Utrecht Law Review igitur

Editorial

The Theory and Practice of Law in Public Administration and Administrative Justice

Dacian C. Dragos
François Lafarge
Paulien Willemsen*

This special edition of the Utrecht Law Review offers the reader contributions by several members of the Permanent Study Group for Law and Public Administration of the European Group for Public Administration (EGPA, see <www.iias-iisa.org/egpa>). The papers published here were presented in Bergen (Norway) 2012. The contributions identify problems and suggest solutions concerning important aspects of public administration in various European countries, and do so from both an internal and an external perspective. The problems are not particular to these countries alone. They occur in other countries as well. It is our hope that the solutions suggested for one country will also inspire solutions elsewhere.

Anouska Buijze writes in her dissertation: 'People need information to make autonomous decisions. Respect for their autonomy may require giving them access to certain information. On the other hand autonomy requires privacy. Individuals need an inviolable domain in which they may freely develop their personality.'

Buijze's contribution to this special issue and the one by Alexander Balthasar both deal with this dilemma. In 'The Six Faces of Transparency', Buijze writes about the lack of consensus about what transparency means and offers a solution to this problem. Balthasar's contribution, '"Complete Independence" of National Data Protection Supervisory Authorities', concerns the aspect of privacy where he writes about the (lack of) independence of European data protection authorities. He comments upon the important ECJ case from 2012 (C-614/10) in which the Court held that the Austrian Data Protection Authority does not fulfil the requirements of independence within the meaning of the European Data Protection Directive (95/46/EC).

Although it is now widely accepted that an administrative dispute ultimately has to be decided upon by an independent court, in many European countries the general view is that the court may not be approached immediately. First, the decision must be reconsidered by the administration. One important consideration underlying this view is that in many cases this prevents a judicial procedure. In her contribution 'Effective Adjudication through Administrative Appeals in Slovenia' Polona Kovač addresses theoretical, normative, and empirical issues of Slovene public administration and administrative justice in order to establish the scope of

* Dacian C. Dragos (daciandragos@yahoo.com), Babes Bolyai University, Romania. François Lafarge (francois.LAFARGE@ena.fr), École Nationale d'Administration and University of Strasbourg, France. Paulien Willemsen (P.A.Willemsen@uu.nl), Utrecht University School of Law, The Netherlands.

effective conflict resolution by an internal administrative appeal that is mandatory before court action can be taken.

It is definitely possible to draw a boundary between administrative and judicial procedures. In yet another respect, there is a certain degree of intermingling between administrative proceedings and court proceedings. If the administrative court rules that a decision is unlawful, it will annul the decision and instruct the administrative authority to issue a new decision. Until recently, as a general rule the procedure then came to an end and interested parties could initiate procedures all over again against the new decision. In their article 'Administrative Decision-Making in Reaction to a Court Judgment', Bert Marseille and Martje Boekema investigate the factors influencing the administrative decision-making process and the degree to which repeated litigation takes place.

In all kinds of matters for which one cannot avail upon the administrative judge an ombudsman may provide relief. Depending on the legal system, ombudsmen can investigate whether there is an instance of maladministration in the activities of administrative bodies, whether the administration has acted 'properly', whether it has acted in accordance with the law, whether administrative actions have breached the human rights of complainants or whether the actions of the administration were in accordance with anti-corruption rules etc. Regardless of the legislative standard of an ombudsman's control, the ombudsman should consider and assess the situation described in complaints against certain criteria or against certain normative standards. There should be a distinct set of standards which ombudsmen use during their investigation, or at least a clear statement of their assessment criteria. Milan Remac, in his article 'Standards of Ombudsman Assessment: A New Normative Concept?' investigates whether ombudsmen can increase the transparency of their procedures and the persuasiveness of their reports.

The guest editors would like to thank the Utrecht Law Review for providing a platform for the work of the EGPA Permanent Study Group. ¶