ROBERTO SCARCIGLIA

COMPARATIVE LAW AND ADMINISTRATIVE CITIZENSHIP IN THE BALKAN AREA

ABSTRACT

The essay investigates the relations between European administrative law models and administrative citizenship in the Balkan area. Administrative law in the Balkan area can be better understood when analysing the social transformation of recent years that swept through the region.

For these countries, the European Union represents a «reference model» for the development of the political institutions. In comparative law, it is referred to as «a strong model», a model which introduces clauses and conditions, so incisive to modify the traditional circulation of the legal models. In this case, the European Union binds candidate members to comply with some institutional obligations before concluding negotiations for enlargement. Clearly then structural reforms of public administration, administrative action and proceeding, and administrative justice represent a necessary condition for admission.

The doctrine's contribution to the analysis of the Balkan legal systems still have not defined a whole outline, but rather independent fragments, as it happens typically for the examination of the foreign law.

The paper examines the administrative experience of countries of the Balkan region like Albania, Bulgaria, Croatia, the Republic of Romania and Slovenia, which, in a short period of time, moved from political systems based on absolute Communist party power to other systems committed to democratic principles and procedures.

Five case studies serve to analyse the legal prevision about administrative citizen's rights introduced in the laws on administrative procedure or in other legal formants to define the concept and one model of administrative citizenship in Balkans area. The coding of rules on administrative action proved limited in the Balkan area. Moreover, the original adhesion to other models centred on the protection of subjective rights promoted the legality of

administrative acts, while the institutes of participation to the administrative procedures were limited, but, with the fall of the classic model of socialism, beside the evolution of the Austrian model, some legal aspects of the Anglo-American model emerged, through hybridisation.

In constructing administrative citizenship in the Balkan area this point is worthy noting.

1. PRELIMINARY REMARKS: TALKING ADMINISTRATIVE RIGHTS SERIOUSLY IN THE BALKAN AREA

What particular rights against public administration do Balkan citizens have? The present topic deserves consideration as it is peculiarly fitting in relation to administrative law in this area, which starting in the 1990s has undergone rapid advances in the development of European administrative law, particularly, in the fields of administrative action and procedures. Administrative law in the Balkan area might be understood in relation to the great social transformation that swept through the region in recent years. In some countries like Albania, Bulgaria, Croatia, Romania and Slovenia – case studies of administrative law[1] and process to define a model for the administrative citizenship – and identify basic elements, «legal formants»[2], in the relations between citizens and public administration. All these five countries, in a short period of time, have moved from political systems based on absolute Communist Party power to others committed to democratic principles and procedures[3].

With the adoption of new constitutions the constitutional order has been changed – Croatia (1990), Bulgaria (1991), Romania (1991), Slovenia (1991), Macedonia (1992), Bosnia-Herzegovina (1995), Albania (1998), Turkey (2001), and Serbia (2006) and also, certain constitutional values and certain fundamental rights of citizens, like administrative procedural rights have been declared. These constitutions are not necessarily common as a phenomenon, or peculiar as a solution. However, an analysis of the constitution can provide insight into the type of pattern of functioning democracy that is likely to emerge from the diverse Balkan political establishments; it also highlights some specific features of the rule of law and the reforms in these countries. The first reason is that region-wide constitutional making has been taking place in the 1990s. The 1990 crisis started with an act regarding the consti-

tutional status of a province in former Yugoslavia, – the dismantlement of Kosovo's autonomy in 1987-1989[4]. It sparked migration, civic disobedience, and the seeds of ethnic conflict that eventually spread over former Yugoslavia[5].

Balkan constitutions are very specific, with extensive coverage on the topics related to the protection of property rights. This characteristic is a relatively common feature of many post-Communist constitutional arrangements. Former socialist countries intend to both guarantee against coercive oppression of individual liberties and define, as explicitly as possible, constitutional rules that establish the right to enterprise and the right to compete on the market. Balkan constitution might be defined as «crisis constitution», but in a very specific sense. They are less specific, or at least have significant omissions in dealing with instances of political crisis, but are rather thorough in prescribing government action in case of emergencies. The least efficient mechanism to resolve a political crisis, the Albanian, is supplemented with the most extensive list of emergency actions. Election systems are very important in a political crisis. Balkan countries, as most European countries, vote in general elections for party lists. Thus, the proportional representation of voters laid the foundations for a centralisation spin-off towards the incumbent prime ministers who, by tradition, are also heads of the political parties that gain majority. As heads of both the cabinet and political party leaders, they control parliaments. Although these spin-offs are mitigated by the direct elections of the presidents, the power of the president in the day-to-day management of the country is diminished. Still, for all the countries of the Balkan area to be integrated in the process of enlargement of European Union – and principally to respect the basic conditions to guarantee human rights and administrative rights –, it is absolutely necessary to respect such conditions, like the experience of Croatia and Turkey demonstrate. In brief, talking administrative rights seriously in the Balkan area is a must[6].

1.1. Impact of the European Union on the Citizen's Administrative Rights

Another element that affects the change of the institutions and the relationship among citizens and public administrations is the common European model of administrative law that reflects the

principles common to the national legal and constitutional traditions of constituent member states, but also its own distinctive features and principles[7]. In the previous paragraph, the process the Balkan area is undertaking to implement their individual stabilisation and association agreements with the European Union was highlighted. Croatia is promptly catching up on most of the issues that have prevented her from being an equal partner in the EU integration. Most of the constitutions in the region arose either to promote nation-building aspirations or to reflect the constellations of early post-Communist reforms. All these processes have required constitutional thinking and debate over existing constitutions. But, if it is true that Slovenia has been part of the European Union since 2004, for the other countries of the Balkan area and, particularly, for Bulgaria[8] and Romania[9], the roadmap in the EU enlargement process, indicated by the Commission, is also concentrated on administrative and judicial capacities – and, particularly, the reform of public administration and the judicial system –, essential conditions to implement and enforce the *acquis* from the time of accession; it also represents a key factor for the success of the enlargement process. For the other countries, the European Union's (EU) objective is to extend the peace, stability, prosperity and freedom it enjoys to the countries of South-Eastern Europe (Albania, Bosnia-Herzegovina, Croatia[10], the former Yugoslav Republic of Macedonia, and Serbia and Montenegro, including Kosovo). This involves agreements establishing that the countries may one day join the EU thus providing preferential trade measures, economic, financial and budgetary assistance, aid to refugees and displaced persons, but also approximation of national legislation to Community legislation, cooperation in such sectors as justice and home affairs, political dialogue, respect for human rights, democratic principles and the rule of law in all the countries of the region. Another perspective regards the accession of the Republic of Turkey to the European Union.

It is so evident that the European Union represents a «reference model» for the development of the political institutions of these countries. In comparative law, it is referred to as «a strong model», a model which introduces clauses with conditions, so incisive to modify the traditional circulation of the legal models. In this case, the European Union binds candidate members to comply with some institutional obligations before concluding negotiations for enlargement. Clearly then structural reforms of public admini-

stration, administrative action and proceeding, and administrative justice represent a necessary condition for admission.

In this perspective, the Constitutional Treaty essentially introduces some typical traditional principles that regulate administrative action and the relations between citizens and public power.

As generally known, the Community's legal system tends to distinguish between general principles, common to legal and administrative proceedings, and the principles that apply only to administrative proceedings. The common principles include: legality; impartiality; subsidiarity; proportionality; duty to give reason; legitimate expectations and fundamental rights. Specific administrative principles are: good administration; the duty of sound financial management; precision and completeness in presenting the relevant facts and interests; the right of defence; and the duty to give reasons and access to administrative documents. However, these distinctions may be grounded more in theory than in practice.

For example, the distinctions between the principles of legality and the protection of legitimate expectations often become blurred when applied to specific cases. Similarly, the principles of equality and impartiality are closely connected, as are the principles of good administration and the sound use of financial resources. Furthermore, it is quite difficult to precisely define the principles themselves. In the absence of general legislative rules, principles are defined through an empirical or case-law method. Such methods make it difficult to bring the principles under a unitary conceptual framework[11]. The transition from the original monist model to the contemporary pluralist model of administrative organisation has clearly affected the discharge of European Community activities. The subject of administrative proceedings was originally given little regard. The founding member states of the Community traditionally considered only the final conclusive act, or decision of an administrative proceeding, to be legally relevant. The preparatory proceedings assumed a marginal value because they were governed by the criteria of good organisation, rather than by legal criteria. Similarly, procedural defects were important only insofar as they contributed to the invalidity of the administrative act or decision. Recently, more attention has been paid to administrative law in the Community. Two factors can account for the change. First, national laws have been enacted to govern the proceedings. These laws can

be general but can also be organic and detailed. Second, following the expansion of Community activities, the Community system became a general legal order similar to those of nation-states. Consequently, the role of administration and administrative proceedings expanded.

With regard to the general, constitutional provisions, it is necessary to distinguish between the norms contained in the Charter of Fundamental Rights of the European Union, and those envisaged by the treaties. Articles 41, 42 and 47 of the Charter of Fundamental Rights promote the principle of legality by providing for the duty of impartiality, the obligation for the administration to give reasons for its decisions, the right to a remedy, the right to be heard, the right to access one's files, and the right of defence. Articles 220 and 230 of the EC Treaty implicitly affirm the principle of legality through their references to «the law» and «legality». The European courts now interprets these articles to mean that administration must not only comply with specific laws but must also base its activities on the EC Treaty and European laws passed pursuant to the treaty. In this way, the principle of legality comes to define the legitimacy of administrative activity. The principle has in turn, promoted more specific principles like administrative impartiality[12] and politic neutrality of administration. Impartiality is an organisational criterion for ensuring free competition and the effectiveness of the common market. Additionally, the principle of legality has advanced the principle of good administration, which requires diligence and efficiency of Community institutions.

The constitutional Treaty considers the following principles: a) general right of information: the transparency of public administration (Article 49.1), right of access to public documents (Article 49.3) and to the protection of personal data (Article 50.1); b) citizen's rights: good governance (Article 49.1) and right to good administration (Article II-41).

The Article II-41.1 provides that every person has the right to have his/her own affairs handled impartially, fairly and within a reasonable time. This right includes: (a) the right of every person to be heard, before taking any individual measure which would affect him or her adversely; (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; (c) the obligation of the administration to give reasons for its decisions.

2. PRESENTATION OF CASES

The limited space of this work does not enable us to analyse all Balkan realities hence we decided to focus on only five constitutional and administrative experiences: Albania, Bulgaria, Croatia, Romania and Slovenia. In relation to the five case studies, the coding of rules relating to the administrative action proved limited in the Balkan area. Moreover, the original adhesion to the Austrian model, centred on the protection of subjective rights, had promoted the legality of administrative acts, while the institutes of participation to the administrative procedures were limited. One characteristic of communist administrative law systems derived from the general policy that public administration was under the control of the government and the party. But with the fall of the classic model of socialism, beside the evolution of the Austrian model, some legal aspects of the Anglo-American model emerged, through hybridisation. Another common aspect in the Balkan area with the transition to a democratic rule of law system was the imperative of changing administrative law: judicial review of administrative action to ensure legality becomes a fundamental principle of guarenting the administrative citizenship.

The first scope of the research will be to analyse legal formants – particularly normative formants – to establish if the legal systems of Albania, Bulgaria, Croatia, Romania and Slovenia have introduced these rights and the corresponding administrative and judicial remedies. In relation to this last point, Article II-47 – dedicated to the right to an effective remedy and to a fair trial – says that «everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal and is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice». It is worth pointing out that these principles must be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the member states are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the member states' constitutions (Article II-53).

2.1. Albania

In 1991, Albania adopted a new Constitution, but no space was dedicated to the administration or to administrative action principles, with the exception of the power of the Council of Ministers to invalidate the illegitimate acts of the central organs of state administration, in accordance to Article 37 of the Constitution.

Prior to 1992, there was no law on administrative procedure or an administrative law of universal application. Instead, each substantive law included administrative and procedural provisions which apply to proceedings brought under that substantive law. The provisions were augmented by a general theoretical framework of administrative justice. Under Communism, administrative law was applied to those state organs commonly categorised as «administrative» rather than the so-called «organs of state power» as the Council of Ministers, Albania's collective presidency called «the Presidium», the Parliament and, of course, the Communist Party. In other words, «administrative law was conceived and devised to apply to those entities that carried out rather than formulated policy». Needless to say, no such thing as independent agencies existed in the sense we imply today. Nor would administrative law apply to the procurator and the courts, although they were not considered organs of state power in the sense referred to above. In terms of activities, administrative law would deal with four main categories of administrative action like the concepts of: *administrative acts*[13], *administrative operations*[14], *administrative contracts*[15], and *jurisdictional administrative acts*[16]. The above-mentioned scope of administrative law in Albania, prior to 1992, and its main technical features, have inevitably determined its main objective: «The legal achievement of state goals rather than the effective address of individual grievances». This legacy has left its imprint on the present-day scope of Administrative Procedures Law adopted by the Assembly on 12 May 1999[17].

2.1.1. Administrative Procedures and Citizen's Rights

The idea of codified administrative procedures rests on the constitutional hypothesis that modern states are the product of representative government, the «groundand practice of democratic politics»[18]. It logically follows that administrative services for citiziens – and, as a consequence, their administrative rights – are

the product of a long process of democratic legitimisation. The quality of such services, on the other hand, is the confirmation of a functioning representative scheme to be contrasted with a mere fiction of it. Thus, last decade of democratic government, has illustrated the mechanics and the limitations of both political and judicial control over bureaucracy. Another factor that has contributed to develop the idea of guaranteeing citizen's rights in the administrative procedures is parliamentary control of government and, consequently, of public administration. Political control can be imposed *ex post facto* through parliamentary hearings and investigations, the reconfiguration of agencies and budgetary reductions, etc. The second approach involves the introduction of judicial control, and the submission of individual complaints against administrative action or inaction. The *ex post* types of controls in particular, reveal some difficulties in the Albanian experience, illustrating ineffective controls that boil down to little more than a political exercise, and as far as the courts are concerned, it must be noted that the inevitable *ad hoc* approach the courts[19] take to administrative litigation undermines the ability of judicial review to bring about systemic improvements in the way public power is exerted, at least in the short run.

In the first place, the Code observes a certain sequence in enacting an administrative procedure like, for example, the obligation of the notification to the parties of the administrative proceeding, the obligation to award the parties a hearing, the obligation for expeditious decision-making, and the obligation to communicate the decisions to the parties. In the second place, the Code's requirements for increased access of the interested parties to the administrative procedure tend to rightfully concentrate the process on legitimate individual rights of the parties giving them an increased opportunity to influence the process.

2.1.2. Administrative Justice and Citizen's Rights

In short, it is necessary to point out that the Albanian Constitution (Articles 60 ss.) provides for People's Advocate who, independent in exercising its duties, defends the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the part of organs of the public administration. The People's Advocate is elected by three-fifths of all members of the Assembly for a five-year period, with the right

of re-election (Article 61) and may be discharged only on reasoned complaint of no less than one-third of the deputies (Article 62). But administrative law remedies fall into three main categories: a) administrative or hierarchical control; b) redress through the courts; c) redress by the People's Advocate (Ombudsman). The motion for review is yet another action envisaged by the Code – Part II, Administrative Powers and Jurisdiction – that can be grouped under the internal administrative remedies. The motion for review is submitted to the relevant supervising administrative organ and is by definition intended to be more formal than the motion for reconsideration. Ideally, from the standpoint of the private person, a motion for review leads to the abrogation of the contested administrative act. Any interested party is entitled to submit an appeal against an administrative act or against a denial for the issuance of the administrative act. In principle, the interested parties may address the Court only after using the administrative recourse (Article 137, Code).

2.2. Bulgaria

On 1 January 2007, Bulgaria joined the European Union. In these last years, administrative procedure reform and judiciary reform have made headway, especially in the field of public administration, also in adopting amendments to the laws on administration and civil servants, a new Administrative Procedure Code and the reform of judiciary. The protection of citizens' rights is done *ex officio* by the judicial authorities. For instance, pursuant to Article 27 of the Code of Civil Procedures, the Prosecution may file a claim in the interest of another person, whereas according to Article 43 of the Code of Penal Procedures «[...] the Prosecution shall raise and maintain charges for offences of a general nature». In respect to certain violations, the judicial procedure requires that the parties concerned bring them to the attention of the judicial authorities. Thus, Article 97 of the Code of Civil Procedures states that anyone may file a claim in order to restore rights violated.

There is no separate law or charter of human rights in Bulgaria. The basic document regulating this issue is the 1991 Constitution, the second chapter of which – Fundamental Rights and Obligations of Citizens – follows the logic and methodology of the International

Covenants on Human Rights and in many cases quotes their texts verbatim. The human rights provisions of the Constitution are irrevocable (Article 57). They are directly enforceable, which means that they are in full force and may be applied even without the adoption of any particular legislation. Nevertheless, the 1991 Constitution contains no norms concerning the mechanisms and procedures for the protection of these rights. Therefore, these issues are regulated and made more specific by legal acts of a material or procedural nature. The Constitution has set a period of time during which the National Assembly has to adopt certain laws, many of which have a direct bearing on human rights. That will generally mark the completion of the overhaul of Bulgarian legislation to make it compatible with the international standards.

2.2.1. Administrative Procedures and Citizen's Rights

The Administrative Procedure Act, n. 90, of 13 November 1979[20] introduces a general discipline of administrative act and the remedies against the public administration's acts, to protect citizens, in the same manner as the classical models introduced in legal systems of civil law and common law. Article 2 of the Code explicity says that individual administrative acts introduce rights and obligations, producing legal effects on the lawful interests of individual citizens or organisations and the decisions for issuing documents which are of significance for the recognition, exercising or extinguishing of rights and obligations, as well as the refusal to issue such documents, shall also be deemed individual administrative acts. If through an administrative act rights are affected or obligations created for citizens and organisations, those measures which are most favourable for them are applicable in case that this does not compromise the aims of the law (Article 4).

In the administrative procedure, the citizen interested has the right to be informed of the commencement of the procedure, that can be found in many European legal systems (Italy, Spain, Germany, etc.) (Article 7), and when the organ that has begun the procedure establishes that the administrative act should be issued by another administrative organ, the former shall immediately send the documentation to the latter, notifying at the same time the person on who's initiative the procedure was started. Administrative act must be formal and written, so the non-resolution within the prescribed time period is deemed as tacit refusal to issue the act.

Another right in administrative procedure is relative to decision (or to refusal) in which reasons to a decision must be given (Article 15) and communicated within a period of three days of issue to all interested individuals and organisations including those who have not taken part in the procedure.

2.2.2. Administrative Justice and Citizen's Rights

In accordance with Article 19 of the Code, administrative acts may be appealed by administrative procedure before the superior administrative organ, and the legality, as well as the correctness of the administrative act may be challenged with an appeal. Within a period of seven days, and when the organ is collective, within two weeks of receipt of the appeal or protest, the administrative organ may review the matter and withdraw the challenged act, alter it, or issue the respective act or document if it has refused to do so. In such cases it is obliged to notify the interested parties. The new act is subject to appeal by administrative procedure under general procedures. The superior organ shall reach its decision after deliberating the explanations and objections of the interested individuals and organisations. It may gather new evidence on the matter (Article 28). When the superior administrative organ fails to rule within the time period stipulated in the preceding paragraph, the appellant may challenge the legality of the administrative act before the court, if the act is subject to appeal before the Court.

Also, the superior administrative organ shall rule with a reasoned decision, with which it shall repeal in whole, or in part, the administrative act as illegal or incorrect. In case the issued administrative act violates law or is incorrect, and another act is to be issued in its place, the superior administrative organ shall return the file to the organ that issued it with the respective mandatory instructions. If the matter has been factually clarified, the superior organ issues the act if no other legal obstacle exist. The interested citizen has the right to appeal administrative acts with regard to their legality before the Court, that may either repeal the whole or part of the administrative act, amend it or reject the appeal. In accordance to the Administrative Procedure Act, n. 90, of 13 November 1979, administrative acts may be appealed with regard to their legality before the Court (Article 33).

2.3. Croatia

It is the most advanced of the Balkan candidates for EU enlargement. Having started membership talks in October 2005, it hopes to join the bloc in 2009. Yet, Croatia still has problems in dealing with ethnic Serbs, border disputes with neighbouring Slovenia and a property row with another neighbour, Italy. Still, the scope for improvement in judiciary and public administration, and in fighting corruption is considerable. The Croatian Constitution of 1990 introduced the principle of rule of law in public administration, providing that individual decisions of administrative agencies and other bodies vested with public authority must be grounded on law and judicial review of decisions made by administrative agencies and other bodies vested with public authority must be guaranteed (Article 19).

2.3.1. Administrative Procedures and Citizen's Rights

Article 89 of the Law on State Administration declares that state authority bodies must enable citizens and legal persons to submit criticisms and complaints regarding the work of state administration as well as any unfair relationship of state officials when citizens come to them to realise their rights and interests or to fulfil their civic duties. The head of the state authority body has to respond the criticisms and complaints of citizens within 30 days from the day the complaint was submitted. The Administrative Procedure Act, n. 90, of 13 November 1979, regulates the procedure for issuing, appealing and implementation of administrative acts insofar as no other act or decree establishes special rules. Administrative acts may be appealed by administrative procedure before the superior administrative organ (Article 19).

2.3.2. Administrative Justice and Citizen's Rights

In accordance with Article 125 of the Constitution, recourse to judicial review is available against all actions and acts of administration. Judicial power is limited to verifying the conformity of the actions and acts of the administration with regard to law. In fact, no judicial ruling shall be passed which restricts the exercise of the executive function in accordance with the forms and principles prescribed by law, which has the quality of an administrative action and act, or which removes discretionary powers. Article 1 of the

Law on Civil Proceedings states that in order to ensure the Court protection of the right of citizens and legal persons, and to ensure legality, a Court in an administrative cause decides about the legality of acts performed by state apparatuses and organisations vested with public powers and reaches solutions about rights and obligations in administrative matters. Besides, the Law on the System of State Administration and the Law of Civil Procedure permit persons to challenge the legality of a public official's action by filing a complaint or by bringing a suit to the Administrative Court or to a Civil Court. Article 15 of the Law on the System of State Administration provides that complaints may be made against individual actions, activities and measures of state government bodies and legal person vested with public power in specific affairs of state administration, in case the complaint is not allowed Court protection can be requested.

2.4. Romania

On 1 January 2007, Romania joined the European Union. But judicial reform and the fight against high-level corruption are a priority for this government, and for the reform of the organisational structure of public administration.

2.4.1. Administrative Procedures and Citizen's Rights

The Constitution of 1991 introduces some general principles in relation to public power, like the rule of law, providing that «all citizens enjoy the rights and freedoms granted to them by the Constitution and other laws, and have the duties laid down thereby» (Article 15). The Constitution protections freedom of information: Article 31 decrees that a person's right of access to any information of public interest cannot be restricted and public authorities, according to their competence, are bound to provide for correct information of the citizens in public affairs and matters of personal interest. However, two laws that should be particularly important to citizen's rights are the Law n. 161 of 19 April 2003, regarding the assurance of transparency in the exercise of authority by public officers and functionaries in economic affairs and prevention and criminalisation of public corruption, and the Law n. 7 of 18 February 2004, which is known as the code of conduct for public officials.

2.4.2. Administrative Justice and Citizen's Rights

In accordance with Article 21 of the Constitution, every person is entitled to bring cases before the courts to defend his legitimate rights, liberties, and interests, and the exercise of this right may not be restricted by any law.

Even in Romania, the Constitution has introduced the Advocate of the People to defend citizen's rights and freedoms (Article 55) and exercise his powers *ex officio* or upon request by persons aggrieved in their rights and freedoms, within the limits established by law, and particularly Law n. 35 of 13 March 1997, on the Organisation and Functioning of the Advocate of the People Institution. The Advocate of the People has the power to take up and distribute complaints filed by persons who have been aggrieved by public administration authorities through violations of their civic rights and freedoms, and to decide on such complaints and to follow up the legal resolution of complaints received and to request the public administration authorities or civil servants concerned to put an end to the respective violation of civic rights and freedoms (Article 13). Ombudsman's office operates to protect citizens' constitutional rights, but it has limited power and independence from the government.

2.5. Slovenia

The reform of the Slovene public administration has been developing systematically since 1996 and is oriented towards upgrading the existent system. One of the principles of the reform is also the simplification of administrative procedures, combined with other initiatives, such as administrative simplification and greater professionalism, the introduction of quality standards into administration work, e-Government, the upgrading of the local government system and others. Administrative procedures in the Republic of Slovenia are regulated in several legal acts, the most important being the General Administrative Procedure Act of 2006.

2.5.1. Administrative Procedures and Citizen's Rights

Articles 2 and 3 of the Public Administration Act of 2002 introduces the fundamental principles of administrative action and, particularly, the principle of legality and of impartiality. This prevision highlights the way the status of EU members presupposes

the classical principles, typical of the separation of powers, that are a common heritage of EU members. The act introduces the concept that the citizen is also a client (Article 5) and, in servicing clients the administration must respect the personal dignity and the personality of clients, and guarantee a speedy and easy exercising of their rights and legal benefits. The administration shall keep the informed public partecipation in exercising the rights. It shall be obliged to enable the citizens to communicate their views and criticisms on the administration service, and shall deal with and respond to those remarks within a reasonable period of time.

2.5.2. Administrative Justice and Citizen's Rights

The judicial system of the Republic of Slovenia includes courts of general and specialised jurisdiction. In administrative disputes first-instance decisions come under the jurisdiction of the Administrative Court as a specialised Court. The Administrative Review Department of the Supreme Court decides in specialised panels. The Constitutional Court is the highest body of judicial authority for the protection of constitutionality, legality, human rights and basic freedoms. Among other issues it decides on constitutional complaints, which can be filed by anyone, who believes that his human rights and basic freedoms have been violated by a particular act of a state body, local community or statutory authority. It also decides on conformity of the laws with the Constitution and on conformity of the general acts issued for the exercise of public authority with the Constitution, the laws and non-statutory regulations.

In an administrative dispute, the court would usually rule on the legality of individual final acts and actions issued by state bodies, local communities bodies or other bearers of public authority (the review of lawfulness). In such cases (when it only reviews the lawfulness) the Court has the power to annul an administrative act and return the matter to the body which issued the act for a repeat procedure, but it can not decide on the matter itself. When issuing a new administrative act the competent body is bound by the legal opinion of the Court and its position on the procedure. In certain cases the Administrative Court may annul the administrative act and decide on the matter with a ruling (full review). In such cases the Court itself adjudicates on the rights, obligations or legal benefits of an individual or legal entity. It is also possible for a claimant to

request the return of items which have been seized and request to award damages caused by the execution of the disputed administrative act.

3. CONCLUSION

Balkan countries have legal perspectives on the development of administrative citizenship, but at different times and with different conditions. Their path towards the EU differs and in general is relatively bleak. Left on their own, their individual country's constitutional design will not provide for gradual improvement. What matters is the competition among the various countries to provide options of a brighter future for their people. Market prices are denominated by the euro, and the European currency serves as a reference currency, while trade gravitates towards the EU; similarly, its peoples and political establishments also gravitate towards the EU. There is no cause and effect mechanism: it is simply where the opportunities are. The rule of law, as it is embedded in the constitutions, does not provide for an efficient and equitable treatment of different forms of property and individual and collective rights. The lack of constitutional equality before the law is likely to favour collective attitudes, that can easily be justified by misinterpreting history.

For the time being the constitution-making in the Balkans follows the chain of events as was the case with Bosnia-Herzegovina, with Macedonia, with the redrafting of the union between Serbia and Montenegro, with the constitution – making of all ex-Yugoslav states, and with constitutional legitimisation of the political establishments of Bulgaria and Romania. A proactive constitutional vision is a part of the solution. Naturally, it takes time, and at the same time these notions of the existing constitution design, in the Balkan area, the peculiarities of democratic transitions. On average, Central European and Baltic states represent more concise constitutional models, but the limited space of this essay does not allow us to elaborate a full charter of common administrative citizenship in the Balkan area, but enables us to outline some basic considerations, in relation to legal formants and, particularly, normative formants.

The first idea is the following: a formal prevision and material

protection of administrative citizen's rights are necessary conditions to become a EU member. We saw that not only Albania, Bulgaria, Croatia, Romania and Slovenia have legal texts on Administrative procedure or administrative action, but also other countries, like Bosnia-Herzegovina (Law on Administrative Procedure of 2004). The European Union has introduced a new form of circulation of legal models, an authority – a model, which can condition political and institutional choices of the countries that are part of European Union, but mainly future members. In this perspective, the introduction of a common model is simplified by the existence, in some countries of the Balkan area – like the old Yugoslavia or Albania –, of the important model of Code of Administrative Procedure: the Yugoslav Law on Administrative Procedure (1957), one of the most important European model[21]. Another point of view involves the consideration that in all the experiences, we point out the prevision of right of information – in constitutional or legal text – is the base to build common administrative citizen's right. The third approach to the build of a charter of administrative rights is through the reform of public administration and the introduction of «operational rules» to fight corruption and implement economic investments in the Balkan area. If the perspective is correct, we can believe that it is possible to take the administrative rights seriously in the Balkan area.

[1] «Administrative law» has more than one meaning. In the original sense it was defined as that part of the law which fixes the organisations and determines the competence of the authorities which execute the law, and indicates to the individual the remedies for the violation of his rights: F.J. Goodnow, *Comparative Administrative Law. An Analysis of the Administrative Systems National and Local, of the United States, England, France, Germany*, New York- London, G.P. Putnam's Sons, Stud. Ed., 1902, pp. 8 ss.

[2] On legal formants see R. Sacco, *Legal Formants. A Dynamic Approach to Comparative Law* (I), in «The American Journal of Comparative Law», vol. 39, 1991, pp. 1-134; Id., *Legal Formants: A Dynamic Approach to Comparative Law* (II), in «The American Journal of Comparative Law», vol. 39, 1991, pp. 343-401.

[3] D.J. Galligan, *Administrative Law in Central and Eastern Europe*, in D.J. Galligan, R.H. Langdan II and C.S. Nicandrou (eds.), *Administrative Justice in the New European Democracies*, Budapest, COLPI, 1998, p. 17.

[4] M. Gleny argues that Milosevic's «real aim was not to end Kosovo's autonomy» but rather to alter the federation into a unitarist state, in M. Gleny, *The Balkans: 1804-1999. Nationalism, War and the Great Powers*, London, Granta Books, 1999, pp. 627 ss. Either objective required and resulted in a non-constitutional alternation of the basic foundations of Yugoslavia, and in wars and interethnic conflicts.

[5] See, e.g.: V. Dimitrijevic, *Preface*, in *Constitutional Reform in Serbia and Yugoslavia. Proposals by an Independent Group of Experts*, Belgrade, Belgrade Center for Human Rights,

2001; T. Fleiner, H.-P. Schneider and R.L. Watts, *Constitutional Reorganization of the Federal Republic of Yugoslavia*, Belgrade, CLDS, 2002; B. Mijatovic, D. Popovic and S. Samardzic, *The Union of Serbia and Montenegro. Proposal for the Constitutional Reconstruction of FRY*, Belgrade, CLDS, 2000.

[6] The expression derives from the classical book of R. Dworkin, *Taking Rights Seriously*, Oxford, Blackwell, 1977.

[7] P. Leyland and G. Anthony, *Textbook on Administrative Law*, Oxford, Oxford University Press, 2005 (5th edition), p. 73.

[8] The roadmap for Bulgaria concentrates on administrative and judicial capacities, economic reform and the chapters of the *acquis*. The current situation in these three areas is described and steps to be taken are indicated. As regards administrative capacity, a reform strategy should be drawn up. As regards judicial capacity, the Commission expresses its support for the implementation of a strategy and action plan for the reform of the judicial system. As far as economic reform is concerned, priority should be given to the following aspects: the privatisation programme, development of small and medium-sized businesses, the programme to reduce and simplify licensing procedures, reform of the customs and tax administrations, bankruptcy procedures, development of financial intermediation, enforcement of property rights, transactions and prices of agricultural land, and public investment in education, the environment, health and infrastructure. Finally, for each of the chapters of the *acquis*, the necessary measures are indicated: see http://europa.eu/scadplus/leg/en/lvb/e50011.htm.

[9] The roadmap for Romania also concentrates on administrative and judicial capacities, economic reform and the chapters of the *acquis*. The current situation in these three areas is described and steps to be taken are indicated. Key areas for the reform of the public administration and the reform of the judiciary are highlighted. The Commission will support these reforms through the «Phare» Programme. Priority areas for the economic reform are set out: rate of inflation, inter-enterprise arrears, wage bill in the public sector, energy costs, tax reform, budgetary reform, bankruptcy procedures, development of financial intermediation, enforcement of property rights, transactions and prices of agricultural land, public enterprise reform, completion of privatisation in the banking sector, public investment in infrastructure, education, the environment and health, and reduction of state aid. Finally, for each of the chapters of the *acquis*, the necessary measures are indicated in http://europa.eu/scadplus/leg/en/lvb/e50011.htm.

[10] Negotiations were to be started with Croatia in 2005 within the framework of an enhanced pre-accession strategy drawing on the conclusions of the Commission opinion on Croatia's candidacy. The Council decided, however, not to set a firm date for the opening of negotiations because it first wanted to see Croatia cooperating fully with the International Criminal Tribunal for the former Yugoslavia.

[11] See C. Franchini, *European Principles Governing National Administrative Proceedings*, in «Law & Contemporary Problems», vol. 63, 1996, pp. 183 ss.

[12] The principle of impartiality requires equal treatment of analogous cases, unless there is an adequate justification for disparate treatment. The principle also respects the general criteria established in the past or followed in similar factual situations. See Case C-119/97, *Francaise de l'Express (Ufex) v. Commission*, 1999, in *E.C.R.* I- p. 1341; Case T-80/97, *Starway SA v. Council*, 2000, in *E.C.R.* II- p. 3099.

[13] Maybe the only way to grasp the real meaning of administrative acts as we in Albania used to understand them is to juxtapose them with other administrative activities such as the so-called administrative operations and contracts. Another important distinction to be drawn here is the one between administrative acts and those political acts which are often known in Europe as «acts of government» and which tended to be considered not subject to judicial control. In other words, acts of administration were considered those normative or individual decrees, decisions and orders which set forth rights and duties and which emanated from the administrative agencies below the so-called institutions of power (Council of Ministers, Parliament, etc).

[14] The notion of administrative operations would refer to those line functions of

administrative entities which did not give rise to rights or duties but were intended to implement administrative acts.

[15] These were agreements between administrative agencies and enterprises and subject more to the norms of civil law and arbitral tribunals than to administrative law.

[16] A special category of administrative acts comparable to the concept of quasi-judicial function that emanated exclusively from the work of the *Arbitrazh*, the arbitral tribunal that settled disputes between state agencies and state-owned enterprises.

[17] Law n. 8485, of 12 May 1999, *The Code of Administrative Procedures of the Republic of Albania*.

[18] S. Whitefield, *Mind the Representation Gap. Explaining Differences in Public Views of Representation in Post-Communist Democracies*, in «Comparative Political Studies», vol. 39, n. 6, 2006, p. 733.

[19] See S. Sadushi, *E dreita administrative. Teoria e aktit administratiu*, vol. 2, Tiranë Shtator, Botimpex, 2000, pp. 124 ss.

[20] Amended by SG Nos. 9/1983; 26/1988; 94/1990; 25 and 61/1991; 19/1992 and 65/1995;
70/1996.

[21] See N.S. Stjepanovich, *The New Yugoslav Law on Administrative Procedure*, in «American Journal of Comparative Law», vol. 8, n. 3, 1959, pp. 358 ss.