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In focus: Law on General Administrative Procedure

June 1st 2017 marks the beginning of application of the Law on General Administrative Procedure ("Official gazette of RS", no. 18/2016, hereinafter: the "**Law**") which was adopted by the National Assembly of the Republic of Serbia at the 7th extraordinary session held on February 29th 2016.

The main goals of the Law are modernization of the administrative procedure; the more effective realization of public interest and individual interests of citizens and legal persons in administrative matters; the establishment of a citizen-oriented public administration which provides them with services in accordance with their needs, guaranteeing the quality and accessibility of public services; and an increase in legal certainty and improvement of the business environment and quality of public services.

The Law provides a number of novelties in order to achieve the above objectives. We highlight the following as major innovations brought by the law:

1. The concept of administrative matter

The law has expanded the concept of administrative matter in relation to the currently applicable law so that it is now defined in two ways, firstly content-wise as a single situation where an authority, through direct application of laws, other regulations and general acts, legally or factually affects the position of a party by rendering administrative and guarantee documents, concluding administrative agreements, undertaking administrative actions and providing public services. On the other hand, it is provided that administrative matter is any other situation that is legally designated as administrative matter.

2. The principle of predictability

The law establishes the principle of predictability, meaning that an authority must adhere to its established practice and decide alike in same or similar cases. The law does not prohibit deviation from previous practice, but rather imposes the obligation to explain why any such deviation is necessary in a given case.

3. Guarantee document

A novelty of the Law is the introduction of a guarantee document as a written document in which the authority guarantees a party that it shall be issued an administrative document of specific content if the factual state and regulations don't change in the period between the rendering of the guarantee document and application for the issuance of an administrative document.

On the one hand, the issuance of a guarantee document **significantly facilitates the administrative authority's**

subsequent work on issuing the administrative document, to the extent that the authority only needs to compare whether the factual situation described in the application for the guarantee document and the factual state at the time of submitting the application for the administrative document coincide in essential elements and whether the legal basis for the issuance of an administrative document has or has not changed in the meantime. On the other hand, the issue of a guarantee document **gives parties greater legal certainty in legal transactions**.

The Law provides for exceptions when the procedural authority is not required to render an administrative document on the basis of a guarantee document, namely:

- if the application for the administrative document is not submitted within one year from the date of issuing the guarantee document or such other deadline determined by a separate law;
- if the factual state on which the request for the rendering of the administrative document is based significantly differs from that described in the request for rendering of the guarantee document;
- if the legal basis upon which the guarantee document was rendered is changed in such a way that the new regulation provides for the annulment, revocation or change of administrative documents rendered on the basis of previous regulations; and
- when there are other reasons determined by a separate law.

4. Administrative agreement

Introduced as a new institute in the administrative procedure is the administrative agreement, a written document binding on both parties which, where established by a separate law, is concluded by the authority and party and used to create, modify or abolish the legal relationship in the administrative matter.

The legal specificity of administrative agreements is reflected in the deviation from the general mode of contractual (civil) law whereby the authority of the legal public entity, for the purpose of achieving public interest, are amplified in comparison to the other party. Thus, the Law gives authority to the legal public entity to terminate the administrative agreement under certain conditions, for example, if the other party does not agree to change the agreements or does not fulfill its obligations, whereas the other party has no such right, although it would have it according to the general mode of law.

Administrative agreements shall be governed in accordance with the provisions of the Law, and in subsidiarity with the provisions governing contractual relations.

5. Single administrative point

The idea of introducing a single administrative point aims to remove the need of a party to address a number of different authorities or conduct multiple procedures before the same authority for the purpose of recognizing a certain right or several interconnected rights arising from one or more related administrative matters. Instead, a party will now be able to, in one place, receive all relevant information, submit a single application and communicate with a single authority which

will render a decision on the application at the end of the process.

Accordingly, the following shall be performed at the single administrative point: instruction of the applicant as to all that is required by the authorities in order to execute the request, in the manner in which the competent authority would do so; receipt of the request for recognition of a right or other action in the administrative matter, opinions, explanations, comments as well as documents and legal means, in accordance with the regulation, and their submission to the competent authority; informing the applicant of actions taken by the competent authority and legal acts which it passed.

The Government shall, within nine months from the date of entry into force of the Law, prescribe more detailed conditions, criteria and standards to be applied in establishing the single administrative point, as well as the manner of cooperation of competent authorities regarding the treatment and performance of work at the single administrative point.

6. Electronic communication

The Law introduces the legal basis for formal and informal electronic communication between bodies and parties, including electronic submission. Electronic communication occurs with the consent of the party or when prescribed by regulation. The Law provides only the basics of electronic communication, while it leaves detailed regulation to laws dealing with electronic communications, electronic signature, electronic document, electronic commerce, as well as the law which shall, in the future, regulate the area of electronic administration.

7. Complaint and appeal

In addition to the previous regular legal remedy – an appeal, parties shall from now on also have at their disposal an objection which can be made for failure to fulfill the obligations of an administrative agreement, due to an administrative action and to the manner of providing public services, if another legal remedy cannot be declared in administrative proceedings.

The objection is filed with the head of the authority to which the objection is addressed, who also rules on the objection by issuing a decision within 30 days of receipt of the objection. The decision adopting the objection:

- determines the further manner of fulfilling obligations by the authority from the administrative agreement and rules on the claim for damages – if the objection was made in connection with an administrative agreement;
- suspends the undertaking of administrative actions and determines how to eliminate its consequences or imposes the undertaking of an administrative action – if the objection was made due to an administrative action; and
- imposes the undertaking of measures determined by law for the purpose of eliminating deficiencies in the provision of public services – if the objection was made due to the manner of providing public services.

In terms of an appeal, unlike the current legal solution, the Law now lists reasons for which it can be filed, i.e. as a result of:

- the incorrect application or complete lack of application of a law, other regulation or general act to the decision;
- the decision being rendered by an incompetent authority;
- an erroneous or incompletely established factual situation;
- the deriving of an incorrect conclusion on the factual situation based on established facts;
- the violation of rules of procedure;
- the limits of authority being exceeded when deciding upon discretion or when the decision was not reached in accordance with the purpose for which the authority was given;
- the improper application of the authority to decide upon discretion; and
- the decision not being issued pursuant to the guarantee document.

An appeal due to the "silence of administration", i.e. when an authority fails to issue a decision within the prescribed time limit, may be filed after the deadline for rendering the administrative document, and no later than one year from expiry of the deadline, thereby introducing the so-called final deadline for filing the appeal.

In terms of a filed appeal, the first-instance authority is now obliged to send the second-instance authority its reply to the appeal in which it will assess all the allegations contained therein.

8. <u>Annulment, revocation and changing of a final decision at the proposal of the Protector of Citizens</u>

As a new extraordinary legal remedy, the Law provides that an authority may, at the proposal of the Protector of Citizens and for the purpose of harmonization with the law, render a new decision to annul, set aside or change its final decision 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.

If the relevant authority deems that it should not act at the proposal of the Protector of Citizens, it shall immediately inform him of its decision.

The annulment, setting aside and changing of decisions at the proposal of the Protector of Citizens is not time-restricted.