Standardizing Administrative Procedure
Case of Republic of Macedonia in context to EU Integration

Ana Pavlovska-Daneva, PhD. Full Proffessor
Iustinianus Primus Faculty of Law, Ss Cyril and Methodius University
Goce Delcev 9b, 1000 Skopje
t. 071225147, e-mail: anapd222@yahoo.com

"Frequent legal amendments, preconditions for success/failure of public administration reforms" Published papers from the 21st NISPAcee Annual Conference, Regionalisation and Inter-Regional Cooperation, Belgrade, Serbia, May 16-18, 2013.
"The European Administartive Space as a Challenge for Public Administration Reform in the Republic of Macedonia", Hrvatska I komparativna javna uprava, Institut za javnu upravu – novi informatory, Pravni fakultet Sveučilišta u Zagrebu Društveno veleučilište u Zagrebu, br. 1, Godina 11, str. 127-146.

Ivana Sumanovska-Spasovska, PhD. Asst. Professor
Iustinianus Primus Faculty of Law, Ss Cyril and Methodius University
Goce Delcev 9b, 1000 Skopje
t. +38978414849, e-mail: ishumanovska@yahoo.com

"Establishing a Higher Administrative Court in the Republic of Macedonia", Iustinianus Primus Faculty of Law Journal – Skopje, 2012

"A Special Administrative Misdemeanor Procedure in the Republic of Macedonia – Need of Necessity", Iustinianus Primus Faculty of Law Journal – Skopje, 2012

Elena Davitkovska, PhD. Asst. Professor
Ecomomic Institute, Ss. Cyril and Methodius University
Ul. Prolet br.1, 1000 Skopje
e-mail: edavitkovska@yahoo.com
tel: + 389 70 222 899

"Frequent legal amendments, preconditions for success/failor of public administration reforms" Published papers from the 21st NISPAcee Annual Conference, Regionalisation and Inter-Regional Cooperation, Belgrade, Serbia, May 16-18, 2013.

Public Administration Basis for reform/non-reforming in the Republic of Macedonia",Davitkovski B., Pavlovska-Daneva A., Davitkovska E., Gocevski D.,
"ВЕСНИК", A Journal of Theory and Practice of social and humanist sciences,
Belgrade Business School Higher Education Institution For Applied Studies, no. 1,

2013, pp. 33-45;

Dragan Gocevski, PhD. Asst. Proffessor
Iustinianus Primus Faculty of Law, Ss Cyril and Methodius University
Goce Delcev 9b, 1000 Skopje t. 078419410, e-mail: dragangocevski@gmail.com

"Frequent legal amendments, preconditions for success/failure of public administration reforms" Published papers from the 21st NISPAcee Annual Conference, Regionalisation and

Inter-Regional Cooperation, Belgrade, Serbia, May 16-18, 2013. „Public Administration Basis for reform/non-reforming in the Republic of Macedonia""ВЕСНИК", A Journal of Theory and Practice of social and humanist sciences, Belgrade Business School Higher Education Institution For Applied Studies, no. 1, 2013, pp. 33-45;

Abstract

In this paper, the authors define and review the goals and principles of the administrative procedure, as well as presenting an overview of setting standards in the administrative procedure by some of the most influential organizations in Europe: the Council of Europe and the EU, as well as other mechanisms set in place to harmonize national legislation with the normative standards set by the above. The authors propose a theoretical framework to explain this process, and analyse the process of administrative procedure harmonization in the Balkan Region under Sigma.

The starting premise is that EU member states still retain national legasilation with specifics that best suit the national administrative systems and differ from state to state. A narrower scope of research in this paper is the need to codify and/or unify administrative procedure in a set of acts or single acts, that would regulate principles and other matters in a uniform fashion for all member states of the EU.

Key words: administrative procedure, administrative standards, EU, european administrartive procedures, Council of Europe, Sigma.

Preface

The implementation of the principles of Good Administration requires a well-designed and solid platform consisting of four components: 1) a system of administrative procedures regulating the administrative decision-making process; 2) a clearly structured organisation of the public administration, and its bodies, in all policy areas and territorial levels; 3) professional, competent and independent

personnel; 4) a system of effective judicial control of administrative actions.[1]

Each of them is equally indispensable for good administrative practice. The primary focus of this paper will be on administrative procedures. Administrative procedures are not an end in themselves. They are the means and ways by which a substantive end, in the form of an administrative decision or other form of action, is achieved. In public issues, right decisions are those which serve the general interest and are reached through the prescribed procedures. These above are considered two sources of legitimacy of administrative action.

Procedural legitimacy is therefore important. Though procedures appear sometimes as formal requirements, procedures have a real and important impact. Their quality is directly linked to the legality and the legitimacy of the substantive results of administrative action. In modern administration, these are the primary criteria for effectiveness and accountability, and standards for judicial review characteristics of a good system of administrative procedures.

A good system of administrative procedures is first and foremost a system of general and standardized administrative procedures. Such a general system is valid in its basic principles. The existence of a good and matured system of administrative procedures is critical for an effectively and efficiently acting public administration and the quality of services provided to citizens.

Such a general and standardised system sets simple and clear guidelines for public administration and civil servants in their everyday activities. It is phrased in a simple, clear and understandable manner and can thus be accessible and commonly known to citizens.[2] It is "citizen oriented", taking into account their expectations and providing guarantees for their procedural rights. It further defines the standards of ethical and practical conduct of civil servants, thus ensuring the proper functioning, the efficiency and quality of the services delivered to the public.

The existence of such a general system ensures better compliance while allowing better control of the administrative operation. It facilitates oversight and control by superior levels in the chain of command (such as the legislator, politicians and the ministry exercising oversight), who can make sure that the competent public body adheres to law and statute.

2. The importance of Standards in the Administrative Procedure

A standardised system of administrative procedures favours the transparency of the decision making process and enhance the legitimacy of its product. All participants in administrative action, politicians, civil servants and interested parties ("stakeholders") benefit from its existence. More specifically, citizens and businesses directly involved in an individual administrative procedure are able to assess if the

[1] Rush, Wolfgang. "Citizens First Good Administration Through General Administrative Procedures", Modernizing Administrative Procedures, Meeting EU Standards, ReSPA, pp. 3-15;
[2] Ibid;

administrative body acts within its legal boundaries, to follow the steps the public body has to take, and more generally to predict the course of administrative process. They have the chance to express their respective interests and views during the process, thus facilitating clarification of interests and improving the rationality of administrative operations.

By prescribing the procedural rights to respect, a general system of administrative procedures sets the standards for a fair decision-making process. It provides for the respect of the rights of all participants in the process (citizens directly or indirectly affected i.e. the neighbour in a building case, a competitor in a procurement or recruitment procedure, the market etc.). It thus ensures impartiality and equal treatment. It guarantees among others the right to be heard, to receive an answer by an administrative authority, the right to information and access to files; the right to protect personal data, the right to a motivated decision, the right to review decisions and legal remedies. The establishment of the basic guidelines provides the principles for any special, new or complex procedure and allows possible gaps to be filled. Thus existing procedures can be rationalised and streamlined while new ones benefit from the existence of general framework rules.[3]

The past twenty years the reduction of the administrative ballast on citizens and businesses rose to be a priority issue. This objective is inherently linked to the quality of administrative procedures and involves, above all, simplicity and standardisation. The lack of a basic system of administrative procedures along the aforementioned lines leads to the ever increasing complexity of administrative operation. For services and civil servants as much as for citizens, this entails higher administrative costs, a lack of transparency and, worse, may even become a source corruption.

Given that modern administration needs to be able to adapt fast to changing requirements, a general law is undoubtedly more easily amended than a host of diverse, special procedures.[4] This also applies to adjustments to the developments of jurisprudence. The administration needs to take cognisance of the way various provisions, requirements and guarantees are interpreted by courts when reviewing administrative decisions. Civil servants and judges can more efficiently comprehend and implement its provisions, compared to a labyrinth of special procedures.[5]

3. Defining European Standards in the Administrative Procedure

One of the more important areas of standardization and convergence in legislation on the EU level are administrative procedures, a result of which is the administrative procedural law of the European Union. The Contemporary state of administrative procedural legislation in the Union can be seen in several Treaties of the European Union,

[3] Ibid;

[4] Such as introduction of new technologies, single contact points…;

[5] May authors still emphasize that special procedures will, however, be inevitable in certain cases. The existence of a general law will still provide guidelines and standards according to which they will have to operate. Exceptions to general guidelines and rules should be well thought out and used parsimoniously.

Charters, judicial practice of the Court of Justice, numerous reccomendations and resolutions. However, such a heterogenous legal framework often contributes to complications in procedure before EU institutions, as well as when procedures are carried out before national authorities. Expamples from these issues confirm the need to adopt a single legal act (law or codex) at a national level which would hold the norms of internationally ratified acts, reccomendations by the Council of Europe and EU regulations. Such an act should be founded on the principles of good governance and rule of law, while carrying the "spirit" of EU Law. One was to achieve achieve uniforming and standardizing procedural legislation providing parties in administrative procedure accross EU member states with the same level of guarantees, rights and proper legal protection at the same time removing the complexity of harmonizing different laws at national and supranational levels is through codification.[6]

Dificulties in the consistent harmonization of norms and practices in administrative law, in different EU states as well as candidate countries are a direct result of the way in which national administrations are built. Each country builds its administration to best suit it's political, social and economic needs. Because of this national administrations differ greatly from country to country, even EU member states. These differences are seen in national administrative law of each state despite of decades of European integration and harmonization. EU member states still show a differences in the level of development, institutional complexity, legal rights protection and judicial system.

4. Standardization Through Codification (The Administrative Procedure in the European Union)

Administrative procedures in the European Union can be categorized in three groups: administrative procedures at a supranational level i.e. at EU level, hybrid or mixed administrative procedures run at both supranational level and national level (which means that some phases of the procedure are carried out by EU institutions or bodies), procedures run at a national level in EU member states.[7] Determening the competence in these procedures is regulated by the Treaty of Lisabon (2007/C 306/01)[8]. Accordint to Art. 3 Par. 1 of the Treaty on the Functioning of the European Union, the Union has exclusive competence to regulate the areas of: the customs union, the establishing of the competition rules necessary for the functioning of the internal market, monetary policy for the Member States whose currency is the euro, the conservation of marine biological resources under the common fisheries policy and the common commercial policy (C83/47). According to Art.2 the Union is competent to legislate and adopt legaly binding acts for member states. Accordint to art. 6 the Union is competent to to carry out actions to support, coordinate or supplement the actions of the Member States in the areas of protection and improvement of human health,

[6] Towards an EU Administrative Procedure Law? *Report of the ReNEUAL Conference* Brussels March 15th &16th – *(draft)*;
[7] Đerđa, D. (2012) Pravila upravnog postupka u europskom pravu. Zb. Prav.fak. Sveuč. Rij. (1991) v. 33, br. 1, pp. 114;
[8] Also knows as the Reform Treaty;

industry, culture, tourism, education, vocational training, youth and sport, civil protection and administrative cooperation.

According to Art. 4 of the Treaty of Lisabon the Union has shared competence with member states in the areas of the common market, social policy, economic social and spatial connection, agriculture, fishery and under exception preservation of biological resources of the sea, environment protection, protection of consumers, commerce, transeuropean networks, energy, freedom, security and justice, commong security issues in public helthcare to the extent regulated by the Treaty for the Funcionting of the European Union.

What is most important for this papers research is that all these processess are carried out by competent institutions, applying separate (in some cases different) procedural legislation when dealing with administrative matters. In order to uniform these regulations, expetially regarding the founding principles of administrative procedure, deadlines for decision making, legal remedies, ensuring an active role for the parties in process, as well as transparency and accountability, furhther in the paper we will argument the pros and cons to unification and adequate codification administrative procedure in a single act.

There has been an active academic debate around accepting a concept of codified administrative procedure in the European Union for some time now. There are many authors supporting the idea of adopting a single codex of EU Administrative Procedure. Most orbit around the idea that codification of procedure will be applied by institutions, agencies and other authorities which would aid the Union in fulfilling it's mandate given by Art. 268 of the Treaty of the Funcioning of the EU as well as contribute to the development of the principle of good governance regulated by Art. 41 of the Charter of the Fundamental Rights of the (C.364/1). Arguments supporting the aforementioned are: first and foremost, codification of EU administrative procedure will strengthen legal certainty and clarity; Second, the code would sistematicaly coordinate procedural regulations currently contained in a multitude of laws, bylaws and various judicial verdids by European courts; Thirdly, due to their (extensive)scope and compass, this codex would be applied in many sectors overcoming contemporarry gaps in legislation, additionally influencing the principle of simplification and accessibility to administration. We believe that codification will systematically standardize the basic process rules and principles of EU administration, thus creating a common reference for administrative procedure, acording to which national legislation (of member states) would later harmonize (accordingly). Codification would provide for improvement and more inovative solutions to contemporary challenges and problems of administrative procedure, through a legitimate democratic process.[9]

The Administrative Procedure Act would serve as a means to operationalize common values of EU Administrative Law, such as the principle of lawfulnes, comon regulations for proportionality and transparency.

In order to better support the need for a single administrative procedure act we must review some of several acts regulating

[9] Towards an EU Administrative Procedure Law, Ibid;

administrative procedures at the EU level. The subject of analysis is procedural norms applied by EU institutions and agencies when dealing with administrative matters. As an example we take the European Codex of Good Government and the Directive for the Services in the Internal Market, Reccomendation for the Council of Europe Board of Ministers (Rec(2007)7) regarding good governance, Resolution on the Protection of Individuals in regard to Decisions by Administrative Authorities (Res(1977)31), European Convetion for the Protection of Human Rights and Fundamental Freedoms (Rome, 4.XI.1950) etc.

The European Codex for Good Governance by the European Ombudsman adopted by the European Parliament in October 2001, serves as a crucial criteria to evaluate if the operation of the administration is in accordance to principles of good government. The Code it self contains the basic princples for EU civil service (their rights and duties) such as: the principle of lawfulness, equality, proportionality, ban on missuse of competence, impartiality and independence, objectivity, transparency, individuality, use of languages, delivery, hearing of the party, reasonable deadlines, justification of decisions, legal remedies, protection of personal data and access to information of public character.[10]

We could note here the Directive for Services in the Internal Market adopted 2006, containing requests for simplification of administrative procedures and the establishing of a single point of contact system, developing electronic means of communication during procedures and regulating the institute of administrative silence in the sense that if in a determined period of time the competent authority doesn't make a decision it will present the existence of a fictinal administrative act.

Resolution Res(1977)31 on the protection of the individual in relation to the acts of the administrative authorities also has an impact to a certain extent, since it contains the principles of the administrative acts: hearing of persons, access to information, legal assistance and representation, obligation for a statement of reasons of the administrative act and the right to a legal remedy.

Recommendation Rec(2007)7 of the Committee of Ministers of the Council of Europe from 2007 concerns the good administration and incorporates the Code of Good Administration, which contains 23 articles stating the good administration principles and rules. The most important principles are, in particular: principle of lawfulness, proportionality, legal certainty, taking action within a reasonable time limit, etc. The rules, on the other hand, refer to definitions, initiation of administrative procedures, requests from private persons, right of private persons to be heard, provisions on the contributions to the cost of administrative procedures, the form of the administrative procedures, publication of administrative decisions, rules concerning the legal recourse and the compensation of damages.[11]

The importance of the Recommendation Rec(2004)20 on the judicial review of the administrative acts is reflected in the fact that it

[10] European Code of Good Behaviour (http://www.ombudsman.europa.eu/en/resources/code.faces#/page/1);
[11] Đerđa D. pp. 113;

defines the administrative act, which may be individual or normative, and governs the cases of refusal or omission to act where the administrative authority has an obligation to do so.

The European Convention for Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe in 1950, also contains provisions laying down the standards for the administrative adjectival law that are binding for the contracting parties of this Convention.

Resolution (77)31 on the protection of the individual in relation to the acts of administrative authorities defines specific requirements that have to be fulfilled in the course of the administrative procedure. This Resolution stipulates that the parties in the administrative procedure must be enabled to put forward facts and arguments when a specific decision is likely to affect adversely their rights and legal interests, as well as that, upon their request, they should be provided all information of relevance for the taking of the act, their right to be assisted or represented in the administrative procedure, and that the decision communicated to them must include a statement of reasons and an indication of the remedies against it.

Regulation no. 1 determining the languages to be used by the European Economic Community prescribes that an individual decision which affects the national authorities of a Member State or the private persons from such Member State must be drafted in the language of that Member State.

Regulation (EEC, Euratom) No 1182/71 of the Council of 1971 determining the rules applicable to periods, dates and time limits is also generally applicable in administrative procedures. This Regulation, in fact, establishes uniform general rules on the calculation of the time limits in the procedure and the time of the entry into force of the administrative acts. Regulation (EC) no. 1049/2001 of the European Parliament and of the Council provides for the public access to the documents of the European Parliament, Council and Commission and of the administrative and executive authorities of the Union.

The case-law of the European Court of Justice also contributes to the unification of the principles of administrative procedure in the legislation of the EU Member States. The Judgments of the Court of Justice by rule include a statement of the reasons for each decision so as to improve the possibility for the party concerned to seek relevant legal recourse. Furthermore, the European Court of Justice establishes a set of key principles that have to be adhered to in the administrative procedure: lawfulness, proportionality, legal certainty, prohibition of discrimination, right to legal remedy, equitable access to the competent (administrative) court and the right of the party concerned to request a compensation of damages caused by the actions of the administrative authorities. One of the specific principles that may be found in the judgments of the European Court of Justice is the precautionary principle in the actions by the administrative authorities. However, despite the case-law of the European Court of Justice, there are difficulties in defining precisely an adequate principles which impedes the application thereof, and is often a cause for commission in the application of different principles to one and

the same situation, which cause problems for the authority carrying out the procedure .[12]

SIGMA provides its contribution to the harmonization of the administrative adjective law by providing expert assistance to the European Commission and the candidate countries and by establishing the general standards of the administrative procedure, such as: clear definition of the scope of competencies of the administrative authorities, regulation of the main stages of the procedure, proportionality of the administrative decisions and actions, adherence to the legally prescribed time limits, statement of reasons for the administrative decisions, providing the party concerned an access to the documentation, right of the persons to be heard, right on information about the decision, obligation for indication of legal remedies and establishing the reasons for revocation and annulment of the administrative acts.

The European Commission's initiative to the European Parliament for the enactment of a Resolution with recommendations relating to the administrative procedure at EU level is particularly important; by such Resolution the European Parliament, relying on a series of existing agreements[13] and other regulations, calls for the drafting and enactment of an act governing the European Law on Administrative Procedure (Art. 1. 2012/2024(INI)). In the initiative itself the European Parliament determined a series of deficiencies in the current state of affairs, most notably: lack legal remedies in procedeengs before EU bodies, entitelement of citizens are entitled to expect a high level of transparency, efficiency, swift execution and responsiveness from the Union's administration regardless of the type of request or petition, severe fragmentation of the Unions existing rules and principles on good administration across a wide variety of sources and lack of coherent and comprehensive set of codified rules of administrative law which makes it difficult for citizens to understand their administrative rights under Union law, a limited effect of existing internal codes of conduct of the different institutions, the parliament recognized the need for the same code of good administrative behavior to apply to all Union institutions, bodies and agencies, as well as the need for a single code of Good Administrative Behavior that would help eliminate the confusion currently arising from the parallel existence of different codes for most Union institutions and bodies, codification of the service principle etc.

---

[12] Đerđa D. pp. 123;

[13] Art. 225, 298 TFEU; Art. 41 CFREU; Regulation (EC) No 45/2001; Regulation (EC) No 1049/2001; extensive case-law of the Court of Justice of the European Union; resolution of 6 September 2001 on the European Ombudsman's Special Report to the European Parliament following the own-initiative inquiry into the existence and the public accessibility, in the different Community institutions and bodies, of a Code of Good Administrative Behaviour; Commission Decision 2000/633/EC, ECSC, Euratom of 17 October 2000; Decision of the Secretary-General of the Council/High Representative for Common Foreign and Security Policy of 25 June 2001 on a code of good administrative behaviour for the General Secretariat of the Council of the European Union and its staff in their professional relations with the public; Council of Europe's Recommendation CM/Rec(2007)7; 'Public service principles for the EU civil service' published by the European Ombudsman on 19 June 2012;… See all regarded points in "2012/2024(INI)".

Perhaps the most important conclusion was that European Law of Administrative Procedure would: help the Union's administration in using its power of internal organization to facilitate and promote the highest standards of administration; would enhance the Union's legitimacy and increase the confidence of citizens in the Union's administration; could strengthen a spontaneous convergence of national administrative law, with regard to general principles of procedure and the fundamental rights of citizens vis-à-vis the administration, and thus strengthen the process of integration; could foster cooperation and the exchange of best practices between national administrations and the Union's administration, in order to fulfil the objectives set up by Article 298 of the Treaty on the Functioning of the European Union. An appropriate lega basis for the adoption of a European Law

5. European Administrative Procedural Law

Prior to commencing the drafting of the future law, three issues shall have to be regulated, in particular: the scope of application of the law, which authorities shall be authorized to act in accordance with the law and what shall be their powers. Furthermore, it shall be necessary to determine the effect of the law as compared to the sectorial instruments in its significance for the EU Member States.

The application of the law of the Union in the specific cases falls within the scope of competencies of the Member States, which shall apply the national regulations (through their respective national administrations) with an obligation to comply with the principles of the acquis communautaire. However, in particular cases this administrative function shall be discharged directly by the EU institutions and bodies, primarily by the European Commission and a series of European agencies (often having regulatory powers) and other EU bodies. Finally, the EU law is also applied through cooperation between the EU institutions and the national administrations by virtue of various forms of co-contracting.

If a direct analogy is possible, the administrative functions of the Union shall be discharged by the European Commission, in spite of the fact that some of the competencies may be discharged by other institutions and bodies of the Union. The institutional framework of the European Union is made of the European Parliament, the European Council, the Council of Europe, the Commission of the European Union, the Court of Justice of the European Union, the European Central Bank and the Court of Auditors. This implies that defining administration in organizational (formal) terms is difficult in view of the fact that administrative activities are carried out (to a certain extent) by all institutions and bodies of the Union, as well as their administrative functions, with the exception of the judicial authorities. In functional terms, the European Commission acts as an executive body of the Union that also performs administrative activities by applying the EU law to individual cases and specific situations. However, the Commission has no original powers to discharge this function under the founding treaties. The executive and administrative powers are conferred on the Commission by the Council Decision 1999/468/EC, which is established as a general rule, while the Council, in specific and substantiated cases

where the basic instrument reserves such a right, may exercise directly certain executive and administrative activities (1999/468/EC).

We may conclude that the administration, in terms of organization, includes the institutions, bodies, offices and agencies of the European Union. The executive agencies are special legal persons that are regulated by the Council Regulation (EC) no. 58/2003 of 19 December 2002, and the reason for their establishment may be found in the increasing number of programmes that the Commission is not able to implement on its own.[14] Currently there are 6 executive agencies: Education, Audiovisual and Culture Executive Agency, European Research Council Executive Agency, Competition and Innovation Executive Agency, Executive Agency for Health and Consumers, Research Executive Agency and Executive Agency for Trans-European Transport Networks. A matter of great significance for the Union today is the intensive increase of the administrative apparatus, where a great number of administrative powers are conferred on other bodies, too, of which currently the most important are the executive and the independent agencies.

As regards the section of the Law which shall contain the basic principles of operation, we hold the position that it would be best, when drafting the Law, not only to take into account the administrative regulations that have been referred to above, and which already contain some of the principles of the administrative procedure, but also to comply with recommendations contained in the annex of the initiative for drafting of a European Law of Administrative Procedure (2012/2024(INI)). The Annex includes six recommendations.

The first recommendation guarantees the right of the EU citizens to a good, efficient and independent administration based on the European Law of Administrative Procedure, which the Union's institutions and bodies shall apply in their relations with the public. By this, the scope of the law is limited only to the immediate relations with the "parties" in the procedure.

The second recommendation is relating to a universal set of principles and a procedure applicable as a *de minimis* rule in the cases where there is no relevant procedure laid down by *lex specialis*. This shall guarantee a minimum threshold of rights and legal protection in the administrative procedure which, in the national legislations, must not be lesser than the rights guaranteed by the European law.

The third recommendations is relating to the general principles which should govern the administration: lawfulness, non-discrimination and equal treatment, proportionality, impartiality, consistency and legitimate expectations, respect for privacy, principle of fairness, transparency, efficiency and service orientation.

The fourth recommendation is relating to the decision-making process and contains guidelines on: the initiation of the administrative procedure (on initiative of the EU administration or at a request of an interested party), acknowledgment of receipt of requests and an indication of the time limit for the adoption of the relevant decision, impartiality and independence of the competent persons in the procedure (laying down the conditions for exclusion of an official from taking part

[14] Lilić S. Evropsko upravno pravo, Beograd, 2011, pp. 26;

in the procedure where conflict of interest is found to exist), right of the party to be heard and the right to access one's own file, clearly defined and reasonable time limits, the form and content of the administrative decisions, mandatory statement of reasons in each decision, obligation for notification of the parties and due service of the decisions, clear indication of the available remedies,

The fifth recommendation is relating to the procedure for review of the lawfulness of the decisions and the rectification thereof, both in cases when the administrative body taking the decision corrects clerical, technical or similar errors on its own initiative and following a request by the person concerned.

The sixth, i.e. the last recommendation lays down an obligation for the authorities to draft the decisions in a clear and concise manner that is easily understandable by the general public, and that those decisions should be publicized in the web pages of the EU institutions and bodies, etc.

6. European Principles and Standards in the Administrative Procedure in the Republic of Macedonia

In recent years Albania, Croatia, Montenegro and Serbia made successful efforts to start modernising their systems of general administrative procedures. The Croatian Parliament adopted a new Law on General Administrative Procedures (LGAP) that entered into force on 1.1.2010. In Albania and Serbia new drafts LGAP were expected to be adopted in 2011 (Serbia) and 2012 respectively (Albania) and in Montenegro the Government decided in July 2011 on a policy paper as a basis for a new LGAP. For all these reform processes, the Governments opted for creating a new Law rather than amending the existing one.[15]

In modern democratic States, three main broad goals can be singled out for administrative procedures, namely to provide a formal guarantee to the rights of the individuals through a practical application of the principle of legality; to provide a formal guarantee to the public interest through demanding transparency in public decision-making and consequently allowing for the administrative action to be controllable; and to create the conditions for capital investments and economic development through providing a guarantee of that administrative, and by extension, any public decision will be predictable and will respect the legitimate expectations of individuals. Along with sound administrative procedures an adequate organisation of the administration and a professional merit-based civil service should complete the administrative picture.[16]

On the one hand, the basic objective of the administrative procedure is to introduce an administrative act, to enforce a lawful administrative action or adopt a legal administrative agreement, which shall enable exercise of the rights and obligations for the parties in the procedure, and on the other hand, to protect the public interest. In this context, what is required from the bodies authorized to act within the administrative procedure is not only to conduct it in a legal manner, but,

[15] Wolfgang, Rusch, Ibid;
[16] Administrative Procedures in EU Member States (Conf. on PAR adn European Integration) Budva, Montenegro 26-27 March 2009, pp. 3;

also, to enable conducting the procedure in a simplest way possible (easy and transparent communication with the parties), in as much as possible concise manner (acting within a short period, without any delays), cost-efficient (with less expenses for the parties in the procedure). However, from another aspect, the public authority should be careful not to threaten the quality of the procedure by all this, and not to influence the pending decision, which means that the body should at the same time lead the procedure in a simple, diligent and cost-effective manner, and it should also mind the correct establishment of the factual conditions, which are crucial for realization of the basic principles in the administrative procedure, such as the principle of material truth, the principle of hearing the parties, the principle of legality, etc., which are the guarantee for adopting a lawful administrative act. All this shall contribute to adequate establishment of the rights and obligations of the parties and for the protection of their legal interests in the procedure.

A regards the physical and legal entities participating in the administrative procedure, the Law on General Administrative Procedure should provide for their *security* in realizing the principle of the rule of law in exercising their rights and realizing their *active status* in the procedure, which means that the party should be involved during all phases of the procedure, especially in the hearing phase for establishing the facts.

The latest trends and challenges occur in the regulation of the administrative procedure, as stated above in the paper, and the harmonization of the national administrative process legislation, with the principles and standards of good governance of the European Union. Consequently, aside from the fact that since the establishment of the European Community, today, in accordance with the Lisbon Treaty of the European Union, the regulation of the administrative matter has been subject of autonomous regulation by the member-states of EU, still, today, more often than before, there is an influence of the European law and principles on the regulation of the public administration on a national level. Namely, what is required from the candidate countries for membership in the European Union is harmonization of their legislation with the EU Acquis. Thus, the influence of *acqui communaitaire* is even more present in the legal standardization of the administrative procedure in the countries- members and candidate countries for membership in EU. However, a characteristic of regulation of the administrative procedure is the double influence, i.e. apart from the influence of the European principles on the national legislation, there have been experiences of the countries-members taken in consideration and incorporated in the provisions of the European legislation.

In addition to SIGMA, here we could mention different bodies of EU and the Council of Europe as some of the institutions which contribute to the process of administrative convergence and harmonization of the administrative legislation of the candidate countries for EU membership, among which is the Republic of Macedonia.

Republic of Macedonia, as a candidate country for EU membership has the obligation to follow the latest European trends and provide for compliance to such trends. In a more narrow context, as regards the achievement of public administration which shall be based and which shall work in accordance with the European principles,

Republic of Macedonia, in accordance with the Reports of the European Commission, is constantly instructed for certain disadvantages in the work of the public administration, such as the need to depoliticize, and rationalize the state authorities, to decentralize, tackle and prevent corruption, etc. Furthermore, in order to obtain a European oriented administration in the Republic of Macedonia, we need to change the traditional bureaucratic model, characterized with slowness, servitude, non-efficiency and non-effectiveness in the decision making, and to adopt a new model whose basic objective shall be citizens' oriented administration, which shall entail responsive, transparent, responsible, efficient and depoliticized public administration. Although there have been numerous administrative reforms in the Republic of Macedonia, in order to adopt this new model of public administration, there are still existing challenges and concrete problems which should be tackled in order to reform and modernize the administration.

Currently, one of the objectives of the Republic of Macedonia is the modernization and improvement of the general administrative procedure. Since its independence in 1991, Republic of Macedonia has adopted the first Law on general administrative procedure in 2005, and the amendments thereof in 2008 and 2011, whereas these amendments do not have a conceptual character, but are related to novelties in the manner of communication between the parties, the manner of delivery, the institute of silence of the administration and amendment of the basic principles. (See Official Gazette No. 38/2005, 110/2008 and 52/2011). The current situation with the administrative process law in the Republic of Macedonia is different, i.e. it is expected that the Republic of Macedonia, as a candidate country for EU integration, shall make crucial amendments to the Law on General Administrative Procedure. Namely, there is a need to adopt a new law on general administrative procedure, inspired by the idea for reforms in the public administration, in order approximation thereof to the European legislation. In this context, the simplification of the administrative procedure is one of the key priorities of the public administration reform, whose purpose is to achieve transparent, accountable, responsible and quality public administration, which shall fulfill all public services.

The main reason to amend the Law on General Administrative Procedure is that the current Law is a complex law, with many provisions and articles, and even though it regulates the actions of the public administration bodies within the administrative matters in a detailed manner, still, this detailed regulation negatively affects the parties and causes difficulties in the understanding of this complex procedure. Actually, these are the main disadvantages of the administrative procedure – non-efficient long procedure, with increased expenses. On the other hand, there is another issue, the tendency for increasing the number of material regulations, which regulate special administrative procedures. Representatives from the Ministry of Information Society and Administration, representatives of SIGMA and experts in the field of administrative law have been involved in drafting the new Law on General Administrative Procedure of the Republic of Macedonia. Acting in accordance with the European requirements and standards, this group is expected to introduce novelties with the new law in relation to precise establishment of the competent bodies which shall

enforce the LGAP, to define the administrative matter, to redefine the basic principles, to reduce the legal remedies, to complete the regulation of the institute of administrative silence, to emphasize the electronic communication between bodies and the physical and legal entities during the procedure. Above all, the innovative administrative tools, such as information and communication technologies, one-stop-shop system of operation, the administrative agreement and the effective system of administrative legal remedies can hardly be integrated in the existing legal framework, partially due to the fact that the given structure of the law does not provide adequate systematic position for these, and in part due to the mismatch between the modern requirements and the overall conceptual content, i.e. the "spirit" of the current Law on General Administrative Procedure[17]

One of the main novelties of the new Law on General Administrative Procedure is that according to the Strategy on Reform of General Administrative Procedure it is expected that the law shall apply even in the case when an administrative body fulfils its obligations in the field of administrative law through other unilateral administrative actions covered in the concept of the administrative act, but related to the rights of citizens, their obligations and legal interests, such as giving information, warnings, notifications, publication of expert's opinions, or in relation to motions by citizens. Furthermore, the Law on General Administrative Procedure should provide legal protection even when the delivery of the public services (such as for example, telecommunication services, electricity or water supply) hinders the rights of citizens or their economic interest. The privatization of the public service delivery should not reduce the legal protection of the service beneficiaries (citizens).[18]

Furthermore, the redefined Law on General Administrative Procedure is expected to harmonize the procedure on a normative level, with the international standards of operation of the public administration, such as legality, transparency, responsibility, efficiency, etc. Conducting the principles of good administration entails well prepared and firm platform consisting of four components: System of administrative procedures, which shall completely regulate the processes of adoption of the administrative acts; b) clearly structured organization of the public administration and its bodies in all administrative fields and territorial levels; c) professional, competent and independent staff; and d) system of effective judicial control of the administrative actions. In this context, each component is equally important for good administrative practice. Accordingly, in order to practically introduce the principles of good administration, there is a need to establish adequate system of administrative procedure.[19] Such system shall establish the general rules for the process of conducting the administrative action; it shall secure its quality and its legal correctness. A good administrative procedure system shall protect citizens' rights and shall promote their involvement. It shall

[17] See: Strategy for the Adoption of the Law on General Administrative Procedure, Government of RM, 2013;
[18] Ibid;
[19] B. Davitkovski, A. Pavlovska-Daneva, E. Davitkovska "A New Concept of the law on Administrative Procedure: Challenges and Advantages" Business Law, Edition for the Theory and Practice of law, Skopje 2013, pp. 173-189;

also avoid unnecessary complex, formal and long processes, and shall improve the transparency and accountability, which shall contribute to greater integrity of the public administration, since many cases of corruption have the sole objective to attain an administrative act which shall be in accordance with the law and issued in a reasonable period. At last, the good administrative procedure system shall also reduce the expenses of citizens, as well as the government expenditures; on the other hand, the system of complex and inefficient administrative procedure is expensive for the citizens and significantly burdens the State budget.[20]

Relevant directives should be taken in consideration, such as the Directive on Services 2006/123/EC, Action Plans "e-Europe", and "-2010" etc. For instance, the main argument imposed by the Directive on Services is the obligation of countries-members to establish single contact points through which the providers of services shall be able to complete all procedures and formalities required by law in order to gain access to the market of services and complete the services. According to article 13 from the Directive on Services, it is prescribed that decision shall be adopted upon a case of a client as soon as possible, within a reasonable time which shall be determined in advance, and if this term is not respected, it shall be considered that approval has been given.

It is required from the new Law on General Administrative Procedure to be compatible with the European requirements. However, another issue more important than the adoption of a new law is providing the conditions for regular and continuous implementation thereof. In order to accomplish this, officials should be trained on the application thereof, those official which shall conduct administrative procedures should pass a professional exam, to strengthen the inspections of administrative procedures and to review the special administrative procedures (whether an to what extent they derogate from the Law on General Administrative Procedure).

The Law on General Administrative Procedure should ensure protection of the rights of individuals and the public interest, as well as proportionality of the administrative acts; to improve the transparency of the administrative procedures; increase the confidence of citizens in the public administration; to promote administrative practice which shall be oriented towards the services and professional public administration as a key precondition for economic development; to support effective and ethical behavior of State and public servants in the protection of the public interest; to improve the efficiency (cost-effectiveness) of the adoption of the administrative acts in the interest of citizens and the public interest; to pave the way for the start of application of modern information and communication technologies for delivery of the administrative services (e- administration); to harmonize the Macedonian public administration to EU standards.[21]

[20] See more in: B. Davitkovski, A. Pavlovska-Daneva, E. Davitkovska, "Law on general administrative procedure – solution for all the problems of the inefficient administration", Pravni život, Časopis za pravnu teoriju i praksu, Udruženje pravnika Srbije, 2013, Beograd;

[21] See more in: Б. Давитковски., А. Павловска-Данева „Правна сигурност грађана у управном поступку", Рад изложен на међународној научној

7. Closing Thoughts

We may conclude, from the conducted research, that modern tendencies undoubtedly imply that there is a need to codify the rules which regulate acting and decision making by the institutions and other bodies in the European administration in the realization of the administrative function of the Union, in a single unifying regulation, which could be titled as "European Administrative Procedural Act"

A system of general administrative procedure materialises the concept of good governance, basic elements of which include openness, participation, accountability, effectiveness, and coherence of administrative action. Many authors recommen regulation of general administrative procedures by law and statute as is the case in many EU Member States and other countries of the Continental European legal tradition. There are very few countries where the principles of administrative procedures are not organised in one specific comprehensive piece of legislation. In these cases, the need for codification of procedural rules has in the past become equally apparent.

Standardization of the administrative procedure is essential for the purpose of efficient conduction of the procedure, which involves two or more bodies of the European Union or the Union and other member-states, for precise legal norming of the authorizations of these bodies in the process of conducting the administrative procedure, the forms of their adjustment and cooperation, as well as the terms imposed to them for undertaking an action. What we want to show is that if this idea is adopted and realized, during the realization of each reform on a national level, and on the level of the European Union, due attention should be taken for correct direction and harmonization of the European administrative procedure with the national procedure of the member-states. This results from the fact that regulation of the administrative matter is essentially an issue, which, according to the acts of the Union, has been left to the independent decision of the member-states, on a national level, in accordance with their political, social, historical and economic circumstances. What is expected from the introduction of this new model of decision making in the administrative matters is above all, unification of the rules of the procedure, which have been incorporated in several legal regulations (the incorporation agreements, decrees, recommendations, resolutions, etc.), simplification of the procedure, simplification of the cooperation between institutions on a national and international level, defining the competences and privileges of the competent bodies, providing greater availability, clarity and transparency of the persons whose rights and obligations are subject of the decision making process, strengthening the confidence of citizens in the institutions, strengthening the responsibility and control as regards the legitimacy of the adopted decisions.

The institutions authorized with the application of this law shall be required to adjust to the new condition, and shall be obliged to adjust the objective and resources they have at their disposal, and when they decide on a concrete administrative matter, they shall be obliged to

конференцији „Правна сигурност у условима транзиције“, на Правном факултету Универзитета у Београду 5-6 новембар 2013;

comply with the principles of the administrative procedure and promote responsible work and quality settlement of the issues.

In regards to the national legislations, this unifying regulation would help for simpler convergence of the national administrative procedural law with that of the Union. Furthermore, the European law on administrative procedure may be a reason to initiate cooperation with member-states in relation to exchange of good practices between national administrations and EU administration, which would fulfill the provision of article 198 from the Treaty on the functioning of the European Union.

Refferences:

1. Б. Давитковски., А. Павловска-Данева „Правна сигурност грађана у управном поступку“, Рад изложен на међународној научној конференцији „Правна сигурност у условима транзиције“, на Правном факултету Универзитета у Београду 5-6 новембар 2013;
2. B. Davitkovski, A. Pavlovska-Daneva, E. Davitkovska, “Law on general administrative procedure – solution for all the problems of the inefficient administration”, Pravni život, Časopis za pravnu teoriju i praksu, Udruženje pravnika Srbije, 2013, Beograd
3. B. Davitkovski, A. Pavlovska-Daneva, E. Davitkovska “A New Concept of the law on Administrative Procedure: Challenges and Advantages” Business Law, Edition for the Theory and Practice of law, Skopje 2013, pp. 173-189
4. D. Đerđa, Pravila upravnog postupka u europskom pravu. Zb. Prav.fak. Sveuč. Rij. (1991) v. 33, br. 1, 109-144 (2012)
5. S. Lilić, Evropsko upravno pravo, Beograd, 2011, str.16
6. I. D. Aviani, Pojam I izvori upravnog prava Evropske unije
7. Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1999/468/EC). Amended by Council Decision 2006/512/EC, of 17 July 2006
8. Towards an EU Administrative Procedure Law? *Report of the ReNEUAL Conference* Brussels March 15th &16th – *(draft)*
9. Treaty on the Functioning of the Eropean Union (C.83/47)
10. Charter of the Fundamental Rights of the EU (C.364/1)
11. European Code of Good Administrative Behavior (http://www.ombudsman.europa.eu/en/resources/code.faces#/page/1) (accessed 17.4.2014)
12. European Parliament resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union (2012/2024(INI))

13. Administrative Procedures in EU Member States (Conf. on PAR adn European Integration) Budva, Montenegro 26-27 March 2009;
14. Стратегија за донесување на нов Законот за општата управна постапка, Влада на РМ 2013;
15. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007 (2007/C 306/01)
16. Rush, Wolfgang. "Citizens First Good Administration Through General Administrative Procedures", Modernizing Administrative Procedures, Meeting EU Standards, ReSPA 2011;