



UDC 35.071+342.9(497.11:4-672EU)
Manuscript received: 12.09.2014.
Accepted for publishing: 21.10.2014.
Original scientific paper

Serbian Political Thought
No. 2/2014,
Year VI, Vol. 10
pp. 105-131

Dejan Milenković¹
Faculty of Political Sciences, Belgrade

Serbian Public Administration Reform in the Light of the European Administrative Space Principles²

Abstract

European integration process influences to the harmonization of different areas of law. The concept of the European Administrative Space in the European Union has been developing for the last thirty years. It includes the set of minimum common principles and standards governing the organization, activities and functioning of administrative bodies in the Member States and potential candidates as well. This includes significant changes and administrative reform in the process of Serbia's membership negotiations. Serbian administrative capacities have to be in compliance with the standards of the European Administrative Space with purpose that in the future Serbia or its administration can successfully implement the regulations adopted by the Union. The process of administrative reform in Serbia is carrying out for ten years. In different cycles this process was faster or slower. Comparative analysis of the European administrative space standards and the process of administrative reform in Serbia indicate that Serbia, perhaps not fast enough, is increasingly adapting to these standards.

Keywords: European Administrative Space, public administration, Strategy of the Public Administration Reform, National Programme for Integration of Republic of Serbia into European Union.

1 Associate professor
dejan.milenkovic@fpn.bg.ac.rs

2 This paper is a result of the scientific research project entitled "Political Identity of Serbia in the Local and Global Context", implemented by the University of Belgrade - Faculty of Political Sciences (reference number 179076).

Introduction - General Review of the European Administrative Principles Creation

The term the “European administrative space” (EAS) has been used to describe an increasing convergence of administrations and administrative practices at the EU level and various Member States’ administration with the “common European model” (Olsen 2003: 506). At the first glance, public administration has always been an internal issue of the Member States. As the European Union itself has no “administration”, national public administrations have to implement the directives and other regulations of the European Union so that European citizens can enjoy the rights guaranteed by the Agreements of the EU, no matter in which country they live. This fact justifies the interest of the European Union to ensure that each national administration has a comparatively good level of quality and professionalism and to be interested in the administrative capacities of its Member States. On the other hand, the EU legislation has a big impact on the economic and social conditions in the Member States and thus their economic competitiveness. Considering that the national public administration and judiciary are guarantees for its implementation, the interest of the Member States for the public administration in other Member States has increased over time. This interest in the administrative capacities and judiciary in the European Union is even greater with the respect to the future Member States (Cardona 2009: 1). Nowadays, numerous meetings at the EU level are dedicated to the “standardization of a common administrative clock of European governance” (Ekengren 1997:79).

Often it is claimed, that the European Union as a community based on the law, could be more precisely called the community based on the administrative law. Since the establishment of the European Community and the European Union, it is nothing else but the Community of the Administrative Law. At the beginning unwillingly and under the pressure of the comparative law, through the Union it arose from the frame of the national isolation, which exceeded the former narrow horizons and opened itself significant prospect for future development (Schwarze 1992: 3-4).

As a support to this thesis is the fact that even in the Treaty of Rome from 1957 four freedoms were determined: free movement of goods, services, people and capital, which meant that national public administrations of EU Member States must work in such a way to ensure

effective implementation of these freedoms in all aspects. Even each Member State has complete freedom to decide on ways and means to achieve the objectives outlined in the agreements, the EU has developed common principles and tools, which is particularly noticeable within the principle of administrative law and a little less in the very organizational structure of the public administration of the Member States, where there are still numerous and different state administration organs, as well as other institutions and bodies.

By establishment of the Single European Market gradually changed the character of administrative activities. National administrations are becoming an important factor of encouraging and development of economy and protection of human rights. Today, good governance, economic development and social cohesion are among the basic components of democratic development of modern Europe and its administrative space. In accordance with tradition, in European countries, state administration becomes the guarantee of the welfare state that provides protection of civil rights, peace and order, social and political stability of the society (Kavran, Vukašinić 2004: 11).

Although indirect, the link between the accession of new states into the European Union and public administration reform is real. Member States have to be able to implement public policy and EU legislation in their countries. To make this, they have to have an administration that functions well. This is a very important requirement for the EU as a whole and for individual Member States. As a country is approaching to the accession to the EU, the connection between European integration and public administration reform seems all stronger. It is important that the European Commission put great accent in its opinion on the ability of administrations of the Member States to implement a system of European legislation (*acquis communautaire*).³

1. The Role and Importance of the European Court of Justice in the establishment and creation of the Principles of EAS

Development of the EAS had been evolutionary and fluid. (Hofmann, C.H. 2008: 662). Legislative activity of the European institutions is an important source of the common European administrative law,

³ Compare: SIGMA paper No. 23: Preparing Public Administrations for the European Administrative Space, OECD, 1998.

which is implemented as national law in the EU Member States. This European administrative law is mostly special administrative law and it refers to the number of sectors. However, there is a horizontal legislation, such as legislation that provides public procurement or public systems of internal financial control. Another source of administrative approach is the constant interaction between civil servants of the Member States and civil servants of the European Commission, which fosters a unique understanding on how to implement EU policies and legislation at national level (Cardona 2009: 4).

However, both primary and secondary sources of the EU legislation are combination and mixture of continental and precedent law, and their characteristics and nuances are particularly evident in the practice of the European Court of Justice, also as a main source of the administrative law of the European Union. Before this court, among other things, can be initiate: procedure for determining the legality of acts of the institutions of the Union, then the procedure that determines whether the Member States meet their obligations under the legislation of the Union, as well as the procedure for obtaining a prior opinion of the Court as to ensure uniform interpretation of the Union legislation and establish cooperation with national courts (Kavran, Vukašinović 2004: 19).

As the European Union does not have its own military or police, nor has a direct means of enforcing its authorities, it must largely rely on the Member States. Therefore the central judicial power embodied in the European Court of Justice is relevant to the integration process, because it ensures the respect of such rules in the interpretation and application of the sources of the Union law.

The European Court of Justice in its judgments has defined a number of principles of administrative-law nature referring to the general principles common to the member states that they have to accept within its legal system when implement EU law (Schwarze 1992: 10-30). This means that the Court's judgments do not match with the particular country's legal system, but its legal practice in fact present a set of influences that come from practically all the EU countries. By applying the method of comparing individual national laws, the Court found a number of general principles of administrative law that are crucial to build the Community administrative law. These principles are: reliability and predictability (legal certainty), openness

and transparency, accountability and efficiency and effectiveness (Milenković 2013: 314-315).

Reliability and predictability is a principle that stems from the rule of law. It consists of a group of principles, such as principles of legality, proportionality, professional integrity, non-discrimination, procedural justice and other. According to the principle of legality, obligation of the administration is to act in accordance with the law (legally), to counter the arbitrary decision-making and that the decision brought is in accordance with previous two principles, to be socially justified (legitimate). Thus, the principle of legality is necessary connected with the principle of proportionality, which implies that the administration may impose obligations to citizens only to the extent necessary to achieve the purpose of these measures, namely the measures taken by the state must be proportionate to the objectives which need to be achieved. The origin of the principle of proportionality is related to (dis)trust of citizens towards the discretion of the authority of the state and for their desire to ensure their fundamental human rights. The principle of proportionality is thus considered as subjective form of the principle of the rule of law, expressed in the request that the state activity is not only legal but fair (legitimate or socially justified). The principle of reliability and predictability supports the principle of professional integrity in public administration (Lilić, Golubović 2011: 72-74). It refers to the impartial and independent work of the administration. Conflict of interests and unequal treatment of clients, personal affinities in decision-making, accepting bribes, great desire for advancement, presents some of the reasons which threaten the professional and independent work of civil servants. Principle of procedural justice that guarantees impartial implementation of the law, respect of parties and its dignity should be also mentioned (Rabrenović 2002: 160-161).

The principle of openness and transparency in a relation to the work of administration means that everyone who is connected to the administrative acting should be familiar with the basics of such acting. At first, this principle meant a duty to inform the party with all the factual and legal facts relevant to the decision making. This principle has been improved significantly with the establishment of the right to free access to information as everyone's right to seek and receive relevant information from the holders of state authority which

is of public interest in order to effectively provide access in the work and actions of the public authorities (Milenković 2010: 35)

Principle of accountability means that each administration organ must be responsible for its actions to other administrative, legislative or judicial authorities. This principle, through development of comparative law is expanding and starts to include external control of the administration by independent and autonomous bodies like the Ombudsman, Commissioner for Information, Committee for resolving the conflicts of interest, Audit institution and others. Establishing clear procedures for effectively performing duties and ensuring compliance with the rules of procedure and the use of public authority in accordance with the law, form the basis of all forms of control, and ensure the principle of accountability of the administration (Kavran, Vukašinović 2004: 23).

Principles of efficiency and effectiveness are typical principles of management. With the principle of efficiency is achieving the balance between invested sources and accomplished results, while the principle of effectiveness refers to the successful achievement of the objectives of the administration in resolving problems of public interest, and is mainly related to the analysis and evaluation of administrative policies.

All these mentioned principles are a reflection of the community law, comparative law of the Member States, but of the realization of strategies and transition of administrative systems as well, not only in the member states but also in many other countries of the world. However, for the countries in transition in Europe they are of special importance, because the admission of the new states into the EU is not possible without the custom modern public administration, because such a state would not have the capacity to meet the current demands of the Union. (Rabrenović 1998: 227). Thus, modern administration has become a requirement for the membership in the EU.

2. The Importance of the EAS Principles Implementation for Admission to the European Union

The process of European integration influences on the harmonization of different areas of law. Harmonization of the public law has always been complex. The concept of the European administrative space,

which was created and developed in the past thirty years, as a set of minimum common principles and standards governing the organization, operation and functioning of the administration organs also implies a significant changes and administrative reforms in the process of the accession of Serbia to the EU membership. This is particularly certain after Serbia has signed the Stabilization and Association Agreement (SAA) in February 2008, which was later ratified, and after Serbia submitted its application for membership in the European Union on 22 December 2009 and the European Commission (EC) adopted the decision on forwarding it to the EU on 25 October 2010.

As in the European countries different ways to organize the state exists, the issue of harmonization of the state administrations was specific. Today, the process of harmonization of the administrations in Europe is primarily viewed through the prism of the already mentioned general principles of the European administrative space, regardless of whether it is a constitutional monarchy with the administration on two levels as is the case in Denmark, or the centralized unitary state without region in Ireland, centralized deconsecrated state in France, a unitary state with the autonomy of nationalities and regions in Spain, or a federal state with a high autonomy of states as in Germany. A strong interaction between EU legislation and national administrations of the Member States, led to changes in national administrative systems and encouraged the process of their harmonization. For the Union the way of organizing the national administrative systems is not important, but the effective implementation of relevant provisions of Community legislation, or the legislation of the European Union.

Even in 1993, the Union has defined the Copenhagen criteria for the accession of the Central and Eastern European countries. Although the development of administrative systems is not directly mentioned, the ability to accept the obligations deriving from the EU membership, and the possibility of implementation of the Union legislation set forth in the Copenhagen criteria, concerns the very ability of states to accept “the achievements of the community” which mostly depends on the administrative capacities of state administration.⁴

In 1995 in Madrid, continuing this process, the EU Council of Ministers noted that the integration of Central and Eastern Europe countries requires the adjustment of their administrative systems, but for

4 Compare: The Copenhagen Criteria, Agenda 2000, for stronger and wider Union. Document drawn up on the basis of COM (97) 2000. European Commission.

this process it is not enough for European legislation to be only appropriately transposed to the national level, but to be effectively implemented in the work of the state administration and courts. The Criteria of the Copenhagen and Madrid require professional state administration, free from undue politicization, based on merits, which acting in accordance with acceptable standards of integrity. They also require a clear division between politics and administration. Finally, it also takes healthy and transparent decision-making structures and procedures throughout the administration. The Council then prepared a document entitled White Paper for assisting in creation and development of institutions and legislation necessary for the admission into the Union. In the Agenda 2000, a document that the European Commission presented the 1997, it was declared that when giving an opinion on the submitted applications for the membership, the Commission should pay particular attention to the public administration and administrative capacities of the candidate countries (Milenković 2013: 319)

3. SIGMA Programme and the Assessment of the Administrative Capacities

New quality in the assessment of administrative capacities of candidate countries for membership in the European Union gave the Sigma Programme as a part of the Organization for Economic Co-operation and Development (OECD) Programme, financed from the PHARE Programme of the European Union. So, Sigma is joint initiative of the European Union and the OECD. Sigma was launched in 1992 and it is functioning within the OECD Department for Public Management, which provides information and expert analysis on public management for decision makers and facilitate contracting and exchange of experiences among public sector managers.

Sigma Programme provides access to a network of experienced public administrators, comparative information and technical solutions to the beneficiary countries. SIGMA objectives are as follows:

- to assist beneficiary countries in their quest for good administration with the aim
- to improve administrative efficiency and to promote adherence of public sector staff to the democratic values, ethics and respect for the rule of law;

- to assist in building of its own skills at the level of the central government to face the challenges of internationalization and integration plans of the European Union and
- to support the initiatives of the European Union and other donors to support beneficiary countries in the public administration reform and contribute the coordination of donor activities.

In the entire work, the initiative places a high priority to facilitating cooperation among governments. It includes providing logistical support to the creation of a networks of experts involved in the public administration in Central and Eastern Europe, as well as their connecting with colleagues from other countries. Sigma now operates and provides assistance in four areas: legal framework, civil service and justice system, internal financial control and external control, procurement and decision-making process. They include the following sectors: administrative law, civil service system and strengthening of the public integrity, financial management, internal financial control and the main control and decision-making process and coordination, management and administrative environment and business.⁵

Standards of development of public administration established by the SIGMA Programme in the late nineties of the 20th century are still used as a basis for assessing of the capacities of the public administration in the Annual Reports of the European Commission. For that reason SIGMA Programme had an enormous importance in the assessment of administrative capacities of countries that became full members of the European Union in the last two “rounds” of the enlargement process, namely in 2004 and 2007.⁶ In 2010, SIGMA Programme, within the pre-accession aid instruments of the European Union worked in three candidate countries for membership in the European Union (Croatia, the former Yugoslav Republic of Macedonia and Turkey), and with five countries (territories) of potential candidates for EU membership (Albania, Bosnia and Herzegovina, Montenegro, Serbia and Kosovo), so it is now one of the main partners of the Directorate General for Enlargement of the European Commission.⁷

5 More information available on the SIGMA website: <http://www.sigmaxweb.org>

6 Several materials and papers published by SIGMA in the period 1998 to 2004. can be found in the Serbian language in the publication: Group of Authors, Sigma Papers: 23, 26, 27, 31, 35, (translation Milena Mihajlović), European Movement in Serbia, the Republic of Serbia, Government, European Integration Office, Belgrade, 2006).

7 More information on current SIGMA programmes available on the SIGMA website: <http://www.sigmaxweb.org>

Even in 1998 SIGMA Programme, by following a period of transition in the Central and Eastern Europe countries which became members of the EU in 2004 and 2007 in terms of meeting the standards of the public administration and development of administrative capacities, pointed out on the experiences of different countries which shown that administrative reform is process that requires time. It requires material and human resources which in these countries are often very lacking. This process implies changes in attitudes and cultural transformation that can be achieved only gradually, and although even the administrative reform itself primarily is a technical process, it has important political consequences. It is therefore necessary for it to provide three key preconditions (Fournier 1998: 52).

The first is existence of political will. Administrative reform is an ungrateful job and faces with many obstacles and its benefits become visible only over the time. To be completed it must have a strong and sustained support of politicians. This in turn means that it is the best that the authority competent for planning and monitoring the reform to be placed as close as possible to the Government, and on this issue a consensus to protect reforms even partially from a political changes must be seek.

The second precondition is that the planning and implementation of administrative reform be approached in a comprehensive manner. Ten separate reforms, however well planed, are not equal with overall reform unless they are based on the same principles and performed in a coordinated way. General Strategy is necessary. Regardless of the quality of available international assistance, comprehensive vision can only come from the country concerned. Each country has to establish organizations and processes that will enable it to develop and pursue its own vision. Only with such a vision, the measures that should be implemented as part of various programs would be coordinated and complementary and not incompatible, what in some cases occurred in the process of accession of certain countries in the EU in 2004 and 2007.

The third precondition is that the eventual risks if some of the steps has been skipped, should be carefully considered. Thus, for example, some of the EU member states have experimented with entrusting the management of public administration through contracting or with the introduction of market mechanisms that adding flexibility to the traditional rules of their state administrations. But, even they are

productive in the countries that already have a capable administrative system, in the countries in transition where this system has still concluding, they may even have far-reaching adverse consequences.

4. The European Integration Process, the EAS Standards and the Reform of Public Administration in the Republic of Serbia

In continuation of this paper, the process of public administration reform in the Republic of Serbia in the context of the European integration and the EAS standards has been analyzed. This process is analyzed within three different time-specific phases: the first phase covers the period from the beginning of the democratic transition until the SAA was signed (2000-2008); second phase covers the period after the SAA was signed until its entry into force (2009-2013) and the third phase covers the period from the SAA entry into force until the present day (2013-2014).

First Phase of the Public Administration Reform in Serbia (2001-2008)

Transformation or the administration reform – administration activities and administrative organization on modern bases harmonized with the EAS standards has become priority task of Serbia in the process of transition, after democratic changes that occurred in 2000, and since the administration has got a key role in ensuring the conditions for accession to the European Union, the smooth functioning of the market economy model and the respect and protection of human rights.

State Administration Reform Strategy in Serbia was adopted by the Serbian Government in October 2004. An integral part of this document was the Action Plan for its implementation within the period from 2004 until 2008. The Strategy included only the state administration as a particular organizational structure within the executive authority at the central level.

The Strategy is mainly based on legally - legalistic strategy in combination with organizational - procedural and participative strategy. The strategy partly involves elements of the strategic direction of the new system of governance (“New Public Management”).

The main objectives of the 2004 Strategy which Serbia sought through the public administration reform are: building a democratic state based on the rule of law, accountability, publicity, efficiency and effectiveness and creation of the public administration that is directed to citizens, capable to provide high level of services at reasonable costs to citizens and private sector. Objectives set up in this respect, are similar to the basic objectives of administration reform in the national systems of other countries. In order to stimulate these objectives, the Government of Serbia committed itself to the implementation of reform which will be guided by the following basic principles: decentralization, depolitization, professionalization, rationalization and modernization.⁸

From the legally-legalistic point of view, the Strategy as a part of the State Administration Reform Strategy, pointed out to the need of the reform of the legislative framework, which should create a legal basis for the implementation and creation of mentioned principles of the EAS. It is indicated as an initial step towards systemic changes, and permanent monitoring of the effects of the laws implementation, with active participation of all relevant social subjects, should be the basic mechanism that provides the dynamics of the reform process and its harmonization with real needs, with the elimination of identified weaknesses and deficiencies. Specifically, according to the Strategy, the reform of the legislative framework in the field of state administration included the adoption of laws that will be the legal framework for the functional and organizational reform of the state public administration based on strategic principles. This meant the adoption of a set of laws and related regulations governing the basis of Serbian state administration, such as the new Law on State Administration and the Law on Civil Servants. Simultaneously with these laws, a part of the new legislative framework should be consisted of the laws which are governing the procedural actions of the state administration and control of the legality and regularity of their work - namely the Law on Administrative Procedure, Law on Administrative Disputes, the Law on Ombudsman, etc. At certain points in the Strategy is also stated that is necessary to introduce special regulatory bodies, to harmonize the legal system of Serbia with the Eu-

8 Read more about the objectives and principles of administrative reform: The Government of Serbia, State Administration Reform Strategy in the Republic of Serbia, October 2004, p. 13-16.

ropean Union legislative in the process of adoption of the new sector laws (but it is not determined which sector laws and regulatory bodies should it be).

From the legally-legalistic point of view, the Strategy did not “exactly” suggest new forms of administrative control that could significantly contribute to the protection of human rights and through which deregulation of administrative competences should be provided. In the meantime, a part of such control bodies were created through adopted laws which were not mentioned in the Strategy (as the National Audit Institution, Anticorruption Agency, Commissioner for free access to information and personal data protection). In accordance with the Strategy, control of the administration mainly came down (apart from the introduction of the institution of the Ombudsman as a specific form of supervision and control over the administration and protection of human rights), on the already existing forms of internal and external supervision namely internal and external controls. Thus, in the “legalistic part” of the Strategy possible ways for improvement of the existing internal and external forms of control were not covered.⁹

Until the middle of 2008 some of the laws referred to in the Strategy were adopted. So, at the end of 2004 the National Assembly of the Republic of Serbia adopted the Law on Free Access to Information of Public Importance, in 2005 the Law on State Administration, Law on Civil Servants, Law on Public Agencies, Law on the Ombudsman, and at the end of 2007 the new Law on Local Self-Government and for the first time, the Law on the Capital City. In 2008, the Law on the Anti-Corruption Agency, which was not in the Strategy specifically “identified” as important for the administration reform, was adopted. New laws which would present the heart of the administrative procedure - the Law on Administrative Procedure and Law on Administrative Disputes in this period were not adopted.

Certain problems already existed with the corps of laws which already have been adopted and with their implementation. From the legally-legalistic point of view, the Strategy from the top is controlled by the state organization, and this direction of the Strategy is primarily dependent on the level of democracy. Thus, for example, laws on ministries are changing from one to the another parliamentary elections,

9 Compare: The Government of the Republic of Serbia, *Ibid.*, 53-54.

and their total number, as the most important administrative bodies, is independent of general social needs but of the needs imposed by the political spoils system (Spoil System) which is directly contrary to proclaimed principles of depolitization and rationalization.

The State Administration Reform Strategy in Serbia also includes elements of organizational - procedural reform strategy, which is combined with participation strategy and to some extent with the New public management strategy.

From the organizational – procedural point of view, the Strategy, in addition to defining the tasks and needs of the administration, should provide the organizational reform as well. Strategy was giving more attention to this part of the reform and can be divided into several sub-strategies: (1) decentralization strategy which included: deconcentration and devolution, material and financial assumptions of the decentralization process and the problem of territorial organization, (2) strategy of fiscal decentralization, (3) strategy of a professional and depoliticized public administration creation (which gave a sketch for a later adoption of the Law on Civil Servants in 2005) and (4) new organizational and management framework as a basis for rationalization of the state administration. Although, the Strategy was paying much attention to devolution of competencies to the level of local self-government, even new legal framework in this area failed to significantly change the scope and competences of local self-government. Certain responsibilities were transferred from the Republic of Serbia to the capital and cities as local self-governments, firstly with the Constitution from 2006 and then at the end of 2007 with the Law on the capital city to the city of Belgrade. It was certainly not enough to achieve the goal set by the Strategy - the local self-government substantially get closer to the citizens.

Creation of a professional and depoliticized state administration within the State Administration Reform Strategy¹⁰, to some extent, was later fulfilled by adopting the Law on Civil Servants (2005), but many solutions are not still implemented.

As for the Strategy of the new organizational framework as a basis for rationalization of the public administration, in the Strategy is stated: “The main goal is to make a clear delineation of competences

10 Compare: The Government of the Republic of Serbia, *Ibid.*, p. 37-48.

and tasks between the various state authorities and to avoid overlapping. On the basis of precisely defined types and scope of the work prepared by the administrative authority it is possible to assess the real needs of employees.¹¹ In this part of the Strategy is not pointed to possible innovations in the organization of the state administration that could “rise” from the traditional nomenclature of public administration bodies: ministries, administrative bodies within the ministries and special organizations, which can be understood as the lack of it. Law on Public Administration from 2005 has kept this concept. The issue of reform of government organizations aimed at the creation and transfer of competencies from traditional public administration bodies to the new forms of individual organs and bodies with administrative competences, is not sufficiently accented.

In terms of strategy direction on the New public management as a part of this Strategy, it is partly based on an request to adjust the control system of the public administration to the modern processes, from which it follows that the administrative authorities in Serbia are expected to bring innovations into the existing system and this would significantly improve processes of management of the public resources.¹²

State Administration Reform Strategy which was adopted at the end of 2004 has its good sides, but also significant disadvantages. In some parts however, the Strategy in the period covered by the Action Plan from 2004 to 2008 was not implemented, which led to the question why it was adopted? It appears that these were mostly foreign-policy reasons, namely the desire to show in international relations with other countries and international organizations that Serbia has entered into a genuine transition and public administration reform. Unfortunately, the State Administrative Reform Strategy is not understood as something that arises from the need to strengthen internal capacity of a still weak state and with its full implementation the above-mentioned standards of the European administrative space would be achieved. The process of the European integration is gradually increasing demands from Serbia to realistically implement what was stipulated by the Strategy, because it was the only way for the adoption of the aforementioned standards of the EAS necessary for its future accession to the Union.

11 The Government of the Republic of Serbia, *Ibid*, p. 49.

12 Compare: The Government of the Republic of Serbia, *Ibid*, p. 50.

Second Phase of Public Administration Reform in Serbia (2008-2012)

The Stabilization and Association Agreement (SAA) with the European Union, Serbia has signed on April 29, 2008 in Luxembourg, and the Serbian National Assembly ratified it on September 9, 2008 together with the Interim Trade Agreement. To prepare the country, particularly the administration for the new challenges and obligations in the EU accession process, and to fulfill requirements stemming from the SAA, it was necessary for Serbia to prepare a comprehensive document, which has to integrate existing and enable planning and monitoring of all Government activities in the EU accession process and their effective coordination (Lilić 2008: 27-28).

Thus, the Serbian European Integration Office prepared the National Programme for Integration of Republic of Serbia into European Union (NPI), which was adopted by the Government of the Republic of Serbia with the Conclusion in October 9, 2008.¹³ In a relation with the above mentioned Public Administration Reform Strategy, the National Programme for Integration (hereinafter NPI) is designed as a document that is constantly changing, since it anticipated that the programme will be revised every year, from January to April, after receiving the Annual Report of the European Commission in November last year. Thus, the Government of the Republic of Serbia adopted a new, revised NPI in December 2009.¹⁴

NPI did not “derogated” the State Administration Reform Strategy, but in some parts it was “supplemental document” that should enhance reform. In 2008, the NPI on the basis of the European Partnership established the key short-term and medium-term priorities related to the public administration.

Short-term priorities arose from the previous phase of reforms, based on the Strategy, which could be determined as the continuation of efforts in implementation of public administration reform, which

¹³ Government of the Republic of Serbia, Conclusion 05 no. 011-8137/2007-10, October 9 2008.

¹⁴ This revised National Programme for Integration from December 2009 available on the web page of the Serbian European Integration Office as Government service: http://www.seio.gov.rs/upload/documents/NPI/Revidirani_NPI_2009.pdf

includes the legislative sphere, political influence, professionalization, rationalization and modernization.¹⁵

NPI, in the legislative sphere, gave the priority to the adoption of the Law on Administrative Court procedure¹⁶ (what occurred at the end of 2009) and to the amendments to the Law on Administrative Procedure (what occurred in 2010) However, amendments to the Law on Administrative procedure mostly were on “terminology” and not of substantive nature.

The other short-term goal which should be, according to the Programme continued with, is depoliticization, which is primarily related to the consistent implementation of the Law on Civil Servants, as well as activities related to the conduction of the open competitions for public servants on positions. Also, NPI assumes that the Code of Conduct for civil servants should contribute to the depoliticization of the civil service because the Code stipulates the obligation of political neutrality in the work of civil servants.

Third short-term goal is professionalization. It should contribute to the further professionalization of civil servants, primarily through their further training. NPI then, as a separate short-term goal emphasizes the obligation to secure transparent recruitment and promotion as well as professionalism and accountability of civil servants, through the consistent implementation of the Law on Civil Servants and the systematic training of civil servants, conducted by the Human Resource Management Service and the Serbian European Integration Office, and other public administration bodies within their competences.

Rationalization is the fourth short-term goal, within which there is a need to develop standardized methodology for conducting functional analyses in the public administration organs and to provide support for their implementation, because they ultimately lead to the realization of this goal.

Modernization has been marked as the last of short-term goals in the NPI, which should be achieved through the use of a single database, including the Central personnel records kept by the Human Resource

15 Compare: Government of the Republic of Serbia, National Programme for Integration of Republic of Serbia into European Union, September 2008, Administrative capacities p. 757 - end.

16 Law on Administrative Court Procedure, „Official Gazette of the RS“, No 111/09.

Management Service, as well as through systemic training of employees especially regarding to staff training in computers.

Mid-term priorities identified by the NPI from 2008 – they will be, through the revised Action plan for implementation of the Public Administration Reform Strategy, closer identified and to continue with activities regarding the raising public awareness on importance of public administration reform and strengthening of inter-sector cooperation in the reform process. Regarding the mid-term priorities under the European Partnership, the NPI particularly points to the continuation of full implementation of the Law on Civil Servants and the Law on State Administration, and to strengthen capacities for policy formulation and coordination of the administration work at the local level, to implement the constitutional provisions relating to decentralization and to provide resources for local self-governments.

In May 2009, continuing this process, the Government has adopted the new Decision on the Establishment of the Council for State Administration (May 6, 2009), as a central strategic body of the Government for implementation of the State Administration Reform Strategy. Council is chaired by the Prime Minister. Council precisely defines tasks that promote and monitor implementation of the Strategy. Also, the Council assesses the application of principles and objectives of public administration in sector development strategies and planning documents and provides an opinion during the establishment of new state institutions, organizations, services or government bodies. In July 2, 2009, the Government adopted the Action Plan for implementation of the State Administration Reform Strategy in Serbia for the period from 2009 to 2012.¹⁷

According to the opinion expressed by WAZ.EU observer in February 2010, related to the evaluation of period when Serbia could become EU member, it was noted that Serbia has better administrative capacities than its neighbors and during the accession negotiations that will last at least four years, there will be additional opportunities for them to be strengthen toward the European standards. Also, in this context it was pointed out that unlike previous enlargements, a number of crite-

17 Compare: Action plan for the implementation of the Public Administration Reform Strategy in the Republic of Serbia for the period 2009 until 2012, available on the web page of the Ministry for Human and Minority rights, State Administration and Local Self-government:
http://www.drzavnauprava.gov.rs/view_file.php?file_id=607

ria must be met even before the opening of negotiations on individual chapters¹⁸, that certainly requires further accelerate of the process of administrative reform, its consistent implementation and harmonization with the standards of the EAS.

This statement becomes more topical at the moment, after Serbia submitted its application for membership in the European Union in December 2009 and the EC adopted the decision on forwarding it to the EU on 25 October 2010.

However, the European Commission in its Report for 2010, in the part related to the political criteria, states: “There has been some progress in public administration reform. However, the legislative framework remains incomplete. The law on administrative procedures has not been adopted yet. The law on administrative disputes is not fully in line with European standards. Further efforts are needed to introduce a merit-based career system and effective human resources management. The capacity of the public administration in certain sectors is weak and coordination is not fully ensured. In view of an intensification of the EU integration process in the coming years, Serbia needs to further strengthen capacity on EU integration, in particular the central coordination (...)”¹⁹.

Similar statement is contained in the Report of the European Commission for 2012 „Little progress has been achieved regarding public administration reform. The Public Administration Reform Council continued to address only administrative and technical issues and did not actively steer the implementation of the Public Administrative Reform Strategy which remains insufficient. Greater political commitment (...) are needed to bring about administrative reform. The legislative framework is still incomplete. New legislation on general administrative procedures and on local government employees and salaries is yet to be adopted. The Law on Administrative Disputes still needs to be fully aligned with European standards for judicial review of administrative acts. The policy planning and coordination system needs to be improved to steer policy development and produce consistent work plans for the public administration. The Law on Civil Servants does not apply to local government employees. The recruitment and career system is not yet fully merit-based and recruitment is still prone

18 WAZ.EUobserver www.WAZ.EUobserver.com , February 2, 2010.

19 European Commission, {COM(2010) 660} Serbia 2010 Progress Report, p. 8.

to political influence. Local government does not have a merit-based and professional human resources service. Temporary employees are still not recruited according to competitive criteria and contracts are allocated without internal or public competition.”²⁰

The conclusion that can be drawn at this phase of the reform is similar as the conclusion related to the previous phase. Neither one of the envisaged short-term or medium-term objectives contained in the NPA nor in the Action Plan for the State Administration Reform Strategy implementation from 2009 to 2013 has not been accomplished. Also, significant political influences on the work of the state administration existed in this period and numerous decisions of the state administration had been made under the influence of daily political needs. Professionalization did not occur because in this period political party recruitment of civil servants in the state administration existed, thus the spoils-system disabled realistic implementation of the Law on civil servants. According to the assessment of the Fiscal Council from the end of August 2013, in the public administration in Serbia, only in the health and education there is an excess of 20.000 employees and in the state administration approximately 5.000, thus Serbia has become negative recorder related to allocations for employees in the public sector with over 12% of GDP in the Eastern Europe.²¹ Rationalization, which included a significant reduction and elimination of a number of state administration bodies / agencies did not occur. Despite the announcement of the new Serbian Government, which was established in July 2012, that it will significantly reduce the number of unnecessary administrative authorities / agencies (number of over 60 was mentioned), in September 2012 the Government has sent to the National Assembly numerous proposals for amendments of the existing laws and after their adoption by the National Assembly of the Republic of Serbia on September 25, 2012 only seven has been abolished (National Development Corporation, Fund for Environmental Protection, Chemicals Agency, Agency for Energy Efficiency, Games of Chance Administration, Foreign Exchange Inspectorate), which is much less than it was previously announced.

20 European Commission, {COM(2012) 600 final}, Serbia 2012 Progress Report, p. 8.

21 Compare: Nikola Altiparmarkov, Serbian Fiscal Council member (statement), 27.08.2013. RTS „Public Sector - counting by supernumerary“
<http://www.rts.rs/page/stories/sr/story/13/Ekonomija/1385104/Javni+sektor,+prebrojav+anije+prekobrojnih.html?tts=yes>

Despite pre-election promises, this was the logical epilogue, since in the Republic of Serbia, there was not or is not a list of the competences and duties of administrative bodies and agencies, and without such a detailed list, real organizational reform of public administration cannot occur. The new Law on General Administrative Procedure even in this period had not been adopted despite numerous announcements, as neither the Law on Local Public Servants, which should introduce civil servants merit system at the local level.

However, drafting the new administration reform strategy has started in this period. Study on decentralization and subsidiary has been completed (Djordjević, Milenković, Prokopijević 2013), which should be the basis for a list of the competences and duties of the administrative bodies that should occur in the next phase. These tasks were mostly realized or still are in the process of realization through projects of the European Union and international donors. National Plan for the adoption of the Acquis (2013-2016) has been adopted, with indicated suggestions of priorities in terms of harmonization of legislation in the field of public administration.²²

Third Phase of Public Administration Reform (2013-2014)

The Stabilization and Association Agreement entered into force on September 1, 2013. Until this moment this is the last and shortest phase in the analysis of the process of administration reform in the Republic of Serbia and it is currently difficult to predict the final outcome. Therefore, it is currently difficult to predict how much time the Republic of Serbia will need to reach the EAS standards, what will be political influences on the reform process in the administration and in which manner the reform will be implemented.

However, during this period, some new steps have been made. At the end of January 2014, the new Administrative Reform strategy has been adopted. Significant progress has been made through the extension of the subject of the strategy, thus the previous State Administration Reform Strategy is now the Public Administration Reform Strategy, with purpose to achieve a functional unity and quality standards

22 Compare: Government of Republic of Serbia, Office for European Integration, National Plan for the adoption of the Acquis - NNPA (2013-2016), February 2013, p. 24-25.

of activities to perform certain types of administrative affairs and public competences independently of the subject performing them (bodies, organizations, institutions).

In this way, the new Public Administration Reform Strategy included not only state authorities but also administrative authorities at lower levels of the authority, all other organizations and agencies entrusted to perform administrative public powers, as well as organizational forms of public services, such as public utilities and public institutions in different areas (health, education, public utilities, etc). Reform of the administration finally has been considered as a reform based on the notion of modern social systems theory (Luhmann 1997), which is a significant step forward compared to the previous period, when the reform included only the organs and functions of state administration at the central authority level. The basic principles of public administration reform are defined as previously mentioned standards of EAS and they represent the starting point in the Strategy.

Measures and activities for realization of the specific Strategy objectives are divided into:

- (1) improvement of the organizational and functional subsystems of public administration which include: organizational and functional restructuring of organs, organizations and other bodies performing public administration affairs; promotion of decentralization and deconcentration of state administration; improvement of the strategic planning system and coordination of public policies; development of e-government;
- (2) establishment of a coordinated public-servants system based on merits and improvement of human resource management which include: establishment of harmonized system of labor relations and salaries of employees in the public administration and development and improvement of management of human resources in public administration;
- (3) improvement of public financial management and public procurement which include: improvement of the process of budget planning and preparing; improvement of the management and control of public revenues and internal audit and improvement of the public procurement system;

- (4) increasement of legal certainty and improvement of business environment and quality of public services providing, which include: improvement of legislation drafting process; improvement of administrative procedures; reform of inspections supervision and increasement of transparency, improvement of ethical standards and accountability in the performance of public administration, which includes, improvement of conditions for the participation of the public concerned in the work of public administration and strengthening ethical standards of employees in public administration and reduction of corruption;
- (5) strengthening supervision mechanisms in public administration.

Measures and activities set in this way are compliant with SIGMA standards, which should contribute to and facilitate the monitoring of implemented activities in the context of fulfillment the standards of EAS, which will be of crucial importance for the assessment of administrative capacities before bringing the decision on full membership of the Republic of Serbia in the EU.

Also, a list of the competences and duties in the public administration was initiated, which will in the following period significantly affect the reform of the administrative organization. Enhanced NPPA for the period from 2014 to 2018, adopted in July 2014, as a priority related to the public administration sets up the adoption of the Action plan for the implementation of the new Public Administration Reform Strategy.²³

However, it concerns that the Government of the Republic of Serbia, even after 9 months, did not adopt the aforementioned Action Plan of the Strategy with clearly defined activities, indicators, responsible institutions for implementation of activities, timelines and resources for the implementation of this strategy. Without the Action Plan, attempt of its realistic implementation will remain voluntary and without clear information on the progress public administration reform process and to which extent the EAS standards are in Serbian public administration implemented.

In the European Commission's Report for 2014 it is stated that the the new public administration reform strategy and recovery of the

²³ Compare: Government of Republic of Serbia, Office for European Integration, National Plan for the adoption of the Acquis - NNPA (2014-2018), July 2014, p. 19-20.

Council's for State Administration Reform work in August 2014, as well as the establishment of the Secretariat for Public Policies, may considerably improve development and coordination of public policies in the Republic of Serbia. However, the Report states that... "recruitment, both for senior and middle management positions, continues to be an issue of serious concern, as, in 2013, a substantial proportion of recruitments (60%) was not based on open competitions. The current legal framework and its uneven application leave room for undue influence in the recruitment process".²⁴

Conclusion

Standards of the European administrative space were built in decades. The European Court of Justice, the legislative activity of certain organs of the Union, SIGMA Programme and review of the administrative capacities of potential candidates for membership in the Union, influenced in recent years on the administrative processes in Serbia as well.

The process of administrative reform in Serbia is carried out for fifteen years. In different cycles this process was faster or slower. Comparative analysis of the European administrative space standards and the process of administrative reform in Serbia, it can be concluded that Serbia, even perhaps not fast enough, is increasingly adapting to these standards. In achieving these principles, legally - legalistic direction of the reform is important and in this respect in recent years a significant number of laws were adopted. Certain organizational - procedural and management measures were also undertaken, but however a significant "barriers" that impede the reform process still exists.

However, "partokratia" still has a significant impact on the public administration and real implementation of legislative reforms and other measures that have been proclaimed in the Public Administration Reform Strategy and the Action plan for its implementation, as well as in the National Programme for Integration of Republic of Serbia into European Union still depends on political will. So it seems

²⁴ Compare: European Commission, {COM(2014) 700 final}, Serbia 2014 Progress Report, p. 9-10.

that the evaluation, that Serbia has the administrative capacities capable to implement the legislations that the Union is adopting, at this moment is not real.

On the other hand, the elimination of the aforementioned “threats” to the complex administrative system could accelerate the reform process. Until the accession of Serbia to the European Union there is enough time to adapt its “administrative capacity” to the standards of the European administrative space. But the “time factor” must not be a reason to abandon this course for any reason. So, it is the best that this “condition” for admission became true as soon as possible, because on the road to the full membership to the EU we are certainly expecting many other tasks and problems as well.

Bibliography

- Cardona, Francisco (2009). *Integration of the National Administrations in the European Administrative* (paper prepared for the Conference: Public Administration and European Integration, Budva 26-27. March 2009), OECD [online]. Available at: <http://www.oecd.org/dataoecd/22/0/43812763.pdf> [Accessed: 10 September 2014].
- Fournier, J. (1998) *The Global Governance and the European integration – Reliable Public Administration*, paper No 23: SIGMA.
- Dorđević, S., Milenković D., Propokopijević., M. (2013) *Studija u primeni načela supsidijarnosti u Republici Srbiji*. Beograd: Ministarstvo regionalnog razvoja i lokalne samouprave.
- Group of Authors (2006) *Sigma Papers: 23, 26, 27, 31, 35.*, Belgrade: European Movement in Serbia, Republic of Serbia, Government, European Integration Office.
- Jacobini, H. B. (1991) *An Introduction to Comparative Administrative Law*. New York-London-Rome: Ocean Publications Inc.
- Ekengren, M. (1997) “The Temporality of European Governance”. In: K. E. Jorgensen (ed.) *Reflective Approaches to European Governance*. Basingstoke: Macmillan. p. 68-86.
- Hofmann, C.H.H. (2008), „Mapping the European administrative space“. *West European Politics*, 31(4): 662-676.
- Kavran, D., Vukašinović, Z. (2004) „Evropski upravni prostor i reforma javne uprave“. *Nauka, bezbednost, politika*, 2-3: 9-33.
- Luhmann, Niklas (1997) *Die Gesellschaft der Gesellschaft*, Band I-II. Frankfurt am Main: Suhrkamp.
- Lilić, S. (2008) “Primena koncepta evropskog upravnog prostora u procesu pristupanja Evropskoj uniji”. In: Lilić, S (ed.) *Pravni kapacitet Srbije za evropske integracije* (knjiga III). Beograd: Pravni fakultet Univerziteta u Beogradu. pp. 26-35.

- Lilić S., Golubović K. (2011) *Evropsko upravno pravo*. Beograd: Pravni fakultet Univerziteta u Beogradu.
- Milenković, D. (2013), *Javna uprava - odabrane teme*, Beograd: Fakultet političkih nauka – Čigoja štampa.
- Milenković, D. (2010) *Priručnik za primenu Zakona o slobodnom pristupu informacijama od javnog značaja, Poverenik za informacije od javnog značaja*. Beograd: Poverenik za informacije od javnog značaja i zaštitu podataka o личности.
- Rabrenović, A. (2002) „Načela „kvalitetne uprave“ u pravu Evropske unije“. *Javna uprava*, 1: 18-37.
- Olsen, P. J. (2003) „Towards a European administrative space?“. *Journal of European Public Policy*, 10(4): 506-531.
- Schwarze, J. (1992) *European administrative Law*. London: Sweet and Maxwell.

Legal and Other Documents, Statements and Online Sources

- Altiparmarkov, N. Fiscal Council member (statement) 27.08.2013. RTS „Public Sector - counting by supernumerary“ Available at:
<http://www.rts.rs/page/stories/sr/story/13/Ekonomija/1385104/Javni+sektor,+prebrojavanje+prekobrojnih.html?tts=yes> [Accessed: 10 October 2014]
- European Commission., {COM (97) 2000}, *The Copenhagen Criteria, Agenda 2000, for stronger and wider Union*, Available at:
http://ec.europa.eu/agriculture/cap-history/agenda-2000/com97-2000_en.pdf [Accessed: 10 October 2014]
- European Commission, {COM(2012) 600 final}, Serbia 2012 Progress Report, Available at:
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf [Accessed: 21 September 2014]
- European Commission, {COM(2010) 660} Serbia 2010 Progress Report, Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf [Accessed: 21 September 2014]
- European Commission, {COM(2014) 700 final}, Serbia 2014 Progress Report, Available at:
http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf [Accessed: 21 September 2014]
- SIGMA Programme: Available at: <http://www.sigmaweb.org> [Accessed: 21 September 2014]
- Vlada Republike Srbije, Strategija reforme državne uprave sa Akcionim planom za sprovođenje Strategije, Novembar 2004, Available at: http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678 [Accessed: 20 September 2014]
- Vlada Srbije, *Akcionni plan za sprovođenje Strategije reforme državne uprave za period 2009 - 2012*. http://www.drzavnauprava.gov.rs/view_file.php?file_id=607 [Accessed: 20 September 2014]

- Vlada Republike Srbije, Zaključak br. 05 011-8137/2007-10 o usvajanju Nacionalnog programa za integraciju Republike Srbije u Evropsku uniju, Oktobar, 9, 2008. Available at:
http://www.seio.gov.rs/upload/documents/NPI/Revidirani_NPI_2009.pdf
[Accessed: 2 October 2014]
- Vlada Srbije, Kancelarija za evropske integracije, *Nacionalni program za usvajanje pravnih tekovina Evropske unije NNPA* (2014-2018), July 2014. Available at: <http://www.seio.gov.rs> [Accessed: 30. September 2014]
- Vlada Srbije, Kancelarija za evropske integracije, *Nacionalni program za usvajanje pravnih tekovina Evropske unije NNPA* (2013-2016), February 2013, Available at: <http://www.seio.gov.rs> [Accessed: 2. October 2014]
- WAZ.Euobserver, February 2, 2010. Available at: <http://euobserver.com/search/text/Serbia%20public%20administration>[Accessed: 21. September 2014]
- Zakon o državnoj upravi, “Službeni glasnik” RS br. 79/05.
- Zakon o upravnim sporovima, “Službeni glasnik” RS br. 111/09.
- Zakon o izmenama i dopunama Zakona o opštem upravnom postupku*, “Službeni glasnik RS” br. 30/10.

