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New administrative procedure legislation or its better implementation?

Introduction

The Law on General Administrative Procedure was adopted on 26 May 2005 and "the ministries, the other bodies of the state administration, the organizations established by law and the other state bodies, executing administrative duties, are obliged to act directly in accordance with its provisions, thus applying the regulations when deciding about the rights, obligations and legal interests of physical entities, legal entities and other parties. Legal and other entities, entrusted by law with public authorizations, are obliged to act in accordance with this Law when deciding about the rights, obligations and legal interests of the parties. The municipal bodies, the city of Skopje and the municipalities of the city of Skopje, which decide about the rights, obligations and legal interests of the parties, are obliged to act in accordance with this Law when executing their administrative duties".

Since its adoption in 2005, the Law on General Administrative Procedure has been amended 3 times – twice in 2008 and one amendment was passed in 2011. The amendments pertained to: concretization of the subject of the right to a complaint against individual acts of the administrative procedure; an electronic submission was envisaged; amendments were passed to the provisions referring to the delivery of written submissions; the deadline for conduct of the procedure before the bodies of first-instance was shortened from 30 to 15 days and the deadline for conduct of the procedure before the bodies of second-instance from two months to 30 days; and a "then and now" controversial decision for the institute of silence of the administration "silence means acceptance" was envisaged.

The Government of Macedonia in 2012 adopted a Strategy for adoption of a new Law on the General Administrative Procedure (Strategy). The mere name of the Strategy suggests that the Government made a decision to introduce new regulations for administrative procedures, or in other words, the legal system of the country to be introduced with a new Law on administrative proceeding.

The Law on General Administrative Procedure in our country was adopted in 2005 and amended in 2008 and 2011[3],

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followed by the adoption of a Strategy for adopting entirely new LGAP indicates that the conducted analysis implies that the current LGAP does not fulfill the purpose of its existence – bringing lawful administrative acts by administrative authorities and protection of the rights of citizens when they enter into administrative and legal relationships with public entities. When it comes to the efficiency of the work of the administration in the country and the citizens' satisfaction with the level and quality of services it is obliged to provide, we fully agree that it takes serious actions to improve the negative condition this plan. However, our dilemma is directed to methods for improving the efficiency of the administration. Namely, if it is an undeniable conclusion that the Republic of Macedonia lacks vocational, professional, competent and above all a depoliticized administration, then it becomes questionable whether these problems can be solved with a new law on administrative procedures, i.e. whether they will disappear with the adoption of a new, ideal (just a hypothesis), Law on General Administrative Procedure. Our opinion is that the existing LGAP by far is not imprecise, unfinished or inadequate to the actual social processes; however, the grounds of the other regulations, on which the administrative procedure inevitably is upgraded, are erroneously formed. We have in mind here primarily the Law on Organization and Operation of the State Administration (LOOSA)[4], the Law on Civil Servants[5] and the Law on Public Servants[6] which, though altered countless times, did not achieve the purpose of their existence. Therefore, if the basic, systematic law (LOOSA) determines numerous overlapping responsibilities of the ministries and other state organs of administration, if it contains provisions under which administrative acts are carried out by the first ministers as the highest political officials against whom it is impossible to provide a legal remedy for the citizens, if it lacks provisions for serious responsibilities of the Agency of Administration, and the existence of a special center for training civil servants, it is inconceivable that these shortcomings and gaps are to be regulated by the procedural law as the new LGAP . The way of employment of civil and public servants , the chaos created by the Law on Civil Servants and the Law on Public Servants, the decisions of the Constitutional Court which abolish numerous

[3] Law General on Administrative Procedure (Official Gazette of RM no. 38/05,110/08, 51/11)

4 Law on Organization and Operation of the State Administration (Official Gazette of RM no. 58/2000, 44/2002, 82/2008, 167/2010, 51/2011)

5 Law on Civil Servants(Official Gazette of RM no 59/2000, 112/2000, 30/2001, 34/2001, 103/2001, 43/2002, 98/2002, 100/2002, 17/2003, 40/2003, 84/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 118/2008, 128/2008, 161/2008, 6/2009, 114/2009, 1/2010, 35/2010, 167/2010, 36/2011, 6/2012, 24/2012, 15/2013, 82/2013, 106/2013)

6 Law on Public Servants(Official Gazette of RM no52/2010, 36/2011, 86/2011, 132/2011, 6/2012, 24/2012, 27/2012, 53/2012, 15/13, 82/13,106/2013)

unconstitutional provisions in this area, as well as the actual "spoils system" in the public servants appointments, the mental state of the officers who are still seen as responsible to their political bosses who employed them in the administration, instead of placing their responsibility and accountability to the citizens, simply cannot be solved by a new Law on General Administrative Procedure.

The paper will be an analysis of the Strategy, indicating above all the impugned statements and assumptions set forth herein and of course, adding some positive directions and solutions it respect of the new administrative and procedural legislation which is in preparation.

1. Current legal situation

An interesting fact is that in the Strategy, the Government concluded that the application of the "old LGAP" (adopted in 2005, significant changes were made in 2008 and 2011) due to the fact that it "enjoyed a great reputation, so the legal experts in Macedonia were reluctant to abolish this classic piece of legislation and replace it with completely new law."[7] This statement, which sounds too arbitrary and inappropriate to be included in the Act of the national strategy, it is possible to direct numerous objections, but most important are two, of which the first relates to confusion about the role of legislators against the role of scientific expert or opinion, and the second is more technical and refers to ignorance of the system of legal acts and their division and hierarchy within that system by the key holder of the executive power.

In this respect, the claim that "the legal experts in Macedonia did not abolish the Law on general administrative procedure in 2005 for its reputation" depicts the sad reality that the Government expected instead of the ministries (first the Ministry of Justice, then the Ministry of IT Society and Administration), and after so many years of their professionalisation, the reforms and staffing, other parties (legal experts, who according to mere logic are people who deal with administrative and legal scientific matters) are to prepare and even pass the LGAP. Of course, it is a true and undeniable fact that since the independence of the country in 1991, all key legal texts have often been prepared by university professors in cooperation with foreign experts, but after more than two decades, it seems inappropriate that that role should still belong to science, and that the production of legal texts by the

7 Page 5 of Strategy for adoption of a new Law on General Administrative Procedure

ministries as the highest state authorities is to use "outsourcing", is to say the least illogical. The Government expects for the legal experts to cancel LGAP, or be declared responsible for its present existence in the Macedonian legislative. Hence comes the second note, which is rather technical, but crucial. The Government's strategy must not contain errors as the abovementioned, according to which the legal experts are reluctant to abolish LGAP, because such a role in each state can be developed only by the legislator, in particular the Macedonian Parliament. Finally, the qualification of LGAP as "classic legislative act" is totally unclear because legal theory and practice in Macedonia there are no "non-classic" legislative acts. There are only laws and by-laws, but they have never been divided (nor has ever the global legal literature divided them) into "classic" and "modern" laws.

In the Strategy of the Government it is explained that the need for a new Law on general administrative procedure which, as we can conclude, refers primarily to modernization of the administration, with which it will become capable "of delivering large and complex public services". The new LGAP is expected to create good administrative practices which are oriented towards the people, the culture and the technical means of communication between the citizens and the administrative authorities".[8]

When referring to the modernization of the administrative procedure, most commonly it refers to filling the legal gaps present in the procedural law, in this case the LGAP, and the supplements to the provisions arising from administrative practice i.e. the deficiencies observed in the actions of the officers, an attempt is made to turn them into a legal standard which will allow for their easy resolution in the future. Sometimes it is really so that – modernization of the administrative procedure meaning amending the existing LGAP, but if the reality largely differs from the legislation, then the statutory amendment and modification it unnecessary, there is simply a need to create an entirely new legislation to monitor the social processes in a given moment, which can greatly anticipate and foresee the future trends and developments of the existing social relations. In this respect, to get to the modernization of the administrative procedural law, it is inevitable to successfully complete the modernization of the administration. Of course, this has to be done with new substantial regulations as well as specific actions by political actors, but also by the mere involved parties – officials leading administrative procedures. The modernization of management requires much more time, effort and analysis, as well as involvement of a myriad of stakeholders (the Government, the parliament, the scientific institutions, the officers, the administrative judges, etc.), and also a prerequisite in order to modernize the procedural rules. So, it is

[8] Ibid

necessary to start reversely: first the modernization of the rules for organization and professionalization of administrative management, then modernization of rules on governing conduct. Or, at least two processes should run in parallel. In theory, the so-called four "M" relating to public administration are known: maintain (maintenance), modernize (modernization), marketize (introduction of market mechanisms) and minimize (minimize)[9]. Yet, because the Government and the competent Ministry of IT Society and Administration has already initiated the process of preparing a new LGAP, it is difficult to believe that the theory and the legal opinion will be relevant to the specific situation in the country. Therefore, we will continue to analyze the allegations in the Strategy whose implementation will probably result in bringing new LGAP (if, politically, the government secures a two-thirds majority in Parliament), but it certainly will not be and must not be a means to its end. For a real reform, modernization and increased efficiency of the administration, many more laws and current conditions need to be changed rather than a mere passing of a new LGAP.

In the following part, there will be a review of a few directions of the legislative action that the Strategy refers to as motives, grounds or purposes of passing new LGAP.

2. Size and scope of the LGAP

We will start with the scope of the law under, which according to the Strategy should be as far as possible uniform and coherent in order to minimize the number of special administrative procedures. In Macedonia there are numerous laws that deviate from the provisions in the General Administrative Procedure, established by passing the law on the special administrative procedures[10], including a whole body of procedural rules (laws), and the existence of numerous provisions in the applicable regulations which expressly indicate deviation from the general rules of administrative procedure (deviations in terms of deadlines, the silence of the administration, the form and nature of the legal remedies, how to initiate proceedings, etc.). Hence, the need for harmonization of the administrative actions by all state bodies and organizations with public authorities, when creating or entering into administrative-legal relations with citizens is undeniable, but

[9] Pollitt, Christopher, Geert Bouckaert (2001) Evaluating Public Management Reforms: An International Perspective, Revista Internacional de Estudos Politicos (Rio de Janeiro) 3(Especial), str. 179

[10] Law on tax procedure (Official Gazette of RM no 13/2006, 88/2008, 159/2008,105/2009,133/2009, 145/2010, 171/2010, 53/2011, 39/2012, 84/2012); Law on misdemeanors(Official Gazette of RM no 62/2006, 51/2011); Law on inspection and supervision (Official Gazette of RM 50/2012, 162/2010, 157/2011)

for us there is a certain amount of doubt of whether this goal can be achieved with a brief and generic law, which will regulate only the basic issues of the procedure, while for the realization of this intention detailed rules are necessary, which will be contained in a comprehensive Law (Code) from which it will be hard to strain away, i.e. there will be no opportunity for free interpretation of the statutory provisions nor passing of parallel laws or provisions, nor inserting provisions in a variety of laws that would derogate the rule contained in the general law. It seems logical to conclude that if in the legal system there is a pillar of administrative actions – a law that specifically regulates all the matters of the procedure, from the beginning of the procedure to the end of the bringing of the decision as the final goal of the administrative- legal relations, then the possibilities for having separate administrative procedures will be reduced or excluded. Vice versa as well. In terms of having a general framework that will regulate only the basic principles, concepts and institutions of the administrative procedure, there is a wide opportunity to carry out and maintain numerous specific actions that will move in the given framework of the outlines of the general law, without precisely pinpointing and regulating the proceedings in a detailed manner. Hence, the government's efforts to minimize the number of separate administrative proceedings is not adequate to the further indications in the Strategy that the current LGAP is very complex, too detailed, difficult to understand and use by officials and citizens, as well as unclear to the citizens, and that it should be replaced by a new, less bureaucratic, more convenient, more comprehensible and shorter law. The present LGAP is extensive and complex, but every shortening and generalization will mean more opportunities for concessions from it, i.e. arising of new special procedures with special regulations. Therefore, before starting with the preparation of the new LGAP, once again the Government, of course, in consultation with the stakeholders as well as the legal experts, will have to redefine the way for the realization of the objective of minimizing the special administrative procedures, or introducing a uniform administrative practice.

The concept of the new LGAP in accordance with the Strategy considers (envisages) expanding its subject matter which besides the current administrative act or decision also includes administrative contracts, administrative action and delivery of public service.

At first this idea sounds, we would say, spectacular, or something that is becoming modern in theory as well as in politics, it sounds – reformed. Yet, if we analyze it a little bit more seriously, especially if we take in consideration the definitions and explanations of these administrative and legal institutions which are included in the Strategy, unfortunately, we come to the conclusion that no substantial innovations will be found in the new

LGAP which would be based on the concept embedded in the Strategy.

So, the procedure for the conclusion of an *administrative contract* is not and cannot be subject to regulation of the LGAP, instead it is a n issue regulated in the legislation with which is considered the possibility for the public legal entity to enter into agreements with private entities (public announcement, selection of the best bidder, within the appeal(deadline of the appeal), appellate body, etc..). These laws, however, for the most part refer to the subsidiary application of the LGAP, so, even if not explicitly mentioned the LGAP administrative agreements with the decision of the public authority for selecting private entity to perform a public service under the authority of the public authority (agency), all by itself presents an administrative act, and therefore it shall be subject to regulation of the LGAP.

In contrast to this concept, we want to point out one legal provision which is completely new for these territories, contained in the Administrative Procedure Act of Finland since 2003 (Administrative Procedure Act N 434/2003)[11]. Article 3 of the Finnish Administrative Procedure Act determines the validity of the law in the area of administrative contracts. However, the law does not establish any procedure of concluding administrative contracts (concessions, public-private partnerships, public procurement, etc.)., but rather determines that performing the administrative work on the basis of the signed administrative agreements must be implemented in accordance to the principle of good governance and citizen participation. So when the administration (public authority) uses the prerogatives established by the administrative agreement (termination of contract, unilateral amendment, imposing penalties, extending or shortening the deadlines for performance, determining cost of service, etc..) it has to be initiated by the principle of good governance and citizen participation. This is a much more important legal decision than naming the administrative agreement as a subject of regulation to the LGAP, which is essentially infeasible or inapplicable, except the decision to award the administrative agreement, which surely is an administrative act which is brought into the legal statutory procedure.

The *administrative actions* which should be the subject of the new LGAP, according to the Strategy are "other unilateral administrative actions which are not included in the concept of an administrative act, but are referring to the rights of the citizens, their duties and legal interests, such as the delivery of information, warnings, notices, disclosure of expert opinions, or in connection

[11] Translate and published on the web site:
http:/www.finlex.fi/fi/laki/kaannokset/2003/en20030434.pdf

with the assumptions of the citizens".[12] In connection with the above, we have several observations that we think the Government had to consider when preparing the text of the Strategy. First, the procedure for the delivery of information already exists within the Law on Free Access to Public Information[13] which governs the details, terms and entities which deliver the information. For all matters not regulated by this Act, the LGAP is applied. The same refers to the Law on citizens' complaints and proposals [14]. As for the "warnings", such administrative action is not provided with any legislation in the country, nor is there an authority or organization which issues or conducts such kind of activities. It remains to be seen how the new LGAP will devise the "publication of expert opinions", and how those opinions differ from the classical analysis which is precisely regulated in the existing LGAP. Finally, a nod to the idea the LGAP enabled to regulate the release of notification (information), which often is the practice of governing bodies although there is no explicit legal basis for that, nor a legal remedy for the party, and it presents a legal gap in the existing LGAP.

For the *delivery of public services*, the Strategy provides: "The new LGAP will also provide legal protection when the delivery of public services (such as telecommunications services, supply of electricity or water) hampers the rights of the citizens or their legal interest. The privatization of the delivery of the public service must not reduce the legal protection of service users (citizens)." Since this is a fairly general setting of a segment from the subject of the LGAP, it is hard to determine how the new legislation will look. However, we want to point out that up until now all these activities, or there delivery of public services by any state authority or public enterprises, or private entities with public authority, for the most part is considered administrative matter, and subject to action under the LGAP.

From the above, it is concluded that substantial or significant expansion of the matter of the LGAP as explicitly announced in the Strategy may even not occur in the forseen, new, LGAP. Realignment of its provisions or drafting new technique is possible and probably expected, but substantial change or extension of its scope it is to be expected given the findings and conclusions of the Strategy. What is possible and probably expected is the realignment of its provisions or drafting a new technique, but given the findings and conclusions of the Strategy it is hard to expect a substantial change or extension of its scope.

[12] Page 11 of Strategy for adoption of a new Law on General Administrative Procedure

[13] Law on Free Access to Public Information (Official Gazette of RM no 13/2006, 86/2008, 6/2010)

[14] Law on handling complaints and proposals (Official Gazette of RM no 82/2008, 13/2013)

3. **What to change?**

Of all the aspects of the new concept of LGAP embedded in the Strategy, the challenges that lay ahead for this extremely important law system could focus on four corps of questions: general principles, the delegation of authority for decision making, the silence of the administration and legal drugs.

3.1 Delegation of authority for decisions in an administrative procedure

In Macedonia, in our administrative practice, there is an undeniable need for a delegation of authority or power of the highest political official of the institution in terms of making decisions (issuing administrative acts in the first degree). Thus it is a negative practice in most administrative matters for a first instance decision to wear on, or for administrative cases to be decided by the Minister, the State secretary or the Director. Politically appointed officials often lack the professional competence to decide on administrative matters, although they may have political or managerial capacity to manage the administrative body or organization. Deciding on the rights, obligations and legal interests of citizens requires special expertise, competence, experience and knowledge of the matter which it would be decided for. It is crucial for the realization of the citizens' rights and their protection. In this sense, we fully agree with the following statements made in the Strategy:

"The hierarchical organization of decision making is contrary to the rule of good administrative practice, in which it states that those who are closest to the user of the administrative service, i.e. the citizen should have the expertise and authority.

The most important adverse effects of strictly hierarchical decision-making process are:

- The congestion at the top of every organization with every large or small administrative decision creating difficulties that hamper the efficiency and quality in making administrative decisions, and the quality of policy making at the highest level in the organization ("policy-making is depreciated and administration offers poor quality. ")
- No one in a public authority is familiar with every detail of the subject. That is the reason why so many decisions made in a strictly centralized and hierarchical process, inevitably suffer from insufficient knowledge of the matter.
- Even if a civil servant from the operational level is involved in the internal decision-making process, in a centralized and hierarchical system he is not authorized to make the final decision, nor is he authorized to act as the responsible person by their name and signature. This acts demotivating and leads to loss of (often well-educated and skilled) human resources, and as a result there is a lack of accountability among public servants.

- Strictly hierarchical decision-making process involves a tendency towards a politicization of administrative decisions, i.e., decisions tend to be based on political convenience rather than what is specified in the legislation. This also encourages the mixing of political and administrative responsibilities and hinders the clear distinction of each area".[15]

However, we cannot agree with the direction that this issue should or can be adjusted with the LGAP because of the simple reason that the responsibilities of each authority separately, and its internal organization, are subject to editing the substantial regulations, primarily the Law on Organization and Operation of the State Administration (LOOSA)[16] as well as, unfortunately, numerous special substantial regulations which bodies of state administration and regulatory bodies are being created and established with. Simply, it is impossible with the LOOSA or other regulation to establish that "the Minister / Director / State Secretary of the authority decides …caries out a decision … brings an act … issues the permit …" and for, at same time, have the LGAP carry out delegation to the already established authority. Our recommendation on this issue that it deserves serious attention that would rattle the powers within the state administration, i.e. exact separation and distinction from the political function in the professional activities of the staff within each body, but it should certainly be done with the preparation of a new LOSA, not the LGAP.

3.2. General principles of the administrative procedure

The Strategy shows that three principles are guiding the new administrative proceeding: lawfulness, fairness and proportionality.

Legality as a principle will not be mentioned in the paper, because it was and will be the backbone of any legal (court or out of court) procedure. The principle of legality in the current LGAP is closely regulated in Art. 4 and it covers the law connected, and discretionary acts of the administration, as it includes the formal and material legality of the act.

As to *fairness,* it is a principle which appears in the current LGAP, perhaps because not always lawful means fair, and for each process or procedure it is of primary importance to be conducted in accordance with the law, legitimacy is the primary means, and by itself presents the greatest guarantee for the realization of justice. However, the new concept of the administrative procedure promoted by the Strategy provides that the LGAP is enabled to include the principle of fairness. Yet, when you look better and analyze the elements that according to the Strategy constitute

[15] Page 12 and 13 of Strategy for adoption of a new Law on General Administrative Procedure

[16] Law on Organization and Operation of the State Administration (Official Gazette of RM no. 58/2000, 44/2002, 82/2008, 167/2010, 51/2011)

fairness, it can be seen that most of those tenets or principles are already contained in the Macedonian LGAP. Here is a small analysis in which we will list the elements that in the Strategy are listed as components of the principle of fairness, and in addition to each of them, in brackets will be presented those same elements already contained in existing provisions of our LGAP:

1. Fair hearing in all stages of the proceedings (principle of hearing the parties[17]),
2. Legal aid and the right to understand the proceedings (principle of helping the ignorant party[18]),
3. Voluntary withdrawal or compulsory exclusion of public servants from the procedure, which are suspected to have a personal interest and bias according to strict legal provisions on conflicts of interest (precisely arranged Institute exemption in administrative proceedings[19]),
4. The right to participate in proceedings brought by another person, if self-interest is at issue (defined notions of a party or interested person[20]),
5. The right for the party to get a decision within a reasonable time (precise terms (deadlines) to perform all procedural actions and decision-making).

From this brief overview we can easily conclude that implicitly the fairness of the procedure is represented in the existing LGAP, and in a very wide range, although not explicitly stated or defined as a principle of fairness.

The last principle which is predicted as news for the future LGAP is *proportionality*. The Strategy states that "The principle of proportionality means that the governing body shall not prejudice the rights and liberties more than necessary so the purpose of appropriate administrative action is achieved". If this definition is operationalized through several more specific provisions in the law, it will be a certain novelty in terms of existing policies. Otherwise, the way the Strategy defines the principle of

[17] (1) Before the decision, the party must be given an opportunity to state the facts and circumstances relevant to the decision. (2) Arts. 10 of the LGAP: Decision can be made without affiliation of the party only in specified by law cases.

[18] Arts. 18 of the LGAP: (1) The authority conducting the procedure ensures that the ignorance of the party and the other parties involved in the proceedings are not to the detriment of the rights that belong to them under the law. (2) The authority conducting the procedure cares about how the party is informed during the administrative procedure. (3) When the official in the process discovers or finds that a particular party has the base on exploit certain rights, he needs to indicate that. (4) If under the law, obligations are being imposed to the parties, towards them actions that are more favorable to them are going to be applied, if by those measures the purpose of the law is achieved.

[19] Arts. 40-45 of the LGAP

[20] Arts. 46 of LGAP: A party in an administrative procedure is a person under whose request has been initiated proceedings or there is a proceeding against him, or in order to protect their rights and interests has the right to participate in the proceedings.

proportionality it can already be found in the existing LGAP, expressed through the principle of protecting the rights of the individuals and protection of the public interest[21].

3.3. Silence of the administration

Page 13 of the Strategy states that "the changes of the current LGAP in April 2011, with which according to Article 293a regulates the silence of the administration, should be carefully reviewed". This presents a serious confirmation that the changes of the LGAP committed in 2008 and later in 2011 with which an attempt has been made for the silence of the administration to be presented as an action which signifies carrying out a specific administrative act with which the citizen's request is being granted, be shown as frivolous, unenforceable and unrealistic. Indeed, the theoretical thinking in the country, as well as the shy experts' public pointed out to the inevitability of these changes enabled in the LGAP, but the in lack of political will and hearing, the changes were made anyway. If from the conclusion in the Strategy there really came a substantial change in the declarative provision 293 (a) of the LGAP (containing 15 paragraphs or fifteen long steps in turning round the party which has not been issued any decision within the prescribed period and its persecution through counter mazes for in the end, it must again be his destiny to seek justice through administrative dispute before the Administrative Court), then this is quite sufficient benefit of what will happen with the new LGAP concept of Strategy, although all other promoted "New's" are actually existing rules and provisions of the current LGAP.

We believe that Macedonia should return and de jure (as de facto despite all nomotechnical attempts belongs) in the dominant set of countries in which the silence of the administration is perceived as negative fiction. This way the client shall be provided with greater legal certainty, because after the deadline for making a decision, if the decision is not delivered, the client obtains the lawful, and unlimited, right of appeal to the appellate authority, which is the same as a rejected requirement. When silence is conducted within the appellate authority, the party (as under the current long, imprecise and inapplicable rules of the LGAP contained in Art. 293a) acquires the right of a charge to the administrative dispute before the Administrative Court under the legal fiction that the submitted appeal is rejected. These are solutions that despite changes to its Law on general administrative procedure that is

[21] Arts. 5 LGAP: (1) The bodies referred to in Article 1 of this law are required to carry out the performance of activities which are in public interest and to comply with the law protected rights and interests of the parties. (2)When running the procedure and in determining, the bodies referred to in Article 1 of this Act should allow the parties to easily protect and enforce their rights, taking into consideration that the exercise of their rights should not be to the detriment of other parties nor in contrary to the public interest established by law.

performed in recent years or are under way, the states of the region have recognized them in their jurisdictions[22].
Although some remarks in negative fiction can be addressed towards the system, his cautious approach in reconciling two conflicting requirements of the state – one that begins with the protection of the individual and one who cares for the protection of the legal system and public interest, so in the Macedonian legal system burdened with lengthy administrative procedures and delays of inefficient administration is still the fittest[23].

On the other hand, if political elites insist on leaving the system of an administrative silence as a negative fiction and its antipode, the system of positive fiction (with the Macedonian LGAP introduced in 2008 and corrected in 2011) shows clearly how inapplicable, and bureaucratized and complex, with which it denies its own reason for being, suggest possible acceptance of a third option, and that is to even silence of the administration with a legal nothing. To be more correct, no legal meaning is being is being added to the administration, but that is simply considered as a fact upon which the party will still be able to conduct legal protection. So, silence of the administration will not mean that the party's request is denied, nor will indicate that it is accepted. It just presents facts that the client can use to further conduct an administrative procedure. This solution is developed in the Austrian law, and accepted in the new Law on Administrative Procedure of Croatia[24].

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[22] Guidelined legal technique was first applied in French law since the article. 7 of the Decree of 02.02.1864 (Journal officiel de la RepubliqueFrançaise, 1865th).

[23] Борче Давитковски, Ана Павловска Данева: Новини во управно-правната заштита на правата на граѓаните во управната постапка и управниот спор“, Деловно право, Часопис за теорија и практика на правото, бр 19; (2008); Борче Давитковски, Ана Павловска Данева: „Реформа на управно-процесната заштита на правата на граѓаните во Репблика Македонија“, Втор скопско-загребски правен колоквиум, Зборник на трудови, Правен факултет „Јустинијан Први“ Скопје; (2009); Борче Давитковски, Ана Павловска Данева: „Институтот молчење на администрацијата во управната постапка во Република Македонија“, Зборник на трудови, МАНУ, Скопје. (2009); Давитковски Б., Павловска-Данева А: „ Реактуелизирање на одделни прашања поврзани со постапката за решавање управни работи“, Зборник во чест на Томислав Чокревски, „Јустинијан Први“– Скопје, Скопје (2010); Ivančević, Velimir, Pravna zaštita građana kod šutnje administracije, Hrestomatija upravnog prava, priredio: Dragan Medvedović, Suvremena javna uprava, Zagreb (2003)

[24] Art. 73 of the Law on General Administrative Procedure from 1925 in Austria (Bundesgesetzblatt für die Republik Österreich no. 273.1925, the right of the applicant is established, that after the period of six months from the date of the filing of the application, unless there is a response from the governing body, with their own application to transfer the right of deciding to the actual higher authority.
Art 101 paragraph 3 of the Croatian LAP is: "If the attending officer does not make a decision and supply it to the applicant within the given time frame, the

The introduction of a "neutral" system of legal protection form the administration's silence could be taken as the most appropriate, given the numerous critics who point out to the system of negative fiction. Criticism is often reduced in the direction that does not motivate officials, that it "rewards" the idleness of the administration that puts the administration in a superior or dominant position in relation to the citizens, and even that has legalized the illegal actions of the administration. Although we cannot argue with most of these reviews, we believe that the system with the silence of the administration will be considered only as a procedural prerequisite for the initiation of legal protection that will facilitate the tale situation in which our laws are now, unsuccessfully trying to cope with this problem.

Finally, if with the substantial regulations in certain areas of administrative actions, opportunities occur or arise for the application of positive fiction, it should be done with those specific laws governing specific matters.

The New LGAP could contain such a provision that allows the administration's silence to be considered as a positive response to the request of the citizens to be governed by special substantial regulations, but will not go into general editing on this issue with binding legal force for all areas, as now that's the case with the 2011 changes in the LGAP.

3.4. Legal Remedies

The Strategy set out the basic routes ranging changes in the number, content and use of legal drugs in the new LGAP.

"The main goals of the new remedies LGAP are:

- To introduce an effective, convenient and economical way to protect the legal rights of the parties before filing an appeal to the administrative courts;
- To provide the opportunity and duty to effective self-control of administrative authorities;
- To reduce the administrative burden on the courts by resolving cases within the internal procedures for legal remedies.

Procedural solutions are not to be challenged. Under the new LGAP there is a rule according to which the procedural decisions can be challenged only through substantive appeal against an administrative decision, i.e. final decision (administrative law). This will significantly simplify and shorten administrative procedures compared with the current legal situation (Article 225 paragraph 1 of the present LGAP), where against a number of procedural decisions "may submit an appeal."

All governing bodies have their assignments which are to be performed under the rule of law, regardless of what type of action is taken. Accordingly, the LGAP needs to secure the right to a legal remedy not only against administrative acts or failure to

applicant has the right to make an appeal, i.e. initiate administrative proceedings."

adopt administrative acts, but also against all other administrative actions and provide a complex system of internal control within the administrative authorities. This is extremely important because the administrative activities are not limited only to administrative acts.[25] "

Our prepositions for the realization of these goals are:

- The appeal to the changes of the 2008 LGAP is no longer a legal remedy which is mandatory for all administrative procedures, because it is predicted that the right of an appeal by the party is supposed to be governed by law. Hence, the principle of two-sided although still standing among the basic principles of the administrative procedure is relative, actually unless the right of appeal is precisely provided by the substantive provision it does not belong to the party for such administrative matters. We believe that the right of appeal as a regular legal remedy must be found as a general rule with the LGAP (as laid down in the 2005 LGAP, before the changes in 2008) for all administrative procedures, and possible exceptions to be regulated by special regulations.
- Macedonia is one of the countries that have a big number of exceptional legal remedies provided in the administrative procedure. We believe that number should be reduced, but at the same time to be careful with the reduced legal means as they should cover all cases of alleged violation of the procedure. It could be considered, the exceptional legal remedies such as request for protection of legality, revoking the final decision with the consent or request of the client, as well as changing and revoking the decision on the administrative dispute to be omitted from the new text LGAP. However, this reduction in the number of existing, traditional, yet not really usable exceptional legal remedies, and the introduction of a new legal institute of the operation of the management for protection of rights and legal interests of the party will be meaningful only if the law is conducted objectively by a professional and depoliticized staff who understands the matter which they are working on, and enforce laws strictly to protect the rights of the citizens and public interest.
- Since the Strategy explicitly insist on increasing control over the legality of administrative acts and actions within the administrative procedure in order to reduce the number of initiation of administrative disputes, it would be good to introduce the complaint as a regular legal remedy for procedural actions or administrative actions that are not administrative acts but are still a subject to the new regulation of the LGAP.

[25] Page 15 of Strategy for adoption of a new Law on General Administrative Procedure

Conclusion

After extensive analysis of the Strategy to adopt a new Law on general administrative procedure it becomes completely clear that we should not expect any spectacular changes to the existing administrative procedural law. Given the present Code of rules for governing actions that operate in this region for fifty years, it is impossible to expect that the new legislature, experts (domestic and foreign), as well as all stakeholders (government officials, judges, politicians) will "invent" rules that will solve all the problems of administration (un)efficiency.

Therefore, we would start with having lower expectations in terms of legislative changes and the increased expectations would be concentrated in the way the legal provisions are being implemented. In this context, we report a part from one of the participant's presentations of the Strategy at the European Commission, last year:"Provisions which have to be made need to be assessed in terms of their "conductivity ", i.e. capacity of public administration to follow the procedural obligations that are brought with them … Undoubtedly, the person that is going to start applying the new LGAP is faced with high demands because he is expected to decide on the basis of general and abstract legal terms. They require a responsible public servant, but at the same time what is necessary for the development of civil service oriented towards citizens is that each civil servant has to be aware of its importance and accountability.[26]"

Hence, the final conclusion would be that the new legal provisions of the LGAP can only assist the process of modernization and reform of the public administration in the country, but only if they are carefully prepared and adopted by a consensus. The main, real, challenge is an ongoing and continuous training of all stakeholders, primarily the public officials who will apply the law, the political officials and of course the administrative judges. For this purpose permanent monitoring of the implementation of LGAP by professional teams (institutions) is necessary as well as indications of all irregularities that are being detected. Last but not least is professional and depoliticized work of every officer and judge who throughout his work is enabled to use any of the provisions of the LGAP. So, without pretensions that new legal formulations or techniques will change the essence of the old, slow and bureaucratic machinery called public administration.

[26] Radica Lazareska Gerovska, State Advisor at the Ministry of Justice, 19 December 2012, Public presentation of the strategy for the adoption of new LGAP

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