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NEWSLETTER

ISAILOVIĆ&PARTNERS

National Assembly of the Republic of Serbia enacted the Law on General Administrative Procedure on 29th February 2016, which is announced in the Official Gazette of the Republic of Serbia number 18/2016. Law entered into force on 9th of March 2016 and has started to apply on 1st of June 2017, except for provisions of the article 9., 103. and 207. that will start being applied 90 days after the Law enters into force, i.e. from June 8, 2016.

Should you have any additional questions, feel free to contacts us.

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NEW LAW ON GENERAL ADMINISTRATIVE PROCEDURE

Main goals of the new Law on General Administrative Procedure (hereinafter referred as: Law) are modernization of the administrative procedure, more effective satisfaction of the public interest and interests of the natural persons and legal entities in the administrative matter. Novelties prescribed by the Law relate on:

1) Expansion of the scope of the Law;
2) Amendments of the basic principles of the Law;
3) Electronic communication between the authority and parties in the procedure;
4) Notifying;
5) Provision of services at single point - single administrative point;
6) Enactment of a decision instead of a conclusion;
7) New legal remedy – complaint;
8) Amendments of the extraordinary legal remedies;

Below we will point out the most important novelties prescribed by

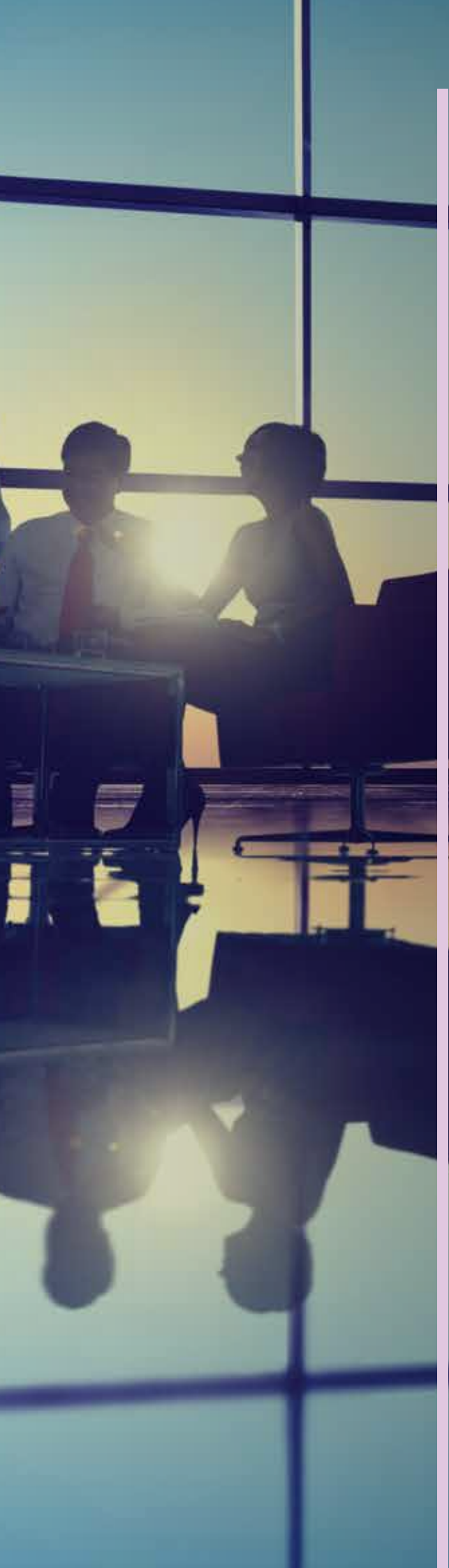
1. EXPANSION OF THE SCOPE OF THE LAW

Administrative matter in terms of the Law, is individual situation in which authority, directly applying the law, other regulations and general acts, shall influence, legally or factual, on the position of the party in a way which include passing the **guarantee document**, concluding administrative contracts, undertaking the **administrative actions** and providing the **public services**.

Having in mind afore mentioned, the scope of the Law is expended by implementation of two new institutes i.e. guarantee document and administrative contract.

» **Guarantee document** is a written document by which the relevant authority is obliged, at party's request, to pass the administrative act of specific content. Guarantee document shall be issued when prescribed by special law.
Authority shall pass the administrative act in accordance with the guarantee document only at party's request. Party has the right to appeal when administrative act is not complied with the guarantee document.

Exceptions to the above-mentioned rules, i.e. the situations when the authority is not obliged to pass the administrative act which is complied with the guarantee document are as follows:



1) If the request for the issuance of an administrative act is not submitted within one year from the date of issuance of the guarantee document or in other period as determined by a special law;
2) If the factual situation on which is based request for the issuance of an administrative act is significantly different from the one described in the request for the issuance of the guarantee document;
3) If it is changed the legal ground based on which the guarantee document is issued in a way that new regulation prescribes annulment, cancellation or amendment of administrative acts which are issued based on earlier applicable regulations;
4) When exist other reasons determined by a special law;

The Law prescribes that guarantee document shall not be contrary to the public interest nor to the legal interest of third parties.

The example of the guarantee document has been already familiar to our applicable regulations. Hence, article 15 of the Law on citizenship of the Republic of Serbia prescribes:

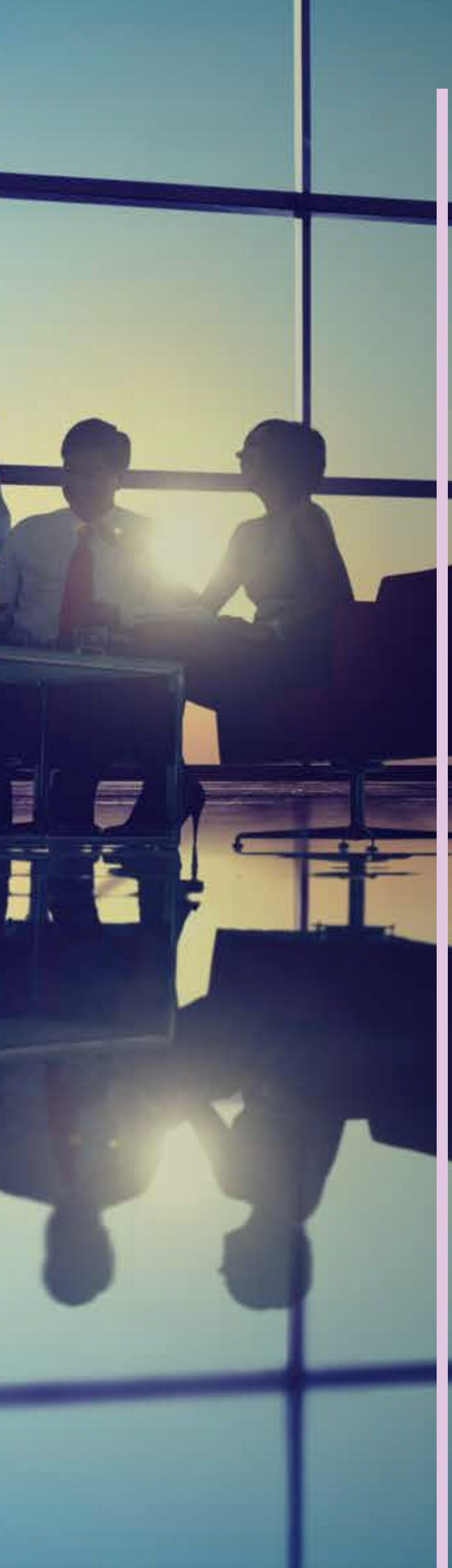
„A foreigner who submitted a request for admission to citizenship of the Republic of Serbia and who does not have release from a foreign citizenship or evidence that he will receive release if granted the citizenship of the Republic of Serbia, can, at his own request, be issued a confirmation attesting that he will be granted citizenship of the Republic of Serbia if he meets other conditions from the Art. 14 para. 1 of the Law on citizenship of the Republic of Serbia."

Therefore, the guarantee document represents a novelty introduced by the Law in order to achieve a higher level of legal security.

» **Administrative contract** – Other new institute of the Law refers to the administrative contract. Administrative contract is bilaterally binding written act which shall conclude, when determined by special law, authority and the party and which shall be used to create, modify or terminate the legal relationship in an administrative matter. For the administrative contract, as well as for the guarantee document, applies the limit that its content must not be contrary to the public interest or legal interest of third parties.

Law prescribes the possibility of the amendment of the administrative contract. Therefore, if, due to the circumstances occurred after the conclusion of the administrative contract which could not be predicted in the time contract is concluded, fulfillment of the obligations of a contracting party has become significantly more difficult, such contracting party may require from the counterparty amendment of the contract and adjustment of the contract in accordance with the occurred circumstances. Authority shall reject the request of the party by passing the Decision if the conditions for the amendment of the contract are not fulfilled or if the amendment of the contract could provoke the damage for the public interest which would be greater than the damage that party would suffer.

Besides the possibility of amendment of the contract, Law also prescribes reasons for termination of the administrative contract by the authority, but such possibility is not prescribed for the party.



Authority shall terminate the administrative contract:
I. If the party has not given the consent to the amendment of the contract due to changed circumstances;
II. If the party does not fulfill the contract obligations;
III. If it is necessary to remedy the grave and imminent danger to human life and health and public security, public peace and public order or to eliminate disturbances in the commerce, and such circumstance cannot successfully be remedied by other means which are less affective on the acquired rights.

Administrative contract shall be terminated by decision of the authority in which shall be explicitly stated the reasons for termination.

Party does not have the right to terminate the administrative contract, but it has the possibility to file complaint, if the authority does not fulfill the contract obligations.

On the administrative contracts shall be applied accordingly other provisions of the Law and subsidiary the provisions of the law which governs obligations relations.

» **Provision of the public services** – Enactment of the Law represents the desire of the legislator to change the attitude of the state towards citizens and commerce by defining the state authorities as providers of public services whereby the state will become a service at everything state does.

By provision of public services shall be deemed performance of the commercial or society activity, i.e. performance of the actions for which the law determinates that shall be performed in the public interest, and by which it shall be granted realization of the rights and legal interest, i.e. satisfaction of the needs of the users of public services.

By provision of the public services shall be deemed the performance of the activity, i.e. the administrative business by the authority, by which it shall be granted realization of the rights and legal interests, i.e. the satisfaction of the needs of the users of public services, and which businesses do not represent other type of the administrative procedure.

Public services shall be provided in a way to grant orderly and qualitative, under equal terms, realization of the rights and legal interest of the users of the public services and satisfaction of their needs.

Possibility of filling a complaint - Complaint shall be filled to the provider of public service which does not grant orderly and qualitative, under equal terms, realization of the rights of the citizens and organizations and satisfaction of the user's needs.

» **Administrative actions** – Administrative actions are material acts of the authority which affect the rights, obligations or legal interests of the parties, such as record keeping, certificate issuance, information provision, reception of declarations and other actions by which legal acts shall be enforced.

Against administrative actions complaint may be filled. Complaint may be filled also in a situation when authority does not undertake the administrative action he is obliged to undertake in accordance with a law. In both cases, complaint is allowed only if the administrative action is not connected with the issuance of the administrative act.

2. AMENDMENT OF THE PRINCIPLES OF THE LAW

Amendments of the basic principles represent the important novelty since the provisions of the law shall be interpreted in accordance with the basic principles of the law. Hence, all provisions of the Law shall be interpreted in a way that administrative procedure shall be more economical, more efficient and with a main goal to satisfice the public interest and interests of the parties.

» **Principle of the legality and predictability** – This principle implies that authority shall act based on the law, other regulations and general acts.

When authority is given the right to decide based on his free estimation, authority shall decide within the limits of the law and given powers in accordance with the purpose for which such authorization is given. When acting in administrative matter, authority shall consider earlier decisions taken in the same or similar administrative matters. (Predictability)

» **Principle of the efficiency and economy of the procedure** – In accordance with this principle, authority is obliged to allow the party successfully and completely realization of the rights and legal interests. That implies that the procedure shall be conducted without protraction and with the minimum costs to the party and other participants in the process, but in a way to perform all the evidence necessary for the proper and complete determination of the facts.
Also, authority is obliged ex officio, in accordance with a law, to perform an insight in data on the facts necessary for decision making on which data official records are kept, to obtain and process them.

Authority may request from the party only data which are necessary for the identification and documents which confirm the facts on which official records are not kept.

Please note that in practice principle of the efficiency and economy has not yet started to implement completely. Notwithstanding the Law has already started to apply, authorities often inform the parties that is necessary that party independently obtain data which relate on the facts on which official records are kept since, according to their words, insight in data on such facts will last longer.

» **Principle of assistance to the parties** – this principle is extended. When authority, having in mind the facts, finds out or estimates that the party and other participant in the procedure have the ground for realization of the certain right or legal interest, authority shall warn them on such circumstance.
If, during procedure, regulation which is of importance for acting in the administrative matter amends, authority shall inform the party on such amendment.

3. ELECTRONIC COMMUNICATION BETWEEN THE AUTHORITY AND THE PARTY

Methods of communication between the authority and the parties may be in the form of oral and written it being provided that the written form of communication includes communication via an electronic and in paper form.

Law introduced special provisions which refer on the electronic communication so the authority shall announce on his web presentation notification on the possibility of the electronic communication between the authority and the party, notification on the information that the electronic documentation shall be submitted to the authority and that authority shall send to the party electronic documentation, as well as on the manner the authority shall perform such activity.

Party shall communicate electronically with the authority if the party previously agrees or if determined by special regulation.

If the electronic document sent to the party is not readable, it can request from the authority to send such document in other suitable form. If the electronic document sent to the authority cannot be read, the authority shall seek from the party to submit it in other suitable form within the time period set and warn the party that, if it fails to act within that time, it shall be considered that the document wasn't submitted.

4. NOTIFYING

Notifying is an action of the authority by which it notifies the party and other participants about the actions to be performed in an administrative matter.

The party can be notified by electronic mail, via post office, delivery service or other suitable manner or orally – if the party is present.

Short and urgent notices can be given by phone, electronic mail or other suitable manner, which shall be noted in the case files containing the name of the person which sends and receives the notices.

Regarding the place of notice, the party shall, as a rule, be notified in its home, office or workplace. If the addressee is an attorney, documents shall be served to his/her law firm, where also a person employed in the office can receive the documents. Service can be also done elsewhere, if the recipient agrees.

The party and its legal representative are obliged to immediately inform the authority about any changes regarding the residence, domicile or seat. If they fail to do it, and the authorized person cannot reach them, the information shall further be served to the party by public notices.

If the attorney or agent for acceptance of services changes the residence or domicile, and fails to inform the authority about such change, service shall further be conducted as if the attorney had not been appointed.

Special cases of service apply to the natural persons and legal entities abroad. The can be notified directly or through diplomatic channels, if a confirmed treaty does not set different rules. Persons serving in the Serbian Army shall be notified via competent command and the members of special forces of the Ministry of Interior via their command. Imprisoned persons shall be notified via administration of the institution where they are at. In all these cases, the service is completed when the parcel is delivered to the recipient.

The party can appoint an agent to whom all the documents addressed to the party shall be delivered (**agent for acceptance of services**), when the party informs the authority conducting the procedure in writing or orally.

v can be done via post office or in electronic form. Notifying in electronic form can be formal and informal. Formal notifying in electronic form is done in accordance with the law and must include the receipt which proves that service is completed. Formal notifying in electronic form is equal to the service of process.

Notifying via post office can be done by regular or registered mail. It is deemed that the document sent by regular mail is received on the 7th day after it was submitted to the post, if sent to an address in the Republic of Serbia, i.e. on the 15th day from the day it was submitted to the post if sent to an address abroad. The receipt can provide proves that he had received the documents on a later day, i.e. that he hadn't received the document. It is deemed that the document sent by registered mail is received on the day stated on the receipt. Service by registered mail is equal to the services of process.

5. SINGLE ADMINISTRATIVE POINT

Single Administrative Point means provision of services in one place. Practically, this means that, if in one administrative matter several administrative authorities have jurisdiction, the party shall address to one of those authorities.

The Law on General Administrative Procedure provides addressing to a single administrative point if exercise of one or more rights requires actions of one or more authorities. Establishing of a single administrative point does not affect the jurisdiction of the authority, nor the right of the party to directly address to the authority in charge.

At the single administrative point the following actions take place:

1) instructing of the person making a submission, in the same way as the competent authority would do, about what is required for the authorities to handle the submission;

2) reception of the submissions for recognition of rights and other actions in administrative matter, opinions, clarifications, comments and documents and remedies, in accordance with the law, and delivery to the competent authorities;

3) informing of the person making the submission about the actions taken by the authority and legal acts enacted.

These actions may also be taken in electronic form, by mail or by other appropriate means.

Time limits for decision on the submissions of the party start on the day the proper request is submitted to the single administrative point. With implementation of the single administrative points, the basic principle efficiency and economy is fully exercised.

6. ENACTMENT OF A DECISION INSTEAD OF A CONCLUSION

The law is amended regarding the situations in which the authority enacts the administrative act – conclusion and decision. For example, the previous law provided that the decision on reinstatement request shall be made in the form of conclusion, while the new law prescribes that such resolution shall be made in the form of decision.

Conclusion is an administrative act by which the authority administrates the procedure and which is enacted when the law does not prescribe that the decision shall be enacted. Conclusions are enacted orally, or in writing – if the party requires or if it is required for proper administration of the procedure.

Appeal cannot be filed against the conclusion, nor can administrative dispute be initiated. Legal rights against a conclusion are appeal, i.e. claim against the decision.

7. INTRODUCTION OF A NEW REMEDY – OBJECTION

The law introduces a new remedy – objection. Objection may be filed because of non-fulfilment of the obligations from the administrative contract, because of administrative action and manner of provision of public services (see point 1), if other remedy cannot be filed in the administrative procedure.

The objection can be filed within:

1) six months from the day the authority failed to fulfill an obligation from the administrative contract;
2) 15 days of the day the administrative action was taken or the day such action had not been taken;

3) 15 days from the day the public services are not provided in such manner that ensures proper and quality, under same conditions, execution of rights and needs of the users.

An objection may be filed to the official of the authority to whose actions refers to, who also makes the decision about the objection. Provision about the form and content of the appeal apply accordingly for the objection.

Resolution about objection shall be made in the form of decision, within 30 days from the receipt of objection.

The official of the authority shall dismiss untimely or unallowed objection, objection filed by unauthorized person or in which the deficiencies have not been eliminated on time or reject the ungrounded objection or accept it if it is grounded.

The decision by which the objection is accepted includes:

1) overview of the further actions on fulfilment of the obligations of the authority from the administrative contract and the decision on request for damage compensation;

2) decision to stop further conducting of an administrative action and measures to remedy its consequences or an order for an administrative action to be conducted – if objection has been filed because of administrative action;

3) order to take appropriate legal measures for elimination of deficiencies in provision of public services – if objection has been filed because of deficiencies in provision of public services.

The authority deciding about the appeal against the objection has the same powers as the authority that made the decision about the objection.

8. CHANGES AND AMENDMENTS TO THE SPECIFIC CASES OF REMOVAL OF LEGAL ACTS

The previous law prescribed the so-called specific cases of annulment, cancellation and amendment of the decision: amendment and annulment of a decision related to the administrative disputes, annulment and cancellation upon official control, cancellation and amendment of final decisions upon consent or request of parties, extraordinary cancellation of decisions and declaring decisions null and void.

The new law also provides specific cases of removal of legal acts: amendment and annulment of decisions related to the administrative disputes, reopening of procedure, annulment of final decision, cancellation of a decision and annulment, annulment or amendment of a final decision upon recommendation of the Protector of Citizens.

Please note that the new law prescribes that the cases opened prior to coming of this law into force shall be resolved in accordance with this law, if the procedure has not been finalized yet.