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HUMAN RIGHTS AND PUBLIC SERVICES:
TOWARDS A MORE EFFECTIVE APPROACH

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Introduction

When we discuss for the implementation of public administration reform in contemporary conditions especially is important to focus on public services users and in general on the process of modernization and improvement of services that are complemented by human rights values. That are those aspects of the reform that deal with the way public services are designed and delivered, such as the emphasis on service users and improvement of public service delivery standards, that are relevant to human rights. Once these common links are identified, the question arises how the human rights approach can give a special contribution for achieving improvements in public services.

In this context, the European Convention on Human Rights¹ provides a framework for considering policy and practice and potentially affects all aspects of public services. The aim that should be achieved with this approach of delivering public services is adoption of legislation that should prohibit actions by public authorities which are incompatible with the European Convention on Human Rights and to avoid breaches of people’s human rights. Firstly, the “positive obligations” doctrine, which is based on Article 1 of the Convention, requires public authorities to adopt a proactive approach to implementation of Convention rights. The effect is that the legislation provides a rights-based framework for designing policy and delivering services in accordance with Convention requirements. Secondly, the articles of the Convention, are based on the principles of fairness, equality, dignity and respect and these values are well recognized as fundamental to ensuring the delivery of high quality public services.

There is a big interest in the European Union about public services, which are mainly called services of general interest. In the reinforced activities of the Union in this field, the starting point is that the services of general interest are the main pillar of the European society model, that they contribute to a better quality of life and that they represent a supposition for the overall achievement of many fundamental rights. Namely, access to services of general interest in all its Member States is one of the joint values of all European

¹ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.1950

IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

societies. Moreover, the services of general interest contribute to the competitiveness of the European industry, as well as to the strengthening of the social and territorial cohesion in the European Union. They are considered as a vital component of the Union's policy in protecting consumers. For the countries accessing the European Union, services of general interest are essential for their smooth integration in the Union. Considering that the public service concept does not exist in all legal systems or does not always include the same positions², the importance given by the European citizens and companies to operating and development of such services or service providing, derives from the policy of the European Union.

Recognizing the crucial meaning of well-functioning, available and high quality services of general interest for qualitative life of the European citizens, the environment and the competitiveness of the European enterprises, the European Commission has increased its activities in this area in the last few years. It has, therefore, started broad consultations about how to best promote norms for high-quality services of general interest in the European Union. These services represent one of the values held by all European communities and which are the basic element of the European society model. Their role is essential for attaining a certain quality of life for all citizens, as well as for overcoming social exclusiveness and isolation.

Human rights are characterized with universality and their approach helps to put the public service user into the heart of their design and delivery. When services are designed with the user in mind, it encourages recognition that people are entitled to be treated fairly and with dignity and respect. The principles of public service reform, particularly the focus on service users and the drive to improve standards, are underpinned by human rights values.³

Public services – services of general interest

The interest for studying public services has been significant from long ago, with the aim of organizing them better, so that they could satisfy as more citizens as possible. It was even Leon Duguit who represented the concept that the basic task of the state in the beginning of the 20th century has changed (transformed) and that instead of performing public authorities, the state's task is to perform public services.⁴ Public service for Duguit is every activity, which performance should be regulated, secured and controlled by those who govern, because the performance of these activities is necessary for the achievement and development of the social interdependence⁵ In terms of the apprehension of the legal

² Recommendation no. r (84) 15 of the committee of ministers to member states relating to public liability (adopted by the committee of ministers on 18 September 1984 at the 375th meeting of the ministers' deputies)

³ Frances Butler, *Improving Public Services: Using a Human Rights Approach Strategies for Wider Implementation of the Human Rights Act Within Public Authorities*, Strategies for Wider Implementation of the Human Rights Act Within Public Authorities, Institute for Public Policy Research, June 2005, <http://www.ippr.org/ecomms/files/ippr%20human%20rights%20report%20June%202005.pdf> [available on 23.03.2013]

⁴ Leon Digi, *Preobrazaji javnog prava*, Beograd, 1929 : Stevan Lilic, Predrag Dimitrijevic, Milan Markovic, *Upravno pravo*, Beograd, 2004, p. 12, 31

⁵ Leon Digi, *Preobrazaji javnog prava*, Beograd, p. 51

IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

theory on public services, a theoretical concept of public services may be determined, according to which they represent activities performed by the state in order to satisfy certain needs of the citizens (education, science, culture, social care, health care, etc.) that are not characterized by giving orders, while in case of their interruption it would come to serious problems during the normal functioning of the society.⁶

Even the Court of Justice, for the needs of the European Union, developed the concept of public service, which in functional terms means service that has as a result direct or indirect interest in the exercise of power based on public law and duty to protect the interests of the state or other public authorities.⁷

In contemporary terms, apart from the interest on national level to provide high quality public services in the interest of the citizens, the focus is more and more on reaching the standard of the European Union. For a long time, in the center of the debate about the European model of a society is the modeling of the future of the public services, or as they are called – services of general interest. Speaking for services of general interest in the European Union, it should be emphasized that there is a differentiation between services of general economic interest and services of general non-economic interest. The European Union describes services of general interest as "market and non-market services which the public authorities class as being of general interest and subject to specific public service obligations". This broadly covers water, energy supply, communication, transport, health and social services, education and postal services. According to Article 14 of the Treaty on the functioning of the European Union, services of general interest should "operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfill their missions".⁸ The provision and funding of these services is left to national governments. The freedom to provide services, according to article 49 (ex 52) of the Treaty Establishing the European Community, seems to apply horizontally and vertically. Thus, Article 49 effects public bodies as well as legally recognized professional bodies, and now seems that will apply as against private parties.⁹

Within the frames of the recent reinforced interest on more specific regulation and definition of the services of general interest in the European Union, the Commission has established principles and goals of its policies in the area of the two complementary Communication: "Services of General Interest in Europe" of 1996 and 2000¹⁰ and in the Laeken Report on "The services of general interest"¹¹. The significance of the Report may be seen in the perception of the need and in the pointing to the necessity of passing a Framework Directive about the services of general interest, but also in the given definitions of the terminology on this subject. Therefore, the concept of services of general interest covers both market and non-market services, which the public authorities have qualified them to be of

⁶ Iskra Akimovska Maletić, European legal framework for public services, *Facta Universitatis*, Series: Law and Politics Vol. 4, No1, 2006.

⁷ Jurgen Schwarze, op. cit. str. 21, op: Ivo Borkovic, *Upravno pravo*, Zagreb, 1995, p. 14

⁸ Treaty on the functioning of the European Union, 9.5.2008 EN, Official Journal of the European Union, C 115/47.

⁹ Josephine Steiner, Lorna Woods, Christian Twigg-Flesner, *EU Law*, 9th edition, Oxford University Press, New York, 2006, p. 469

¹⁰ (COM (1996) 443 and COM (2000) 580 – Official Journal C 281 of 26.09.1996 and Official Journal C 17 of 19.01.2001)

¹¹ (COM (2001) 598 од 17.10.2001 not published in the Official Journal

IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

public interest, as well as a subject of specific obligations of the public service. Having in mind that the concept of public services is an ambitious term, since it can only refer to a current body providing services or a role of general public interest granted by a competent body, it may be determined that there is often confusion between the terms of public service and public sector. Namely, the term "public service" is linked to the profession of providing services to the public, having a reference to which service would be provided, while the term "public sector" (including state service) is connected to the legal status of those providing the service, with reference to who owns the service. When speaking about services of general public interest in the European Union countries, it should be pointed out that a generally accepted rule is that the Union leaves up to the Member States to decide whether they would provide public service by themselves, directly or indirectly (through other public bodies) or they would determine a third person to perform them. When there is an economic activity on the Community's level, in accordance with the rules and principles of the Treaty, with the purpose of securing equal treatment and fair competition between public and private, it is necessary for the operators to fulfill defined guarantees, so that these services may be provided in economically best services available on the market.¹²

Starting from the view that all the services of general interest which do not constitute an economic activity, are not subject of competitive and internal market rules, it was suggested to the Commission to comprise a list of services that are of non-economic nature. In that aspect the Court of Justice has determined that "any activity comprised of supply of goods and services on their market is an economic activity".¹³ Also, the scope of services that must be provided on the market is subject of technological, economic and social changes that have increased in time. It is therefore considered that while the list of examples may be composed, it would not be feasible to provide a definite *a priori* list of all services of general interest that would be considered "non-economic".¹⁴

In terms of the application of the Community's rules on selection of an operator, it is important to mention that the Member States are free to decide how they would provide the service, whereas they may decide on their own to provide the service directly or indirectly (through some other public body). However, when they decide to entrust the services to a third party, they have to follow certain procedural rules and principles. These rules and principles emanate from the Treaty and are applied to all agreements concluded by the Member States for performing economic activities within the framework of the meaning of the Treaty, irrespective of their qualification in the national legislation. Nevertheless, there are many exceptions in the Treaty, such as the activities linked to the performance of public authority, where derogations are allowed, if they are justified for some reason, like public order, public safety and public health. The activities of "non-economic nature" within the meaning of the Treaty are also excluded from the application of these rules and principles.¹⁵

¹² Iskra Akimovska Maletić, European legal framework for public services, *Facta Universitatis*, Series: Law and Politics Vol. 4, No1, 2006, p. 32.

¹³ Joint cases C- 180 to C- 184/98, Judgment of the Court of Justice of 12 september 2000, *Pavel Pavlov and Others vStichting Pensioenfonds Medische Specialisten* [2000] ECR I-6451

¹⁴ Report to the Laeken European Council, Services of general interest, Commission of the European Communities, Brussels, 17.10.2001, COM (2001) final 598, 2.1.2.2, p. 11

¹⁵ Report to the Laeken European Council, Services of general interest, Commission of the European Communities, Brussels, 17.10.2001, COM (2001) final 598

IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

When defining the public interest goals performed with these services, as well as the way they are organized, funded and assessed, the starting point is that the reality of the services of general interest in the European Union is complex and is constantly evolving, and thus entails:

- a broad circle of different types of activities, from huge network activities (energy, mail, transportation and communications) to health, education and social services
- the level of providing these services is also very different, from European or even global to purely local
- the services differ by nature, some are market services, while others are non-market
- the organization of these services differs depending on their historical, geographical
- and cultural tradition and characteristics of the specific activities.¹⁶

Confirming the importance of the services of general interest the European Parliament adopted a resolution¹⁷. In this regard it has expressed assurance that certain services of general interest would be excluded from the scope of rules on competition, such as health care and education, social accommodation and services of general interest that try to lead or increase pluralism of information and cultural diversities. It is believed that it is either not possible or relevant to have joint definitions on services of general interest or duties originating thereof, but that the European Union must determine joint principles such as universality and equality of access, continuity, safety, adaptability, quality, efficiency, availability, transparency, protection of users, consumers and the environment and participation of citizens, taking into consideration the specifics for each individual sector.¹⁸

In reference to the request of the European Parliament on the Green Paper of 14 January 2004, the Commission has brought conclusions from the debate that were implemented in the White Paper. While the services of general interest may be organized in cooperation with the private sector, or to be entrusted to private or public enterprises, the definition of the obligations and activities of the public services remains a task of the public authorities on the relevant level. They are also responsible for market regulation and ensuring that the operators perform the activities of the public services entrusted to them. Even in the White Paper on the Services of General Interest there is a definition of the terminology¹⁹, which refer to the services of general interest as an attempt to overcome many mistakes that have appeared, having in mind the discussions on European level as a result of the terminological differences, semantic confusions and different traditions of the Member States.

Bearing in mind that the terms "services of general interest" and "services of general economic interest" have not been identified with the term "public service", the White Paper highlights the opinion that this term may have different meaning and this might lead to confusion. The term sometimes refers to the fact that the services is offered to the general

¹⁶ Green Paper on Services of General Interest, Commission of the European Communities, COM (2003) 270, 21.05.2003

¹⁷ European Parliament Resolution of 13 January 2004 on the Green Paper on services of general interest (A5-0484/2003)

¹⁸ Green Paper on Services of General Interest, Commission of the European Communities, COM (2003) 270, 21.05.2003

¹⁹ These definitions are based on the Green Paper on the Services of General Interest COM (2003) 21.05.2004

IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

public, sometimes it is underlined that the service is ascribed a specific role of public interest, and sometimes it refers to the ownership or status of the entity providing the service.²⁰

The existence of a joint concept on services of general interest in the Union influences the values and goals of the Union and it has been based upon a set of joint elements, including universal services, continuity, affordability, as well as user and consumer protection. Regarding the services of general interest of great importance is the Directive 2006/123/EC of 12 December 2006 on services in the internal market.²¹ The Directive mentions only the services that suit the economic activities, but it also implies to the non-economic activities. An intention is being noticed in Europe to consider as many services as "economic" as possible and accordingly, if the public authorities provide these services guided by social motives and not by profit, it is left to be defined as services of general economic interest, and not as services of general interest. This development of "economic" services exists only due to the parallel growth of the numerous companies from the private sector that offer services from the domain of the public entities.²² It should still be pointed out that although the public services mostly become "economic", it is not understood as "commercial" or "doing business on the market". Also, the Court of Justice imposes indications that the Treaty on the European Union gives freedom to the Member States to define the providing of services of general interest and to establish organizational principles for the services they intend to provide. In any case, this freedom must be achieved transparently and flawlessly in terms of the general or public interest, and the Member States must have in mind the law of the Community when establishing arrangements for implementation of the outlined goals or principles. For example, they have to respect the non-discrimination principle and Community legislation on administrative agreements and concessions when organizing a public service. Moreover, when dealing with services of economic nature, the compatibility of their organizational order with the other areas of the Community law must be secured (especially the freedom to provide services and the freedom to establish). In the EU, the starting point is that universal service is considered as a dynamic and flexible concept, which has proven as an effective protective provision for those who do not otherwise buy services for themselves. The concept allows that the joint principles be defined on Community level and that the application of these principles be left to the Member

²⁰ As emphasized in the White Paper on the Services of General Interest (Commission of the European Communities, Brussels, 12.5.2004, COM(2004) 374 final, Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, White Paper on services of general interest), there is often confusion between the terms public service and public sector. The term public sector includes the public administration along with all the enterprises, controlled by the public authorities

²¹ The Directive 2006/123/EC of the European parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, needed to be fully implemented by the Member states by 28 December 2009. Most Member states failed to implement the Directive by a 2009 deadline. More on:

<http://www.euractiv.com/sustainability/services-general-interest-eu-links dossier-500147> [available 20.03.2013]

²² For example, "health" services are considered potentially "economic", as there is a "market" in some health services. Also, there is a "market" in education services, by paying participation fees in private schools and there are even (in Great Britain) companies that offer to provide education services entirely on local level. More: Council of European Municipalities and Regions, *Services of General Interest: Public Interest, Democratic Choice*, September 2003

IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

States, thus creating an opportunity for taking into consideration the specific situation in every country, in accordance with the principle of subsidiarity.²³

In the context of performing public services it should be pointed that in 2007 a Protocol²⁴ on Services of general interest was included in the Lisbon Treaty underling their value and potentially laying the ground for a new legal framework. The Protocol affirmed that EU treaty provisions do not affect member states’ control over their non-economic SGIs "in any way". The Commission has since stated that no new legislative frameworks for SGIs are in the pipeline. In January 2008, the EU executive launched an interactive information service on SGIs and their relation to EU law for the general public, member-state authorities and service providers. Article 14 of the EU Treaty and the Lisbon Treaty Protocol therefore provide the legal basis for Services of General Interest in the EU, while a series of non-legislative measures are being planned – such as a 'tool-kit' for public authorities and a voluntary EU-wide quality framework for social services.²⁵

Human rights approach towards more effective public services

Many aspects and many concepts, like the concept of fundamental rights and freedoms, mean different things to different people. Rights aplenty have been established and widely accepted, but a precise universal definition is not spelled out anywhere.²⁶ The starting principles of the human rights concept are that the fundamental human rights and freedoms should not be deserved or given, because they are possessed. In that aspect Universal Declaration of Human Rights stipulates that all human beings are born free and equal in dignity and rights.²⁷

The concept of human rights and freedoms is structured within the framework of the international documents and it covers a large part of international law. The international documents are the main source of the overall promotion, practice and protection of human rights and freedoms. Regarding the protection of human rights in an international context it can be said that the International Bill of Human Rights consists of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Other nine international agreements²⁸ for human rights

²³ Iskra Akimovska Maletić, European legal framework for public services, *Facta Universitatis, Series: Law and Politics* Vol. 4, No1, 2006, p. 39

²⁴ Protocol on Services of General Interest, C 306/158 EN, Official Journal of the European Union, 17.12.2007

²⁵ <http://www.euractiv.com/sustainability/services-general-interest-eu-links dossier-500147> [available 20.03.2013]

²⁶ Gudmundur Alfredsson, *The Usefulness of Human Rights for Democracy and Good Governance*, H.O. Sano and G. Alfredsson (eds.), *Human Rights and Good Governance*, 2002 Kluwer Law International, The Hague, The Netherlands, p. 20

²⁷ Universal Declaration of Human Rights, 10 December 1948, art. 1

²⁸ We should mention International Convention on the Elimination of All Forms of Racial Discrimination from 1965, International Covenant on Civil and Political Rights from 1966, International Covenant on Economic, Social and Cultural Rights from 1966, The Convention on the Elimination of All Forms of Discrimination against Women from 1979, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

are considered as basic, some of which are amended with optional protocols that refer to specific fields. In this context, certainly should be noted the European Convention on Human Rights, which entered into force in 1953 and has been ratified by all forty-seven member states of the Council of Europe.²⁹

States have the legal obligation to respect, protect and fulfill the human rights set out in the international human rights conventions they ratify. Their obligation to protect human rights requires them to protect individuals and groups against human rights abuses, including by business enterprises. Their obligation to fulfill human rights means that States must take positive action to facilitate the enjoyment of basic human rights. It can be said that international human rights treaties generally do not impose direct legal obligations on business enterprises. Legal liability and enforcement for the infringement by businesses of international human rights standards are therefore defined largely by national law. However, enterprises can affect the human rights of their employees, their customers, workers in their supply chains or communities around their operations. Indeed, experience shows that enterprises can and do infringe human rights where they are not paying sufficient attention to this risk and how to reduce it.³⁰

The European Union is an important player in the world, which greatly contributes to promotion and protection of all human rights, whether civil and political, or economic, social and cultural. The EU is founded on a shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy and the rule of law. Article 21 of the Treaty on European Union has reaffirmed the EU’s determination to promote human rights and democracy through all its external actions. The entry into legal force of the EU Charter of Fundamental Rights, and the prospect of the EU’s acceptance of the jurisdiction of the European Court of Human Rights through its accession to the European Convention on Human Rights, underline the EU’s commitment to human rights in all spheres. The EU is promoting human rights in all areas of its external action without exception. In particular, is integrating the promotion of human rights into trade, investment, technology and telecommunications, Internet, energy, environmental, corporate social responsibility and development policy as well as into Common Security and Defense Policy and the external dimensions of employment and social policy and the area of freedom,

Punishment from 1984, Convention on the Rights of the Child from 1989 година, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families from 1990, International Convention for the Protection of All Persons from Enforced Disappearance from 2006, Convention on the Rights of Persons with Disabilities from 2006, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights from 2008, First Optional Protocol to the International Covenant on Civil and Political Rights from 1966, Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty from 1989, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women from 1999, Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict from 2000, Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography from 2000, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment from 2002 and Optional Protocol to the Convention on the Rights of Persons with Disabilities from 2006.

²⁹ Харис, О Бојл и Варбрик, *Право на Европската конвенција за човекови права*, второ издание, Oxford University Press, 2009, p. 2 (original: Harris, o’Boyle & Warbrick, *Law on European Convention on Human Rights*, Oxford University Press, 1995)

³⁰ The Corporate Responsibility to respect Human Rights an interpretative Guide, UNITED NATIONS, Human rights, Office of the High Commissioner, New York and Geneva, 2012

IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

security and justice, including counter-terrorism policy. The EU is aimed to intensify its efforts to promote economic, social and cultural rights; to strengthen its efforts to ensure universal and non-discriminatory access to basic services, with a particular focus on poor and vulnerable groups. Also the EU is encouraging and contributing to implementation of the UN Guiding Principles on Business and Human Rights.

Regarding human rights in the European Union it is important to mention Strategic Framework on Human Rights and Democracy with an Action Plan³¹. The Framework sets out principles, objectives and priorities, all designed to improve the effectiveness and consistency of EU policy as a whole in the next ten years. They are involving the European Commission and EU member states, which are jointly responsible for implementation. In order to contribute to implementation of the Strategic Framework and the Action Plan, EU Special Representative on Human Rights was appointed, with the aim to enhance the effectiveness and visibility of EU human rights policy.

An important issue related with the human rights and the entities that are performing public services is the issue of corporate social responsibility (CSR). The European Commission has previously defined Corporate Social Responsibility as “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”.³² It is in the interest of the enterprises and in the interest of society as a whole. CSR concerns actions by companies over and above their legal obligations towards society and the environment. Certain regulatory measures create an environment more conducive to enterprises voluntarily meeting their social responsibility. A strategic approach to CSR is increasingly important to the competitiveness of enterprises but also it can bring benefits in terms of customer relationships. In that respect by addressing their social responsibility enterprises can build long-term employee, consumer and citizen trust as a basis for sustainable business models.

Responsible business conduct is especially important when private sector operators provide public services. In the Europe 2020 Strategy, the Commission made a commitment to renew the EU strategy to promote CSR. Commission has played a pioneering role in the development of public policy to promote CSR ever since it’s 2001 Green Paper³³ and the establishment of the European Multistakeholder Forum on CSR. In 2006 the Commission published a new policy whose centre piece was strong support for a business-lead initiative called the European Alliance for CSR.³⁴ The policy also identified 8 priority areas for EU action: awareness-raising and best practice exchange; support to multi stakeholder initiatives; cooperation with Member States; consumer information and transparency; research;

³¹ Council of the European Union, Luxembourg, 25 June 2012 11855/12, EU Strategic Framework and Action Plan on Human Rights and Democracy. The Framework builds on the joint Communication entitled 'Human rights and democracy at the heart of EU external action – towards a more effective approach', adopted by the European Commission on 12 December 2011.

³² COM(2001)366, according: European Commission, Brussels, 25.10.2011, COM(2011) 681 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU strategy 2011-14 for Corporate Social Responsibility

³³ Commission of the European Communities, Brussels, 18.7.2001, COM(2001) 366 final, Green Paper, Promoting a European framework for Corporate Social Responsibility

³⁴ Commission of the European Communities, Brussels, 18.7.2001, COM(2001) 366 final, Green Paper, Promoting a European framework for Corporate Social Responsibility

IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

education; small and medium-sized enterprises; and the international dimension of CSR. The Commission has identified a number of factors³⁵ that will help to further increase the impact of its CSR policy, including among others:

- The need to better clarify what is expected of enterprises, and to make the EU definition of CSR consistent with new and updated international principles and guidelines.
- The need to address company transparency on social and environmental issues from the point of view of all stakeholders, including enterprises themselves.
- The need to give greater attention to human rights, which have become a significantly more prominent aspect of CSR.

The modern understanding of corporate social responsibility can be seen in Commission’s new definition of CSR as “the responsibility of enterprises for their impacts on society”. To fully meet their corporate social responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders. To maximize the creation of shared value, enterprises are encouraged to adopt a long-term, strategic approach to CSR.³⁶

Although it is clear that the development of CSR should be led by enterprises themselves the role of public authorities is also very important. In that respect public authorities should play a supporting role through a smart mix of voluntary policy measures and, where necessary, complementary regulation, for example to promote transparency, create market incentives for responsible business conduct, and ensure corporate accountability.

When speaking for the public services delivery it should be pointed out that very important is improving company disclosure of social and environmental information. In that aspect, the Fourth Directive on annual accounts 2003/51/EC³⁷ requires enterprises to disclose in their annual reports environmental and employee-related information to the extent necessary for an understanding of the company’s development, performance or position. It is also an important element of accountability and can contribute to building public trust in enterprises. It is concluded that a growing number of companies disclose social and environmental information. Some sources estimate that about 2,500 European companies publish CSR or sustainability reports, which puts the EU in a position of global leadership³⁸.

³⁵ COM(2011)366, according to: European Commission, Brussels, 25.10.2011, COM(2011) 681 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU strategy 2011-14 for Corporate Social Responsibility

³⁶ European Commission, Brussels, 25.10.2011, COM(2011) 681 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU strategy 2011-14 for Corporate Social Responsibility

³⁷ Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings

³⁸ CorporateRegister.com, according to: European Commission, Brussels, 25.10.2011, COM(2011) 681 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU strategy 2011-14 for Corporate Social Responsibility

IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

However this is still only a small fraction of the 42,000 large companies operating in the EU.³⁹

Certainly, it can be said that the global framework for CSR consists of core set of internationally recognized principles and guidelines, in particular the OECD Guidelines for Multinational Enterprises, OECD Guidelines on Corporate Governance of State-Owned Enterprises, the ten principles of the United Nations Global Compact, the ISO 26000 Guidance Standard on Social Responsibility, the ILO Tri-partite Declaration of Principles Concerning Multinational Enterprises and Social Policy, and the United Nations Guiding Principles on Business and Human Rights. According to these principles and guidelines, CSR has multidimensional nature that at least covers human rights, labor and employment practices (such as training, diversity, gender equality and employee health and well-being), environmental issues (such as biodiversity, climate change, resource efficiency, life-cycle assessment and pollution prevention), and combating bribery and corruption. Community involvement and development, the integration of disabled persons, and consumer interests, including privacy, are also part of the CSR agenda.⁴⁰

One of the most important international tools in this aspect are UN Guiding Principles on Business and Human Rights, as the global standard of practice that is now expected of all States and businesses with regard to business and human rights. They elaborate on the implications of existing standards and practices for States and businesses, and include points covered variously in international and domestic law.⁴¹ UN Guiding Principles cover three pillars:

- the state duty to respect human rights;
- the corporate responsibility to respect human rights; and
- the need for access to effective remedy.

According to established principles the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. That means that business enterprises should respect human rights by avoiding infringing the human rights of others and should address adverse human rights impacts with which they are involved. It exists over and above compliance with national laws and regulations protecting human rights. Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation.⁴² The corporate responsibility to respect human rights applies to all internationally recognized human rights, because business enterprises can have an impact—directly or indirectly—on virtually the entire spectrum of these rights. Even rights such as the right to a fair trial, which is clearly directed at States, can be adversely affected if, for example, an enterprise obstructs evidence or interferes with witnesses.⁴³

³⁹ COM(2011)366, according: European Commission, Brussels, 25.10.2011, COM(2011) 681 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU strategy 2011-14 for Corporate Social Responsibility

⁴⁰ Ibid

⁴¹ The Corporate Responsibility to respect Human Rights an interpretative Guide, UNITED NATIONS, New York and Geneva, 2012

⁴² Guiding Principles on Business and Human Rights, Implementing the United Nations “Protect, Respect and Remedy” Framework, United Nations, 2011, p.18

⁴³ The Corporate Responsibility to respect Human Rights an interpretative Guide, UNITED NATIONS, Human rights, Office of the High Commissioner, New York and Geneva, 2012

IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

According to Guiding Principle 14 of the UN Guiding Principles the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

According to Guiding Principle 16 of the UN Guiding Principles, as the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

- (a) Is approved at the most senior level of the business enterprise;
- (b) Is informed by relevant internal and/or external expertise;
- (c) Stipulates the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
- (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
- (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise. For instance, one of the most typical risks for a toy or footwear company will be involvement in labor rights abuses through its supply chain. For a beverage or food company, typical risks are both labor rights and impact on water and/or land use and consumer health. For a pharmaceutical company, the right to health will be particularly salient, as will freedom of expression and the right to privacy for an information and communications technology enterprise.⁴⁴

According to Guiding Principle 17 of the UN Guiding Principles, in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence is necessary for any enterprise to know and show that it is respecting human rights in practice. It will need to include all the elements set out in the Guiding Principle: assessing actual and potential human rights impact, integrating and acting upon the findings, tracking responses, and communicating how impact is addressed. However, the scale and complexity of these processes will vary according to the size of the enterprise, as well as its sector, operational context, ownership and structure. The single most important factor, however, in determining the processes needed will be the severity of its human rights impact.

As prescribed in Guiding Principle 18 of the UN Guiding Principles, in order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

⁴⁴ The Corporate Responsibility to respect Human Rights an interpretative Guide, UNITED NATIONS, New York and Geneva, 2012, p. 28

IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

- (a) Draw on internal and/or independent external human rights expertise;
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation. According to Guiding Principle 23 of the UN Guiding Principles, in all contexts, business enterprises should:
 - (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;
 - (b) Seek ways to honor the principles of internationally recognized human rights when faced with conflicting requirements;
 - (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

Users in the center of performing of the public services

It is known that public service delivery in the countries (most OECD countries) lately is more in the competence of the local self government, where responsibilities and resources have been transferred, and which are empowered to set up their own administration and public services that are going to be closer to the citizens. With an intention to achieve better quality of life, better public service delivery and better economic prospects the redistribution of competences is then a suitable tool for:

1. having public service delivery at the most appropriate level for citizens and business with the central level guaranteeing homogeneous quality across the national territory
2. ensuring citizens equal access to services and giving the same standards of quality;
3. strengthening the legitimacy of local /regional/ sub national and national authorities and being perceived as such by the citizens;
4. promoting a healthy process of competition and comparison between local governments in the provision of services and investment activities;
5. setting up co-ordination and co-operation mechanisms between and across the different levels of government.⁴⁵

A focus on service quality is part of the general direction of public sector management reforms being pursued by OECD member countries. OECD, since the publication “Administration as a service: Public as a user”, proposes the following components of the service delivery that meets the requirements of citizens: transparency, participation, user satisfaction of users requirements and availability.⁴⁶

In the European Union the starting point is that access of all citizens and enterprises to high-quality services of general interest, which they could afford on the territory of the Member States, is the basic principle for promoting social and territorial cohesion of the

⁴⁵ SIGMA Support for Improvement in Governance and Management A joint initiative of the OECD and the European Union, principally financed by the EU, Philippe Vermeulen, Senior Adviser, *Administration and Territory in Europe: Public Services and Distribution of Competencies*, SIGMA Conference on Public Administration Reform and European Integration Budva, Montenegro 26-27 March, 2009

⁴⁶ Организација за економска соработка и развој (OECD), Одговорна власт, *Иницијативи за квалитет на услугите*, Скопје, 2003, David Shand, Morten Arnberg, *Responsive Government, Service Quality Initiative*, OECD

IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

European Union. In this regard, universal service is the key concept that the Community has developed in order to ensure efficient approach to the basic services. By that, every person establishes a right to approach to certain services that are considered as basic and that impose some obligations to the operators of the services to offer defined services in accordance with specified conditions, including complete territorial coverage and affordable prices. The universal service is a dynamic and flexible concept and it has proven as an effective protection norm for those who do not buy basic services for themselves in any other way. The concept enables for joint principles to be defined on the Community's level, while their application to be left to the Member States, which makes possible for taking into consideration the specific situations in each country, according to the principle of subsidiarity.⁴⁷ While the principle of subsidiarity means that in general competencies should be devolved to authorities and public services closest to the citizens. So, a need has been highlighted for the services of general interest to be organized and regulated as closer as possible to the citizens and for the principles of subsidiarity to be strictly followed.

Also, the Protocol on Services of General interest emphasizing the importance of services of general interest determines that the shared values of the Union in respect of services of general economic interest include in particular:

- the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organizing services of general economic interest as closely as possible to the needs of the users;
- the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;
- a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.⁴⁸

Starting from the fact that it is clear that services should be done in a way that puts the users in the first place, it is confirmed that the principle of transparency is the key concept for the development and implementation of public policies that refer to the services of general interest.

It is noted that Dr Reid’s statements encapsulate the foundation of human rights when it comes to the public services. The Universal Declaration of Human Rights expressed a determination to “promote social progress and better standards of life in larger freedom.” These are the goals and human rights principles provide both a set of values that guide their achievement and a safety net for those who need special protection. A human rights approach helps put the user of public services at the heart of their design and delivery. Users of services will have disparate and individual needs but in one sense they are uniform in that they are all, without exception, entitled to human rights protection. When services are designed with the user in mind, it encourages recognition that people are entitled to be treated fairly and with dignity and respect. This entitlement has a legal basis under human rights legislation because if people are not treated in accordance with the principles of fairness, dignity, equality and

⁴⁷ Iskra Akimovska Maletić, European legal framework for public services, *Facta Universitatis, Series: Law and Politics* Vol. 4, No1, 2006, p. 34

⁴⁸ Protocol on Services of General Interest, C 306/158 EN, *Official Journal of the European Union*, 17.12.2007, Art. 1

IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

respect, it is more likely that an unlawful act, such as degrading treatment, discrimination or breach of a protected right, will occur.⁴⁹

In that aspect it is important to understand and to determine the way how to communicate with citizens about human rights to enable effective use of them to drive up standards in public services. It can be said that the proposition that a human rights approach can encourage public authorities to provide better services, is not simply theoretical. It is noted that there are enough examples⁵⁰ of changes that have occurred during this period to suggest that the proposition can be validated and to support the need to conduct further research. Several case studies are also provided which describe the proactive approach adopted by public authorities to implementing human rights requirements throughout their organizations. Another question is that despite these examples of beneficial results, many public authorities are having difficulty in understanding how to implement human rights in their decision-making processes⁵¹

In order to achieve improvement in public services through human rights approach the implications for supporting a positive attitude to human rights issues as a party of guidance for public authorities should be clear. In that respect the entities performing public services should fully appreciate that implementing the Human Rights principles effectively involves leadership from the top and changes in management techniques throughout the organization. Certainly is very important to find evidence of a corporate approach to human rights that was proactive and related to service improvement.

In order to make the aim of improved public services through respect for human rights more achievable, the introduction of human rights thinking into the wider public sector environment needs to be considered. The focus must go beyond linking human rights, equalities and user participation to the broader context of related “initiatives, frameworks, concepts and standards” which already constitute “such a clamour” around public authority staff involved in service delivery.⁵²

⁴⁹ Frances Butler, *Improving Public Services: Using a Human Rights Approach Strategies for Wider Implementation of the Human Rights Act Within Public Authorities*, Strategies for Wider Implementation of the Human Rights Act Within Public Authorities, Institute for Public Policy Research, June 2005, <http://www.ippr.org/ecomms/files/ippr%20human%20rights%20report%20June%202005.pdf> [available on 23.03.2013]

⁵⁰ Some recent evidence comes from the Audit Commission’s survey among 175 public bodies in 2003. In its report, the inspectorate lists several examples of changes made by public bodies to their policies and practices as a result of assessing them for human rights compliance (Audit Commission, 2003), according: Frances Butler, *Improving Public Services: Using a Human Rights Approach Strategies for Wider Implementation of the Human Rights Act Within Public Authorities*, Strategies for Wider Implementation of the Human Rights Act Within Public Authorities, Institute for Public Policy Research, June 2005, <http://www.ippr.org/ecomms/files/ippr%20human%20rights%20report%20June%202005.pdf> [available on 23.03.2013]

⁵¹ Audit Commission, 2003, *Ibid.*

⁵² Frances Butler, *Improving Public Services: Using a Human Rights Approach Strategies for Wider Implementation of the Human Rights Act Within Public Authorities*, Strategies for Wider Implementation of the Human Rights Act Within Public Authorities, Institute for Public Policy Research, June 2005, <http://www.ippr.org/ecomms/files/ippr%20human%20rights%20report%20June%202005.pdf> [available on 23.03.2013]

IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

Concluding observations

It is clear the existence of a numerous international instruments for the protection of human rights as well as numerous international standards that provide better public services. According to the “positive obligations” doctrine, public authorities should adopt a proactive approach for implementation of Convention rights. The legislation should provide a rights-based framework for designing policy and delivering services and should incorporate principles of fairness, equality, dignity and respect. These values are well recognized as fundamental to ensuring the delivery of high quality public services.

The question that arises is whether and to what extent the countries apply international standards in the field of human rights in the public service delivery. The modernization of public services should be priority for every Government in the countries. They should set an example by making a more explicit connection between the adoption of a human rights approach and better public services. The authorities should use human rights as a tool for public service improvement by making principles of dignity, respect, fairness, equality and transparency central to their policy agenda. That is possible only if service users are put in the heart of what they do and especially in the center of public services. As, possible indicators of human rights compliance are pointed several: evidence of a corporate approach to human rights, the type and extent of training provided to staff, reviews of procedure and policy, changes in the way that services are delivered, human rights specifications in contracts between public authorities and contractors, information on human rights and equality standards to be provided to the public and effective participation by users.⁵³

By emphasizing the issue of improvement of public services by using a human rights approach competent authorities should be encouraged for its more effective implementation. First, they should be directed to investigate the impact of human rights in public services. It is necessary to make empirical research that will confirm the fact in which extent human rights are respected during the public services delivery. For that purpose there is a need to take actions in the direction of researching awareness, attitudes and expectations of public service delivery in the context of human rights principles among public service users. Also, important element here is whether the entities have the competencies to apply human rights approach in the public services. Namely, even certain entities to want to apply a human rights approach in the service delivery the question is whether they know how to do that. In that aspect very important for them is to know how to apply the precise legal principles but also to know how to develop an entire corporate approach with emphasis on service users.

⁵³ Frances Butler, *Improving Public Services: Using a Human Rights Approach Strategies for Wider Implementation of the Human Rights Act Within Public Authorities*, *Strategies for Wider Implementation of the Human Rights Act Within Public Authorities*, Institute for Public Policy Research, June 2005, <http://www.ippr.org/ecomms/files/ippr%20human%20rights%20report%20June%202005.pdf> [available on 23.03.2013]

IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

In order to take some practical measures for achieving better and more efficient public services with human rights approach, first certain conceptual solutions should be taken. It is therefore very important for the countries to adopt national strategies.

Also, it could be said that quality of service delivery depends on the application of the human rights approach that highlights the importance of the existence of a clear corporate strategy and high-quality training of staff that provide services. Of course of crucial importance is the existence of a human rights framework for making and reviewing policy decisions, including processes for taking into account the perspective of users.

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IPSA (RC 32) 2013 Conference
‘Europeanization of public administration and policy:
sharing values, norms and practices’
April 4-7, 2013, CAAS, Dubrovnik, Croatia

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