

Will things get better when citizens are no longer couriers of state bodies

Amendments to one of the most important and most enduring laws in the country - the Law on Administrative Procedure are a very significant event. The Ministry of Public Administration and Local Self-Government that leads Public Administration Reform, has made every effort to additionally promote the new Law. The Law should be applied as of June 1, 2017. However, some of its provisions, specifically those related to the exchange of data between the authorized bodies, will be applicable as of June 8, 2016.

The idea that citizens should not "play the role of couriers" between various state bodies and public services is not new. Since the amendments from 2010, the Law on State Administration includes the following provision ("Official Gazette of RS", No. 79/05, No. 101/07 and No. 95/10):

Article 75a

In the process of deciding on rights, obligations or legal interests of a natural or legal person or other party, the state administration body is, ex officio and in accordance with the law, reviewing, acquiring and processing data from the records or registers maintained by other state administration bodies and other state authorities, territorial autonomy bodies, local authorities and holders of public powers, in accordance with special regulations.

Reviewing, obtaining and processing data from the records or registers kept in electronic form in the procedure referred to in paragraph 1 of this Article shall be conducted through information system that provides security and protection of personal data.

In the procedure referred to in paragraph 1 of this Article, the state administration body may review, obtain and process only those data which are by law or other special regulation identified as essential for resolution of certain rights, obligations or legal interests of the client.

What were the reasons for citizens to deliver such documents in person (or "over the counter")? And what would be the consequences if this practice was abolished?

From the viewpoint of particular interests of certain public services or, even more precisely, individual officials, it is just easier if a concerned citizen personally obtains and brings all necessary documentation, and if officials just verify that all the required documents are present.

The obligation of state bodies to independently obtain these information implies more work, which consequently causes one of the following: a) more work (better utilization) of working time among current employees; b) slower public services (if existing capacities were used to the maximum and this practice adds extra work); c) additional costs for the public sector (engagement of additional resources in order to maintain the current level of efficiency in the provision of services, if the resources are already completely used). In other words, the effects of these measures will vary depending on the current status - whether the number of officials is greater than the required, or if the number is insufficient for all legal tasks to be carried out.

The situation is also ambiguous from citizens' viewpoint. If a citizen is not in a hurry to finish the task, and the case needs to be resolved within the statutory period of 15, 30 or 60 days, the situation where the body obtains all necessary information would be an obvious advantage and save citizen's time, effort and dignity. However, in situations where a citizen is the one rushing the body to perform the task as soon as possible, due to an urgent need and interest, then it a citizen can offer the body in charge of the issue to bring all documentation and thus speed up decision making process.

This measure is sometimes rightfully presented as an anti-corruption measure. In fact, there is no doubt that any situation that includes contact between citizens and administration creates opportunities for corruption, and sometimes even causes corruption to occur. However, it should be noted that this does not entirely eliminate the problem of corruption.

The extent of motifs for corruption to appear will depend on several factors. Some of them are related to citizens or regulations and will be further analyzed (e.g. an interest that will make a citizen willing to give a bribe to an official to violate a regulation, or a regulation that does not reflect the reality and the development of society and is consequently avoided by citizens through corruption). Other motifs are related to the administrative body or a public service that resolves the case. Here we primarily refer to those situations which offer a lot of room for discretion. Even when there is not much room for "free evaluation" and "appropriateness" in decision making, and there can be only one outcome of the administrative procedure, discretion can exist in terms of *the order and the deadline in decision-making process*.

There are plenty of situations where authorities have a deadline to decide on a matter within 30 or 60 days, while, in reality, they can reach a decision within a day or two. Since customers can have a significant interest in the subject being completed as soon as possible (or being procrastinated), there will be motifs and opportunities for corruption to take place relatively undetected, as long as there is unlimited space for decision-making process within the deadline.

Similar to the above is the situation in which the body fails to follow the prescribed deadlines due to excessive workload, and then, due to the overall delay, quickly decides on some cases on the basis of urgency, complaints, or no clearly apparent reason.

Possible resolution for these risks would be compliance with the obligations referred to in Section 29 paragraph 5 - Instructions for preparing and publishing information booklets on the work of state bodies, which were adopted by the Commissioner back in 2010. State bodies are required to describe the services provided to citizens and legal entities, among other things, in the following manner:

The following information are required to be listed for each service: a brief description of the service; definition of the categories of persons who are entitled to that service; definition of the conditions that persons must meet in order for the service to be provided; the prescribed deadline for the provision of the service; the manner in which the service can be obtained (e.g. request or application); the expected timeframe for providing the service, regardless of whether the timeline is prescribed and whether the expected timeline differs from the prescribed one. The information booklet should also include any other useful information about the services, if applicable (e.g. the quality of services that can be expected).

As it can be seen from the analysis of Transparency Serbia and the annual report of the Commissioner for Information of Public Importance and Personal Data Protection, the obligations contained in these Instructions are often violated in practice. When it comes to services, the findings of Transparency Serbia show that the vast majority of bodies avoid stating the actual, average or other expected deadlines, and that, in the best case, they provide only legal deadlines. This is why we believe that the strict control on the fulfillment of obligations from the Commissioner's Instructions (under the jurisdiction of the Administrative Inspectorate of the Ministry of State Administration and Local Self-Government), as well as amendments to the Law on Free Access to Information in the direction of establishing obligations for

all authorities to prepare information booklets (also under the jurisdiction of the aforementioned ministry), would significantly complement the effects of anti-corruption measures from the new Law on Administrative Procedure.

The extent to which the Ministry of State Administration and Local Self-Government relies on this legal innovation is evident in media promotions, but also in the fact that the Ministry prepared a special Act - **INSTRUCTIONS ON THE IMPLEMENTATION OF PROVISIONS OF ART. 9. AND 103 OF THE LAW ON GENERAL ADMINISTRATIVE PROCEDURE ("Official Gazette of RS", NO. 18/16) GOVERNING THE EXCHANGE OF DATA ON FACTS THAT REQUIRE OFFICIAL RECORD KEEPING.**

This non-binding guidance is said to be adopted on the basis of Article 126, paragraph 3 of the Law on General Administrative Procedure ("Official Gazette", No. 33/97, No. 31/2001 and No. 30/2010) and Article 13 of the Law on Protection of Personal Data ("Official Gazette of RS, No. 97/2008, 104/2009 – state law, 68/12–constitutional decision and 107/2012).

The legal framework is presented as follows:

Article 9, paragraphs 1 and 2, of the **Law on Administrative Procedure ("Official Gazette of RS", No. 18/16)**, stipulates that the authority is obliged to enable all parties to successfully implement the exercise and protection of rights and legal interests, and for the proceedings to be conducted without delay and with the lowest possible costs for the party and other participants in the proceedings, but in a way that would allow the collection of all the evidence necessary for the proper and thorough decision making. Paragraph 3 of the same Article stipulates that the authority is obliged, ex officio and in accordance with the law, to review factual data that are subject to official record keeping and necessary for decision-making, as well as to collect and process the data on which official records are kept. The authority is further obliged to obtain and process these data, while, according to paragraph 4 of the same Article, the authority may require the client to provide only those data which are necessary for client's identification and the documents on the facts that are not subject of official record keeping.

Article 103 of the Law stipulates the following: the body is obliged, ex officio and in accordance with the law, to review, acquire and process all factual data that are subject to official record keeping and essential for decision-making (paragraph 1); if official records are kept by another body, the body that conducts the procedure is obliged to urgently request the data, and the requested authority is obliged to provide the data free of charge within 15 days, unless otherwise specified, and if the requested data can be obtained electronically, the body is required to submit them as soon as possible (paragraph 2); in proceedings conducted at party's request, the body may review, obtain and process factual data that are subject to official record keeping when this is necessary for decision making, unless the party expressly states that it will personally obtain such information. If the party does not submit necessary personal information to the body within deadline, the request for proceedings shall be considered incomplete, according to Article 59, paragraph (2) of the Law (paragraph (3) of Article 103).

The provision of Article 207 of the Law stipulates that a fine of 5,000 to 50,000 RSD shall be imposed on an official who, in regards to this Law and ex officio, does not review factual data subject to record keeping and necessary for decision making, does not request and process the data, or does not provide the data free of charge at the request of the authority conducting the procedure within 15 days or other period specified by the Law (Article 103 paragraphs 1 and 2 of this Law).

Article 215 of the Law stipulates that the provisions of laws and other regulations that stipulate the obligation for the party and other participants in the proceedings to submit factual data subject to official record keeping to the body and contrary to the provisions of Art. 9 and 103 of this Law, will no longer be effective upon the expiration of 90 days from the date this Law entered into force.

In accordance with the provision of Article 217, the Law shall enter into force eight days after its publication in the "Official Gazette of RS", and shall apply from June 1, 2017, except for the provisions of Art. 9, 103 and 207 of the Law, which will be applicable upon the expiry of 90 days from the date the Law entered into force, that is, on June 8, 2016.

The Ministry further described that the Instructions shall be improved "in accordance with the development of technology and technical solutions regarding the exchange of data from the official records ex officio." It is necessary that the authorities, in accordance with the principles of the Law on Administrative Procedure, improve the methodology and ways of exchanging data from official records, with consideration of all specifics of individual administrative procedures. Attached is one of the possible acts that constitute "the basis for the definition of data exchange model" (an example from Loznica).

Text Instructions and attachments can be downloaded here: <http://www.mduls.gov.rs/aktivnosti-obavestenja.php#a27>

As we have already mentioned, in addition to the impacts on corruption and fight against corruption, these measures may affect costs and effectiveness of public administration (positively or negatively), and costs and effectiveness of satisfying the needs of citizens and businesses (presumably positive). These effects should be carefully monitored and it should be determined if and to what extent public services delegated time and costs of implementation of new commitments to the users of their services and taxpayers.

In general, it can be expected that the effects will be overall positive, even in case of any harmful effects. It is likely that the new obligations will accelerate the use of electronic communication between the authorities and access to databases, which will reduce the time and cost of information delivery (whether the delivery is performed by interested parties or the state bodies). Ideal scenario would be that these amendments to the Law on General Administrative Procedure cause another effect - that public authorities and public services that required citizens, on the basis of regulations, to collect various certificates and evidence, face the responsibility of collecting these documents and actually realize that many of them were essentially unnecessary, and, on that basis, initiate amendments to the regulations that would reduce these bureaucratic requirements to the extent that is really necessary for the establishment of relevant facts.

Transparency Serbia, Jun 2016