

THE NEW LAW ON ADMINISTRATIVE PROCEDURES: LONG-LASTING GOODBYE TO THE SERVICE COUNTER

SUMMARY

The study analyses the expected benefits of the new Law on Administrative Procedures (LAP). Some of the novelties it brings are appointments of **duly authorized officials** for the implementation of administrative procedures as well as the **official duty to exchange information**. For these to be implemented, however, a number of further conditions have to be met.

Our analysis of 11 ministerial guidelines that have been discussed in Government meetings in the course of 2017 in order to align them with the LAP shows an **uneven trend of implementation of the rule to appoint a duly authorized official for decisions concerning the general administrative procedure**. Six ministries have implemented the rule in its entirety, while the other five only delegate the administrative procedure to appointed officials, leaving the decision-making powers to the management. In addition to making the procedure less efficient and increasing the burden on the top management, this approach also adds to the politicization of the procedure. According to the information we collected from almost 40 local administrative bodies, the same trend is evident at the local government level.

The **official duty to exchange information** is introduced as a principle, with the objective of relieving the citizens of the obligation to collect a pile of papers before they can access a public service. The risk is that it may remain but a good intention, especially as the gap between various public registries has been very difficult to bridge. **At the moment, public administration bodies are in charge of 153 different electronic registers, but there is no unified record of all registers managed by the public administration.**

All electronic registers should be integrated by 2020. However, there is no indication of a strategic intention to digitalize registers that remain available only in the paper format. Although comparative practice suggests that central guidelines for due information exchange would be required, the Government has failed to adopt a binding guideline for public administrative bodies to which the obligation applies.

Public administration bodies **should make more use of the possibility to appoint officials duly authorized to make decisions in general administrative procedures**. The Government should adopt binding **guidelines** on due exchange of information and facilitate effective exchange of information between the bulk of registries managed by public administration bodies.



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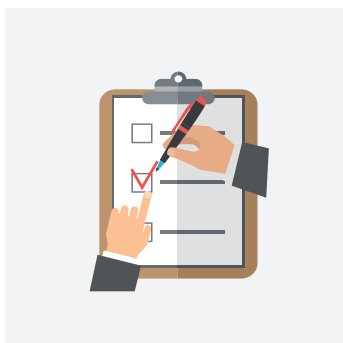
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INTRODUCTION

The public administration reform in Montenegro is an ongoing process, which began in 2002, and is currently taking place within the third Strategy for the reform of public administration for the period 2016-2020.¹ The main goal of the Strategy is to “create an efficient and service-oriented public administration, characterized by growing citizens’ trust in its work”.

One of the key preconditions for the citizens to enjoy their rights in relations with public administration is to institute a solid normative framework that would regulate the matter of administrative procedure in Montenegro. The new Law on Administrative Procedures (LAP) came into force on 1 July 2017². It was originally supposed to come into force on 1 January 2016, but the starting date has been postponed three times on various grounds, including the need to put into place the necessary structures for the effective implementation of the new rules, i.e. aligning institutional regulations with LAP provisions.

According to the opinion poll conducted by IPSOS agency for Institute Alternative the citizens evaluate public administration services as “average”. The respondents are more



or less evenly split between those satisfied (40%) and those dissatisfied (44%) with public administration services. The number of “very dissatisfied” ones however outpaces the number of “very satisfied” ones (12% vs. 7%)³. Inefficiency of public administration services is the most frequent cause of dissatisfaction among the citizens, with nearly half of the respondents (49%) stating that requests submitted to public administration bodies take too long to be resolved.

The aim of this study is to offer a critical review of the LAP’s main novelties with regard to more effective service provision, to highlight their potential importance for the citizens, and assess the extent of improvements they are likely to bring. To that end, we analysed publicly available documents as well as the responses obtained via requests for free access to information. We also distributed a short survey among local administration bodies in order to further assess the necessary preconditions for successful implementation of the Law at the local level. The findings and interviews conducted in preparation of the report

¹ / Strategy for reform of public administration in Montenegro for the period 2016-2020, Government of Montenegro, July 2016. Available at (MNE): <http://www.mju.gov.me/biblioteka/strategije> (Accessed 22.12.2017).

² / Law on Administrative Procedures („Official Gazette of Montenegro”, no. 056/14 of 24.12.2014, 020/15 of 24.04.2015, 040/16 of 30.06.2016, 037/17 of 14.06.2017).

³ / Perception of public administration: Public opinion research, IPSOS agency for Institute Alternative, February 2017.

“Public Administration Reform: How far is 2020?”⁴ were also used, and complemented by additional interview with the head of Directorate for Electronic Registries in the Ministry of Public Administration.

The main focus of the study is on the two new instruments related to:

1. delegation of responsibility for the issuing of administrative decisions;
2. official duty to exchange information held in different public administration bodies’ registries.

The first part gives an overview of the trends in 2017 regarding the appointment of special officials for decisions on administrative procedure in public administration bodies. The second part discusses the official duty to exchange information necessary to complete the administrative procedure, which until now has been the responsibility of citizens. It also offers recommendations for better implementation of the new instruments, and for reporting on their implementation.

DELEGATED RESPONSIBILITY – AN ADMINISTRATION CLOSER TO THE CITIZENS

The previous LAP prescribed a so-called “hierarchical approach” to responsibility for adoption of administrative acts. This meant that nearly all decisions would be taken at the highest level of administration (the minister, the secretary, the director, etc.) This entailed high risk of political influence on the adoption of administrative acts. Moreover,



hierarchical organisation of the decision-making process is contrary to good administrative practice, according to which expertise and responsibility for decisions should rest to those officials that are the closest to the users of administrative services.⁵

The new LAP regulates differently the matter of responsibility and authorization for conducting administrative procedures and institutes the principle of delegation of authority. The authority is assigned to a duly authorized official who leads the administrative procedure and adopts administrative acts. According to the LAP, the duly authorized official is appointed by the act on internal organisation of each public administration body.

⁴ / The report available from the website of Institute Alternative (MNE): <http://institut-alternativa.org/reforma-javne-uprave-koliko-daleko-je-2020/>

⁵ / Concept note for the new Law on Administrative Procedure, Ministry of Interior, 2011.

The positive effects of the new rules could lead to:

- **Improved quality of administrative acts** – it can be expected that the decisions adopted by the official in charge of the administrative process will correspond to the facts on the ground. This should reduce the number of administrative decisions that are rendered void every year by the Administrative Court;
- **„Shorter“ procedures and a more efficient access to rights** – draft decisions will no longer have to wait for the signature of the superior, which can postpone the procedure;
- **Lower risk of politicised decisions** – the locus of decision-making moves from the political to the professional;
- **Bringing administration closer to the citizens** – the decisions are made by the official who is directly interacting with the citizens during procedure;
- **Stronger accountability of the authorized officials for the quality of decisions** – the decision-making responsibility is clear and can be traced more easily in case of complaints. If, e.g. 6 out of 10 decisions made by an authorized official are overturned by a higher instance, it is a clear signal that that official should be either retrained or assigned other responsibilities.

THE PRINCIPLE OF DELEGATION NEED NOT BECOME THE RULE

The Law, however, offers plenty of opportunity to waive the principle of delegated responsibility for decisions in administrative proceedings to lower levels of administration. If, for instance, the public administration body fails to appoint an authorized official, decisions will continue to be made by the head of the unit. This could lead to a widespread practice of not authorizing officials to take decisions in administrative proceedings, and leaving the decision-making power in the hands of superiors.

For instance, the Ministry of Economy has two officials, one independent advisor and one employee of the Directorate for analysis and transformation, authorized to conduct the administrative procedure in the first instance, but they are not expressly authorized to take decisions which suggests that this will remain the responsibility of the superior, in accordance with the LAP.

Even if the internal regulations authorize individual officials for decision-making in administrative proceedings, this does not mean that they will be the ones taking decisions in practice. The Commentary on the LAP states that if a decision is taken by the head of a unit, even though that unit has an authorized official for administrative proceedings, this cannot be ground for

invalidating the decision as long as decision making in matters of administrative procedure is also in the job description of the head of unit.⁶

To provide a clearer picture of the progress to date on appointment of officials duly authorized to make decisions in matters of administrative procedure, we analysed draft regulations on internal organisation of public administration bodies from the start of 2017 until mid-October. A total of 11 regulations have been undergoing amendments in this period in order to align them with the LAP.⁷ The question is whether the officials in charge of leading the administrative proceedings are also authorized to take decisions. If this is not the case, the regulation sidesteps the basic principle of the LAP, by appointing officials duly authorized to conduct proceedings, while implicitly leaving the decision-making responsibility with the superior official.

The analysis reveals an uneven trend with regard to the implementation of the principle of appointment of an official duly authorized for taking decisions in matters of administrative procedure. Six ministries clearly recognise the authority of the officials in charge of conducting the procedure to also take decisions (Ministry of Health, Ministry of Labour and Social Affairs, Ministry of Education, Ministry for Sustainable Development and Tourism, Ministry for Agriculture and Rural Development and Ministry of Interior). Another four regulations only authorized officials to conduct procedures, but not to take decisions. The logical question is whether in this cases the responsibility for decision-making will remain with the superiors, thus invalidating the purpose of the LAP provision and opening the way to exceptions. Ministry of Public Administration has a peculiar solution with regard to the responsibility for entering NGOs and political parties into the registry: the procedure is delegated to lower-level officials, while responsibility for decision-making is assigned to the general director. This makes it completely unclear who should decide on the entry of the NGOs and political parties into the registry – the officials in charge of the procedure or the general director.

Bearing in mind the large number of regulations on internal organisation adopted by local administration bodies, we conducted an electronic survey of 101 local government secretariats in order to inquire about the rules on appointments of duly authorized officials. We received a total of 39 answers, i.e. a 38% response rate (34 written replies to the survey, and five more by phone). Although not all secretariats responded to our

⁶ / Sreten Ivanović, Commentary on the new Law on Administrative Procedure, Podgorica, p.143.

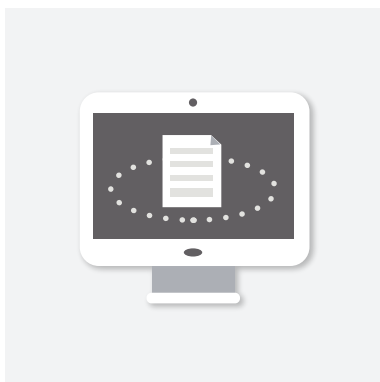
⁷ / Ministry of Health, Ministry of Labour and Social Affairs, Ministry of Economy, Ministry of Justice, Ministry for Sustainable Development and Tourism, Ministry of Culture, Ministry of Agriculture and Rural Development, Ministry of Transport and Maritime Affairs, Ministry of Interior, Ministry of Public Administration. For more information see (MNE): http://www.gov.me/sjednice_vlade_2016

inquiry, we received responses from nearly all municipalities, with the sole exceptions of Gusinje and Herceg Novi.

Although the collected information doesn't offer a full picture, it does suggest certain tendencies which are in line with the uneven practice observed at the central level. Namely, roughly half of the secretariats (20) did not appoint a duly authorized official, while the other half (19) did. Moreover, even among those that did appoint officials to conduct administrative proceedings, only some granted them decision-making powers. As an example, the Secretariat for agriculture and rural development of Bar Municipality reported that duly authorized officials are responsible both for the procedure and for the final decision, but these decisions must be signed by the Secretary. Meanwhile, a number of bodies in Kolašin, Nikšić, and Bijelo Polje municipalities do not have officials specially appointed to conduct administrative proceedings, but they have internal mechanisms for issuing authorization to officials in charge of a given procedure. Respondents from Nikšić municipality moreover told us that they are waiting for the announced amendments to the Law on Civil Servants and Public Employees and Law on Local Self-Government to implement organisational changes that will include appointments of duly authorized officials.

OFFICIAL DUTY TO EXCHANGE INFORMATION: GOOD INTENTIONS, DIFFICULT TO IMPLEMENT

Law on Administrative Procedures stipulates that the official in charge of the procedure has the official duty to collect all information pertaining to the case that is being held in



public registers, regardless of the form (written, electronic, etc.) This stipulation ought to reduce the administrative burden on the applicants, who no longer have to visit multiple public institutions to collect certificates necessary in order to obtain their rights.

Whether or not this stipulation is effectively implemented in practice depends on a number of factors, however. The official duty to exchange information can be expected to yield positive effects only if it is implemented through

a unified electronic system or through another mechanism guaranteeing effective exchange. That means, among other, that officials in charge of conducting procedure and issuing final decisions should be able to very quickly verify information held in other public registries, instead of asking the applicants to go from one institution to another collecting various certificates. At the same time, if exchange of information is not conducted through an electronic platform, data collection by authorities might take significantly longer.

THE GAP BETWEEN PUBLIC RECORDS IS HARD TO BRIDGE

To understand properly advantages of the official duty to exchange information in order to meet the needs of public service customers, one must review the technical requirements for this exchange to be effective.

Article 13 of the Law Administrative Procedure prescribes the principle of official duty to obtain information:

„While conducting administrative proceedings, a public administration body reviews, collects and processes data from public registries held by that body as well as by other public institutions, unless access to that data is restricted by law.

Public Administration Reform Strategy for the 2016-2020 period sets “interoperability of registries and accessibility of registry data for users” as one of strategic goals. Interoperability includes “functionality of electronic records and information systems which facilitates exchange of documents and data in electronic format through the System for electronic data exchange”.⁸

One precondition for exchange of information between registries is the existence of a unified system for electronic data exchange among public institutions and administrative bodies. Such a system is envisaged by the Law on Electronic Administration and was supposed to be put in place in the two years after this law came into force, i.e. by mid-2016. Unfortunately, the Law originally failed to set the deadline by which individual institutions and public administration bodies should be connected to this system, and the amendments designed to remedy this oversight have been put to debate in the Parliament only in October 2017.⁹

According to the information collected using requests for free access to information, there are **153 electronic registries currently held by public administration bodies**. Public Administration Reform Strategy seeks to ensure their full operability – the possibility of mutual institutional access to these registries – by 2020. However, apart from a record of all electronic registries held by public bodies, whose operation is defined by a special Regulation¹⁰, there is no up-to-date unified record of all official registers.

⁸ / Regulation on the content and management of data in the unified information system for electronic exchange of information, Government of Montenegro, July 2015.

⁹ / Draft law on amendments to the Law on Electronic Administration, Ministry of Public Administration, October 2017. Available at (MNE): <http://www.mju.gov.me/vijesti/177016/Poziv-za-javnu-raspravu-o-Nacrtu-zakona-o-izmjnama-i-dopunama-Zakona-o-elektronskoj-upravi.html> (Accessed 22.12.2017).

¹⁰ / Regulation on record-keeping on electronic registers and information systems of public institutions and administrative bodies („Official Gazette of Montenegro”, no. 027/15, 29.05.2015).

According to the 2014 Information, there are more than 300 public registries held by various public institutions, which differ significantly in the type of data, data management practices, and the possibility to exchange information with other bodies.¹¹ Public registries do not even include all official records, but it is instructive to compare this number with the number of electronic registries identified three years later - twice as many. To complete the picture, we must remember that the total number of public registries, including local self-government, was more than 600 in 2014. There is no unified record of all electronic registries at the local level, although the fact that the Draft law on amendments to the Law on Electronic Administration lays foundations for the local self-governments to join electronic data exchange.¹²

Various public administration bodies currently hold **153 electronic registers**. The total number of publicly held registers is, however, unknown, although it should be the first step towards effective implementation of the official duty to exchange information.

In addition to the technical preconditions, such as the unified information system, genuine progress on information exchange would also require digitalization and registration of all existing public registries and official records. In Croatia, for instance, a so-called “meta-register” contains all basic information about all registries held by public sector bodies, as well as information on the conditions for access to each one of them. One of the main purposes of setting up a meta-registry was to include also the official “paper” records to ensure an exhaustive overview of data in public possession.

The main thrust of the efforts to ensure interoperability in Montenegro concerns connections between the existing electronic registries, rather than the parallel efforts to digitalize other public registries and official records. By the same token, the efficiency of the official duty to exchange information still crucially depends on the effectiveness of non-electronic data access, i.e. requesting copies or consulting physical copies.

¹¹ / Information on the management of registries held by public institutions and local self-government units with recommendations for improvements, Government of Montenegro, December 2014. Available at (MNE): <http://www.gov.me/biblioteka/Informacije?query=Unesite+pojma%3A&sortDirection=Asc&pageIndex=51&alphabet=lat> (last accessed 31.10.2017).

¹² / Draft law on amendments to the Law on Electronic Administration with a Report from Public Discussion, Government of Montenegro. Available at (MNE): http://www.gov.me/sjednice_vlade_2016/56 (Accessed 29.12.2017).

LESSONS NOT LEARNED

In Serbia too, a new Law on Administrative Procedures came into force on 1 June 2017, also with the aim of reducing the burden on the citizens by introducing the principle that public authorities should only ask the citizens for their identification documents and to verify those facts on which there is no public record. For all other information the authorities have the official duty to collect and process data. The Law goes a step further and explicitly describes as misdemeanour the failure of the official in charge to act in accordance with this principle. The Law was also accompanied first by **Guidelines**¹³ and later by **Regulation**¹⁴ on access to information held in public registries. All public records can be accessed through various mechanisms – electronically, physically, or on request.

The first evidence from the implementation of this law also point to the challenges that have already been outlined in this document. The question, namely, is how meaningful

In Montenegro there are no detailed guidelines on the implementation of the official duty to exchange information, nor did the Government adopt a binding regulation that would allow this principle to take root in practice.

these stipulations are when the official in charge of the procedure needs to access information held by another public body.¹⁵

In Montenegro, however, except for the clause in the Article 13 of the current Law on Administrative Procedures, there are no guidelines on the implementation of the official duty to exchange information. Evidently, comparative practice and challenges encountered in the implementation in

other contexts have not been used to develop binding guidelines on the way information should be exchanged. A Directorate for administrative procedure was created by the Ministry of Public Administration, and tasked with issuing expert guidelines and instructions on the implementation of the law regulating administrative procedure. A Commentary on the Law on Administrative Procedures¹⁶ and a Guideline for the implementation of the Law¹⁷ have also been published. However, neither contains a detailed elaboration of the principle of the official duty to exchange information, nor did the Government adopt a binding regulation for the bodies implementing the Act that would allow the principle to be implemented in practice.

¹³ / Guidelines for the implementation of Articles 9 and 13 of the General Administrative Procedure Act („Official Gazette of the RS“, no. 18/16), regulating exchange of information from official records.

¹⁴ / Regulation on access to data from public records, „Official Gazette of the Republic of Serbia“, no. 56 of 7 June 2017.

¹⁵ / For more see: <http://www.pravniportal.com/prvi-dana-primene-novog-zakona-o-upravnom-postupku/> (last accessed 15.9.2017).

¹⁶ / Sreten Ivanović, Commentary on the new Law on Administrative Procedures, Podgorica.

¹⁷ / Đorđije Blažić, Guideline for the implementation of the Law on Administrative Procedures, May 2015.

WHAT NEXT?

The new Law on Administrative Procedures creates opportunities for the more effective functioning of public administration bodies. However, its effects should not be overestimated, as the implementation of solutions designed to bring public administration closer to the citizens is likely to be plagued by numerous challenges.

Delegation of responsibility for the adoption of administrative acts to the officials in charge of the procedure could in principle bring numerous improvements to the conduct of administrative proceedings in Montenegro. Unfortunately, such delegation remains a possibility rather than an obligation. By the same token, delegation of responsibility for decision-making in administrative procedure from the highest political to the lower expert administrative level need not become practice, and thus the positive legal intention may be rendered meaningless.

Practice reveals significant inconsistency in application, as in many cases administrators in charge of administrative proceedings do not have authority to take final decisions, which by virtue of the legal exemption remains the responsibility of their superiors. This preserves political influence on administrative decision-making.

Official duty to exchange information is a good principle, but its effectiveness crucially depends on a high level of interoperability among public registries. Government's strategies in this regard, however, largely focus on interconnections between electronic registers and far less on the parallel efforts account for and digitalize all public registers and official records, and then connect them to the unified information system in order to ensure effective exchange of information.

RECOMMENDATIONS:

- Public administration bodies should utilize to a greater extent the possibility of appointing a duly authorized official to conduct and conclude administrative proceedings;
- The Government, in cooperation with the Ministry of Public Administration, should adopt bylaws for the implementation of the official duty to exchange information, and specify the procedure and deadlines for the collection and processing of information necessary to conduct and conclude administrative procedures;
- The Government should set up the so-called meta-registry – a record of all registries held by the public sector in Montenegro, in order to lay ground for a more effective exchange of information from official records;

- The first monitoring report on the conduct of administrative proceedings, to be prepared by the Ministry of Public Administration, should offer a complete overview of the extent of delegation by administrative body, and provide information on the implementation of the principle of official duty to exchange information during administrative proceedings.

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