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**ASPECTS OF THE ADMINISTRATIVE PROCEDURE  
IN REPUBLIC OF MACEDONIA**

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**ABSTRACT**

Relations between administrative bodies (administration) and citizens occur when citizens want to exercise certain rights and interests of these bodies or administration requires the fulfillment of certain obligations by the citizens. Administrative authorities shall, in exercising its responsibilities to the citizens to ensure effective and lawful exercise of their constitutional rights and freedoms.

Administrative procedures, which is based on the Law on Administrative Procedure, governing relations between the bodies exercising public powers and the citizens as the biggest users of public services, representing one of the most important segments of society. Law on Administrative Procedure establishes the foundations of the administrative matter in detail to regulate the administrative area, which refers to special laws regulating the relations between the parties determined administrative matters.

**Keywords:** administrative procedure, Law on Administrative Procedure, administration, citizens, administrative area.

**INTRODUCTION**

Law on Administrative Procedure, with his service orientation provides all authorities in resolving administrative matters in administrative procedure to

achieve objective and subjective purpose of legality.<sup>1</sup> It establishes a system for the effective protection of citizens' rights in the administrative procedure.

Under this law shall act ministries, other state bodies, organizations established by law and other state bodies in the administrative procedures, directly implementing the regulations about the rights, obligations and legal interests of individuals, legal persons or other parties.<sup>2</sup> Also, the Law on Administrative Procedure shall act as legal and other entities to which the law is to perform public powers, and the municipalities, the City of Skopje and the municipalities in Skopje, when exercising powers decide in administrative matters<sup>3</sup> on rights, obligations or legal interests of the parties in accordance with the legal provisions.

Regulations on Administrative Procedure contain rules governing jurisdiction, the shape and course of actions in the procedure and the form and content of the acts adopted as a result of the procedure by state bodies, institutions and organizations exercising public powers. These are formal rules of conduct that are different from the substantive law.

There are 2 types of administrative procedures:

**1) General Administrative Procedure** - rules which are common to the actions and work of most government bodies, institutions and organizations exercising public powers.

**2) Special Administrative Procedure** - rules governing jurisdiction and form of acts and activities for specific organs and for certain areas.

Competence in the administrative procedure is a right and duty of the authority to decide an administrative matter of a particular territory, where there are: material and local jurisdiction.

- **The material jurisdiction** is determined by the nature of the administrative matter and is determined by law, which regulates administrative area or the competence of the authorities who decide in the administrative procedure.

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<sup>1</sup> Kitevski, K., Handbook for the application of the General Administrative Procedure, Program for the United Nations Development, Skopje, 2008, 5.

<sup>2</sup> Law on Administrative Procedure, article 1, Official newsletter of Republic of Macedonia, Skopje, 124/2015.

<sup>3</sup> Administrative matters represent all acts and actions through which are expressed and carry out the responsibilities of public administration.

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As a subspecies of real competence occurs functional competence, which is determined by the function of the authority.

- **The local jurisdiction** shall be determined by territory, ie acts of internal organization of which settled in the administrative procedure.

Parties of the administrative procedure may be any physical or legal person, on whose request the procedure is initiated (active party) or the person for whom the procedure (passive party) or a person who in order to protect their rights and legal interests have the right to participate procedure (interested party). For a person to be a party to the procedure, it has a certain ability that is expressed as:

- **Ability to party**- to be holder of rights and obligations.
- **A procedural ability** - independently to undertake procedural actions.
- **Legitimation of the party**- the right and interest in the present case.

As their primary means of communication, ie communication between citizens and the administration are the following: submission, minutes and delivery.

**The submission** is written and oral communication which addresses individual's administrative authorities. Under submissions means the requirements, forms which are used for automatic data processing, proposals, reports, requests, complaints, appeals and other communications by which the parties refer to the state body and require implementation or protection of their rights. It must be understandable and contain all the necessary elements to be able to act according to them:

- Designation of the authority to which reference is made;
- Subject to which the request or proposal;
- Representative or attorney (if any);
- Name and surname;
- Residence (address) of the applicant or of the representative or proxy.

**The minutes** are a public document which serves to record the procedural steps taken and statements made during the procedure.

**Delivery** may be direct, be implemented by mail or by publication in a daily newspaper.

## 1. Course of the administrative procedure

Administrative proceedings initiated competent authority, ex officio, or at the request of the party. The Authority initiated proceedings, ex officio, cases determined by law and when it discovers or becomes aware that, given the actual facts, in order to protect the public interest, should be initiated administrative proceedings. In matters which, by law or by the nature of work for initiating and conducting the administrative procedure necessary request of the party, the competent authority may initiate and lead the proceedings only if there is such a request.

After initiating the procedure, the competent authority shall determine all the facts and circumstances which are relevant for resolution and the parties to enable them to exercise and protect their rights and legal interests. These reactions may be carried out in two ways, by:

- Shortened procedure or
- A special test procedure.

In **shortened procedure** competent authority may decide the matter directly, when:

- 1) The party in its request stated facts or submitted evidence on the basis of which you can determine the condition of the work, or if the condition can be determined on the basis of generally known facts or facts known to the authority;
- 2) The state of matter can be determined on the basis of official data available to the entity, and no separate examination of the party in order to protect its rights or legal interests;
- 3) The regulation stipulates that the work can be resolved on the basis of facts or circumstances that are not fully proven or evidence only indirectly determined, and facts or circumstances are committed probable, and all the circumstances it appears that the party's request should meet and
- 4) Should take urgent measures in the public interest that can not be postponed, and the facts on which the decision should be based are established or at least probable incurred.

**Special test procedure** is carried out to establish the facts and circumstances that are important to clarify the work or to give opportunity to the parties to exercise and protect their rights and legal interests. Parties have the right to participate in the inquiry procedure and in order to accomplish the aim of the procedure, to

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provide the necessary data and to defend its rights and legally protected interests. Rights, obligations and legal interests of legal entities in administrative proceedings shall be decided in a solution which is a specific administrative act and is based on the facts established in the proceedings. The solution, as a rule, a decision in writing in exceptional cases can be brought verbally, but it must be issued in writing, unless the law stipulates otherwise. The solution includes: introduction, disposition (saying), explanation, advice on legal remedy, name of the authority, number and date, signature and official stamp of the body and must be delivered to the party in original or certified copy.

The deadlines for issuing a decision, depending on the type and complexity of the procedure, ranging from 15 to 30 days from the day of the regular application, ie from the date of the initiation of proceedings ex officio, unless the law otherwise provided.

## 2. Legal remedies

Regarding the decision of the administrative body, the party has right of legal remedies, which may include:

- Regular legal remedies and
- Extraordinary legal remedies.

**Regular legal remedy** is the complaint, that the party has the right to submit the decision made at first instance. The complaint shall be filed within 15 days of receipt of the decision, unless the law otherwise determined. It is directly delivered or mailed to the authority that adopted the first instance decision, and it decides the appellate authority. It can dismiss the complaint in its decision to annul the first instance decision and resolve the matter or its decision to annul the first instance decision and to return the first instance authority for another procedure.

Decision on the complaint must be made and submitted to the client as soon as possible, and no later than two months from the date of submission of the complaint, unless the regulation is given a shorter term.

**Extraordinary legal remedies** that can use the parties are:

- ✓ Repetition of the administrative procedure;
- ✓ Cancellation, suspension and changing decision;
- ✓ Request for protection of legality;
- ✓ Cancellation and revocation according to the law of supervision;

- ✓ Abolishment and changing the final decision with the consent of the renewed party or at the request of a party;
- ✓ Extraordinary abolishing and
- ✓ Announcement of the decision as a null.

➤ **Repetition of the administrative procedure**

Repetition of the administrative procedure may require the party and the authority that has adopted the decision that the procedure has ended may initiate retrial ex officio.

➤ **Cancellation, suspension and changing decision**

Authority whose decision time is initiated administrative proceedings to ending the dispute if it complies with all requirements of the complaint may revoke or amend its decision for reasons of which the court could reverse that decision if it does not infringe on client in the administrative proceedings or a third party.

➤ **Request for protection of legality**

For the final decision adopted in work which can not be conducted administrative proceedings and court protection is not provided us out of the administrative dispute, the Public Prosecutor of the Republic of Macedonia has the right to file a request for protection of legality if it deems that the decision was a violation of the law.

➤ **Cancellation and revocation according to the law of supervision**

The decision which is final in the administrative procedure, the competent authority shall annul the law of supervision if:

- The decision brought actually competent authority;
- In the same case before there is a final decision by which the administrative matter is resolved differently;
- The decision brought an authority without consent, confirmation, approval or opinion of another authority, which is required by law or other regulations based on law;
- The decision brought locally competent authority and
- The decision was adopted as a result of coercion, extortion, blackmail, pressure or other illegal activity.

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➤ **Abolishment and changing the final decision with the consent of the party or at the request of a party**

If the final decision the party acquired a right and the authority that has adopted this decision considers that decision wrongly applied the substantive law, may revoke or amend its decision in order to harmonize the law only if the party on the basis of that decision acquired right agree with it if it does not infringe a thirdparty. The consent of party's requirement and amend the damage to party of the final decision to the party is certain obligation.

➤ **Extraordinary abolishing**

Executive decision may be reversed only if it is necessary to remove the severe and immediate danger to life and health, public security, public peace and order or public morality, if it could be removed successfully by other means which would be less concerned the rights acquired. The decision may be reversed only partially, to the extent as necessary to eliminate the danger or to protect general public interests mentioned.

➤ **Announcement of the decision as a null**

The law also envisages the possibility decision to declare as a null (fully or partially). The decision at any time may be declared null ex officio, at the request of the client or the prosecutor of the Republic of Macedonia. Nullity may sound decision that can not be performed, the performance of which can cause offense punishable under the Criminal Code and other laws and in other cases provided by law.

The annulment and declaring the decision as a null shall be annulled and the legal consequences that produced such a decision.

With the suspension of the decision not to cancel the legal consequences that the decision has already produced, but prevents further production of the legal consequences thereof.

### **1. Enforcement of the decision**

The decision adopted in the administrative procedure is executed once it becomes enforceable ie:

- 1) Expiration of the complaint, if an complaint is filed;
- 2) Submission of the party, if the complaint is admissible;

- 3) Submission of the party, if the appeal does not delay the execution and
- 4) Providing the party of the decision on the complaint is dismissed or refused.

The second instance decision which amended the first instance decision becomes enforceable when submitted to the client.

If the decision is determined that the action is subject to the execution may be carried out in the timeframe, the decision becomes enforceable upon the expiry of that period. If the solution is not specified period to perform the action, the decision becomes enforceable within 15 days of adoption of the decision.

## CONCLUSION

The procedure for the exercise of individual rights, obligations and interests of individuals and legal entities is prescribed by the special (material) law, but based on those specific actions is the Law on Administrative Procedure, as a general procedural law. Special procedures are not complete and they always should be harmonized within the provisions of the Law on Administrative Procedure.

Law on Administrative Procedure adopted by a two-thirds majority in Parliament and the Law on Administrative Disputes governs administrative and procedural matters of law. Enabling the protection and realization of rights of the parties shall not prejudice the rights of other persons nor contrary to a public interest determined by law. The authorities, which are obligated to conform to the Law on Administrative Procedure, should strive to achieve objective goal of legality, ie the protection of the legal order and the rule of law and the exercise of subjective order of legality, and that is to protect the legal rights of legal and individuals.

The analysis of the legal provisions relating to the administrative procedure leading to the conclusion that the legislation in this sensitive areas lacking compliance with practice or with real social relations between administrative authorities and citizens. For these reasons, these shortcomings should soon be removed, and laws tailored to the basic principles underlying the Macedonian legal system. Taking concrete measures remains in the hands of the authorities: the Ministry of Justice, the Government and Parliament of Republic of Macedonia.



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