexity for citizens, and may even encourage deficiency as to the accountability of public services. These arrangements may run counter the principle of legal certainty and constitute a large problem for proper functioning and transparency of public administration in BH. Therefore, LAPs should be reviewed and tailored to meet common European standards. The new system should ensure predictability and impartiality of administrative decision-making. Simple and speedy administrative procedure should not deal, to the highest extent possible, with technicalities and strict and formal procedural arrangements (minimum procedural requirements). The administrative Procedure Law should make a sound balance between the technical side of the procedure and discretion of the decision-maker. Modernization of administrative procedure should make it a functional, reliable, efficient, transparent, accountable and coherent tool of a modern, client-oriented countrywide public administration able to join the European administrative space.

Key words: public administration reform, modernization of administrative procedure, policy-making and coordination capacities, public finances, human resources management, administrative procedure, institutional communication, information technologies

POTREBA ZA SVEOBUHVAATNOM REFORMOM JAVNE UPRAVE U BOSNI I HERCEGOVINI S NAGLASKOM NA MODERNIZACIJI OPĆEG UPRAVNOG POSTUPKA

Sažetak

Reforma javne uprave preduvjet je za pridruživanje Bosne i Hercegovine Europskoj uniji, a odnosi se na razvoj dovoljnog upravnog kapaciteta i na sposobnost prilagodbe i primjene pravnog poretka Unije (*acquis communautaire*). U radu se opisuje trenutačni upravni okvir u četiri različita sustava na šest horizontalnih područja (oblikovanje javnih politika i koordinacijski kapaciteti, javne financije, upravljanje ljudskim potencijalima, upravni postupak, komunikacija među institucijama te informacijske tehnologije). Ukratko se prikazuje stanje stvari koje jasno zahtjeva sveobuhvatnu reformu javne uprave s naglaskom na modernizaciju upravnog postupanja. Situacija je raščlanjena prema sustavima (razinama) i daje sliku najnovijih događanja vezanih za upravno odlučivanje u okviru pojedinih upravnih područja. Nijedan od četiri zakona o općem upravnom postupku trenutačno važećih na području BiH nije potpuno u skladu sa zajedničkim europskim standardima i načelom vladavine prava. Veliki broj posebnih upravnih postupaka dovodi do manjka transparentnosti, stvara nepotrebno složene pravne probleme običnim građanima te čak može poticati neodgovornost javnih službi prema svojim korisnicima. Takovi zakoni mogu biti u suprotnosti s načelom pravne sigurnosti građana te su velik problem za pravilno funkcioniranje i transparentnost javne uprave u Bosni i Hercegovini. Stoga bi zakone o općem upravnom postupku (bez obzira na razinu) trebalo revidirati i prilagoditi tako da budu u skladu s europskim standardima. Novi bi sustav trebao osigurati predvidivost i nepristranost upravnog odlučivanja. Jednostavan i brz upravni postupak ne bi se trebao baviti, koliko god je to moguće, tehničkim pitanjima i strogo formalnim proceduralnim stvarima (minimalni proceduralni zahtjevi). Zakon o općem upravnom postupku trebao bi uravnotežiti tehničku stranu upravnog postupka i diskrecijska prava onih koji odlučuju. Modernizacija upravnog postupka trebala bi ga učiniti funkcionalnim, pouzdanim, učinkovitim, transparentnim, odgovornim i koherentnim alatom moderne, strankama okrenute i cjelovite javne uprave koja je sposobna pridružiti se europskom upravnom prostoru.

Ključne riječi: reforma javne uprave, modernizacija upravnog postupanja, kreiranje javnih politika i koordinacijski kapaciteti, javne financije, upravljanje ljudskim potencijalima, upravni postupak, komunikacija među institucijama, informacijske tehnologije