PART FOUR

REFORM IN ADMINISTRATIVE LAW AND PROCEDURE

1. General

Corruption in the administrative area undermines the trust in State authority, in the judicial system and in public administration, and tends to be increasingly perceived as a criminal feature of the system itself rather than as a series of criminal acts committed by individual organizations, institutions or officials.

Some essential reasons for the significant growth of corruption in the administrative sphere, which are also relevant to the reform of the Judiciary, could be summarized as follows: the lack of a clear system of judicial review over the steps undertaken by the administration; somewhat obscure rules on administrative disputes; rather ambiguous limits of operational autonomy for the administration which is not always subject to control; a slow and clumsy bureaucratic machinery; no specific attention to ethics in public administration and in administrative justice; lacking or weaker confidence of citizens in the steps made by the administrative and judicial authorities.

A major problem of administrative law now is the **lack of consistent administrative legislation and procedures**. The numerous amendments to substantive administrative laws are frequently discrepant and incompatible, give rise to many gaps and ambiguities, and invite conflicting interpretation. The existing rules on the issuance and challenging of secondary legislation and of individual administrative acts are rather obsolete and should be fundamentally revised. At present, administrative proceedings are governed by the following instruments and rules: the *Constitution* of Bulgaria (s. 120, subs 1) which generally provides for judicial review of the lawfulness of any acts issued or steps made by administrative authorities; the *Law on Administrative Proceedings* (published, SG, issue 90 of 1979); the *Law on Administrative Offences and Penalties* (published, SG, issue 92 of 1969); the *Law on Legislative Instruments* (published, SG, issue 21 of 1973) and the *Law on the Supreme Administrative Court* (published, SG, issue 122 of 1997). Those legal instruments were adopted at different times, there is no consistency among them and they reflect different sets of values. Their enforcement and interpretation are therefore especially difficult and inhibit the access of citizens to justice.

All these factors should be in the focus of reforms in administrative law and procedure if those reforms are to become an efficient tool to suppress corruption by way of subjecting the acts and the decisions of public administration to judicial scrutiny.

1.1. Problems in substantive administrative law

In view of combating corruption in the process of enforcing administrative law, the following major problems in substantive administrative provisions should be singled out:

- problems relating to the legislative framework of **public administration** and to its consistent implementation

In spite of the legislative measures undertaken to implement a uniform organizational pattern for the administration and common internal rules for the administrative structures of all executive bodies, be they central or regional or municipal (*Law on Administration*, *Ordinance Laying Down the Conditions and the Procedure for Keeping a Register of Administrative Structures and of the Acts of the Bodies of the Executive*), corruption still affects to a larger or lesser degree the administration of all those bodies.

The measures aimed to make the work of individual administrations more **transparent** are far from sufficient. While almost all administrations have provided special reception rooms where citizens can file applications or complaints, there are no particularly efficient feedback mechanisms or adequate legal rules. While legislative provisions exist on how to exercise the **right of access to public information** (*Law on Access to Public Information*, published, SG, issue 55 of 2000, amended and supplemented, issues 1 of 2002 and 45 of 2002), their implementation has identified the lack of sufficient guarantees for transparency and accountability and a persisting strive of the administration to keep for official use only much of the information about its operations. The *Law on Access to Classified Information* (in force as from 4 May 2000) covers the creation, processing and storage of any information that represents a **State or official secret**, and lays down the conditions and the procedure for providing access to such information. Nonetheless, there are still opportunities to refuse, by reference to obscure criteria, access to information constituting an official secret and that environment is quite conducive to corruption.

At the same time, though, the annual *reports on the situation in the administration as a whole*, and *of some individual administrations* offer no **findings of corrupt practices, nor are there any suggestions for specific anti-corruption measures**. It is still rather difficult to pinpoint the indices that could be used to assess the efficiency of administrative operation and to manage performance in a purpose-oriented manner.

- problems with the framework of **professional civil service** and with its consistent implementation

The impression of the public that those working in the administration are highly corruptible strongly invites an in-depth analysis of the implementation of the *Law on the Civil Servant* and of the anti-corruption measures envisaged therein.

In line with the *Law on the Civil Servant*, the **status of civil servants** has been introduced in all structures of the central administration, in the regional administrations and in 95 per cent of the municipal administrations. It is somewhat perplexing, however, that **this status is inapplicable to those working in the National Audit Office and in the tax administration**. This is even more surprising given the responsible supervisory functions vested in those bodies. Expert positions in the general administration are still subject to the *Labor Code* and the contemplated extension of *Law on the Civil Servant* to those positions has been delayed without good cause. There has been a recent trend to insert in sector-specific legislation (*i.e.* the *Law on the Judiciary* as regards court clerks, the *Law on the Ministry of Interior*, the *Law on Defense and on the*

Armed Forces, the *Law on the Constitutional Court*) only a few „beneficial" elements of the civil servants' status, without taking the status as a whole on board in the respective sector. Any deviations from, and exceptions to, the status of civil servants may easily become an obstacle to the promotion of a system of professional civil service based on corruption-free behavior and culture.

As **competitions** are not compulsory when someone is appointed in the civil service, that method is simply not applied by most administrations. This brings forth the reasonable suspicion that improper influences are, or might be, exerted when people are appointed as civil servants. The lack of clear criteria to evaluate the professional knowledge and skills of applicants is favorable to corruption and fails to guarantee any objective selection or recruitment based solely on professional merit. The possibility given to any head of administration to appoint at his own choice any of the three applicants ranked by the competition committee, rather than the best-performing candidate, also benefits corruption.

The statutory guarantees for stability, which should be a crucial corruption-deterring factor in the administration, are by far insufficient. In quite a few cases the formal internal restructuring of some units of the administration is used to remove specific civil servants from office. The higher levels of the administration **aspire to dilute the divide between political and career-based appointments**. This puts a serious strain on the overall implementation of the status of civil servants, as **stability** lies in its very heart.

The draft amendments to the *Law on the Civil Servant* prepared by the Government envisage a series of anti-corruption measures, such as: a mandatory requirement of holding **competitions** upon appointment; introducing **incompatibility** between the position of a civil servant and the functions of a trustee or liquidator; **conflict-of-interest** rules; abolishing the possibility for **premature promotion in rank** that is not based on clear criteria, etc.

- problems in **the system of administrative services and with the access to information**

The expected results of the implementation of the *Law on Administrative Services to Natural and Legal Persons, viz.* **lawfulness, speed, accessibility, good quality of the service provided and deterrence of corruption**, have not materialized yet. There is no shared understanding that efficient services are unthinkable of unless the procedures within each separate administration improve. There are great discrepancies in the level of administrative services attained in different administrations. This virtually thwarts the gradual development of administrative work from the mere provision of services by a given administration into an integrated administrative servicing, or into a common pattern of „one-stop shop" servicing by all administrations in the Executive. This finding is reconfirmed by the fact that the legislation rarely provides for procedures where several administrations are bound to co-ordinate among themselves *ex officio*. The process of improving administrative services is also severely frustrated by meager funding which prevents the supply of documents, equipment and information required for the operations.

- the lack of a clear-cut division between the **powers of the central and local administration**

The interweaving of powers most often results in duplicating work and reshuffling duties which, in turn, is conducive to abuse and irresponsibility.

- no **uniform concept of „administrative act"** exists

Different legal instruments prescribe different contents and scopes for the concept of „administrative act". This can be easily seen in s. 120(2) of the *Constitution*, s. 2 and 3 of the *Law on Administrative Proceedings,* s. 19(5) and (4) of the *Law on Administration*, the *Law on the Supreme Administrative Court*, and many others.

To further confuse the situation, a number of instruments do not refer to concept of „administrative act" at all, thus inviting hesitation as to how the acts they provide for should be defined and reviewed. One example is the term „decisions of the land commission": when these are challenged, regional courts sometimes believe that they are not administrative acts but concern property matters, so the ensuing disputes should not qualify as administrative, but as civil ones.

The *Law on Administrative Proceedings* does not provide an exhaustive definition of the concept of administrative acts. There is no uniform legal criterion to be used for excluding some administrative acts from judicial review.

A significant source of corruption is the lack of distinction between two clearly distinct capacities of the State: its capacity as the carrier of Executive power and its capacity as an economic operator who manages and disposes of state-owned property. Similarly, no distinction is made between individual administrative acts whereby the State exercises its public function of regulating and organizing public life, and the acts whereby the State merely carries out specific activities relative to the management of State-owned assets[14]. The identical arrangements for appealing against such essentially different instruments therefore frequently blocks normal economic life, thus creating preconditions for corrupt practices.

- the lack of legal rules on **key concepts and legal structures**

Bulgarian administrative legislation does not contain any legal definition of the concepts of **„nullity" and „voidability" of administrative acts** and the interpretation of those concepts is entirely left to administrative-law theory and to the courts.

[14] Judgment No. 19 of the Constitutional Court of 23 December 1993 in case No. 11/93 describes the power of the Council of Ministers, which is the highest administrative authority in the country, to organise the management of State-owned property as a „typically managerial function". The vast material scope of that constitutional power is defined as covering not only the two types of property the State may have in Bulgaria, *i.e.* public and private property, but also other rights and duties of the State that can be valued in money". Express mention is made of the fact that in the context of that organisational activity, the Council of Ministers may issue acts but the same activity could also be carried out by individual ministers or by other bodies empowered by the Council of Ministers to do so. In other words, in its capacity as a high Executive body, the Council of Ministers decides on the basis of expediency who and how should manage that property, unless otherwise provided in law. At the same time, attention is drawn to the fact that the regime of sites which form either private or public (other than exclusive) property of the State or the municipalities shall be laid down by law, and in the exercise of their right to private property the State and the municipalities shall be placed on an equal footing with all citizens and legal entities.

There are no clear criteria to define the concept of **„interested parties" in administrative proceedings**, and improper influences and practices can boost at ease on that account.

- the lack of adequate provisions on the situations where **the administration fails to pronounce within the time limits set in the law (the so-called „tacit refusal"**)

This structure persists in the shape in which it existed in an earlier social setting, where there was no division of powers, so it provides no guarantees for the respect of citizens' rights. The rules on challenging tacit refusals before the court are equally unsatisfactory under the new circumstances. The appeals procedure is slow and dear, so many private individuals prefer to dispense with it. As a matter of fact, in numerous cases the protection of citizens' rights is used to shield their actual infringement, as the administration simply keeps silent when it receives requests.

The frequent instances of tacit refusals, which are more often than not the result of corrupt practices, entails the uncontrollable transfer of functions which are typical of the administration, to the court. The courts thus engage in unusual activities (they decide on issues of governance and power which fall entirely into the competence of public administration) and this fuels secondary corruption at the level of the administration of justice.

- **operational autonomy**

The widest field for corruption in the administrative sphere is the so-called operational autonomy, *i.e.* the legal possibility of the administration of any Executive body to assess and define its conduct on grounds of advisability, albeit within the framework and in line with the objectives of the law.

When entrusting an administrative body with the power to rely on operational autonomy, the law-maker normally has in mind the attainment of specific targets through the exercise of that body's competence. In such cases, the Legislature believes that the body in question will best perform the functions assigned to it if it has the legal possibility to assess and choose its own steps on a case-by-case basis. The lack of adequate controls for lawfulness or advisability, though, frequently makes operational autonomy translate into arbitrary or illegal steps by the administration, and all these factors contribute to corruption to the largest possible extent.

At the same time, some laws contain legal rules which pave the way for corruption as they give powers to the administrative authorities but fail to identify any criteria or to give any instruction as to why a particular law should regulate specific cases of clashing interests (for example, the *Law on Civil Registration*, in its s. 12, subsections 2 and 3, provides as follows: „Where both parents fail to reach an agreement on the name, the public official shall enter in the certificate of birth only one of the names proposed by the parents. Where the parents fail to identify a name, the public official shall determine the name which he or she deems most appropriate in the case at hand." How would a public official determine which of the names proposed by the parents should be entered in the certificate?). „Undefined" concepts or expressions in some laws also enable broad

interpretation and enforcement and, hence, corruption. Such an example might be „incongruous speed", a concept used in s. 20(2) of the *Law on Road Traffic*. Such provisions greatly risk to become corruption-generating incentives, especially when used in privatization and public procurement laws.

A detailed analysis is needed of the norms which enable the administration to exercise discretion and to decide in favor of one party or the other, while not allowing for any creativity, nor requiring that a matter be settled also in view of the public interest involved.

1.2. Shortcomings in the legal framework of administrative procedure

In view of judicial reform in general, and of administrative procedure in particular, the following major drawbacks and problems emerge from the analysis of the legal framework of administrative procedure:

- the existence of **plenty of sources of administrative-procedure law, which are moreover inconsistent**

The existence of many and diverse sources of administrative-procedure law makes control over the administration rather inefficient, waters down the responsibilities of the different supervisory authorities, undermines the reputation of judicial review, and results in poor information for the citizens about how and where they should challenge illegal or incorrect administrative acts (for instance, in administrative practice the existing *Law on Citizens' Proposals, Petitions, Complaints and Applications* is often applied in parallel to, or instead of, the *Law on Administrative Proceedings*).

Legal instruments belonging to other areas of law, *e.g.* constitutional law, civil law and civil procedure, criminal law and criminal procedure, labor law, fiscal law and fiscal procedure, tax law, public international law, sometimes contain administrative provisions.

There is no clear distinction between administrative-procedure law and other sets of procedural provisions, in particular between tax proceedings and administrative proceedings. The *Code of Tax Procedure*, for instance, provides for a route of challenging administrative acts other than the one set out in the *Law on Administrative Proceedings* or the *Law on the Supreme Administrative Court*. The *Code of Tax Procedure* has introduced the compulsory challenging of tax reassessments following an administrative procedure as a precondition for any subsequent judicial review, and precludes the challenging of initial tax assessments in court.

Because of the different approaches used, references to the *Code of Civil Procedure* and the *Code of Criminal Procedure* result in inaccuracies, gaps or even inconsistencies with the laws on administrative procedure. This is due to the different legal nature of the relations covered by any of those instruments. That situation frustrates enormously the examination of administrative disputes by district (second-tier) courts when they hear appeals lodged under the *Law of Administrative Proceedings*. It also creates difficulties when certain disputes fall within the competence of the Supreme Administrative Court (SAC), as the *Law on the Supreme Administrative Court* provides for a special procedure in such cases.

Under the existing rules on administrative procedure, the *Code of Civil*

Procedure has subsidiary application and this fails to mirror the specific nature of administrative legal relationships. The aspiration of the law-maker to put a coherent body of procedural rules in place is thus compromised, as is efficient administrative justice.

The interpretative decisions of the Supreme Administrative Court are binding on the bodies of the Judiciary and on the bodies of the Executive, as well as on the authorities of local self-government, but this does not imply that they could substitute for statutory rules. The lasting relations of administrative procedure (*e.g.* those concerning cassation proceedings or the rights of third interested parties) must not be governed by interpretative decisions, or else there would be conflicting pronouncements, fragmentation and inconsistency.

The existing legal rules on administrative justice fail to contribute to the development and operation of a consistent and uniform system of justice as far as administrative procedure is concerned. Those rules form a substantial obstacle to the development of administrative justice and to identifying the strategic legislative priorities for its improvement.

The discrepant, non-standardized sets of administrative proceedings may even push the courts to adopt different approaches, and this is beneficial to corrupt practices.

- the absence of **unambiguous legal rules on some procedures and on major legal structures**

The **cassation appeals** against court judgments in administrative cases give rise to issues which have no definite or explicit legislative response in the pieces of administrative-procedure legislation, at least not so far. The subsidiary application of the *Code of Civil Procedure* is insufficient, nor is the Code fit to serve as a comprehensive legal basis for the complex and specific area of administrative justice. Moreover, this approach fails to take on board the specificity of administrative procedure and the enhanced *ex officio* principle which underlies it. Gaps and inconsistent interpretations on issues such as grounds for cassation, evidence, time limits for lodging or challenging appeals, cassation appeals before the district courts, etc. quite naturally produce divergent case-law.

Bulgarian law has no provisions on corporate liability, be it civil or criminal or administrative.

- no **specialization at courts of first instance**

The lack of specialization at first-instance courts results in some administrative cases being handled by civil or criminal judges who find it more difficult to sink into the peculiarities of administrative proceedings. This affects essentially the quality of their judgments and overloads the instance of cassation, *i.e.* the Supreme Administrative Court, with cases abundant in poor examination of both the facts and the law, and not accompanied by the requisite evidentiary material. Administrative disputes are currently heard by the Supreme Administrative Court; special administrative divisions exist in some district courts and yet another group of courts have no specialization whatsoever when it comes to administrative cases.

- **failure to respect and comply with court acts**

Respect for and compliance with court acts form a fully-fledged manifestation of the principle of the rule of law. The rule of law is upheld not only when cases are resolved, but also when judgments are fulfilled. Failure to respect and comply with court judgments is a common problem across the country.

In the sphere of administrative law, the relations between the court, on the one hand, and the administrative bodies having issued the acts under attack, on the other hand, are somewhat problematic. The forwarding of administrative files is often delayed, the court is not assisted in clarifying the case through relevant facts and submissions, and there are instances of failure to fulfil the judgments.

The judgments of the Supreme Administrative Court are binding on the authorities and on the persons having participated in a case. If the administrative act appealed against is reversed, the judgment is binding *erga omnes* (s. 30, *Law on SAC*). The judgments delivered by the Supreme Administrative Court are subject to immediate enforcement by the authorities having issued, or applying the act reversed (s. 32, *Law on SAC*). Corrupt practices transpire when the administrative body which must act so as to fulfil the court judgment and the instructions of the court either fails to comply with the judgment or refrains from taking on board the instructions and the spirit of that judgment: for example, a privatization deal is not terminated although the court has repealed the illegal administrative order whereby the buyer was selected, or a privatization procedure starts from scratch instead of being resumed from the stage where the violation occurred, etc. The administrative penalties envisaged for such cases are extremely inefficient and, even worse, are often not enforced in practice.

2. The objective of reforms in administrative law and procedure

The reform of administrative law and procedure is aimed at improving the legal and organizational framework of administrative justice so as to prevent corruption by introducing a modern system of administrative legislation and setting out efficient mechanisms to keep the work of public administration under judicial review.

3. Proposed reforms

3.1. Proposed reforms in administrative law

Changes are compelling in substantive administrative law, and especially in the legal instruments that regulate the work of the administration, along the following lines:

3.1.1. Introducing **wider accountability and access to the information** kept by public authorities which could reduce the chances for corrupt acts or omissions.

3.1.2. **Regulating operational autonomy** by adopting internal rules that should define the method of decision-making when operational autonomy is granted. The internal rules will not be the same for all administrative bodies, they will not even be binding but will largely facilitate the work of the corresponding authority and articulate clearly the methods, approaches, criteria and measures to be used

by that authority when it operates autonomously. At the same time, all possible actions that could be undertaken by the respective authority in exercising its operational autonomy should be provided for in law. They should form part of the authority's competence and should correspond, in their content and objective, to the legislation in force. That process needs clear regulations and control.

The lawfulness of any exercise of operational autonomy must be subject to judicial review. A more problematic issue, though, is the possible review of the expediency of the steps made by the administration, as operational autonomy implies expediency.

It is debatable whether or not review could be entrusted to the so-called **special jurisdictions**. The grounds to resist the revival of the wide resort to administrative jurisdictions derive from the *Constitution*, as it provides for an overall judicial review of the acts and steps of the administration. The view in favor of special jurisdictions (that should *inter alia* review the expediency of administrative decisions) is substantiated with the argument that the *Constitution* only prevents bodies other than the courts listed in the *Constitution* or set up by virtue of special laws, from administering justice, *i.e.* from deciding on legal disputes. It is claimed that review by a special jurisdiction does not represent a genuine legal dispute but a dispute concerning the lawful exercise of an indisputable right.

The usefulness of special jurisdictions in controlling operational autonomy requires further debate and a solution should be forged that will be both working and faithful to the *Constitution*.

3.1.3. Career promotion of civil servants depending on their performance when they exercise their official duties, based on **fair and transparent career development procedures**. Such steps should contribute to eliminating the existing conditions for inside corruption.

3.1.4. Promoting a **general system to improve the professional knowledge and skills of those working in the administration.** An important element could be the introduction of a **systematic training for civil servants in corruption-related matters** at the Institute of Public Administration and European Integration, an institution that has been involved for nearly two years now mostly in the provision of compulsory or specialized training to civil servants.

3.1.5. Putting a reliable **feedback mechanism** in place to stay in touch with service users, so that their skills could be used both to better the process of administrative servicing and to suppress corruption. Special attention should be given to the provision of different lines of access to services (telephones, mail, e-mail, Internet portals), and to the implementation of floating working hours in administrative service units. Offering specialized training to civil servants at those units, so as to inspire a new administrative culture and to amplify their competence, would contribute to make the provision of administrative services more efficient and, hence, restrain

the causes for corruption. Such training should prepare the servants to meet the novel requirements in their contacts with citizens, *viz*. the provision of information, transparent decision-making, right to appeal. It is necessary to implement, stage by stage and consistently, the *State E-Government Strategy* and the *Government Concept Paper for Improving Administrative Services Based on the One-Stop Shop Principle*. These two documents outline the directions for a future modern and efficient governance in response to the needs of the public for high-quality and easily accessible administrative services, *inter alia* by way of electronic links between the citizens and the various agencies of public administration. Although in the most optimistic scenario at least 7 to 10 years will be needed to complete the automation of administrative processes, the gradual introduction of electronic operations within that process will enhance its transparency, accountability, flexibility and speed, and will reduce the costs. The exercise of state power, *inter alia* by providing administrative services though information technologies, would in all cases contribute to curbing bureaucracy and building up a corruption-deterring environment.

3.1.6. Devising legislative rules, adequate to the novel conditions, to regulate the constitutional right of citizens to file complaints, as the existing *Law on Citizens' Proposals, Petitions, Complaints and Applications* of 1980 is hopelessly outdated.

3.1.7. Revising completely the „**tacit refusal**" and the appeals against such refusals. Two options are offered for discussion. **The first** is to retain tacit refusals but only provided that on appeal the court will invariably review the decision and handle the liability of the corresponding administrative body or of the person who failed to pronounce on time, while imposing **penalties** in the same proceedings. **The second** option is to establish the principle that failure of the administration to pronounce on time shall be construed as a reply in the affirmative to the request addressed to it. That would imply extending the structure of „**tacit refusals**" as enshrined in the newly-adopted *Law on Limiting Administrative Regulation and Administrative Control* (published, SG, issue 55 of 17 June 2003, in force since 17 December 2003) to a wider number of cases.

3.2. Proposed reforms in administrative procedure

Further improvements in the legal and organizational framework of administrative justice are associated with the following specific proposals:

3.2.1. Drafting a ***Code of Administrative Procedure*** (CAP). The latter should cover the subject matter of administrative proceedings in the widest possible sense, as currently governed by the *Law on Administrative Proceedings*, the *Law on SAC*, the *Law on Administrative Offences and Penalties*, the *Law on Legislative Instruments*, and other laws relevant to the relations between citizens and legal entities, on the one hand, and public administration, on the other hand, and to court proceedings in administrative cases. Likewise, explicit rules are

needed to address the open issues in the administrative procedure, while interpretative decisions should be reserved for the essential interpretation of specific cases in court.

At the same time, CAP should not copy provisions or matters from the *Code of Civil Procedure*. Unfortunately, this has been the experience with the *Tax Procedure Code* which repeats, sometimes with minor discrepancies and deviations, texts from other procedural laws, thus entailing situations where the same court might apply different sets of rules to identical circumstances.

CAP should comprise the general rules of administrative procedure, including the procedure of issuing administrative acts, the enforcement of such acts, the imposition of administrative penalties, the appeals against those acts before another administrative body or before the court. Special procedural rules should exist for urgent and justified cases but they should also be contained in CAP, for example in a separate chapter. References to other procedural codes should be made according to the same approach and should be restricted, *i.e.* applicable only where principles and solutions common to all legal procedures are at stake.

In order to draft a *Code of Administrative Procedure* meeting the above requirements, the following steps are required:

- conducting an in-depth analysis of Bulgarian administrative legislation in view of its streamlining and future codification in a thorough *Code of Administrative Procedure*. The idea is to fully set apart administrative-procedure law and administrative justice and to ensure their autonomy in relation to civil and criminal justice;

- carrying out a general evaluation of the Bulgarian system of administrative justice and presenting the practices of the member states of the European Union to enable comparison;

- to fulfil the tasks identified above, international and European lecturers and experts must be involved, training and exchange of experience for Bulgarian experts and practicing judges should be organized;

- setting up a task force with the wide involvement of practicing judges, scholars and experts to draft a *Code of Administrative Procedure*. That task force should form part of a larger expert team developing, at conceptual level, the subject matters to be regulated by all procedural codes.

3.2.2. When elaborating CAP, references to the *Code of Civil Procedure*, the *Code of Criminal Procedure* or other procedural laws should be avoided. Should that prove impossible, such references should be reduced to a minimum.

3.2.3. The rules in CAP should be conform to the principles embedded in the *European Convention for the Protection of Human Rights and Fundamental Freedoms* and to other relevant international conventions ratified by the Bulgaria, as well as to any international conventions on the suppression of corruption to which Bulgaria has acceded.

3.2.4. In terms of structure, CAP should cover at least the following elements of proceedings relative to administrative acts:

- definition of the concept of „individual administrative act";
- definition of the concept of „general administrative act";
- definition of the concept of „instrument of secondary legislation";
- accurately developed criteria for the exclusion of certain administrative acts from the scope of judicial review; any exceptions should be strictly justified and kept to a minimum, in line with the European principles of administrative justice;
- definition of the concept of „interested parties";
- rules on the issuance of administrative acts and on the challenging of such acts before other administrative bodies;
- updating and specifying the prerequisites under which an administrative body may allow for the preliminary enforcement of an administrative act;
- further to introducing substantive legal rules on the nullity and voidability of administrative acts, providing for procedures that should help overcome the practical difficulties in distinguishing between the two concepts;
- providing exhaustive rules on proceedings at first instance and on proceedings before SAC;
- preserving the current two-instance court procedure, in line with the proposed reforms in civil law and procedure;
- providing autonomous rules, other than those in the *Code of Civil Procedure*, on summoning, notices, evidence and evidentiary means; the latter, in particular, should be modernized and brought into line with modern trends in the development of social life, such as the Internet, e-documents, etc.;
- explicitly providing an opportunity for interested parties who have not participated in the administrative proceedings to be able to initiate the reversal of effective court judgments; this possibility is currently covered by Interpretative Decision No.1 of 2001 of the General Assembly of Judges at SAC;
- providing for corporate pecuniary liability;
- providing for specific rules on collateral to match the demands of administrative procedure;
- providing rules on the enforcement of judgments by the administration. The legal procedure whereby sanctions are imposed for failure to comply with the instructions of the court should be fundamentally revized;

- to achieve the aforementioned objective, administrative authorities should be placed under a more severe threat of administrative penalties for any failure to comply with judgments; such liability should match the seriousness of the violation, *e.g.* higher fines and other appropriate sanctions should be envisaged;

- providing rules on the liability of the State and on remedying the damage that may have occurred as a result of an administrative act or of the failure to issue an act. Redress could take various forms, *viz.* compensation in the form of paying an amount of money or ensuring another benefit (if the damage cannot be directly rectified) or reinstating the affected parties in their rights. The remedy should not depend on whether or not there has been any attempt to bring the individual perpetrator to court; should be fully payable where the administrative act is found to be illegal, with partial compensation where the act entailed some damage; should not be payable or should go down where the victim partially contributed to the damage; and should be immediately decided on and paid in due course.

It is necessary to introduce unified rules on the steps of the administration in issuing administrative acts. On grounds of those rules, the administrative bodies should adopt their own internal regulations for each type of individual or general administrative acts, and those internal regulations should be announced in public and be accessible. That would assist statutory judicial review on the discretionary powers of the administration in issuing a specific act.

3.2.5. Setting up **a new unified system of administrative courts - regional administrative courts and a Supreme Administrative Court: *pros and cons***

Support for setting up a new unified system of regional administrative courts is based on the current drawbacks of administrative justice which stem from the lack of specialization at first instance (regional administrative courts). This entails the need to amend the *Constitution* of Bulgaria, and in particular to provide expressly in its s. 119(1) that the system of courts in the country shall include regional administrative courts.

Should this option be adopted, it is mandatory to examine well the number of cases heard by district and regional courts at present, so as to rectify the imbalance in the workload of different courts and to avoid impeding the access of citizens to justice. Where those courts are set up, professionals at district courts with operational administrative divisions should be relied upon.

When building up a new system of administrative courts, any potential „remoteness of justice from people“ should be prevented. The lesson with the existing *Code of Tax Procedure* should be learnt well, as that Code entrusted the examination of tax cases only to five district courts located within the territory of the courts of appeal.

The views **against** such a system also take account of the need to have specialization in administrative cases at first instance, but this should allegedly be achieved along the current model of the specialization in civil or criminal cases. The arguments against the proposal for separate administrative courts mainly suggest that this would be unreasonable in

terms of quantity, structure and financial resources needed.

It is therefore recommended that the studies and discussions on this issue should go on, so that all pros and cons could be carefully weighed and taken into consideration.

Regardless of the path to be taken, it is necessary to clearly define the competence of SAC and to devise criteria to streamline the number and the type of cases heard by that court at first instance, *inter alia* by evaluating the underlying public interest. This is required as the Supreme Administrative Court should be enabled to efficiently implement its constitutional powers to carry out the supreme supervision for the accurate and uniform application of the laws by all courts. To that effect SAC should also issue interpretative decisions to overcome inconsistent case-law.

A careful thought should be given to the introduction of single-member, three-member and five-member chambers at the Supreme Administrative Court and to an extended use of closed hearings as a tool to assess on a preliminary basis the procedural admissibility of complaints.

3.2.6. **Training** of judges and court clerks

The need should be analyzed for training in administrative law, and specific training programs should be developed to tackle the implementation of the future *Code of Administrative Procedure*. Those programs should be implemented in the context of the proposals for an overall reform in the training of magistrates and court clerks (see Part One, section III).

3.2.7. Creating a **computer system** where the cases should be loaded (similar to that in the Supreme Administrative Court) and providing access to both systems via the Internet.

3.2.8. The need to promote the role of public prosecution as an efficient anti-corruption factor in administrative proceedings

Unlike its role in criminal procedure, public prosecution is not involved in administrative proceedings as a body of criminal repression, nor does it necessarily represent the interests of the State. This finding is reconfirmed by the fact that public prosecutors must participate in court proceedings where the legality of administrative acts is questioned but are not bound to do so in administrative liability proceedings where fines are challenged.

In administrative proceedings, public prosecutors **uphold the principle of legality and supervise the lawfulness of the acts and steps issued or undertaken by the administration**. The public prosecutor pronounces and gives conclusion on the lawfulness of the administrative act at stake or on the well-foundedness of the appeal, thus participating in the dispute-resolution process. An explicit provision is therefore necessary for the **compulsory participation of a public prosecutor in proceedings where administrative acts of a legislative nature are appealed against before SAC**. That would help reaffirm the role of public prosecution in administrative procedure and would turn it into a powerful anti-corruption factor.

The mandatory participation of prosecutors from district prosecution offices or from the Prosecution Office with SAC in all court hearings where administrative acts are appealed against, in cassation proceedings (possibly initiated on appeal from the Deputy Prosecutor General with SAC on grounds of s. 33(2) of the *Law on SAC*), in proceedings for the delivery of interpretative decisions and for the reversal of effective judgments (Deputy Prosecutor General with SAC), and the power to propose the resumption of administrative liability proceedings (district prosecutors) reinforce the guarantees for compliance with the principle of legality and appear to be efficient supplementary mechanisms to fight corruption. Therefore, the recommendations of some foreign experts that the general supervision of public prosecution to ensure legality or the participation of public prosecutors in administrative cases should be abolished are unacceptable, as they result from an insufficiently detailed knowledge of the institution of public prosecution and of its functions in administrative justice.