

The new Law on General Administrative Procedure (“Official Gazette of RS” No. 18/2016), enacted on February 29, 2016, entered into force on March 9, 2016 (“the Law”). The Law will be applied from July 1, 2017, except for certain provision that will start being applied 90 days after the Law enters into force, i.e. from June 7, 2016.

In enacting this Law the legislator was motivated by the need to improve administrative legislation in keeping with European standards. One of the legislator’s principal motives was to adapt public administration to the needs of the citizens, providing the necessary services and guaranteeing their quality and accessibility. Quality and efficient public services will certainly help in improving the business environment and legal certainty. Another principal motive was to modernize the administrative procedure, making it simpler and more efficient. The new solutions fit this purpose, and also contribute to more effective fulfillment of public interests and the individual interests of citizens and legal entities in administrative matters.

Simplifying the language in formulating the norms and more logical systematization of legal provisions was aimed at better understanding and application of the Law.

With the numerous new elements it has introduced, the new Law on General Administrative Procedure (“the Law”) is in many ways an improvement as compared to the previous wording of the law. The most important elements we will present here are:

1) significantly expanded scope of the Law;

Apart from the rule specified in Article 3 of the old wording of the law - that the provisions of special laws have to comply with the basic principles of the Law, the amendments also specify that certain matters relating to the administrative procedure may be regulated by a special law only if unavoidable in certain administrative fields, and only if this does not decrease the level of protection of rights and legal interests of parties guaranteed by the Law.

The previous Law on General Administrative Procedure regulated only the procedure for issuing administrative documents and public documents, while the procedural rules of the new Law introduce obligations of governmental and non-governmental bodies with regard to other forms of administrative procedures - rendering guarantee documents, concluding administrative agreements, undertaking administrative actions and providing public services.

Such considerable broadening of the scope of the Law has truly raised it to the level of basic law which greatly contributes to legal certainty.

2) newly introduced principles and principles with new content;

There have been considerable changes with regard to the principles of general administrative procedure - both introduction of new articles, and expansion of existing ones. The principle of legality has been broadened and is now called the principle of legality and predictability. Namely, the competent authority is now obliged to act both lawfully and

predictably, which means that in proceeding in an administrative matter the competent authority has to take previous decisions in the same or similar administrative matters into account as well. Although it seemingly introduces the rule of legal precedents, this principle does not actually do so. It was introduced with the goal of improving legal certainty for the parties concerned, and to make administrative practice as established and uniform as possible in order for public administration to support the necessary conditions for conducting business activities. The difference as compared to the common law system is that when reaching decisions administrative bodies do not rely on precedents, but on uniform administrative practice. If there are justified reasons to deviate from previous practice in a specific case, they must be additionally specified.

3) obligations and misdemeanor liability of competent authorities with regard to data kept in official records;

The provision according to which competent authorities are obliged to review, obtain and process all data on the decisive facts on which official records are kept has been raised to the level of principle by the new wording of the Law. Administrative bodies are forbidden from asking parties to submit such data and misdemeanor liability is specified for the officers of such bodies who do so, as well as for the officers of any bodies who keep official records yet fail to provide the administrative body with the requested data in a timely manner. Namely, an authorized officer who fails to ex officio review data on facts necessary to reach a decision for which official records are kept, fails to request and fails to process such data, or who fails to provide data on which official records are kept at the request of the proceeding authority, free of charge, and within 15 days or another period of time specified by the law, shall be fined 5,000 to 50,000 RSD. The principle of access to information and data protection further specifies that confidential and personal data shall be protected in compliance with the law.

4) single administrative point;

Unified provision of services in one location or single administrative point is another new element of the new Law. Namely, by introducing a single administrative point, instead of contacting a number of different authorities or initiating several procedures before the same authority for recognition of a certain right or several mutually connected rights arising from the same or several connected administrative matters, parties will now be able to submit a single application, communicate with and contact a single authority, which will render a decision on the application at the end of the process.

The solutions provided by the new Law regarding the manner of organizing the single administrative point are very flexible, so as to enable continuous expanding of the scope of situations in which it may be established.

5) guarantee document;

A new type of document which can be rendered in administrative procedures is a guarantee

document. According to the explanation, a guarantee document is a written document by which the relevant authority guarantees the party that an administrative document of specific content will be issued to it if the state of facts and the regulations do not change between the rendering of the guarantee document and the submitting of the application for issuance of an administrative document.

Although a new element in the Law on General Administrative Procedure, this document is not new in the Serbian legal system, or in comparative administrative practice, where it has proven to be one of the best instruments for achieving a high level of legal certainty. As a result, the guarantee document also lowers the chances of appeals being lodged in administrative matters, thereby decreasing the workload of the second-instance bodies, and therefore of the administration as a whole.

One of its greatest advantages is raising the level of predictability of the business environment, and it can also have a future application in the procedure for issuing building permits, and in acquiring the status of privileged power producer.

The Law specifies that the competent authority is obliged to issue the administrative document in compliance with the guarantee document, except in the cases specified by law, thereby removing the lack of obligation seen in opinions on application of regulations issued by administrative bodies.

6) rules of communication between authorities and parties in procedures (special rules on electronic communication);

The provisions on notifications introduce new manners of communication between the authorities and the parties. In enacting such provisions the legislator's intention was to make communication more efficient and more flexible.

A new element regarding communication between the authorities and the parties is seen in the definition of written communication, which, apart from communication on paper (via regular mail/delivery), includes communication by electronic means.

Delivery, as a form of notification, can be 1) personal – the provisions have been changed and specified as compared to the old wording of the law; 2) indirect or 3) public – by posting a document on the competent authority's website or bulletin board and/or in an official gazette, daily paper or in some other suitable manner; however the option for public delivery is restricted by law. Namely, public delivery is resorted to: 1) when no other form of delivery is possible; 2) if a decision is being delivered which concerns a number of persons not known to the delivering authority; 3) if delivery in some other manner was not possible or suitable; 4) in other cases determined by the law.

The provisions on electronic communication regulate this form of communication between authorities and parties in the interest of efficiency. Electronic communication is not applied in every case, but only if the party communicating electronically with an authority has previously agreed to such communication, or if it is provided for by a separate regulation.

Namely, authorities post information on their websites regarding the option of electronic communication between the authority and parties, submitting electronic documents to the authority and the authority's sending of electronic documents "to parties, and the manner in which this is done.

All other issues relating to electronic communication will be regulated by the provisions of the laws on electronic communication, e-business, electronic signatures and documents, and the law that will regulate the field of e-administration in future.

7) manner of initiating procedures;

The changes relating to the manner of initiating procedures *ex officio* differentiate between two situations - 1) when the procedure is being conducted in the interest of the party - in which case it is considered initiated when the relevant authority undertakes any action towards conducting the procedure, and 2) when the procedure being conducted is not in the interest of the party - in which case it is considered initiated when the party is notified of the document regarding initiation of the procedure.

The legislator's motive in adopting this solution was more efficient implementation of the principle of the party's right to a statement, i.e. protection of the basic procedural rights of the party and the party's active participation. This solution will also increase the cost-effectiveness of procedures, as it helps in avoiding the annulment of decisions and restarting the same procedure from the beginning.

8) legal remedies;

Articles 147-150 introduce a new legal remedy - a complaint. This legal remedy may be resorted to because of defaulting on the administrative agreement, taking or failure to take administrative action and the manner of providing public services, but only if in the specific case at hand the complainant has no other legal remedies at his disposal.

Complaints are addressed to the subject who took the administrative action the legality or expediency of which is being contested by the complaint, and were introduced into the Law in order to secure legal protection of parties in case of actions which do not comply with the administrative document.

Decisions on complaints may be appealed in an administrative procedure, or a claim may be filed against them in an administrative dispute, depending on which authority decided on the complaint.

Regarding complaints as regular legal remedies, the first-instance authority is now obliged during the procedure following the complaint to send the second-instance authority its reply to the complaint together with the complaint and the case files relating thereto.

A new element which has been introduced is that parties and persons who do not have the capacity of a party in the matter now have the option of waiving the right to an appeal from the moment of being notified of the decision until expiry of the deadline for the appeal. In compliance with the principles of cost-effectiveness and efficiency, such a statement cannot

be revoked.

The reasons for lodging appeals have been expanded and now include the option of contesting an administrative document because it was not rendered in compliance with the guarantee document.

In certain cases appeals are not lodged with the first-instance but with the second-instance authority, these being: 1) in case of “silence of the administration”; 2) against a decision rejecting the appeal; 3) against a decision annulling a contested decision; and 4) against a decision by which the first-instance authority is complying with the request in the appeal. In case of “silence of the administration” a final deadline for submitting appeals has been introduced, which is one year after expiry of the deadline for rendering the decision, after which the procedure is considered terminated and appeals can no longer be lodged.

Another new element which has been introduced in the case of “silence of the administration” relates to situations in which a first-instance authority, even after an appeal has been lodged because of failure to render a decision by the legal deadline, followed by an order from the second-instance authority, still does not render a decision within 15 days. In that case the second-instance authority will itself decide on the administrative matter, thus resolving the problem of shuttling the matter to and fro between the first- and second-instance authorities, without either of them reaching a decision in the matter.

9) extraordinary legal remedies;

Regarding extraordinary legal remedies, the simplification and redefining has resulted in considerable changes - the existing extraordinary legal remedies have been improved or entirely new solutions have been provided for.

The measures of unscheduled administrative inspection are now as follows - 1) changing and annulling decisions relating to administrative disputes; 2) repeating procedures; 3) annulling final decisions; 4) setting aside and annulling decisions; 5) setting aside or changing final decisions at the recommendation of the Protector of Citizens.

After the problem relating to the inability of authorities to act according to the recommendations of the Protector of Citizens in certain instances was noticed in practice, the new Law now grants the Protector of Citizens the authority, under the conditions specified by the law, to propose removal, annulment, setting aside or changing of a final decision in order to harmonize it with the law, if the party whose rights and obligations were being decided on and the opposing party agree to this and if this does not harm the interests of any third party. Although this solution does not change the unbinding nature of the recommendations of the Protector of Citizens, it facilitates action being taken by the relevant authority in accordance with the recommendation. For the same reason, annulment, setting aside and changing of decisions at the proposal of the Protector of Citizens is not time-restricted.

Procedures which have not been completed by the time the Law starts being applied will be

completed in accordance with the provisions of the old version of the Law. If a decision of a first-instance authority is annulled or set aside after the Law starts being applied, the further procedure will be conducted in accordance with the provisions thereof. The provisions of other laws will be harmonized with the Law by June 1, 2018.

We believe that the above solutions will make procedures easier, and the resolving of administrative matters simpler and faster in the Republic of Serbia. How the new Law will be applied in practice remains to be seen.

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