

## Impact analysis of expanding administrative legal protection in Republic of North Macedonia

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### Abstract

The implementation of the principles of good governance requires a platform consisting of four components: a) system of administrative procedures that completely regulates the processes of adoption of the administrative acts; b) a clearly structured organization of the public administration and its authorities in all administrative areas and territorial levels; c) professional, competent and independent staff; and d) system of effective judicial control. Each component is equally significant to establish an appropriate administrative process. A good system of administrative procedure protects the rights of citizens and encourages their participation. It avoids unnecessarily complex, formalistic and lengthy processes and improves the transparency and accountability of the administration. In the same time, it reduces the costs of citizens and government expenditures.

General administrative procedure addresses these issues in communication between public authorities, citizens and businesses. Several shortcomings and challenges were addressed in 2015 in Macedonia through new legislation (complicated economic activities, large administrative costs and costs for the business sector, slower economic development of the country, slower legal transactions and a porous legal protection system). But despite the expected direct and indirect impacts (as a result of change in a system law), one must foresee obvious risks in its implementation related to harmonization of the legal framework, inadequate capacities of the public sector and public service providers to apply the set standards consistently as well as insufficient material and financial resources to respect the obligations for inter-institutional electronic communication.

Using qualitative data analysis via in desk research of official records, legislation and existing scholarship, the paper addresses the novelties in GAP in relation to expected and actual impacts on stakeholders as well as risks related to implementation stemming from objective obstacles hindering public administration responsiveness in a modern democratic society. In order to assess those impacts, the

paper analysis the documented data and data extracted from reliable surveys concerning citizens' satisfaction of public services delivery and chances for legal protection.

**Key words:** *General administrative procedure; Standard; Service; Administrative legal protection; Impact analysis.*

## **Introduction**

The administrative practice often is a subject to criticism and because of that - under permanent modifications aimed to reform its functionality. In that reform processes, when it comes to the delivery of the public services, in recent years, many countries world-wide favour a customer-focused approach. The supporters of this tendencies are considering the citizens as customers that have right to expect an improved level of services and in the same time a remedy if the service does not satisfy the accepted or the expected standard (Leyland and Anthony, 2009). Moreover, the successive public reforms in different areas transformed the role of a presumed notion of an administrative state through series of policies, providing marked orientated solutions to address the endemic problems of administrative bureaucracy and inefficiency. Those initiatives fundamentally revised ideas and expectations (Austin, 2007).

The notion of the European Administrative space has frequently been associated with a growing number of European administrative standards. There are serious efforts to ensure effective implementation of the right to good administration and boost the administrative simplification and in that line are the attempts for the convergence of the administrative procedures (Kopric, Kovac, Dulabic & Dzinic, 2016). The contemporary administrative standards were not included in a previous legal framework tackling the general administrative procedure in the Republic of Macedonia. The legal frame did not recognize modern types of administrative activities and did not provide full legal protection. The solutions contained frivolous, complex, lengthy and costly procedures. The modes of e-communication and modern ICT tools were not legally recognized as official means for communication and the formalities of the procedures without taking into account the results of the decision-making process were more than common. The legal frame was burdened with the details regulating the aspects that could be better regulated through other legal means such as by-laws or other internal rules.

In addressing the extended needs that a democratic state is facing the new Law for the general administrative procedure was introduced (*LGAP, 2015*) with the aim to provide the solutions for the detected problems. The new law provides sufficient legal protection but in the same, it is extensive modus for regulating the administrative procedure. The paper addresses the novelties in general administrative

procedure in the Republic of Macedonia in relation to the expected and actual impacts on the stakeholders as well as risks related to implementation stemming from objective obstacles hindering public administration responsiveness in a modern democratic society. In order to access those impacts, the paper sets a theoretical framework in relation to the concepts of modern administrative state, and upon it performs a qualitative desk research - analysis of the documented data and data extracted from reliable commenced surveys that are tackling the citizens' satisfaction of public services delivery and chances for legal protection. Under that methodology, the paper accesses the benefits and shortcomings of the new legislative framework and gives the conclusions and recommendations aimed to support the incorporation of modern administrative trends toward better public services and comprehensive legal protection of the citizens.

## **Theoretical framework**

### **Citizens' (customers) expectations in a modern administrative state**

The boundaries of the state that were defined 25 years ago have been modified and now the public law is applied in respect to the shrunken concept of the public as opposed to the private sphere of social life (Holliday, 2000). Although the borders of the state can never be precisely predetermined since the margins of governmental; non-governmental institutions and definition of powers are constantly shifting, (Foucault, 1980), there is inextricable nature between the administrative and constitutional law and that depends on the context within which the administrative law operates because it reveals its connection with the dominate daily policy issues (Hutton, 2002). In particular, it is not important only to understand the origin and evolution, but also the nature and utility of many central concepts of modern administrative law as well the connected challenges and undertaken changes to meet new social pressure and concerns. In addition, there is no neutral space with which the law operates since it is always contextualized by the political, economic and social environment within which it has originated and in which it gives its meaning and purpose (Leyland & Anthony, 2009).

Administrative law is an area of law that is concerned with the control of the government powers. Administrative law frames the decision – making on the basis of those powers whether is the central, local or devolved government. It is embodying the general principles that can be applied to the exercises of powers and duties of the authorities - meaning putting their functions under the standards of legality and fairness. This should ensure the respect of the rule of law, accountability, transparency, and effectiveness in an exercise of the powers in the public domain. Administrative law is primarily concerned with the mechanisms and remedies available to citizens when confronted with the potential excess or abuse of

power. It is essentially bounded by what governments does and how public administration directly or through the agency of private companies exercise these powers and fulfil variety of duties – such as application of the principles by the state institutions and by the other public bodies that are responsible for delivering and/ or overseeing the delivery of services booth on national and local level (Leyland & Anthony, 2009).

One of the more prominent approaches in the administrative sphere is the concept of new public management as a special way for managing public administration in order to meet modern challenges. The concept was conceived in the mid-1970s and developed in the 1990s and was primarily introduced in English speaking countries whereas the latter spread with a lot of variations in many transition democracies (among them within the Macedonian administration). In essence, this approach concerns that the public administration should be run upon the business-oriented approach. This approach tends to minimize the distinction between the public and the private administration thinking that any administration should be run according to the same managerial principles and values. This system is prone to reforms that are meant to address the “broken” public administration (seen as ineffective and inefficient). The new management should ensure that public administration is market driven, and in that frame, the citizens (clients in the traditional managerial aspect) are seen as customers to whom the government should be responsive. The government should guarantee that goods and services are provided, but that doesn’t mean that the government or public administration should produce them, i.e. the government can rely on the third parties to deliver their services. Overall, the idea is to change the public administration culture in order to be flexible, innovative, problem-solving and entrepreneurial (as opposite to rule-bound, process-oriented and focus on inputs rather than results) (Rosenbloom, Kravchuk, & Kravchuck, 2005).

This new, reformed administration insist on customer satisfaction, that is measured using surveys, focus groups etc. and towards them, the administrative behaviour and operations should be adjusted to meet the customer needs. Similar what markets do – putting the customer first (Rosenbloom, Kravchuk, & Kravchuck, 2005).

### **Standards for good public administration**

There is extensive scholarship arguing in favour of setting high-performance standards for public services and upon them, the quality of the service to be expected, ranging from New Public Management in UK since the 1970s, the New Steering Model promoted in Germany in the mid 1980s to the rising concept of Neo Weberian State as proposed by Christopher Pollit and Geert Bouckaert in 2004 (Manojlovic, 2009) Each proposing a different strategy how to design the public sector and position the role of the state. NPM

promoting efficiency, effectiveness and economics as underlying principles how administrative organizations should operate, firmly arguing that public sector institutions odd to mimic managerial intuitiveness of the private sector. On the other hand neo Weberian state promotes the idea that European administrative models must encompass a multitiered institutional system, devolving certain functions of the state to supranational institutions (public in a sense), core services must be provided by state actors (also public) and private actors may be allowed to provide public services under strict rules undergoing the same oversight as any other state or supranational actor while all actors collaborate in an inclusive policy making process (Randma-Liiv, 2008/2009). In addition - the administration should constantly strive to achieve or to improve the set standards. Among those standards are the principles of good administration - set of positive values and principles that relate to the practical tasks of policy implementation in many different contexts and need to be generally applied. Such standards are clearly set by many international or regional organizations with the reform tendencies as guidelines for administration change (see for example Principles for Public Administration, SIGMA, 2014). Still, in essence a good administration should act in accordance to law with the due regard of the rights of those concerned, providing effective service, using trained and competent staff, bringing reasonable decisions based on all relevant considerations. Additionally, good administration needs to be a customer-focused – ensuring that people are accessing the services easily, they are informed about the standards and can expect them. Dealing with people should be in a helpful manner, promptly and responsive to the customer needs - including where is appropriate providing a coordinate response together with the other service provider. This is involving openness and accountability, acting fairly and proportionately (threatening people impartially with respect and courtesy, without any discrimination or prejudice, objectively and consistently), acknowledging mistakes and apologizing if appropriate, offering a fair and appropriate remedy and effective compliance procedure. The public administration should strive for continuous improvement of service and performance in the sense of reviewing policies and procedures regularly to ensure that they are effective (Principles of Good Administration, 2009)

Failure to reach those or similar standards might constitute maladministration and raises the possibility for the remedial action that should be available to tackle the inadequate service or injustice as a consequence. In that respect, the maladministration does not only mean acting beyond powers or authority, or committing a serious procedural error (such as ignoring statutory rules of procedure for example time limits, adequate notice, consultation) but as well ignoring the rules of the natural justice and fairness. Furthermore, the maladministration can be bias, neglect, inattention; delay, incompetence, ineptitude, arbitrariness, rudeness, unwillingness to treat the complainant as a person with rights, refuse to answer responsible questions; neglect to inform the complainant on requests on his/ her rights or

entitlement; knowingly giving misleading or inadequate advice; ignoring valid advice; offering no redress; omission faulty procedures; failure to manage or monitor according to the procedure and so on (Leyland & Anthony, 2009).

In general, maladministration is meaning injustice, a hardship which should not have arisen, something wider than legally repressible damage that can cause anger and frustration. Maladministration encompasses the administration shortcomings, poor administration or wrong application of the rules (Leyland & Anthony, 2009).

### **Changes in Macedonian legislation/ new general administrative procedure**

The general administrative procedure is applied in respect to issues related to public authorities, citizens, and businesses. Several shortcomings and challenges of the previous legislation related to the general administrative procedure (complicated economic activities, large administrative costs and costs for the business sector, long legal transactions, porous legal protection system and slow economic development) were addressed in 2015 in R. Macedonia with a new legislation on general administrative procedure (entered into force in 2016).

The previous Law on General Administrative Procedure (*LGAP 38/2005, 110/2008, 118/2008, 51/2011*) was designed to be an extensive and widely applicable law. However, in practice, its application was derogated within a number of special laws. The law was based on long tradition (dating from the Austrian Administrative Procedure Act of 1925) that was providing firmness, but on the other hand, the law in essence was outdated and its amendments were only superficial solutions that did not correspond to the needs of the modern democratic state and quests for citizen-oriented administration. The administrative procedures upon it were complicated and durable and their exaggerated formalism complicated the economic activities and made it difficult for the citizens to protect their rights. Long and ineffective administrative procedures caused large administrative costs to the state budget, as well as high costs for the business sector. These practices deterred investment and slowed the country economic development (Kopric et al., 2016).

Administrative procedure according to the LGAP (2005) and its amendments from 2008 and 2011 recognized only the activities undertaken on hard copy documents and did not recognize the other means of communication between administrative bodies and citizens, such as electronic communication. This slowed down the legal circulation and influenced the exercise of the rights of the citizens. The actual privatization of public service delivery (such as telecommunication services, electricity or water supply)

was not provided with the administrative and legal protection and in that situation, the citizens and business (users of services delivered from private individuals and legal entities - public service providers) were accomplishing legal protection before civil courts with the higher costs in litigations and significantly longer procedures (*Draft Law, 2014*).

Therefore, the ideas were to modernize the system of administrative procedures that should be based on a completely new legal framework, which sought to preserve the traditional values and good sides of the LGAP (2005) but also to open new opportunities for future social and technological developments. In that respect the innovations are in the affinities for establishing administrative practice oriented towards the citizens, introducing changes in the administrative culture, as well advanced usage of the technical means for communication between the citizens and the administrative bodies. That changes supposed improve the position of democratic administration (as opposed to the traditional bureaucratic administration)-expected to deliver complex public services, apply the principles of good governance and standards reflected in administrative practice in the EU member states.

As such a new framework encompasses many innovations besides acceptance of the ICT modes for official communication such as “single access point” (contact through one person or counter), a management agreement, “administrative assistance” (institute that is envisaging the non-bureaucratic cooperation, mutual assistance and support between administrative bodies) and an effective system of administrative remedies. Moreover, in order to ensure the de-politicization of the administrative procedure and to increase the professionalism of the public sector each public authority need to have an organizational unit (or an authorized person), that will provide guidance to the ones they needed. Following that endeavours, the new LGAP tends to provide efficient, simpler and faster administrative procedures, thus reducing administrative costs.

### **Impact analysis/ challenges in the implementation of new LGAP**

The newly introduced Law (*LGAP, 2015*) affects many legal subjects such as ministries; other state administrative bodies; independent bodies of the state administration; bodies within the ministries; municipalities that decide in administrative matters; all private individuals and legal entities that perform a public activity and ultimately the citizens and the legal entities that exercise rights and fulfil obligations. Since this is change in a systemic law, it has widespread consequences and influences, direct and indirect impacts upon the stakeholders as well upon vast number of material regulations that need to be aligned.

Despite the expected direct and indirect impacts, there were obvious risks in the implementation of the new LGAP related to harmonization of the legal framework, inadequate capacities of the public sector

and public service providers to apply consistently the set standards as well as insufficient material and financial resources to respect the obligations for inter-institutional electronic communication. In the short term, negative impacts were anticipated coming from the challenges in alignment with the new legal solutions, building human, material and ICT capacities of public authorities / public service providers, or in general from the consistent implementation of the provisions of the new law. Hence, the difficulties in the application were expected because the new (more) high standards of work. Additionally, the service providers who need to act and provide legal protection in administrative proceedings may not have a real human capacity or experience to carry out extensive legal obligations. Among them, the specific problem is limited access of ICT (on the side of citizens, but as well on the side of administration), as well as insufficiently material and financial means for the modernization of ICT equipment (Shikova, Gocevski, & Jurukovski, 2018).

In order to perform a full impact assessment of the legal protection introduced with the new LGAP, there is need to access the current condition according to the previous one (before introducing the changes) and the expected one (after 5-7 years since the enforcement) in the time interval according to the set of indicators. In order to access the improvement of the administrative legal protection of the citizens the following indicators need to be taken into account: the time needed to initiate and run the procedure (how much time a party will spend in hours, minutes to initiate the procedure); number of procedures annually in all institutions and how much is the growth / reduction of the number; cost of the procedure; number of procedures conducted by electronic communication and how much is increased / decreased; monetization (expression in monetary value) of an hour's value that citizens/companies spend to initiate a procedure; reducing dependent workplace costs (if any) etc. This need to be accessed upon all involved stakeholders including citizens, companies (business sector) as well as the state and the other society segments. In order to perform a systematic analysis, given the complexity of the impacts and the unavailability of data on the situation before the adoption of the new Law, there is a need to adjust the length of the measurements for gaining reliable results. In that task, except setting the indications the appropriate tools for gaining of the need data have to be utilized - such as observation, experiences of the individuals and legal persons who were undertaking the procedures; data from state institutions as well as economic calculations upon costs, benefits and trends (Shikova et al., 2018).

Such a detailed survey in all its complexity is not (yet) performed on a state level although there are official methodologies for measurement of the specific aspects (Methodology, MISA, 2013). This paper also takes into account the latency at which legal novelties are implemented, as only by late 2018 did appellate institutions register actual new cases where parties in administrative procedures summoned



provisions from the new Law and not the previous (not out of force) version.<sup>1</sup> Due to the lack of the official data, this paper relies on the surveys and research performed by different think tanks and NGOs working on the sphere of public administration and good governance and summarize the general observation after the introducing of the new LGAP. If the new Law provides a higher quality of services, we may hypothesize there would be fewer appeals and fewer lawsuits against administrative decisions. One expected outcome in appellate procedures is more second instance decisions being adopted in full merit meaning that the appellate institutions would resolve cases in full thus providing a direct service to citizens and businesses.

## **Methodology and indicative findings**

The paper represents findings deduced from qualitative data analysis, predominantly via in-desk research (Barakso, Sabet and Schafner, 2014) of available official records, legislation, relevant published reports and previous studies. Positions expressed in the paper and concepts used are drawn and referenced according to consulted scholarship.

Based on the analysis of the available (published) surveys and studies, there is an indication that there is an improvement on the level of satisfaction of performing the public services, but that is far from sufficient. The quality of the services is still not satisfactory – on central and on the local level of administration as well when the services are provided by the private or public providers. Among the most common envisaged aspects is unclearness of the procedures.

As an example, if we take into the account services provided by the state and their quality (there are around 150 public services), the biggest number of the complaints of the citizens are because of the problems connected with insufficient coordination between the institutions (Ombudsman report 2016). In that regard, only 18% of the citizens think that work of administration is good (Evrometar, Challenges and Changes, 2017); only 19.3% think that public administration in the Republic of Macedonia is fast in delivering its services to the citizens", and just 21.2% agreed that the public administration delivers quality services. In using of the public administration services, as most common problems the citizens are identifying the unclearness of the procedures (13.88%); the poor quality of services 8.85%) and unprofessional/poor employee behavior (8.53%) (Challenges and Changes, 2017).

If we analyze the situation on a local level, based on the public opinion surveys - only 13% of the citizens are satisfied with the service provided in the helping manner from the persons in charged and the vast majority (more the 70%) is indifferent – potentially indicating that there is no significant change in

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behaviors. As for the expected efficiency of the administrative procedure – the “single access point” is realized only in 15% of the municipalities. When it comes to providing documents by the official procedure only 7% of the municipalities are providing documents by the official authorization. The same indications pointing of less improvement are noticeable when analyzing the lasting of the procedure and resolving of the cases (8% of the respondents think that is great; 19 % very well; 15% are indifferent, 35% good) (Kurcieva & Todevski, 2018).

Analyzing the surveys dealing with the perception of the quality of the services in different sectors can show that the situation is similar. For example, in the sphere of public health, more than 28% of the respondents think that services are bad (Atanasova – Toci, M., 2018); in the social sphere the average satisfaction from the institutions is around 20% (Gerovska – Mitev, M., 2018); and the satisfaction on the communal services in the average is again around 25 -30 %. As key problems related to the communal services in most of the cases are not answering the complaint; not appropriate relations with the users, high prices, termination of the service and similar (more than 30% relies on that basis) and in most of the cases (more than 40%) the problem is not solved or it is partially solved (Gocevski, 2017).

Considering the legal protection of the citizens and possibilities for realization of the administrative justice, citizens are not informed about the changes in the procedures; many cases are staying "in a drawer"; the additional documents are requested from citizens and they are not previously informed that they are needed; even when there are executive decisions for reimbursement of funds, the citizens are forced to exert pressure on the institutions for their implementation; in the pre-election cycles the public administration completely stagnates in its work; citizens do not know how to fill out the forms, and employees are not helping them (Challenges and Changes, 2017). Moreover, in less than 15% of the total number of the administrative cases, the citizens decided to demand legal protection. That can be due the fact that big number of citizens do not have information about where they can exercise their right to appeal or filed a lawsuit when they are not satisfied with the decision or the service; great number are not even informed about the existence of different commissions and bodies that can protect their rights - nor they do believe in the existence of administrative justice (Gocevski, 2017).

There is no doubt that the system of administrative-legal protection is complex and it involves hundreds of decision-making institutions that lack mutual communication (whereas even the delivery of records can last for months). In the same time, the frequent changes in systemic and sectoral laws can introduced uncertainty in the system of administrative-legal and administrative-judicial protection (Gocevski, 2017). However, a general observation based on the analysis of the undertaken studies in separate segments, indicates that despite the tendencies for modernization the quality of the public services provided to the citizens in R. Macedonia is below the expected level and the administrative justice remains distant and difficult to reach.

## Conclusion

In modern administrative state there are extended expectation for delivery of quality public services for citizens and ensure a solid legal administrative legal protection when the expectation are not met. The changes in the new legislative framework for general administrative procedure and its tendencies to be in line with modern European standards, created opportunities as well challenges. The challenges arose due to the large number of stakeholders potentially involved in the content of the legal framework that regulates the general administrative procedure, the changes in the forms of legal protection, the types of acts and actions upon which the legal protection is provided, high standards and the vast number of regulations that need to be aligned.

Analysed data gained from the reliable surveys are indicating that the provision of public services and administrative legal protection in the Republic of Macedonia have improved from the past, but there are still ongoing problems. However, only in ideal conditions, the benefits of the adopted solution can be immediately visible and significant. In order to overcome the misbalances, the employees or public service providers need to adjust the administrative behaviour to the new standards and show clear determination for providing quality services acting effectively and efficiently. To overcome the legal uncertainty, the compliance with the provisions of the Law must be ensured. Only the strict adherence to the principles of administrative procedure will provide adequate legal protection and legal certainty in general (Shikova et al., 2018).

If the involved stakeholders successfully incorporate the changes, it is expected that the efficiency and predictability of the procedures will increase. That will lead to a higher level of legal certainty, improvement of the general level of satisfaction with public service delivery, bigger trust in the institutions and ultimately will raise the potential of the society as a whole.

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