

The Role of National Ombudsman's Offices in Promoting the Concept of good Administration in Albania, Macedonia and Kosovo.

The way ahead

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Abstract

The private persons in any democratic state should have a right to dispute the administrative decisions affecting their rights, freedoms or interests before (among others) competent independent courts. It is the key precondition for the principle of transparent and responsible public administration as an integral part of democratic governance. In addition to the "judiciary control of the administrative decisions", the private persons' human rights against the public administration may be also protected through the Ombudsman office. The increasing importance of the afore mentioned issues relating public administration and the various types of control of the administrative acts been long time ago reflected in the mandate of almost all of the key international inter-governmental organizations, especially the European ones including the Council of Europe, the European Union and the OSCE. The establishment of both effective public administration and administrative justice system has been for a long period of time among the most "important and urgent" final strategic objectives of almost any country in the Balkans region, including Albania, Macedonia and Kosovo. This process included (among others) establishing European-like Ombudsman offices in these countries.

Against the above background the present paper firstly explains why the administration action must be controlled by the public, and it then outlines the European Right of Good Administration, the Ombudsman Office's mandate. This is then followed by presenting the concept of European Administrative Space in terms of the Role of the OECD-SIGMA in Developing the Standards of Good Administration. Against the preceding sub-sections the paper further presents the basic legislative framework for action of the National Ombudsman Offices in Albania, Macedonia and Kosovo, which is then followed by a short review of the actual state of play of the Principle No.2 of the SIGMA European Principles for Public Administration (as specifically related to the accountability) in the three countries, on the basis of the relevant international monitoring reports, including the most recent EU Commission's Progress Report on those countries. The paper finally concludes that Albania, Macedonia and Kosovo all have already established the basic legislative framework for establishing their national administrative judiciary system alongside which there is the one related to their own

national Ombudsman office as well, while all of them are still more or less far from being fully in line with the principle No.2 of the SIGMA European Principles for Public Administration (as specifically related to the accountability). As to later, the paper particularly stresses that Albania, Macedonia and Kosovo have (more or less) adopted rules on independent status, functioning and powers of their own ombudsman office and other oversight institutions in line with the relevant international standards, but their administrations are still too far of being ready and willing to fully implementing the ombudsman institutions` recommendations. The fully implementation of the above Principle No.2 is therefore one of the most important and serious present challenges for Albania, Macedonia and Kosovo on their individual road towards the EU membership, in terms of building up their individual European administrative capacity.

Keywords: administrative justice; administration; good administration; implementation; European Principles for Public Administration; EU Progress Reports; ombudsman office; reforms.

Introduction

The state authorities in any country are the key points of interaction between the private physical and natural persons (on the one side) and the very State (on the other side). In determining the specific rights, duties and/or responsibilities of the private physical or natural persons, the state authorities daily adopt a various form of administrative decisions related to any specific civil, economic and/or social human rights, and thereby making deceive impact on the everyday life of the private persons. The states are always formally aimed to be formally as much closer to their citizens as possible by offering their political concepts related to all relevant issues of an immediate interest for their citizens. In this regard however one should recall that even the best political concepts of any state are most likely to fail if its public administration lacks the necessary capacity for practical implementation of those concepts in the specific society related reality¹. The later clearly explains why the political success of any government depends on the quality level of its public administration at central and local levels. This administrative power of any state (as defined above) however must not remain uncontrolled by the public, since the lack of any effective control of the state`s administrative acts is most likely to result in violations and misuses of the citizens` rights by the its public administrative bodies. The aforesaid clearly confirms the great importance of the private persons` right to dispute the administrative decisions affecting their rights, freedoms or interests before (among others) competent independent courts. It is the key precondition for the principle of transparent and

¹ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 5 to 29 June 1990, пароси 5.10 и 5.11.

responsible public administration as an integral part of democratic governance². But, in this context, one should underline that in addition to the “court or judiciary control of the administrative decisions”, there is also a series of other efficient means designed for protecting citizens` rights from possible violation and misuse by the public administration, including the one made through the Ombudsman office.

The increasing importance of the afore mentioned issues relating public administration and the various types of control of the administrative acts been long time ago reflected in the mandate of almost all of the key international inter-governmental organizations, especially the European ones including the Council of Europe, the European Union and the OSCE.

On the European Right of Good Administration and Governance

The increasing importance of the afore mentioned issues relating public administration and their direct relation with the both the role of ombudsman office and local self-government has been long time ago reflected in the mandate of almost all of the key international inter-governmental organizations, especially the European ones including the Council of Europe, the European Union and the OSCE.

The Council of Europe is the only and the oldest European international intergovernmental organization which has been conducting long time ago a huge number of specific legislative activities relating the administrative justice. In this regard, one should firstly mention the very popular European Convention on Human Rights and Fundamental Freedoms (ECHR), which has an increasing impact in the field of administrative justice. Namely, despite this convention does not include any specific provision on the good administration /governance it is still the European Human Rights Court (as established on this convention) the case law of which includes also the field of administrative law, especially from the perspective of Article 6 (Right to Fair Trial) and Article 13 (Right to Effective Remedy) of the very ECHR. This convention is completed with (among others) the European Charter on Local Government. In addition, the added value of this organization in the field of administrative justice is not based only on the increasing number of conventions from the rule of law and human rights related fields but also on the increasing number of recommendations as adopted by both its Committee of ministers and Parliamentary Assembly. In this regard, one should recall that the first step in this direction was the 1977 Council of Ministers Resolution (77) 31 on the protection of the individual in relation to the acts of administrative authorities, and the principle of good administration is integrally defined in the Recommendation Rec (2007) 7 of the Committee of ministers

² “Recommendation CM/Rec (2007)7 of the Committee of Ministers to member states on good administration”, Council of Europe, 20 June 2007.

of the Council of Europe on the good administration³, the annex of which includes a Code of Good Administration, stipulating all of the key principles in this context. This is completed with the Recommendation Rec (2004) 20 of the Coe Committee of Ministers on the judicial control of the administrative acts. All of those principles are however always to be seen in a close relation with other relevant conventions and recommendations of this Organization, including the particular important case law of the respective European Human Rights Court, as was affirmed even during the first conference of the supreme administrative courts' presidents in Europe in 2002^{4 5}.

Complementary role in above context has the European Union, the legal achievements in the field of administrative justice derives (among others) from Article 298 of its TFEU stipulating that "the institutions, bodies, offices and agencies of the Union in carrying out their missions, shall have the support of an open, efficient and independent European administration". This provision is closely related to Article 226 TFEU (ex. Article 193 TEC), which, defining one of the very first European Parliament's prerogatives, regulates that it may, at the request of a quarter of its members, set up a temporary Committee of Inquiry to investigate alleged contraventions or maladministration in the implementation of Union law. The provision does not explicitly narrow the maladministration cases on European administration, although it should be expected to employ this possibility in 'European matter', and not to investigate a particular national administration.

In addition, one should particularly underline that a number of particular provisions in the Treaties are related to administration and citizens' rights⁶, and in this regard, similarly, it is Article 20 of TFEU which includes the right to refer the cases of maladministration to the European Ombudsman.

The aforesaid clearly indicates that despite the EU member's states are independent in regulating their own administrative matters in lines with their own national traditions and administrative culture, the very EU has certain indirect means to influence its member states' administrations, without directly offering and prescribing obligatory downloading of the model for structures or functioning of the national administrations. The EU obliges its member states with duties in terms of results to be achieved⁷.

³ Recommendation CM/Rec (2007)7 of the Committee of Ministers to member states **on good administration**, as adopted on 20 June 2007.

⁴ First Conference of the Presidents of Supreme Administrative Courts in Europe "The possibility and scope of the judicial control of administrative decisions" 7-8 October 2002, Strasbourg CONCLUSIONS.

⁵ For more information, see at the Venice Commission (2011). Venice Commission - European Commission for Democracy through Law. Stocktaking on the Notions of »Good Governance, Study no. 470/2008, CDL-AD (2001)009. Retrieved November 16, 2017, from [http://www.venice.coe.int/webforms/documents/CDL-AD\(2011\)009.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2011)009.aspx). Google Scholar

⁶ Most of them are also included in the Charter, such as Article 15 TFEU that requires good governance and openness of the EU institutions, especially granting the right of access to documents.

⁷ For more information, see at Koprić, I., Musa, A., & Lalić Novak, G. (2011). Good administration as a ticket to the European administrative space. *Zbornik Pravnog fakulteta u Zagrebu*, 61(5), 1515-1560.

It therefore insists on specific standards, principles incorporated in different conventions, declarations, recommendations, directives and the likely, as adopted by its bodies, and on the basis of which the administrative system of any of its member or candidate states should be based on. These principles and standards concern the good governance⁸, human right protection, market-oriented administration, the administration as a public service in function of achieving the human rights and fundamental freedoms, all of which are contained the so-called *acquis communautaire*.

In above context, we may also see the added value of the European Ombudsman, which was introduced to the European political, administrative and legal systems by the 1992 Maastricht Treaty. Today, the Treaty on the Functioning of the European Union defines the Ombudsman as a means of ensuring the proper functioning of the EU institutions and establishes the right of every citizen to apply to the Ombudsman (art. 24)⁹. As a classical type of ombudsman in Europe and elsewhere, the European Ombudsman is granted the right and duty to receive and examine complaints from citizens and legal persons (residing or registered in the member states) concerning maladministration, in the meaning of the allegations of misconduct in the Union institutions, bodies, offices or agencies. Consequently, the European Ombudsman is primarily focused on the administrations of political institutions and various administrative bodies, focusing on their adherence to the principles of legality and, in broader meaning, to good administration. By promoting the concept of good administration, the Ombudsman is expected to help to improve and intensify the relations between the European Union and its citizens, and help to lower the democratic deficit. Since the Treaty provisions do not clearly define what kind of behavior falls under 'maladministration', beside illegality of actions and decisions, the European Ombudsman determined the content of the concept by himself by choosing the positive type of concept, explaining what kind of behavior is expected from the EU servants and officials. Consequently, in 1999, the Ombudsman drafted the Code of Good Administrative Behavior, which was adopted by the European Parliament in September 2001. Despite this Code is not legally binding for the EU institutions, bodies, offices and agencies, the European Ombudsman have the possibility to recommend, make warnings, and to give an opinion or advice to the institution or officer in question. Eventually, the Ombudsman is entitled and required to alarm the Parliament and the public about the practice or decision that qualifies as a case of maladministration. In a word, nevertheless, the Code has today exceptional value for European administrations, both supranational and national. The European Ombudsman had (among others) recommended to the European institutions and bodies to adopt their own respective codes of good administrative behavior, and one

⁸ Mendes, J. (2009). Good Administration in EU Law and the European Code of Good Administrative Behavior. *European University Institute, EUI Working papers, Law 2009/09, Department of Law*: 1-19. Google Scholar

⁹ See Kucsko-Stadlmayer, G., ed., *European Ombudsman – Institutions and their Legal Basis*. Springer Verlag, Wien, New York, 2008.

of the examples is the Code for the staff adopted by the European Commission in March 2000¹⁰.

It is also the above illustrated against which we may see the increasing strategic role and value of the EU's Charter of Fundamental Rights in the field of the European administrative principles. Namely, the importance of this Charter in this regard is based on the following its three special provisions: right to good administration (Article 41), right to access documents (Article 42) and right to refer to the Ombudsman (Article 43). In addition, there are numerous other rights, which have also impact on administrative behavior and structures, and are the content of 'good administration'¹¹

The above list of European legal and political instruments is, of course, completed with the increasing number of relevant documents as adopted by other intergovernmental organizations, including the ones adopted by the OSCE, such as its Copenhagen Document (1990), Moscow Document (1991) and OSCE Ministerial Council, Decision No. 7/08¹².

In summarizing the above mentioned, however, one should underline that what is the most important in above regard is that the promotion of the above mentioned international standards and their practical implementation at national level is impossible if there is no functional system of administrative judiciary system within the framework of which the ordinary citizens may effectively dispute the administrative acts affecting their specific human rights and /or interests. And alongside this system is also the Ombudsman, an additional, but non-competitive accountability layer that checks to see if the system is working to the benefit of citizens. The role of an Ombudsman is to let those who make the laws, and those who administer the laws know how those laws actually feel in practice to the people¹³.

¹⁰ The Code of Good Administrative Behavior – Relations with public for the staff of the European Commission in their relations with the public, OJ L 267, 20.10.2000, as part of the Commission's Rules of Procedure C(2000) 3614. It includes legal and non-legal rules, stressing the principles of service, independence, responsibility, accountability, efficiency and transparency, offering the possibility for citizens to lodge a complaint.

¹¹ This include the right to petition the European Parliament (Article 44), the right to the protection of personal data (Article 8), equality before the law (Article 20), non-discrimination (Article 21), the right to cultural, religious and linguistic diversity in the European Union (Article 22),⁴¹ the principle of equality between men and women (Article 23), access to services of general economic interest (Article 36), the right to an effective remedy and to a fair trial (Article 47).

¹² See in particular the OSCE Ministerial Council, Decision No. 7/08, "Further Strengthening the Rule of Law in the OSCE Area", Helsinki, 5 December 2008, para 4; <http://www.osce.org/mc/35494>.

¹³ See Emily O'Reilly, The Role of the Ombudsman in Modern Parliamentary Democracies Keynote introduction of the antiparliamentary seminar on The Ombudsman's Role in a Modern Parliamentary Democracy, 18th November 2015, available on <https://www.ombudsman.europa.eu/en/activities/speech.faces/en/61362/html.bookmark>

On the concept of European Administrative Space and the Role of the OECD-SIGMA in Developing the Standards of Good Administration

It is thus only the above short illustrated background against which we may properly understand also the basis of the increasingly used concept of European Administrative Space. Namely, this notion should be understood in the context of the above illustrated the consensus among the EU member states in relation to the basic components of the good governance, and which is specifically connected with the well-known Copenhagen criteria for EU membership including the additional one, i.e. so called Madrid criterion stipulating the need of developed administrative and judiciary capacity for implementing the EU acquis. The European administrative space is thus often defined as informal acquis of the EU related to the organization and functioning of public administration. Its creation, at least in the part offered as a model to the prospective member states, is mostly due to the activities of SIGMA -Support for Improvement in Governance and Management-, a joint initiative of the European Union (EU) and the Organization for Economic Co-operation and Development (OECD), financed by the EU, established by OECD and the European Commission's Phare Programme in 1992 as support to partner countries in their public administration reforms¹⁴.

The activities of SIGMA's support to the reform processes of public administration are divided into different areas, including legal frameworks, civil service, administrative justice and integrity; public expenditure management, external audit and financial control; public procurement; policy and regulatory systems. Within the scope of those priorities, Sigma supports the target countries by assessing the reform progress and identifying priorities for reform, supporting institution building and development of legal frameworks and procedures, and facilitating assistance from the EU and other donors. The mechanisms of SIGMA's support include advising, peer reviews/assistance, analysis and assessments, support to networks, preparation of different reference material and providing training and education (e.g. twinning programs). Important contributions to SIGMA's work are documents covering specific issues in governance and management - the Sigma papers. The standards developed and compiled within Sigma papers represent good practices and European standards of governance and management to which candidate countries are expected to conform within accession conditionality, in order to align their public administration structures and practices with those of the EU member states. Those standards have been thoroughly used in SIGMA's assessment reports, which have been prepared since 1999, at the request of the European Commission and as a contribution to its annual progress reports on EU candidate and potential candidate countries. The objective of Sigma assessments is to examine the extent to which the public administration systems in candidate

¹⁴ See more on www.sigmaweb.org.

countries correspond to the principles of the European Administrative Space. In its annual reports, the EU Commission is assessing the extent to which the institutional arrangements adopted by the candidate country and its administrative practices are compatible with principles of the EAS. The SIGMA's documents, although not legally binding, gather and codify good administrative practice and ways of doing things, and administrative standards that are backed up by the Commission's authority and the argumentation, functionality and usefulness in dealing with practical administrative problems. Moreover, spreading of the EAS is enhanced by the dissemination of principles and related concepts by the means of conferences, round tables, workshops and other events, and by the publication of the assessments and analyses of its experts. The emerging network of experts in different administrative areas helps to promote mutual learning and the convergence among the European administrative traditions. Moreover, the development of the EAS has been fostered by Union's need for a policy template for horizontal administrative reforms, based on the requirements stipulated by the Copenhagen and Madrid accession criteria. SIGMA's important role in creating the concept of the European Administrative Space (EAS) should be firstly seen in the light of the fact that the very notion of this concept was developed in its above mentioned Sigma papers published in 1998 and 1999. In this context, what is also to be particularly underlined is its Paper no. 27 entitled "European Principles for Public Administration"¹⁵, in which the EAS as defined "a metaphor with practical implications which 'represents an evolving process of increasing convergence between national administrative legal orders and administrative practices of Member States influenced by several driving forces, such as the jurisprudence of the European Court of Justice, economic pressures from individuals and firms and regular and continuous contacts between public officials of Member States, but also the legislative activity of European institutions and influence of EU legislation on the national legal framework. According to Sigma, the EAS includes a set of common standards within public administration, defined by law and enforced in practice through procedures and accountability mechanisms. Those principles of EAS are divided into four main groups: the rule of law - legality, reliability and predictability; openness and transparency; accountability; efficiency and effectiveness¹⁶.

As seen from the perspective of the present paper's key aim, however, one should in particular present the principle No.2 related to the accountability, according to which "Functioning mechanisms should be in place to protect both the rights of the individual to good administration and the public interest", and to this aim the states should ensure (among others) that:

¹⁵ OECD (1999), "European Principles for Public Administration", *Sigma Papers*, No. 27, OECD Publishing, 1999, [URL: <http://dx.doi.org/10.1787/5kml60zwd7h-en>]

¹⁶ Ibid.

“the operations of all administrative bodies are subject to scrutiny by ombudsman or other oversight institutions, courts and the public, based on the legislation; Rules on independent status, functioning and powers of ombudsman and other oversight institutions meet international standards and are regulated by law, providing for a coherent and efficient system; Oversight bodies have a sufficient level of independence from the government; and the administration implements the ombudsman institution’s recommendations¹⁷.”

The basic legislative framework for action of the National Ombudsman Offices in Albania, Macedonia and Kosovo

The establishment of both effective public administration and administrative justice system has been for a long period of time among the most “important and urgent” final strategic objectives of almost any country in the Balkans region, including Albania, Macedonia and Kosovo. This process included (among others) establishing European-like Ombudsman offices in these countries. The latter is presently done within the framework of the Stabilization and Association Agreement which each of these countries has concluded with the EU.

In above context, and as seen from the perspective of this paper’s key aim one should firstly stress that all relevant international (European) monitoring reports confirm that all of the above three countries have already established legislative framework for their national administrative judiciary system alongside which there is the one related to their own national Ombudsman office as well. In this regard, one should however recall that, unlike Kosovo, the basic legal framework for both the concepts of “good governance” and “administrative judiciary” and the process of establishing an ombudsman office, Albania and Macedonia have adopted even before they had concluded their individual Stabilization and Association Agreements with the EU. Namely, both countries have earlier entered the full membership of both the OUN and the key European intergovernmental organizations, including the Council of Europe and the OSCE, which has significantly contributed to the process of introducing and further developing the new legislative framework related to both the administrative justice (i.e. administrative capacity) and the ombudsman office in these two countries in particular¹⁸.

But, despite the aforesaid, in the case of Albania, we may still underline that the above illustrated process of developing the administrative justice system and the relevant forms of the control of administrative action have received a far increasing dynamics following the entrance into force (in April 2009) of its Stabilization and Association with

¹⁷ See also Woehrling, J.-M., *Judicial Control of Administrative Authorities in Europe: Toward a Common Model*, Papers presented at the “Regional Workshop on Public Administration Reform and EU Integration”, Budva, 5-6 December 2005.

¹⁸ Both countries have earlier ratified all of the relevant legal instruments of the Council of Europe, including (among others) the European Human Rights Convention and the European Charter on Local Self-government.

EU, resulting with granting the country with a candidate status for EU membership (on 27th June 2014). The later has proclaimed de facto the beginning of the so-called third stage of development of the Albanian national administrative justice system, as was illustrated by adoption of the Law No. 49/2012 on the Organization and Functioning of the Administrative Courts and resolving of administrative disputes” on the basis of which the administrative courts have been established for the first time in the country. The later was reinforced by the recent adoption of the Law No. 44/15, introducing the New Code of Administrative Procedure¹⁹. The above laws are presently an integral part of the broader national legislative framework related to administrative justice²⁰ within which one should analyze the role and work of the Albanian Ombudsman Office, as defined by both the Albanian Constitution²¹ and the Law on Ombudsman, defining all relevant aspects related to the role and competencies of the Ombudsperson²².

Similarly, in the case of the Republic of Macedonia we may also see a number of inter-related stages in the process of developing its national system of administrative justice, which has started de facto with its entrance the membership of some of the key international intergovernmental organizations, including the OUN, the Council of Europe and the OSCE. Due to the later, as was the case with Albania, Macedonia has earlier ratified almost all of the relevant conventions of both the OUN and the Council of Europe, including the European Human Rights Convention and European Charter on Local Self-government, which has significantly influenced the process of introducing and further developing the new legislative framework related to both the country administrative justice system (i.e. its administrative capacity) and the ombudsman office particularly.

But, despite the aforesaid, as was the case of Albania, we may still underline that the above illustrated process of developing the administrative justice system and the relevant forms of the control of administrative action in Macedonia have also received a far increasing dynamics following the entrance into force of its Stabilization and Association Agreement with EU (in April 2004), resulting in 2005 when the European Council has granted Macedonia a candidate status for EU membership.

As was the case with Albania, the basic legislative framework for introducing and further developing of both the above illustrated concepts of good governance and administrative judiciary and the Ombudsman office has been firstly provided

¹⁹ As published in the Official Gazette of the Republic of Albania of 25th May 2015.

²⁰ This includes the laws on the courts, public administration, the access to public information, legal aid, notary office, local government, etc.

²¹ According to Article 60 of the Albanian Constitution: *“The People's Advocate defends the rights, freedoms and legitimate interests of individuals from unlawful or improper action or failure to act of the organs of public administration. The People's Advocate is independent in the exercise of his duties”.*

²² Law no. 8454 dated 4.02.1999 "On the Ombudsman", amended.

by its Constitution²³, on the basis of which the country has up-to date established a comprehensive legislative framework in the above fields²⁴. As to the later, one should still stress the particular importance of the establishment of the country's administrative courts in May 2006. As seen from the most recent perspective, this permanent process of introducing legislative and institutional changes in the above fields has resulted in 2015, when the country adopted its new Law on General Administrative Procedure²⁵. All of the afore-mentioned is actually the broader national legislative framework related to administrative justice system in Macedonia²⁶ alongside which there is also the Macedonian Ombudsman Office, which (according to both the Macedonian Constitution and the Law on Ombudsman) is an additional, but non-competitive accountability layer that checks to see if the system is working to the benefit of citizens²⁷.

And lastly, as concerns the Kosovo, and for the purposes of the above mentioned key aim of the present paper, unlike Macedonian and Albania, one should firstly underline that the process of developing the administrative justice system in this country following its independence in 2008 was permanently determined by the issue relating to its international recognition, due to which the very country did not enjoy the above illustrated benefits deriving from the membership in (among others) the OUN and the Council of Europe. From most recent perspective, however, the most important moment in this regard was the signature of Kosovo's Stabilization and Association with EU (of 2015) which has entered into force in April 2016. The later does not mean nevertheless that Kosovo did not have any relation with the EU before 2015²⁸.

In the context of the aforesaid very short background, and as specifically seen from the perspective of the above illustrated Madrid criterion for EU membership, in the case of Kosovo we may also say that it is firstly its Constitution, which has been permanently offering (as was the case with Albania and Macedonia) the basic normative framework for further developing its both national administrative justice system and

²³ In this regard, one should emphasize that the Macedonian Constitution also contains a wide series of relevant provisions, as judged from the perspective of the key aim of the present paper. This includes (among others) Article 8 and Article 15, as well as the provisions on the judiciary, ombudsman office, basic human rights and freedoms, and the likely.

²⁴ This includes the laws on the courts, public administration, the access to public information, legal aid, notary office, local government, anti-discrimination, gender equality, etc.

²⁵ In this context, one should also take into account that in Albania and Macedonia, there are also specific administrative procedures regulated by separate laws in the specific fields, such as inspection matters, customs affairs, the expropriation related issue, etc.

²⁶ This also includes the laws on the courts, public administration, the access to public information, legal aid, notary office, local government, etc.

²⁷ For more information, see at Davitkovski, B., and Pavlovska - Daneva, A. (2009). Realizing Citizens' Rights through the Administrative Procedure and Administrative Dispute in the Republic of Macedonia. *Hrvatska javna uprava*, 9 (1), 125-140.

²⁸ See, European Partnership, Council Decision 2004/520/EC. Brussels. 14.06.2004; Communication from the Commission – A European Future for Kosovo, Com/2005/0156 final. Brussels. 20.04.2005.

an Ombudsman office²⁹. On the basis of its Constitution, this country has also up-to date established almost comprehensive legislative framework in the above fields³⁰, i.e. administrative justice system alongside which there is also the Kosovo Ombudsman Office, which (as judged in the light of both the Kosovo Constitution³¹ and the 2015 Law on Ombudsman), it is an additional, but non-competitive accountability layer that checks to see if the system is working to the benefit of citizens as well³². In this context, one should particularly underline that the most recent relevant legislative changes include both the new Law on General Administrative Procedure³³, Article 13 of which guaranties the right to legal remedies (administrative and judicial remedies) against an administrative action or inaction of a public authority that violates a person's right or a legal interest, and the Law on Administrative Disputes³⁴, the purposes of which is to provide judicial protection of the rights and legal interests of natural, legal and other persons whose rights and interests have been violated by individual decisions or actions of public administration bodies.

The actual state of application of the principle No.2 of the SIGMA European Principles for Public Administration in Albania, Macedonia and Kosovo

Although Albania, Macedonia and Kosovo have their own specific national social, political and other circumstances, and each having its own pace and dynamics of approaching the EU, all of these countries nevertheless have during the last several years adopted a number of laws, which formally reflect the European principles and standards in the fields of both the administrative justice system and the ombudsman-led control of administrative action. But, having said the afore mentioned we may not claim that there is thus a functional system of administrative judiciary system in any of these countries, alongside which there is also an Ombudsman Office being seen as additional and non-competitive accountability layer that checks to see if the system is working to the benefit of citizens in any of these countries! This is particularly confirmed

²⁹ In this regard, please particularly see the following provisions of the Kosovo Constitution: Article 32, guaranteeing the right to remedy against court and administrative decisions which violate the rights or interests of Kosovo citizens, which is completed with Article 54 stipulating that this remedy should be affective one. In the same time, one should particularly take into account Article 53, according to which "the human rights and fundamental freedoms, as guaranteed by this Constitution, should be interpreted consistently in line with the court decision adopted by the European Human Rights Court".

³⁰ This includes the laws on the courts, public administration, the access to public information, legal aid, notary office, local government, anti-discrimination, gender equality, etc.

³¹ See Article 132 of the Kosovo Constitution defining the role and competencies of the Ombudsperson.

³² In this regard, please also see Article 137 of the Kosovo Constitution, according to which the Auditor-General of the Republic of Kosovo audits: (1) the economic activity of public institutions and other state legal persons; (2) the use and safeguarding of public funds by central and local authorities; (3) the economic activity of public enterprises and other legal persons in which the State has shares or the loans, credits and liabilities of which are guaranteed by the State.

³³ Law no. 05/L-0-131 on General Administrative Procedure, Official Gazette of the Republic of Kosovo / no. 20/21 June 2016, Pristina, at: <http://map.rks-gov.net/getattachment/beba5693-99b9-4c04-869a-50bbc431dc26/LIGJI-PER-PROCEDUREN-E-PERGJITHSHME-ADMINISTRATIVE.aspx>.

³⁴ LAW No. 03/L-202 on Administrative Conflicts, Official Gazette of the Republic of Kosovo / Pristina: Year V / No. 82/21 October 2010 at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2707>.

by (among others) the most recent EU Commission` reports on the individual progress made by any of these three countries in their individual process of association with the EU.

In above context, and as stated in the most recent EU Commission`s Progress Report on Albanian³⁵, "Albania is moderately prepared in what concerns the reform of its public administration.

"Further progress is key to consolidate achievements towards a more efficient, depoliticized, and professional public administration.... ..., substantial efforts are needed to increase the administrative capacity of local government units to carry out their expanded competencies.... the work of the Ombudsman`s Office continued to be limited by a lack of funding and personnel and its central and local offices need to be upgraded Accountability lines and reporting between institutions are regulated, but inconsistencies between different types of subordinated bodies persist... The number of unanswered Ombudsman`s recommendations and requests for information remained significant, compromising citizens` right to good administration³⁶."

Although the right to access public information is regulated by law since 2015, the rate of response to citizens` requests remained low..... The capacity of the Commissioner for the Right to Information and Protection of Personal Data needs to be increased so that the implementation of the law is properly monitored.... The right to administrative justice is governed by the law on administrative disputes and the law on administrative courts. The overall capacity of the administrative court system to deal with the backlog of cases needs to be significantly improved....".

Similar points may be seen also in the latest EU Commission Progress Report on Macedonia³⁷, according to which:

"The country`s judicial system has some level of preparation. The authorities failed to demonstrate necessary political will to address effectively the underlying issues as identified in the 'Urgent Reform Priorities'. Serious challenges to the democratic governance of the country continued, raising concerns about state capture of institutions and key sectors of society. Independent regulatory, supervisory and advisory bodies were not able to carry out their functions proactively, effectively and free from political pressure, leading to limited oversight of the executive. Strong political commitment is necessary to guarantee the independence of the public administration and respect for

³⁵ Brussels, 9.11.2016 SWD (2016) 364 final COMMISSION STAFF WORKING DOCUMENT **Albania 2016** Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2016 Communication on EU Enlargement Policy {COM (2016) 715 final}.

³⁶ In this regard, please also see the ANNUAL REPORT on the activity of the People`s Advocate 1st January – 31st December Year 2016, Tirana, April 2017.

³⁷ Brussels, 9.11.2016 SWD (2016) 362 final COMMISSION STAFF WORKING DOCUMENT **The former Yugoslav Republic of Macedonia 2016** Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2016 Communication on EU Enlargement Policy {COM (2016) 715 final}

the principles of transparency, merit and equitable representation. The Ombudsman continued to work efficiently but systemic follow-up of his repeated recommendations is required from a number of institutions. Concerns continued to be expressed about excessive classification of documents by the government as confidential, thereby impeding citizens' right to access public information. On the right to administrative justice, the current appeal procedure remained onerous, complex and lengthy, comprising several appeal layers. Administrative courts' efficiency increased, but delays in enforcing court rulings remained. The right to seek compensation and the liability of public authorities in cases of wrongdoing is in place but data on compensation for damages is still not available. Equal access to public services is partially in place. The legislative framework on general administrative procedures was amended, simplifying more than 180 special administrative procedures. A new approach and substantial training at central and local level are needed to ensure it is applied uniformly. The lack of implementation of the recommendations in last year's report and the delays in implementing the new legal framework have compromised the declared political support and the commitment to the principles of transparency, accountability and merit in public administration. This also limits the financial sustainability of a wider public administration reform agenda"³⁸."

And lastly, similar points may be also found in the most recent EU Commission Progress Report on Kosovo³⁹, where it is stated (among others) the following:

"Kosovo has some level of preparation in the reform of its public administration. Kosovo did not address the Commission's recommendations in the area of accountability. In the coming year, Kosovo should in particular: address the issue of the growing backlog of administrative cases in the Basic Court of Pristina, by ensuring funding to increase the number of judges and by improving the working conditions of the Court (e.g. facilitating implementation of the electronic case management system) The state administration is organized in a fragmented way which does not ensure effective lines of accountability. Citizens' right to good administration is being addressed by oversight institutions such as the Auditor General and the Ombudsman. Their recommendations are not systematically implemented by all institutions, although there has been some improvement during the reporting period"⁴⁰."

The right to access public information is regulated in the law on access to public documents. Over the past two years the number of requests unanswered or refused was low. The new law on general administrative procedures, adopted in May 2016, aims to improve the right to administrative justice, together with the planned new law on administrative disputes. The increasing backlog in resolving administrative

³⁸ In this context, similar points may be also found in SIGMA Baseline Measurement Report on Macedonia, The Principles of Public Administration, April 2015.

³⁹ Brussels, 9.11.2016 SWD (2016) 363 final COMMISSION STAFF WORKING DOCUMENT Kosovo* 2016 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2016 Communication on EU Enlargement Policy {COM (2016) 715 final}

⁴⁰ In this regard, please also see Kosovo Ombudsperson's Annual Report 2016. No.16, Prishtina 2017, which is available on www.ombudspersonkosovo.org/.../docs/Annual_Report_for__2016_-_OIK_978633.pdf.

disputes is damaging public confidence in the court system. The backlog stood at 5 380 unresolved cases at the end of 2015, an increase of 1 341 from 2014. The right to seek compensation is not yet secure because the legislation is fragmented and there is no specific law on public liability”⁴¹.

Some Conclusions

A democracy, as it is well-known, is not a static thing and can never be taken for granted. It needs constantly to be nurtured and to be protected and this is true whether we are talking at European or national level, about EU member states or those countries yet to become member states. Healthy democracies have a system of checks and balances, at executive, legislative and judicial level and each of these plays its own unique and vital role in this democratic balance. And alongside this system is the Ombudsman, an additional, but non-competitive accountability layer that checks to see if the system is working to the benefit of citizens. The role of an Ombudsman is to let those who make the laws, and those who administer the laws know how those laws actually feel in practice to the people.

The establishment of both effective public administration and administrative justice system has been for a long period of time among the most “important and urgent” final strategic objectives of almost any country in the Balkans region, including Albania, Macedonia and Kosovo. This process included (among others) establishing European-like Ombudsman offices in these countries as well. The latter is presently done within the framework of the Stabilization and Association Agreement which each of these countries has concluded with the EU.

In above context, and as seen from the perspective of this paper’s key aim we may firstly conclude that all relevant international (European) monitoring reports confirm that more or less Albania, Macedonia and Kosovo all have already established the basic legislative framework for establishing their national administrative judiciary system alongside which there is the one related to their own national Ombudsman office as well. As judged, however, on the basis of their latest EU Progress, one should conclude any of these countries is still more or less far from being fully in line with the principle No.2 of the Sigma European Principles for Public Administration (as specifically related to the accountability).

According to this this Principle, “functioning mechanisms should be in place to protect both the rights of the individual to good administration and the public interest”, and to this aim the states should ensure (among others) that: the operations of all administrative bodies are subject to scrutiny by ombudsman or other oversight

⁴¹ In this regard, please also see SIGMA BASELINE MEASUREMENT REPORT for 2015 and 2017, available at OECD Publishing, Paris, <http://www.sigmaxweb.org/publications>

institutions, courts and the public, based on the legislation; rules on independent status, functioning and powers of ombudsman and other oversight institutions meet international standards and are regulated by law, providing for a coherent and efficient system; oversight bodies have a sufficient level of independence from the government, while the administration implements the ombudsman institution's recommendations. Albania, Macedonia and Kosovo have (more or less) adopted rules on independent status, functioning and powers of their own ombudsman office and other oversight institutions in line with the relevant international standards, but their administrations are still too far of being ready and willing to fully implementing the ombudsman institutions' recommendations.

The fully implementation of the above Principle No.2 will consequently remain one of the most important and serious challenges for Albania, Macedonia and Kosovo on their individual road towards the EU membership. Any of these countries has been presently undergoing the most difficult stage of their overall strategic reforms: proper and timely implementation of their relevant laws regulating the administrative justice system alongside which there are their Ombudsman Offices. The further development process of the administrative capacity of any of these countries (as seen from perspective of the Madrid criterion for EU membership) must therefore not permanently consist of only adopting laws and different strategy policy documents in those fields. In addition, the successful reform in this very complex area does not consist of (and must not end with) establishment of new administrative courts, but there is a need of building up of really effective and fully independent administrative courts, as an integral part of the national broader judicial system of any of these countries, alongside which one should see and further develop and reinforce the above illustrated formal mandates of the Ombudsman Offices of these countries.

In closing, one should recall that in well-functioning democracies, the Ombudsman, the people, the parliament, and the administration must form an essential circle of trust. The people must trust the Ombudsman and the administration must trust the Ombudsman. In turn the Ombudsman must trust the administration to accept its recommendations in most cases and if not, must trust parliament for support. If that trust is damaged in any part of that circle, the Ombudsman cannot function as it should.

Albania, Macedonia and Kosovo have presently a real chance to start finally the building up –process of the abovementioned circle of trust in their societies, and this chance derives from their individual Stabilization and Association Agreements with the EU, the implementation of which should be based on proper implementation of any of the specific recommendations as contained in their above mentioned individual EU Progress Reports.

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