Journal of Positive School Psychology
2021, Vol. 5, Issue 1
Pp 1-15

The Learnings From Debureaucratization Experiment in Slovenia; The Limits in Administrative Procedures Codification

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Abstract

This article explores bureaucratization and its boundaries in the framework of cutting red tape in the regulation of administrative procedures. Law is not an end in itself but should contribute to predictable and thus better relations in society. In this sense the priority protection of public interest which is characteristic of administrative relations between individual holders of rights and obligations and administrative bodies presents certain limitations to simplification. Through qualitative research methods (dogmatic normative and comparative methods as well as case studies) this article examines examples of debureaucratization in Slovenia provided by the amendments to the General Administrative Procedure Act. In most cases e.g. in waiving the right to appeal or broad fiction of service modifications were not appropriate since constitutional guarantees cannot be subject to "debureaucratization". However crises such as the COVID-19 pandemic call for even greater simplification. The approach to address bureaucratization as an obstacle to the economy should therefore be holistic and proportionate. Debureaucratization should be implemented in individual administrative areas rather than by an umbrella law that ensures fundamental administrative principles and through process optimization rather than deregulation. The results of the analysis are useful for comparable particularly Central European countries.

Keywords:

Administrative procedures; codification; debureaucratization; public interest; Slovenia

Article History:

Received: 20 Nov 2020

Accepted: 2 Jan 2021

1. INTRODUCTION

Changes in society are conditioned by several processes such as the globalization of business computerization of communications Europeanization as the convergence of standards in the European Union (EU) and the limited possibility of legally determining the fast-changing industries in relation to the development of science. All these call for the adaptation of the drivers and forms of public governance and of the functioning of the public administration (Ongaro 2018; Mulgan 2017; Harlow and Rawlings 2014; Bevir 2011; RoseAckerman and Lindseth2010) which applies both at national levels and in the EU. Among the key approaches to addressing the said changes also highlighted by the activities of the OECD and the European Commission (European Commission2020;Misuraca2019;Carausan2016;Gallo et al.2014) are various red tape cutting programs and scientific contributions which in particular relate to the simplification or debureaucratization of administrative procedures (Bozeman1993;Moynihan et al.2015). Namely procedural regulation increasingly prevails in modern administrative relations due to the limited determinateness of substantive law. However even in the case of procedural laws it is necessary to distinguish between the role content and limitations of umbrella laws in respect to sector-specific legislation (Mathis2014; Kovacˇ2016).

Representatives of partial group's most often economic entities as parties in administrative procedures

use the term bureaucratization to describe various phenomena and experiences such as restrictive rules binding decisions or public charges. However this aspect alone is by no means justified in professional circles as the needs of various social subsystems and the community as a whole must be taken into account (Sever ET al.2020; Ziller2008). In order to pursue a proper balance of public interests in various sectors as well as minimum common standards in administrative relations the concept of good administration has been developed to be included in future law making as well as in codification procedures (cf. Hofmann et al.2014;Kovacˇ2016). Namely Article 41 of the 2009 EU Charter of Fundamental Rights enshrines certain guarantees in administrative relations as elementary or minimum standards in relation to individuals such as the right to be heard or decision within a reasonable time. Consequently given the spillover effect these rights also apply as guidelines for the Member States even though the scope of the Charter is limited to EU institutions (Hofmann and Mihaescu2013). Moreover the concept of good administration has been developed as a part of the more popular theory of good governance (Bevir2011;Venice Commission2011;Harlow and Rawlings2014) since good administration is a factor of a democratic yet also an efficient administrative system. However good administration can be considered more legally oriented while good governance broadly encompasses various principles such as responsiveness transparency and accountability.

In most European countries the codification of administrative procedures in the above sense is structured dually which is through a general administrative procedure act (GAPA or APA) and sector-specific rules and regulations (Auby2014; Dragos ET al.2020). Here the role of general law is to provide the basic safeguards regardless of sectoral specifics i.e. to pursue good administration principles (Galetta ET al.2015). This also applies to Slovenia independent since 1991 and an EU member since 2004 which adopted its GAPA in 1999 (Official Gazette of the Republic of Slovenia No. 80/99 and amendments) based on a century-long Austrian tradition of the Rechtsstaat and the (post) socialist legacy of former Yugoslavia. Given their traditions and the parallel pursuit of European convergence the countries in Central and Eastern Europe often present frictions and implementation gaps (Kovacˇ and Bileišis2017; Kopric´ ET al.2016).

The above is relevant in the framework of better regulation since not all provisions of general law are intended to protect public interest or individual rights hence they can generate red tape. Better regulation and the related measures of reduction in the administrative burden cutting red tape and regulatory impact analysis have been among the central topics and aspects of public administration reform in the OECD and EU countries for about thirty years (European Commission 2020;Karpen and Xanthaki 2017;Carausan 2016;Radaelli and de Francesco2007). Rules have been proven to contribute to the restriction or promotion of economic competitiveness (i.e. compliance costs) which is especially relevant in the context of various crises including the one related to COVID-19. However it is still crucial to determine which (procedural) rules can be simplified so that the benefits thereof do not result in an even greater burden for other stakeholders or affect the public interest. Basically red tape is defined as the objective or perceived burden of public policies rules and regulations or other government interventions that produce negative effects for stakeholders in terms of the required costs time, or organizational and procedural changes involving the addressees of authoritative acts, especially businesses (Bozeman 199;Gallo et al.2014). This article therefore provides an analysis of amendments to the Slovenian GAPA over the past twenty years (2000–2020) in terms of conciliation between the necessary protection of the public interest and positive debureaucratization.

The research question discussed herein is do the amendments to the Slovenian GAPA that are proclaimed as debureaucratization ensure the balance between public interest and individual private interests of the parties in administrative relations? This article focuses on the importance of the GAPA as the umbrella law. The aim of this research was to examine the amendments to the Slovenia GAPA and thus to identify the main needs and limitations regarding debureaucratization of administrative procedures. The purpose of this article was to formulate generalized findings and recommendations for any future modifications of such kind in comparable countries.

2. METHODOLOGICAL OUTLINE AND LIMITATIONS

To address the above research question about the Slovenian GAPA modifications in the framework of proclaimed debureaucratization a qualitative approach was applied. The topic is highly legally determined; accordingly various qualitative methods were used to verify our hypothesis. Quantitative insights are often not possible since no exact measurements (e.g. on the impact of GAPA modifications) are available. However there are other methods that strive for objectivity such as surveys among parties and officials the content analysis of scientific literature or the statistical analysis of indicators related to the issued administrative acts and legal remedies. Nonetheless these were not selected as the aim of this research was limited to a general overview of all GAPA amendments over the past twenty years through the lenses of declared debureaucratization.

The relevant GAPA modifications aiming at simplification are mentioned only when and if they are to be considered a role model for the amendments to the GAPA. The hypothesis put forward is: the main drawback of debureaucratization in the general codification of administrative procedure is the protection of the public interest through procedural guarantees. Based thereon the procedure should be simplified mainly by modifying sector-specific regulations and adapting to the specific needs in the field. Moreover parallel organizational managerial and other measures in public administration should be put in force to achieve the optimum effects of the law. Whenever there is a coherent approach to the reforms that combine legal digital organizational and managerial measures positive impact is shown to the extent of the deep transformation of public services. (Ongaro2018; Misuraca2019; European Commission2020)

The assumption about the GAPA not being the main tool to introduce simplification is verified with qualitative research approaches such as the dogmatic normative and comparative methods and case studies of GAPA amendments and the evaluation method. Although scarce these methods can provide an overall diagnosis of the situation. Being aware of the limitations of research further analyses are envisaged. Firstly the paper is based on qualitative methods only which are not as objective as quantitatively grounded data. Secondly the analysis presented is therefore diagnostic which calls for ongoing and upgraded research in the future. In order to overcome these deficiencies at least to a certain extent various sources of literature and comparative studies are examined while the Slovenian GAPA and its amendments are assessed in the light of respective findings although subjectively. In the future broader and empirically substantiated analyses are required in order to incorporate more countries and acquire empirical data. This approach has already been used as a accepted model although national systems in various countries often express a lack of quantitative measurements (seeAuby2014; Kopric´ et al.2016; Dragos et al.2020).

The main approach provided is the analysis of individual amendments to the GAPA between its enforcement in 2000 and 2020 which the proposing bodies declared as debureaucratization. This section contains a methodological and a substantive part. The substantive part evaluates the purpose and effects of the ten GAPA amendments over the last two decades including the adjustments resulting from the trends in the EU and the COVID-19 pandemic and the lack of necessary interventions. One of the ways to assess the modifications more objectively is to present a clear structure of all GAPA amendments as well as to evaluate the ones aimed at simplification through the main indicators of better regulation (e.g. the necessity of legal rules to achieve a specific objective transparency effects for various stakeholders proportionality).

As regards the structure of the article Section3 defines the role of law in administrative relations their peculiarities with overriding public interest when in conflict with individual rights of the parties and the consequent codification and debureaucratization in administrative procedures. Here attention was paid to highlighting the GAPA as a sys-temic law (lex generalis) providing fundamental principles and rights in terms of good administration. Section4brings forward the main results as revealed by the analysis of individual amendments to the GAPA in Slovenia in the last twenty years that were aimed at debureaucratization. These modifications were critically evaluated in terms of their necessity aims and actual effects while special attention was paid to the amendments in relation to COVID-19 which seem to correspond to a possible permanent simplification of the GAPA (such as e-applications or e-services with less formalities than stipulated in the current law). Section5follows which is dedicated to a broader discussion and evaluation of results confirming the initial hypothesis that debureaucratization should be sought by means of sector-specific law rather than by the GAPA since the latter functions predominantly as a tool to protect the public interest. This section also provides several recommendations for the Slovenian regulator to improve the current GAPA in order to overcome its obvious deficiencies that do not contribute to good administration or even hinder the efficient protection of general administrative safeguards characteristic of the European setting. The article ends with a short conclusion.

3. THEORETICAL FRAMEWORK ON DEBUREAUCRATIZATION AND ITS LIMITS IN GENERAL ADMINISTRATIVE LAW

3.1. Relevance of Proportional and Efficient Legal Regulation of Administrative Relations and Procedures

Law at its core is not an end in itself or a formalization of relations for formalization‟s sake. Its original i.e. historical as well as current role is the peaceful conciliation of interests and prevention of conflicts. Law protects fundamental societal values such as democracy separation of powers equality and ensures the protection of minorities. This generally consists of norms relations and values the latter being as ideas pursued by people‟s behavior and interests a precondition for regulating social relations as the subject of regulation with legal norms (Harlow and Rawlings1997;Tyler2006;Galetta et al.2015).

Law is supposed to strive for justice in society or it merely acts as a bureaucratic apparatus. If disputes are resolved through legal means it is not the argument of power (physical capital or political) that prevails but the power of argument.

Rules generate legal certainty including the doctrine of legitimate expectations (Vertrauenverschutz) under either substantive or procedural law. In the context of legal certainty the very essence of procedural law is to analyze the course of actions in as much detail as possible in order to achieve the objective of the legally regulated procedure. With the certainty and predictability of relations equality and the protection of the weaker party the rule of law is after all also in the interests of (post) capitalist market players as long as an appropriate balance is established between adaptation to actual needs and regulatory stability (Ziller2008). In this sense proportionality is also important as evidenced inter alia by EU case law (Harlow and Rawlings2014; Galetta ET al.2015). If legal rules are designed with due account of well-considered interests the level of compliance among addressees is significantly higher which eventually creates the rule of law (Tyler2006).

Therefore with regard to legal regulation and debureaucratization there is the basic need for a systemic search for a balance between regulation and administrative burden in the public interest which should not suppress but rather promote economic activity the competitiveness of national and regional economies and indirectly also the development of the society as a whole (Buckley2016). Excessive rules lead to red tape. The latter is either scraped (disposed) reduced or imposed yet most often the three forms are combined. In such regard procedural and managerial aspects seem to prevail in contemporary highly dynamic operations since political and legal measures take more coordination and time. Some (e.g. Moynihan et al.2015) recognize learning psychological and compliance costs of red tape that are by definition largely procedural. Moreover there are specific sector procedures that can affect business-related administrative procedure and often cause regulatory costs change and inconsistency. Some areas are even more sensitive as indicated by the World Bank's Doing Business and the European Commission especially as regards starting a business paying taxes customs procedures trading across borders and issuing building permits (Sever et al.2020;Dragos et al.2020).

Theoretically the efficiency of regulations and policies should also be emphasized as it is the usual indicator of the adequacy and proportionality of law and (procedural) rules. Like all key concepts in administrative relations efficiency needs to be understood as interdisciplinary. If for example only the legal aspect prevails there can be excessive formalism and stativity instead of responsiveness to social dynamism. If only the economic or managerial aspect prevails the focus is on private business while the special importance of the public interest and of the ethos is underestimated; if only the political aspect prevails legal certainty and the traditional legal determinateness of the administration in (Central) Europe are overlooked (Mathis2014;Carausan2016). Thus in economic terms effectiveness as the achievement of set goals (public policies) is distinguished from efficiency in terms of the management of (public and other) resources to achieve these goals while in terms of political science and law efficiency is generally understood more broadly (Sever et al.2020). Efficiency in this sense combines administrative rationality i.e. the contribution of the administrative system to the functional requirements of the social environment in light of social values in relation to the expected and real benefits and burdens (according to Weber Zweckrationalität and Wertrationalität). Here a key distinction is to be drawn between the concepts of administrative barrier and administrative burden as a „barrier" is a narrower term standing for an administrative burden that is not justified by the public interest to achieve the objectives of a particular procedure or protected values (Bozeman1993;Virant and Kovacˇ2020). In this aspect the importance of procedural law is increased to ensure the enforcement of the objectives of a sector-specific policy and substantive legislation but also to provide rules for the realization of international good administration principles such as the right to be heard or legal protection (Kovacˇ2019; Galetta ET al.2015; Rose-Ackerman and Lindseth2010). Given the substantive personal and institutional range of the right(s) to good administration this concept presents an obligation for administrative agencies toward the parties that exercise individual rights (Hofmann and Mihaescu2013). These principles are thus an essential material legist of general codification.

The concepts under regulation should often be iterative rather than definitive (Mulgan 2017) since the benefits from continuous adaptation may outweigh the benefits of stability and predictability although there will be trade-offs. The general legal guarantees and basic principles of the GAPA apply as value-based criteria that guide the substantive definition of more specific legal rules and their enforcement. Today the role of law is slightly different than it was decades ago since the basic doctrines of public governance are changing and so is the role of the state i.e. of the regulators as connectors of different social subgroups and are no longer just monopolistic holders of power (Bevir2011). Therefore also the role of regulation has changed. The related reforms should be consequently carried out based on a multi-layered analysis of the situation with increased the transparency and participation of the ruled in the decisions of the rulers (Karpen and Xanthaki2017; Radaelli and de Francesco2007; Bozeman1993). Simultaneously the measure to improve organization and management in public administration are in place and in line with legal modifications

(Ongaro2018; Kovacˇ and Bileišis2017).

3.2. Characteristics of Administrative Procedures with Public Interest Priority and the GAPA as Lex Generalist

Administrative procedure regulation under the GAPA and sector-specific laws presents some specific features that need to be taken into account in debureaucratization. Its primary characteristic is the priority protection of the public interest in administrative cases. This means that in the event of a collision between the public interest and private rights and obligations the public interest takes precedence. Another fact is that in the life of an average person administrative procedures are inevitable given the multitude of administrative relations taking place within a regulated social community (Harlow and Rawlings1997; Kopric´ ET al.2016). In Slovenia, with a population of two million and around 250000 busi-ness entities between 8.5 and 10 million procedures are conducted every year at the first instance alone (mostly in taxes and social affairs home affairs and the environment) followed by appeals and several thousand subsequent administrative disputes before courts. However these high figures should not overshadow an even more important feature of administrative procedures

i.e. their heterogeneity. The application of a general law on administrative procedures is based on the equal protection of rights. This means that the GAPA applies in comparative law at least in a subsidiary manner insofar as the sector-specific law does not override or supplement a particular rule yet always with due account of the fundamental administrative principles (Auby2014;Galetta et al.2015).

The function of the GAPA as a lex generalis is both integrative and anti-fragmentary (Hofmann ET al.2014; Mathis2014) as it implies the harmonization of minimum standards of administrative relations and unites the otherwise dispersed sector-specific laws and regulations concerning individual issue-specific rules (e.g. access to public information). This also applies to various public administration bodies regardless of the level and area of governance (e.g. state ministries and local units social institutions tax administration). Since fewer partial interests should come to the fore in its development than in the case of sector-specific policies the GAPA can focus on the efficiency and implementation of the basic values of good administration. By introducing uniform solutions the GAPA is further likely to contribute to the modernization of the administration. It therefore acts as a glue of the administrative system as it establishes a coherence of public administration and administrative law through fundamental procedural concepts.

On the other hand attention should also be drawn to the problems or side effects of codification which leads to the inevitable assessment of the extent to which codification is appropriate in light of the development of administrative relations within a community. The main disadvantages of a single law especially if too detailed or not allowing to be overridden are excessive rigidity which does not take into account the specifics of the field and obstacles to development due to the pursuit of formalism instead of proactivity in solving problems in the public field. Usually sector-specific law is characterized by greater topicality although this is also a disadvantage leading to relatively frequent modifications and the unpredictability of relations. Furthermore there are shortcomings in the relation between national legal order and the acquis communautaire both at the normative level by disregarding national differences and at the functional level by sticking to the status quo (Mathis2014; Hofmann ET al.2014). Both regimes the codification of the general administrative procedure and the procedural specifics expressed in sector-specific legislation are thus necessarily complementary for the achievement of different societal benefits. However it is necessary to consider which norms belong to general and which ones to sector-specific procedural law as the latter should be systemically harmonized with the former. Consequently new approaches to the procedure particularly those characteristics of or necessary for an individual area only apply to the latter. If problems (and solutions) are specific to a particular area the experience of individual countries (Auby2014;Dragos et al.2020) shows that such institutions and the direction of conducting procedures are better regulated by sector-specific law.

The purpose of regulating administrative procedures is threefold. First it is about protecting the public interest and effectively implementing public policies. In this regard the GAPA provides for authoritative relations in which an individual party is subordinated to the interest of the community. Second in individual cases the GAPA ensures the protection of the rights and legal interests of all affected parties preventing the arbitrariness and misuse of law or abuse of the superior position of the administrative body. Third the GAPA should incorporate tools for dialogue between authorities and the parties to protect the public interest so that the parties are more actively involved and thus exercise their rights and understand their obligations more easily (Tyler2006;Galetta et al.2015). Form is indeed important for equivalence predictability and the proportional confrontation of legally protected interests but should not prevail over the substantive objectives

of law.

On the other hand procedure is not to be underestimated as it establishes at least the manner and scope of the desired outcome.

The public interest must always take precedence over the rights and legally protected private interests (Harlow and Rawlings1997). Here the public interest is understood as a priority value set out in regulations or as the objective of other rules. The public interest is defined abstractly e.g. as the effective collection of taxes to finance common needs as environmental protection with parallel economic development or as public health. More specifically it is defined by the rules of sector-specific laws or substantive law determining the conditions that an individual must meet in order to be granted a particular right or imposed an obligation and through essential procedural rules. Personal albeit legal interests can therefore only be asserted with due consideration of the public interest. The public interest is the „cardinal" value of the public sector that ensures the legitimacy of the results of its operation (Bevir2011; Sever ET al.2020). The public interest primarily belongs to the circle of value-based political decision-making although it is expressed as a normative phenomenon whereby a general interest becomes public interest based on a legal norm. This denotes the objective effects as a result of activity and is in this part equated with substantive legality. As a rule the GAPA does not define the content of the public interest or defines it only in the form of general categories e.g., protection of lif health and property or environment emphasizing its importance through several institutions or setting out basic principles of procedure. For example the public interest can serve as the basis for restricting the rights of the parties. Hence when the exercise of rights is limited in time (preclusions) an abbreviated fact-finding procedure is prescribed instead of dialogue with the party which reduces legal remedies. In the administrative procedure negotiating on legitimate public interest is limited or even unconstitutional which means that the possibilities of mediation and other methods of alternative dispute resolution are very limited (Dragos and Neamtu2014).

Furthermore the public interest also has a procedural component whereby following the essential rules of the GAPA or achieving formal legality is considered a general standard. Administrative law in addition to ensuring the formulation and implementation of public policies traditionally plays another role i.e. the protection of weaker participants against the authorities in administrative relations. The administrative procedure not only has an instrumental role in the realization of substantive rights and duties but also implements some constitutional safeguards of democratic authority through due process or fair trial. Fair trial is the core of administrative constitutional and supranational law as it (also) seeks to protect fundamental human rights through administrative procedure (Rose-Ackerman and Lindseth2010; Galetta ET al.2015; Kovac˘2019). Accordingly any simplifications of administrative procedure in this direction would be controversial under constitutional and international law and vice versa: even the above-standard protection of the rights of parties which is not balanced with other features of the administrative procedure is contrary to the mission of the administrative branch of government.

4. RESULTS OF DEBUREAUCRATIZATION CASE STUDIES IN SLOVENIAN GAPA 2000–2020

4.1. Analysis of Selected Cases of Debureaucratization of the Slovenian GAPA: A Methodological Approach

The Slovenian GAPA was adopted in 1999 and contains as many as 325 articles. Roughly speaking it is a typical example of an APA characteristic of Central and Eastern Europe and based on the Austrian tradition. Slovenia adopted this law after gaining independence in 1991 following the breakup of the former Yugoslavia. In its adoption the legislature largely focused on a smooth transition from one system to another rather than on modernizing social relations in the sense of a more abstract and participatory law. The latter is otherwise typical of most countries that have adopted or conceptually updated their APAs in recent years (as part of Europeanization for example Kopric´ ET al.2016; Auby2014). Considering the changes observed in other countries Slovenian law is seen as highly over regulated despite the fact that various analyses show a relatively stable implementation thereof while respecting the principles of European convergence (Kovac˘2016;Dragos and Neamtu2014;Dragos et al.2020). This is probably the main reason that the Slovenian GAPA has not (yet) been radically modified although it has undergone 10 amendments (plus one that has not been adopted) over the twenty years since the beginning of its application in April 2000. Most of these modifications were justified by an alleged reference to debureaucratization thus aiming to facilitate the procedure for both the authorities and the parties.

In order to assess the efficiency of simplifications and determine whether they brought improvement

without compromising the public interest the 11 amendments were analyzed as shown by Table1. Which among these amendments actually involved debureaucratization was studied based on the explanations to the draft GAPA amendments and the laws that interfered therewith. The study was further supplemented by an analysis of Slovenian and foreign literature. Of the 11 amendments presented below eight were adopted and one was not while two were the direct consequence of the adoption of other laws. One such law was the new Administrative Dispute Act (ADA Official Gazette of the RS No. 105/06) which regulates the judicial review of the legality of individual administrative acts issued under the GAPA and interferes therewith by restricting legal remedies to enable the faster enforceability of administrative decisions. The other one is the Act on Provisional Measures for Judicial Administrative and Other Public Matters to cope with the Spread of Infectious Disease SARS-CoV-2 (COVID-19 Act; Official Gazette of the RS, Nos 36/20, 61/20) which applied between March and June 2020 to provide more simplified communication. In addition a third similar law was adopted to apply between December 2020 and February 2021 namely the Act Determining the Intervention Measures to Mitigate the Consequences of the Second Wave of COVID-19 Epidemic (Official Gazette of the RS No. 175/20).

Table 1. Overview of Slovenian GAPA modifications during the period 2000–2020.

	GAPA Modifications	Adopted/in Force since (If Not the Same Year)	Scope and Significance of Modifications	Modifications Oriented toward Debureaucratization (DB)
1	GAPA-A	2000	Minor, not significant for DB	Easier enforcement
2	GAPA-B	2002	Minor, but crucial for DB	Data exchange as a burden of authorities
3	GAPA-C	2004/2005	App. 100 art. on e-communications as DB	Computerized communication equalized with traditional one
4	GAPA-D	2005	Minor, no direct effect on DB	Partially, to promote one-stop-shops and deformalize service
5	ADA	2006/2007	Minor, no direct effect on DB	Only partially reduced legal remedies
6	GAPA-E	2007/2008	Medium, mostly no DB	Waiver of appeal for immediate enforceability
7	GAPA-F	2008	Minor DB	Loosening of conditions for official persons conducting procedures
8	GAPA-G	2010	Not DB	Less repressive inspection
9	GAPA-H	2013	Minor, no direct effect on DB	Promoted support to file applications
10	GAPA-I	2015/not adopted	Significant deformalization of e-operation	Meant as DB but not adopted due to lobbying
11	COVID-19 acts (two)	2020	E-communication, deformalized urgent matters	DB though only with interim validity during official epidemic

As revealed by Table1 the regulation of the general codification of administrative procedure in Slovenia reflects the tendency to quickly respond to the need for public policy efficiency and limited resources on the one hand and the tendency for legal stability as a guarantee of the rule of law on the other. Slovenia is no pioneer of change as most of the amendments build upon good practices from abroad or even EU requirements. Here too no major modifications were made to the GAPA as such. Thus for example Directive 2006/123/EC on the internal market (OJ EU L376 of 27 December 2006) with positive fiction in case of administrative silence was transposed only into sector-specific regulations unlike in Spain or the Netherlands (Dragos ET al.2020). It is obvious that the amendments to the Slovenian GAPA are not managed systemically but partially and inconsistently. In fact an amendment to lex generalis has a developmental charge only if it involves a systemic and well considered set of measures (Ziller2008). For example one would assume that the computerized conduct of procedures is a necessary component of modern communication in administrative procedures (Moynihan ET al.2015). Namely digital transformation in public administration requires systemic informatization of internal and external procedures i.e. among administrative bodies or civil servants and towards parties alike (Misuraca2019). It is also the aim of the EU to encourage the Member States to make electronic procedures the dominant channel for delivering e Government services (Gallo et al.2014). Moreover bearing in mind the global development of administrative law legal rules have been recognized as insufficient and the law itself has moved further away from critical aspects of how agencies function to support social changes (Metzger2015 ; Hofmann et al.2014). Nevertheless a significant

amendment envisaged in the Slovenian GAPA in 2015 in this direction in addition to some previous modifications made in such regard in 2005 was not adopted. Its proposers justified it as a suitable solution enabling communication without a qualified e-signature in non-disputable cases. In its drafting they followed the German practice of filing applications and service as well as the theory on the tradeoff between disputability and formalization (Rose-Ackerman and Lindseth2010; Hofmann et al.2014). However the national Post succeeded in preventing its enactment by lobbying the Government.

Below selected institutions that were simplified or newly introduced by the GAPA in Slovenia are discussed in more detail and evaluated according to the proclaimed goals and comparative solutions in comparable countries with an emphasis on the theoretical criteria as to what debureaucratization means for better regulation (Table2). Due to the role of the GAPA special attention was paid not only to the effects of less bureaucratic proceeding by parties and authorities but also to the ratio between simplification and the public interest. The methodological approach in both parts focuses on the empirical dimensions of regulation and its implementation and mainly consists of qualitative analyses given the legal nature of these modifications. A similar approach was applied in foreign or comparative studies (Auby2014; Kopric´ ET al.2016; Kovacˇ and Bileišis2017; Dragos ET al.2020).

Table 2. Analysis of the Slovenian GAPA modifications regarding de bureaucratization effects and limits.

BR Principles / GAPA Simplifications	Necessity of Legal Rules to Achieve an Objective	Transparency	Simplicity for the Authorities and the Parties	Proportionality between Parties' Rights and Public Interest
Exchange of information between authorities	Yes	Yes	Mainly for parties	Yes
Fiction of service	No	No	Yes	Questionable
Less requirements for official persons	No	No	Only for the authority	No
E-applications/e-service	Yes	Yes	Yes	Predominantly
Formalities in non/urgent cases	Yes	Partially	Partially	Predominantly
Waiver of appeal	No	No	Yes	Questionable

4.2. Assessment of Scope Effects and Limits of Debureaucratization of Selected GAPA Amendments

A number of successful measures to cut red tape have already been introduced in Slovenia. The onestopshop project for example received the UN public service award in 2008. The changes were substantive (deregulation) and procedural (optimization of procedures) in the latter case either through the GAPA or through sectorspecific regulations. The more notable amendments to the GAPA included the shift of the burden to obtain data from official records from the parties to the authorities (GAPA Articles 66 139 and 175) and the abolition of limited territorial jurisdiction in specific cases (GAPA Article 19). Combined with organizational changes such as the introduction of Saturday office hours and the systematic elimination of backlogs the amendments brought benefits to the parties the economy and the administrative system (Virant and Kovac ˇ2020;cf.Gallo et al.2014). However does this also apply to the systematic approach to debureaucratization through the GAPA?

Before analyzing individual amendments it needs to be pointed out that the Slovenian GAPA explicitly defines among the reasons for appeal also violations of substantial rules (Article 237). These are listed in seven points defining which rules in addition to the basic principles are so important as to be considered public interest in the sense of procedural guarantees whereby an administrative decision can be set aside if these rules are violated despite possible substantive correctness. The first rule is strict adherence to subjectmatter jurisdiction in terms of both the area and level of decisionmaking. This means inter alia that changing the powers of the authorities e.g. under the alleged objective of debureaucratization by merging or taking over independent agencies (such proposals or steps already taken stem from a number of Eastern European countries in recent years;Kovacˇ2019) implies a threat to the public interest. Three further substantial rules relate to the parties as the body must allow anyone with a legal interest to participate in the proceedings and in particular guarantee the right to be heard and adequate representation in the event of a lack of legal capacity. The possibility of using one‟s language is also important as otherwise participation is not possible. This applies to the members of constitutionally recognized national minorities as well as to persons with disabilities. The last two procedural maxims are the necessity of impartial decisionmaking and such a

form of a decision or act that enables the review of legality meaning that is must also contain an individualized explanation. When these maxims are restricted the Constitutional Court intervenes in the sectorspecific law or the GAPA such as in the case of Decision U-I-146/07-34 13 November 2008 stating that persons with disabilities (in this case the blind) must also be provided with an adapted way of communication if they are to exercise their constitutional and legal rights.

Similarly Decision U-I-165/0934 3 March 2011 annulled the construction law due to „debureaucratization" aimed at speeding up the procedures by excluding the affected persons. Furthermore Decision UI313/13 20 March 2014 annulled the Real Estate Taxation Act because the parties only had access to a simplified procedure on legal remedies in relation to constitutional standards.

Table2 presents an analysis of the compliance of the selected but paradigmatic cases of debureaucratization listed in Table1 with theoretical and prescribed guidelines in the metaregulation (Karpen and Xanthaki2017). It is also intended to address the dilemma of how much the drafters of the amendments to systemic laws actually consider the general principles of better regulation (BR) as prescribed by the Slovenian Resolution on Legislative Drafting adopted in 2009 (Kovacˇ2017). This concerns the necessity of legal regulation which puts forth the need for an indepth analysis of the policy from which the issues to be regulated and the causes of problems arise with precisely defined goals and ways of regulating the solutions. The transparency of the reasons and objectives of adopted laws is important for the legitimacy of regulations. The principle of simplicity should guide both the authorities and the parties rather than merely shifting the burden from one stakeholder to another. The more the procedure is simplified by the competent public authorities the greater the responsibility of the parties themselves therefore the selfregulatory supervision of the chambers and state supervision must be strengthened preceded by proper support to the parties. After all according to the principle of proportionality regulations are only adopted to the extent strictly necessary to achieve the set goal which in public law relations is the balance between the public interest and the rights of individual parties. Let us take a closer look at the arguments for the above assessment. Although in practice only minor deviations may occur in the case of systemic controversies some modifications may be more controversial due to the lack of adherence to the principles in question. This applies for example to the waiver of the right to appeal introduced in 2008 (Article 224a and related articles of the GAPA). This amendment with the declared goal of greater efficiency of administrative procedure was included in the GAPA due to the supposedly positive results in some areas or sectorspecific laws governing e.g. the registration of real estate or the construction of buildings. However such generalization would be more appropriate in sectorspecific laws rather than in the GAPA given the fact that this institution is bound by procedures in which the subject matter is delimited by the parties. Furthermore there are two systemic reservations namely that the waiver of appeal by the main party prevents the assertion of other legally protected interests (including the public interest) by legal remedies or before a court and that waiving the right to appeal before a decision is served is unconstitutional. This example shows that debureaucratization can be efficient if it is limited to specific areas. However when transposed into the GAPA procedures should first be differentiated in order not to affect the public interest.

Similarly a prompt enforcement is often highly appropriate e.g. by shortening the time limit for remedies but it should have its limits. An administrative area often stated to require optimization is service (e.g. eservice fiction of service service on party representatives) as service is a prerequisite for the legal effect of acts.

Particularly questionable here are the various fictions of service which are not conditioned by the party's noncooperation or the necessity of acting in the public interest. If the law stipulates that decisions take effect even before they are served on the parties this is an interference with a constitutionally provided effective legal remedy. The fact that the legal effects of a decision apply for an addressee even before the addressee is aware of them let alone has the opportunity to challenge the decision at least before it becomes administratively final is undemocratic and contrary to the rule of law. This is indeed so although some bodies e.g. with the introduction of the fiction of ordinary service in tax legislation in Slovenia in 2007 saved almost one million euros in costs for the delivery of documents (Virant and Kovacˇ2020) in one year. However such an ordinary service violates the principle of proportionality since savings in material costs are not the basis of public interests and the objective is disproportionate to the impact it has on the taxpayers. This is indirectly evidenced by the fact that the Taxation Act was only amended after two years of its simplification in the opposite direction (where personal service under the GAPA is preserved) and additional provisions were necessary for effective enforcement in the event of fiction of service.

Equally as important as the waiver of the right to appeal was the abolition of the requirement of a professional exam in administrative procedure for certain official persons under the GAPA (Article 31) in 2008. The exam was considered a guarantee that the official person would weigh lawfully between the public interest and the parties as it required at least some minimum knowledge of the relevant rules. In principle the

exam as such is not considered an administrative barrier as stated in the proposed amendment GAPAF claiming that it prevents flexible employment and causes delays in decisionmaking but rather a necessary burden to ensure that procedures are conducted lawfully. Removing such a requirement is indeed a case of disburdenment which however causes damage. It would make much more sense if the relevant amendment introduced the periodic training and verification of the professional knowledge of officials thus raising the quality of work and harmonizing procedural discretions.

The exchange of information ex officio under Articles 66 139 and 175 of the GAPA appears to be a well-considered set of measures introduced by the 2004 amendment and later supplemented by the analysis of the state of affairs continuous evaluation computerization etc. However a further simplification of this kind proposed in 2015 failed due to various objections within government services and lobbying interests. This latest amendment sought to deformalize ecommunication (no qualified esignature and estamp needed) which could easily apply in all nondisputable administrative matters that according to the proponents of this amendment account for 70% of all administrative cases (i.e. somewhere between six and seven million procedures per year). The amendment envisaged that applications could be submitted and authoritative acts delivered by ordinary email where the proof of receipt was the relevant note in the information system. In addition, several articles were supplemented with safeguards for those cases where communication should still take place in the form of personal service under Article 87 of GAPA, e.g., in the event of the disputability of relations already at the beginning of the procedure or in the event of a disputable matter at any time during a procedure. The saving of around eight million euros was anticipated in postal services only, which the national post used as an argument for the government to reject the amendment.

Another interesting element in such regard is the provisions of the COVID-19 acts adopted in the spring and autumn of 2020. These acts overrode the GAPA, although only temporarily for the time of the pandemic. Nevertheless, they are a very effective example for future GAPA amendments as the new provisions aimed at debureaucratization applied without any systemic abuse. The first novelty was the possibility to define an administrative matter as urgent, e.g., in the case of inspection in order to enable the exercise of rights or statuses on which the further rights of the parties depend. In these cases, shorter deadlines were set, while certain procedural actions e.g., hearings were facilitated by the means of mechanisms such as videoconferencing. The second one was the fact that in non-urgent matters deadlines ran differently, yet communication was largely computerized and simplified e.g., did not require qualified a e-signature in line with European Commission guidelines to design the e-government reflecting the reduction in administrative burden (seeGallo et al.2014;European Commission2020). Collectively, these simplifications proved to be very effective as they in no way affected any constitutional values or the public interest. Moreover, they also ensured a fairly smooth running of procedures despite the epidemic, all aiming at the protection of public health as a public interest. A similar law was adopted in November 2020 for the second COVID-19 wave to apply for three months and could serve as a role model of permanent GAPA modification. However, for Slovenia and similar countries, certain weaknesses exist in this respect that should be overcome in the future, such as improved top-down coordination and analytical, more collaborative networking with various stakeholders. Quite often, however, the provisions of sector-specific laws were found to interfere with the GAPA simply because the authorities were too idle to act otherwise. For example, since it is difficult to obtain data from abroad, the relevant sector-specific laws can provide that the probably established facts are sufficient for the decision, or that an abbreviated rather than a special fact-finding procedure is conducted as a general rule (rather than an exception, as stipulated by the GAPA). In such a context, the sector-specific construction law has repeatedly tried to speed up the procedures for issuing building permits, which would have been possible if procedures were regulated with the primary goal of time-effectiveness without taking into account the most basic rights of the parties, e.g., by excluding the affected persons from the procedure. Although it had been annulled by the Constitutional Court years ago, the same amendment was drafted by the relevant ministry in 2020 with additional simplifications in light of debureaucratization, such as the reduction in environmental impact assessment in relation to state investments. Why does the legislature even adopt certain GAPA principles and rules if it obviously uses them only for the formal appearance of democracy? Moreover, the duality of the regulation in which the relations between the participants in the procedure are partly defined as administrative and (only) partly deregulated, is systemically contradictory.

5. DISCUSSION

As administrative procedure is a key process or method for implementing public policies, it must change in line with the changing objectives of public administration. Administrative procedure is undoubtedly a tool whereby administrative institutions carry out their mission, and as such, a key element for assessing the efficiency of the administrative system and identifying possible improvements for the economy, the civil sphere, and society as a whole. Therefore, new approaches are being developed in the regulation and conduct

of administrative procedure, especially towards debureaucratization. Such orientation indeed makes sense, as law is supposed to play an integrative societal role. However, while enthusiastic about the many positive results of debureaucratization (e.g., digitization), care must be taken to ensure that changes are systemic and well considered. Otherwise, there are more detrimental effects than added value. In particular, the efforts towards an economy of procedure should not overlook the need for a substantive assessment of conflicts of interest between individuals and the public interest and the constitutional rights of the parties.

The governmental and parliamentary policies implemented through the umbrella law should not be the sum of sector-specific policies or only partially justified and systemically unconsidered measures, but should be coordinated and strategically steered. However, it can be established for the general codification of administrative procedure in Slovenia that debureaucratization is merely a subject of political discourse, while there is no real breakthrough because of the lack of a systemic approach. This is evident, for example, in the Slovenian Public Administration Development Strategy until 2020, which does not provide any operational improvement or guideline for sectoral change, claiming even that the line ministry is not responsible for sectorspecific policies (Kovacˇ2017). Furthermore, certain improvements are introduced e.g., in taxes but not in social affairs, or in the registration of companies but not regarding the greater flexibility of their transformation and deletion from the register. In other words, declarations in strategies and partial legislative changes are not sufficient for effective debureaucratization (Karpen and Xanthaki 2017; Kovacˇ and Bileišis2017; Bozeman1993).

The above experiences show that debureaucratization is a priority item on the agenda of the modern regulation of administrative procedures, but simplification measures should not rely solely on allegedly overburdened authorities or the cost-effectiveness of the procedure. Even comparatively, exemplary solutions must include safeguards for the parties who act in good faith but are nevertheless unfairly affected by such mechanisms. Knowing this is important since partial initiatives should be limited. In fact, despite the limitations, it is obvious that Slovenia is a transition country that adopts some measures which in practice, are not even abstractly in line with the doctrine of better regulation, while others are only partial or temporary. The main problem of Slovenian practice is that „efficiency" is unambiguously understood as simplification and economy rather than the necessity and proportionality of a certain measure, as in almost all cases the same justified goal could be achieved with a more appropriate approach within the basic principles. For example, instead of introducing an ordinary service for the sake of lower costs, the state should negotiate a reduction in the prices of postal services offered by the national post which, after all, is a state-owned company. Instead of excluding appeal, non-suspensiveness should apply, while instead of positive fiction in the case of administrative silence, work should be organized more efficiently. The speed and manner of decision-making must be subordinated to the substantive objective of the procedure. In an administrative case, the ratio of the procedure is the optimal exercise of rights and legal interests, i.e., a positive status of individual parties in relation to the authorities as well as the effective protection of the public interest in the implementation of public policies. Procedural rules must not be intended to circumvent, evade or misuse the purpose of sector-specific regulations that define the legally protected interests of the participants in the procedure. Procedural law should instead serve to support the values protected by substantive law, such as equality and anticorruption (Moynihan et al.2015). However, if it exists as a political decision procedure must be regulated in accordance with fundamental administrative principles; otherwise, legal certainty and equality are encroached upon.

As far as the system is concerned, if an institution is suitable for a certain or several administrative areas (e.g., mediation;Dragos and Neamtu2014), it should be regulated by sector-specific regulations, not by lex generalis. This applies to most public law relations with very different subject matters of procedure. Moreover, if a specific administrative area does not require the protection of the public interest or of the constitutional rights of the parties, it should be deregulated. If, however, the authorities establish that regulation is necessary, the procedure should be regulated „in full". After all, the essence of the administrative procedure is to confront the prescribed conditions in the public interest for the acquisition of a right or the imposition of an obligation on an individual party. If such a procedure is not carried out, one cannot speak of meritorious assessment, because merit is interpreted as a substantive expression of fulfillment of the prescribed conditions in a specific case. In the event of the fiction of a recognized right or legal interest which is a frequent example of debureaucratization however, the meritorious assessment is by definition absent, which means that the purpose of the regulation is not fulfilled. In such a case, the administrative procedure does not make sense, because without a meritorious assessment, the administrative procedure would truly be just an unnecessary administrative burden (Harlow and Rawlings1997).

Like legal regulation in general, administrative procedures need to be regulated and implemented while balancing the democracy of authority and administrative rationality. A systemic approach is crucial in such regard, in the legal as well as organizational and managerial sense. Otherwise, the danger is not simply that the core aims of administrative law will not be realized, but also that the actual ways in which administrative

government is constrained and strengthened will not be recognized (Metzger2015). This means that the specific objectives of public policies should be set first and then harmonized at the government level. This is how the public interest is defined when it spills over into a valid regulation. Procedural regulation should follow substantive law purposes and standards in order to achieve the desired substantive results, while ensuring the fundamental constitutional rights of the parties. Thus, also procedural rules become a component of the result. A modern regulation is expected to introduce at least less procedurally programmed decision-making also in the legal orders traditionally based on the letter of the law. This is how legitimate debureaucratization is achieved, yet due to the heterogeneity of administrative areas, it should be brought by sector-specific regulations rather than by lexgeneralis. The GAPA should be simplified in terms of differentiation between various types of procedures (e.g., with less details in public services compared to repressive inspection measures) and through systemic simplifications, such as greater and less formalized digitization. The adopted rules need to be constantly evaluated in order to be further improved, while striking a balance between social reality needs and legal certainty.

Debureaucratization is indeed crucial in terms of procedure if, e.g., the conditions for entrepreneurial activity are to be preserved while respecting other protected social values (Virant and Kovacˇ2020). It is therefore not surprising that most changes generally relate to procedural laws. In Slovenia, it seems appropriate to revise the umbrella law, i.e., the GAPA, while also analyzing and modifying legislation in the most relevant areas, starting with small and medium-sized enterprises (Sever et al.2020, Buckley2016). Furthermore, it is necessary to provide for a completed regulatory loop, as debureaucratization does not take place only at the level of regulation and is, in fact, only one of the steps in the cycle. In the future, more attention needs to be paid to balancing interests and assessing the consequences, as good governance with effective public policies and the lawful conduct of administrative procedures are complementary and not exclusive concepts. From the viewpoint of the rights of defense as the foundation of good administration, the concept of such rights is relatively old since it derives from the theory of a state governed by rule of law (Rechtsstaat) as a classic subject of international and national law. However, modern reforms of general codifications should check its content from the good administration perspective to optimally balance various functions of administrative procedures (Venice Commission2011; Hofmann and Mihaescu2013). This is important in order to follow the major trends in the EU and to comply with Article 41 of the Charter of Fundamental Rights on a national scale as well.

The initial statement that the main limitation to debureaucratization in the general codification of administrative procedure is the protection of the public interest is supported both by theory and by the assessment of individual changes in the Slovenian GAPA. Furthermore, this confirms that procedures should be simplified mainly by adapting sectorspecific regulations and not the GAPA, which serves general and common standards through which the procedural aspect of the public interest is defined as a limitation to debureaucratization. However, further possibilities are available, both for better lawmaking and future research.

As regards the research to be carried out on the field, two main directions can be recommended. One is the method of comparative studies, which has already proven fruitful. However, it needs to be taken into account that only those codifications can be compared in depth that follow a certain administrative tradition and adjust to the common European legal framework (Hofmann et al.2014). Second, any objective assessment should be based on carefully designed empirical research and the results applied in a sense of databased decision-making. Third, not purely legal but all aspects of public administration should be linked together, predominately in relation to computerization in terms of more efficient and responsive services, agile organization, and proper human resource management (Ongaro2018;Metzger2015). On the other hand, this calls even more strongly for scholars to conceive such studies and enforce their findings to be considered by the legislature.

Unfortunately Slovenia does not follow the current European trends relating to the modernization of administrative law and debureaucratization as would otherwise be expected from an EU country. This conclusion can be made even if only based on a depthless analysis. Namely, Western countries in particular are revising their APAs to make them a tool of dialogue between government and the parties, with selected guarantees and the maximum efficiency of procedure for economic and social development (Auby2014; Hofmann et al.2014; Dragos et al.2020; European Commission2020). Moreover, the said procedures and their legal regulation are highly computerized since public administration in general is in different phases of digital transformation (Misuraca2019). This goal should be pursued even more in countries where the APA is outdated and overly formalized, which derives from the times of socialism (Rusch2014; Kovacˇ2019). Nevertheless, the anticipatory regulation logic may point in the opposite direction, towards more complexity; ideally with simple principles but flexibility to devise sufficiently detailed regulations to enable new models to emerge (Mulgan2017). Luckily, in the countries that are small and less eager for development, modernization is encouraged or forced by the EU guidelines, such as the 2016 European Parliament resolution

with a Regulation on open, efficient and independent administration (Hofmann et al.2014; Kovacˇ2016) and the EU sectoral law. The same applies for at least legal transplants from individual countries under the spill-over effect of Europeanization (e.g., the introduction of alternative dispute resolution, guarantee acts, computerization of procedures). A contribution thereto is certainly made by various comparative studies among scholars who provide objective and positive examples. A breakthrough will only be possible if politics closes the ranks and listens to expert arguments for debureaucratization and the public interest as its necessary limitation.

6. CONCLUSIONS

To conclude, it should be emphasized that the legislature must strive to adopt such a regulation of administrative procedure that will protect the public interest. This means imposing the necessary administrative burdens in a balanced way in order to interfere with the rights of businesses and citizens only to the extent necessary for the implementation of sector-specific public policies and of the basic procedural guarantees of the parties in relation to the authorities. In such regard, the relevant EU principles of better regulation and administrative law should be applied with due consideration of different administrative relations, types of entities, and areas or degrees of collision between public and private interests. Legally regulated relations are a tool and a guarantee of a systemic model of good public governance, which is based on the principle of equality and represented by general codification. Its effectiveness must be understood as the right ratio between the common principles and necessary rules in administrative relations and the debureaucratization of other burdens on the parties. Only in this way can the latter properly assert their rights and legal interests at supraand national levels, while the GAPA represents a noble instrument of democracy and even a driver of systemic change, such as digitization. The essence of GAPA cannot be considered red tape, but rather a core mechanism for balancing interests in administrative relations in those cases that sector-specific legislation identifies as administrative matters (and does not deregulate them). Debureaucratization should thus take place holistically, possibly in sector-specific legislation, with the awareness of the importance of the public interest in both substantive and procedural terms.

Conflicts of Interest:

The authors declare no conflict of interest.

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