

TABLE OF CONTENTS

<i>Foreword</i>	v
<i>George A. BERMANN</i>	v
<i>General Report</i>	1
<i>Jean-Bernard AUBY</i>	1
1. Framing the Issue	2
1.1. Administrative procedure?	2
1.2. Codification or not?	3
2. The Making of GAPAs	4
3. The Content of GAPAs: General Orientations	5
3.1. Scope	5
3.1.1. In terms of bodies regulated	5
3.1.2. In terms of fields of administration covered	7
3.1.3. As to the kinds of administrative acts included	8
3.1.4. As to issues regulated	9
3.1.5. Organisational issues	10
3.1.6. Conflicts of interest	11
3.1.7. Freedom of information	11
3.1.8. Administrative liability	11
3.2. Combination with other sources	11
3.3. Concepts and principles	13
3.3.1. GAPAs are more or less centred on the administrative act. .	13
3.3.2. GAPAs' approach is more or less judicial-like	14
3.3.3. Differences related to principles put forward in the GAPAs...	14
3.3.4. One procedural pattern or several?	15
3.3.5. Room for participation of lay citizens	16
4. The Content of GAPAs: concrete arrangements	17
4.1. Proceedings	17
4.1.1. Jurisdictional issues	17
4.1.2. Starting up of the procedure	18
4.1.3. Parties	18
4.1.4. Evidence	20
4.1.5. Other issues	20

4.2. Outcome	21
4.2.1. Kinds of possible outcomes	21
4.2.2. Obligation to issue an outcome and consequences of inertia..	22
4.2.3. Consequences of procedural irregularities on the outcome of procedures	23
4.2.4. Appeals.....	24
4.2.5. Modification and revocation of decisions	25
5. The Evolution of GAPAs	26
6. Living without a GAPA.....	27
<i>National Reports</i>	29
Chapter 1. Australia	
Iain STEWART	31
1. Codification: <i>mors codicis</i> ?.....	32
1.1. Code and codification	32
1.2. The Code Napoléon: from book to database.....	35
1.3. Is codification still possible? From scrolls to scrolling	37
1.3.1. Life of the Code civil.....	37
1.3.2. Too much codification?	38
1.3.3. The French codes today	39
1.3.4. Codes, from books to databases.....	41
1.4. Justinian: comprehensiveness and exclusivity	41
1.5. Style, logic and audience	44
1.5.1. Style and logic — Portalis	44
1.5.2. Audiences	47
1.5.3. Legal databases	48
1.6. Access to and access in (searchability).....	49
2. Australia	51
2.1. Introduction.....	51
2.2. Law online	53
2.3. Constitutive and supervisory administrative law	53
2.4. Constitutive law of administrative procedure.....	55
2.5. Supervisory law of administrative procedure.....	55
2.5.1. Division of powers.....	55
2.5.2. Courts and tribunals	56
2.5.3. Binding decisions.....	56
2.5.4. "Review"	57

2.5.5. Grounds of review	58
2.5.6. Exclusion of review	59
2.5.7. Formality and informality	60
2.5.8. Remedies	60
2.6. The "new" administrative law	61
2.6.1. The new legislation	61
2.6.2. Fates of the new legislation	63
2.6.3. Prescribed Informality	65
2.6.4. Standing (locus standi)	66
2.6.5. Access to reasons	67
2.6.6. Aims of administrative law	67
2.7. The ADJRA — Purpose and content	68
2.7.1. Grounds of review	68
2.7.2. Innovations	70
2.7.3. Back-door innovation: damages	71
2.8. The ADJRA — Failure	71
2.8.1. Exceptions	72
2.8.2. Limited scope	72
2.8.3. Conduct toward	73
2.8.4. Obscurity of individual grounds	74
2.8.5. . Obscurity of the grounds as a set	75
3. Conclusion	76
4. Appendix — 2013	76
Chapter 2. Canada et Québec	
<i>André BRAËN</i>	77
1. L'administration	77
2. La procédure administrative et le fonctionnement de l'administration	78
3. La procédure judiciaire et le contrôle de la légalité administrative	80
4. En résumé	81
Chapter 3. China	
<i>Li ZHANG</i>	83
1. Chinese conception of administrative procedure	84
1.1. An "administrative" "procedure"	84
1.2. Classification of administrative procedure	85
1.2.1. Classification based on the criterion of nature of the act to be taken	86

1.2.2. Internal and external procedures	86
1.2.3. Prior and posterior procedures.....	87
2. Characteristics of the Chinese law of administrative procedure	88
2.1. A scattered legislation	89
2.1.1. Sector-based regulations	89
2.1.2. The new tendency focused on the administrative acts	89
2.2. In search of a good balance between the guarantee of the administrative power and the protection of the citizens' rights.....	90
2.2.1. Recognition of the own values of the procedure.....	90
2.2.2. Procedural systems in favor of the citizens.....	92
2.3. Multiple references to foreign legal systems	94
3. Prospect of a codification in China.....	96
3.1. What shall the future codification consist of?	98
3.1.1. A codification exceeding what its title means	98
3.1.2. Topics and systems to bring into the future codification	99
3.2. Controversy, inertia and controversial actions.....	100
3.3. What objective to pursue?.....	101
3.3.1. Reification of the "procedural legality"	101
3.3.2. Affirmation of a "minimal procedural justice" in an essential law	102
Chapter 4. Republic of Croatia <i>J.S.D. Dario ĐERĐA</i>	107
Chapter 5. Czech Republic <i>Josef STAŠA, CSc.</i>	123
1. Scope of comparison: what do we mean by "administrative procedure"?.....	124
2. Main features of the law on administrative procedure in the Czech Republic	127
3. Codification of administrative procedure	129
Chapter 6. Denmark <i>Niels FENGER</i>	135
1. Scope of the comparison: what do we mean by "administrative procedure"?.....	135
1.1. Procedure?	135
1.2. Administrative procedure	138

1.2.1. The extent to which Danish law draw a distinction between governmental processes (which would not be subject to the rules concerning "administrative" procedure) and administrative ones	138
1.2.2. Where is, in Danish law, located the boundary between administrative and judicial procedure?	138
2. Main features of Danish law on administrative procedure (apart from whether it is codified or not)	140
2.1. Historical development and origin of its basic principles	140
2.2. Importance of the procedural dimension in Danish administrative law	141
2.3. How far is Danish law on administrative procedure influenced by international (European) rules and standards?	142
3. The extent to which Danish law on administrative procedure is codified	144
4. Time and structure of the codified acts	147
4.1. When was it codified?	147
4.2. How are the codes structured? Which are the main concepts that determine their architecture?	148
4.3. What room does Danish law allow to direct participation of the citizens?	149
4.4. Was the codification process the occasion for a special effort in the sense of conceptualization and theorization of administrative procedure law?	150
4.5. Does there still exist special pieces of legislation about administrative procedure, which complement the code, or deviate from it?	151
4.6. As to the effects of the codification	151
4.6.1. What room did it leave to jurisprudential creation?	151
4.6.2. Has it been considered as satisfactory (in terms of administrative efficiency, in terms of simplification and in terms of democratization)?	152
5. Areas where Danish law on administrative procedure is not codified ...	153
5.1. Is there a (doctrinal or political) debate on codifying?	153
5.2. What are the sources of procedural administrative law (Constitution, statutory legislation, governmental regulation, soft law, case-law)?	153
5.3. What room for jurisprudential creativity?	154

5.4. To what extent are administrative authorities free to adapt general rules to their own procedural needs?	154
Chapter 7. Estonia	
<i>Ivo PILVING</i>	157
1. Scope of the study: what do we mean by "administrative procedure"?	157
1.1. "Procedure"	157
1.2. "Administrative"	159
2. Main features of the law on administrative procedure in Estonia	160
2.1. Historical development, origin of its basic principles	160
2.2. Fundamental orientations	161
2.3. Importance of the procedural dimension in the Estonian administrative law	162
2.4. Main debates related to administrative procedural law	164
2.5. Influence of international (European) rules and standards on Estonian law on administrative procedure	164
3. APA as the codification of administrative procedure in Estonia	165
3.1. Legislative history	165
3.2. Structure and main concepts of the APA	166
3.2.1. Structure	166
3.2.2. Administrative acts and regulatory acts	167
3.2.3. Contractual procedures	168
3.3. Extent of freedom available to administrative authorities in the arrangement of their procedures	168
3.4. Availability of direct participation to the citizens?	169
3.5. Meaning of the codification process for the development of administrative procedural law	170
3.6. Ambit of the codification	170
3.7. Effects of the codification	170
3.7.1. Case law	170
3.7.2. Deficits in APA	171
Chapter 8. Finland	
<i>Outi SUVIRANTA</i>	173
1. Introduction to the Legislation on Administrative Procedure in Finland	173
2. Background for the Codification Work in Finland	177

3. Drafting of the APA of 1982: Citizen-Salient Approach	178
4. Structure of the APA of 2003	180
5. Ambit of the Codification	181
6. Direct Participation of Individuals	182
7. Margin of Freedom of Administrative Authorities in Arranging their Procedures	183
8. Survey on the APA of 2003 — Expectations for the Future.....	184
Chapter 9. France	
<i>Stéphane BRACONNIER</i>	187
1. Introduction: A quick approach to French administrative law	187
1.1. The historical origins and the sources of French administrative law and procedure	187
1.2. The scope of administrative law in France and the notion of administrative acts under French law	189
1.3. General considerations on the codification process in France ...	190
2. The scope of the comparison: The meaning of “administrative procedure”	190
2.1. What is administrative?	190
2.1.1. The distinction between governmental processes and administrative processes	190
2.1.2. The boundary between administrative and judicial procedure.....	191
2.1.3. The existence of specialized administrative courts	191
2.2. What is <i>procedure</i> ?	191
2.2.1. Non-contentious administrative procedure: Administrative procedure <i>stricto sensu</i>	192
2.2.2. Non-jurisdictional contentious administrative procedure...	192
2.2.3. Jurisdictional contentious administrative procedure: Administrative litigation	192
3. The codification of the rules on administrative litigation	193
3.1. The drafting of the Code: A codification on the basis of established law	193
3.2. The structure of the Code.....	194
3.3. Fundamental orientations.....	195
3.4. The influence of international and European rules and standards.....	195

3.5. The effects of the codification	197
4. The absence of codification of the rules on administrative procedure <i>stricto sensu</i>	197
4.1. The sources of procedural administrative law.....	198
4.2. The influence of international and European rules and standards.....	199
4.3. The room left to jurisprudential activity.....	200
4.4. The room for direct participation of the citizens in administrative processes	200
5. Bibliography	201
5.1. Unofficial codes	201
5.2. Textbooks	201
5.3. Articles	201
Chapter 10. Germany	
<i>Jens-Peter SCHNEIDER</i>	203
1. Introduction and overview	203
2. The history of German administrative procedure law and the codification process until 1976	204
3. Multi-level codification and executive federalism in Germany	207
4. The limited scope of "administrative procedure" in the German APA	209
4.1. Scope of the APA I: administrative activities of authorities under public law	209
4.2. Scope of the APA II: limited definition of administrative procedure and inclusion of substantive annex matters.....	211
4.3. Scope of the APA III: open subsidiarity to sector specific law ..	213
5. The procedural concept and architecture of the German APA	214
5.1. "Informal" proceedings for unilateral decision making as the APA's standard model	215
5.2. Formal administrative proceedings and proceedings for planning approvals	219
5.3. Public law contracts.....	220
6. Elements and limits of procedural thinking in German adminis- trative law: a case for reform?	222

Chapter 11. Greece

<i>Vassiliki KOUMPLI</i>	227
1. The concept of "administrative procedure"	227
1.1. The scope of the term "administrative procedure"	227
1.2. The extent of the term "administrative procedure"	229
1.2.1. Exclusion of government processes	229
1.2.2. Exclusion of judicial review procedures	230
2. Main features of administrative procedure law	231
2.1. The evolution of administrative procedure law	231
2.1.1. Historical underpinnings	231
2.1.2. Legal underpinnings	232
2.2. Fundamental orientations of administrative procedure law	233
2.2.1. The priority of the rule of law	233
2.2.2. The importance of the procedural dimension	235
3. The Greek Administrative Procedure Code	236
3.1. Historical background of the Administrative Procedure Code	236
3.1.1. The debate about making a code	236
3.1.2. The debate about the content of the code	237
3.2. The structure of the Administrative Procedure Code	239
3.2.1. First Chapter	239
3.2.2. Second Chapter	240
3.2.3. Third Chapter	240
3.2.4. Fourth Chapter	241
3.2.5. Fifth Chapter	241
3.2.6. Sixth Chapter	242
3.3. An assessment of the Administrative Procedure Code	242

Chapter 12. Israel

<i>Yoav DOTAN</i>	245
1. Background	245
2. Codification	247
3. Administrative Procedure – Principal Requirements	249
3.1. Bias and Conflict of Interest	249
3.2. Hearing and Consultation	249
3.3. The Duty to Give Reasons	250

3.4. Access to Information	250
3.5. Additional Duties.....	251
3.6. General Duty of Fairness	251
Chapter 13. Netherlands	
<i>Tom BARKHUYSEN, WILLEMEN DEN OUDEN and YMRE E. SCHUURMANS</i>	253
1. Introduction.....	253
2. Historical Development	254
3. Scope of the Comparison: "Administrative Procedure" in the Netherlands	256
3.1. Procedure.....	256
3.2. Administrative law in relation to other branches of law	257
3.3. Administrative and judicial procedures	259
4. The Codification of the GALA.....	261
4.1. Nature and structure of the GALA.....	261
4.2. Relationship between the GALA and specific legislation.....	266
4.3. Towards uniformity in administrative law	267
5. Main debates relating to administrative procedure and the GALA ...	267
6. International/European Influence	272
6.1. EU influence	273
6.2. ECHR	275
7. Conclusion	276
Chapter 14. Norway	
<i>Eivind SMITH</i>	277
1. Introduction: The public administration and the courts	277
2. The impact of the system of judicial review on the law on administrative procedure	279
2.1. Introduction	279
2.2. Focusing on administrative procedure stricto sensu	280
2.3. The relative un-importance of the distinction between administrative and other procedures	281
3. "Codification of administrative procedures"	281
3.1. "Codification"	281
3.2. "Administrative"	284
3.3. "Procedures"	284
4. Main features of the law on administrative procedure in Norway	286

5. Norwegian law on administrative procedure codified	289
5.1. The Public Administration Act	289
5.2. Main content	290
5.3. The 1967 Act and administrative bodies submitted to <i>lex specialis</i>	292
6. Some remarks on the effects of codification	293
7. Appendix.....	294
Chapter 15. Paraguay	
<i>Javier PARQUET VILLAGRA</i>	321
1. Scope of the comparison: what do we mean by "administrative procedure"?	321
1.1. "Procedure"?	321
1.2. "Administrative"	324
2. Main features of the law on administrative procedure in your country (apart from whether it is codified or not).....	325
3. Is your national law on administrative procedure codified?	327
4. If it is codified.....	327
5. If your national law on administrative procedure is not codified	328
Chapter 16. Poland	
<i>ZBIGNIEW KMIECIAK</i>	329
Chapter 17. Portugal	
<i>José Eduardo FIGUEIREDO DIAS</i>	345
1. Scope of the comparison: what do we mean by "administrative procedure"?	345
1.1. "Procedure"?	345
1.2. "Administrative"	346
2. Main features of the law on administrative procedure in your country (apart from whether it is codified or not).....	347
2.1. Historical development, origin of its basic principles (legislation, case-law...)	347
2.2. Fundamental orientations.....	347
2.3. Importance of the procedural dimension in your administrative law	348
2.4. What are the main debates related to administrative procedural law: Simplification? Democratization? Others?	348

2.5. How far is your national law on administrative procedure influenced by international (European) rules and standards?.....	349
2.6. Is your national law on administrative procedure codified?.....	349
3. If it is codified	349
3.1. When was it codified?.....	349
3.2. How is the code structured? Which are the main concepts that determine its architecture?	350
3.3. What margin of freedom does it leave to administrative authorities in the arrangement of their procedures?	351
3.4. What room does it allow to direct participation of the citizens? ..	351
3.5. Was the codification process the occasion for a special effort in the sense of conceptualization and theorization of administrative procedure law?.....	351
3.6. What was the ambit of the codification?.....	352
4. As to the effects of the codification.....	353
Chapter 18. Sweden	
<i>Lars-Göran MALMBERG</i>	355
1. Salient features of administrative procedures in Sweden	355
1.1. Historical development and origin of basic principles	355
1.2. Importance of procedural dimensions under Swedish administrative law	357
1.3. The codification of administrative procedure in Sweden	359
2. What is meant by "administrative procedure"?.....	360
3. Final comments.....	362
Chapter 19. Switzerland	
<i>Thierry TANQUEREL</i>	365
1. The purview of administrative procedure.....	365
1.1. The central position of the administrative decision.....	365
1.2. The absence of procedure applying to rulemaking.....	368
1.3. The double nature of citizen participation	369
1.4. The distinction between administrative and judicial authorities.....	370
2. Regulation of administrative procedure in Switzerland.....	371
2.1. The mark of federalism.....	371
2.2. History	373
2.3. Sources	375

2.3.1. International sources	375
2.3.2. National sources	376
2.4. Main features	376
2.4.1. Party status	376
2.4.2. The rights of the parties	377
2.4.3. Coordination and the global weight of interests	378
2.4.4. Access to justice	379
2.5. The debated questions	379
3. Codification	382
3.1. Codification at the federal level	382
3.2. Codification at the cantonal level	383
3.3. The room left for case law and administrative practice	384
4. Conclusion	384
Chapter 20. United States	
<i>Dominique CUSTOS</i>	387
1. Scope of the comparison: what do we mean by "administrative procedure"?	387
1.1. "Procedure"?	387
1.2. "Administrative"	400
2. Main features of the law on administrative procedure in your country (apart from whether it is codified or not)	401
2.1. The APA, first administrative procedure codification in the common law world	401
2.2. The use of the world code with regard to the APA	403
2.2.1. The code status and functions of the APA	404
2.2.2. Unwarranted code label?	408
3. Is your national law of administrative procedure codified?	411
3.1. When was it codified?	411
3.1.1. The search for a model of administrative procedure	411
3.1.2. The drafting of the APA	413
3.1.3. The impact of the APA on the sources of administrative procedure	414
3.2. How is the code structured? Which are the main concepts that determine its architecture?	415
3.2.1. The APA's focus on the regulated public's participation	415

3.2.2. Legislative and executive oversight of agencies are dealt with outside the APA	417
3.3. Was the codification process the occasion for a special effort in the sense of conceptualization and theorization of administrative procedure law?.....	418
3.4. What was the ambit of the codification?.....	418
3.4.1. Does there still exist special pieces of legislation about administrative procedure, which complement the code, or deviate from it?	418
3.5. As to the effects of the codification	418
3.5.1. What room did it leave to jurisprudential creation?.....	418
3.5.2. Has it been considered as satisfactory (in terms of administrative efficiency, in terms of simplification, in terms of democratization...)?.....	418