

Realizing Citizens' Rights through the Administrative Procedure and Administrative Dispute in the Republic of Macedonia

*Borče Davitkovski**

*Ana Pavlovska-Daneva***

UDK 35.072.23(497.17)
342.722(497.17)

Prethodno znanstveno priopćenje (preliminary scientific report)

Primljeno 8. 12. 2008.

Prihvaćeno 17. 3. 2009.

The first Macedonian Law on General Administrative Procedure was passed in 2005, and was aimed at modernizing administrative procedures. The amendments of 2008 challenged certain core solutions, such as the silence of administration institute. There is change from negative presumption to positive presumption when first-instance public administrative body is inactive. In other words, when such a body, at citizens' request, does nothing within certain

* Borče Davitkovski, PhD, professor of Administrative Law and Public Administration, Faculty of Law »Justinianus Primus«, University of »Sts. Cyril and Methodius« Skopje, Republic of Macedonia (redoviti profesor upravnog prava i javne uprave Pravnog fakulteta Justinianus Primus Sveučilišta »Sv. Ćirila i Metoda« u Skopju, Makedonija)

** Ana Pavlovska-Daneva, PhD, assistant professor of Administrative Law and Public Administration, Faculty of Law »Justinianus Primus«, University of »Sts. Cyril and Methodius« Skopje, Republic of Macedonia (docentica upravnog prava i javne uprave Pravnog fakulteta Justinianus Primus Sveučilišta »Sv. Ćirila i Metoda« u Skopju, Makedonija)

term, the presumption is that it accepts citizens' request. The aim of such a legislative solution is to increase the efficiency of public administration. Detailed legal analysis of the new regulation is presented in the paper. It is followed by similar analysis of the Law on Administrative Disputes of 2006. Numerous shortcomings are identified and certain proposals for improvement are presented in the paper.

Key words: general administrative procedure – Macedonia, administrative dispute, silence of administration, legal protection of the citizens' rights, administrative efficiency

1. Introduction

The Law on General Administrative Procedure of the Republic of Macedonia was passed on 26th May 2005 (LGAP, National Gazette of the Republic of Macedonia, NGM No. 38/2005). It represented a logical continuation of the founding principles that were a basis for the first codification of administrative procedure in the world – the Austrian Law on General Administrative Procedure of 1925. Using the groundwork of this Law, the Kingdom of Yugoslavia codified the conduct of administrative procedure in 1930, thus becoming the fourth nation in the world that passed a law on general administrative procedure. As it led to the creation and development of an entirely new kind of societal relations, in 1956 a new LGAP (coming into force in 1957) was passed. Even though this new law contained changes, it was still based on the first Yugoslav law. A few unimportant, yet still necessary revisions of the same law were made in 1965, and later in 1977 and 1978.

Finally, in 2005, the first Macedonian LGAP was adopted (following the independence of the Republic of Macedonia) that stipulated new and more adequate methods for delivery, as well as new principles of administrative procedure that were in accordance with modern times. However, the legislation that preceded the current LGAP was an excellent basis for regulating a large number of issues connected to realizing the basic activities of public administration – deciding in administrative cases, i.e. passing concrete administrative acts. Still, the legislator was careful not to destroy the fundamentals of the law.

The latest amendments to the LGAP from 2008 (NGM 10/2008) were not numerous. Nevertheless they were the first attempt to change the

core of some systemic solutions that had existed and functioned within the legal order for decades. An analysis of the institute of the silence of administration and its legal regulation is of special importance.

2. Content of the institute of silence of administration

What does silence of administration mean in everyday lives of citizens? It means ignoring the requests filed with public administration, i.e. not answering citizens' requests within the periods determined by law.

What is the legal importance of this institute? For the first time since the beginnings of administrative-procedural rules in Macedonia, a single answer to this question cannot be found. Until September 2008, the silence of administration represented a basis for initiating an appeal procedure or the initiation of an administrative dispute.

A characteristic of the appellate procedure in the case of silence of administration is that an appeal can be filed directly to the second-instance body. The appeal does not have to be given to the body with which the initial request has been filed. In such cases (when the first-instance body did not make a decision within one month, and for more complicated cases within two months; while in the newest amendments to the LGAP the periods are 15 and 30 days, respectively), the second-instance body acts on the appeal in the following way. First, it can request the first-instance body to give the reasons for not making the decision within the stipulated period. If it finds that the reasons for not making the decision within the stipulated period have been appropriate, or if it happened because of liability on the side of the appellant, the second-instance body will give the first-instance body a period (not longer than 30 days) within which the decision must be made. However, if the reasons why the decision has not been made within the stipulated period are not acceptable, the second-instance body can request the case file from the first-instance body. If it is possible for the second-instance body to decide on the case on the grounds of case file, it will make a decision. If it is not possible to do so, it will conduct a procedure, or, exceptionally, will order the first-instance body to conduct a procedure and send back the information within a stipulated period. After receiving the information, the second-instance body will make a final decision. This decision is treated as a second-instance decision even though a first-instance decision was not formally made.

1. In which cases does silence mean acceptance, according to the latest legislative changes

One of the most important changes is the introduction of the new Article 129/2 of the LGAP. It has stipulated that silence of administration means the acceptance of citizen's request. In order to explain the essence of this new article and its applicability or inapplicability in practice, it is necessary to give an overview of several changes that led to the change of this article.

The first, more serious, change was made in the part of the LGAP containing the basic principles of administrative procedure. It concerned the two-instance principle, i.e. the right to appeal contained within Article 14/1 of the LGAP. Before the changes, it stated, »The party has the right to appeal against a first-instance decision«. Now the two-instance principle cannot remain the basic principle of administrative procedure, as the article states, »The right to appeal against a concrete administrative act passed in a first-instance procedure by a state administrative body, organization, or other body with public competences, is regulated by law«. This amendment is an attempt to operationalise an amendment to the Constitution of the Republic of Macedonia, according to which an appeal or other legal protection against the first-instance administrative acts is allowed. So, when there is no higher body than the one that passed the first-instance administrative act, instead of appeal, the Constitution allows for a direct initialization of an administrative dispute. This article of the Constitution is interpreted by the legislator very rigidly and narrowly, because the possibility the Constitution grants does mean a divergence from the two-instance principle, but rather an exception. Instead, the amendments to the LGAP have stipulated a full derogation of this principle, even as a general principle, and the citizen's right to appeal has become a possibility that can (but does not have to) be applied in each individual substantive law. Nevertheless, this article remains part of the Law titled »Basic Principles«. This is merely another nomotechnical mistake of the legislator, or more precisely, the creator of this legal text.

We can proceed to the analysis of Article 129, which is presented to the public as a foundation for exceeding the efficiency of public administration and »regulatory guillotine«. In the first part of Article 129, a novelty is implemented regarding the form of the request through which a party can initiate an administrative procedure. Prior to the amendments of 2008, there was no request for such a form. With the latest amendments to the Law, there is now a possibility (not an obligation) that a special

law may define the form and content of the party's request, as well as the term during which a body must make a decision. This part of Article 129 is of the utmost importance because silence of administration will mean acceptance of the request only if the conditions are fulfilled. Therefore, in order for »silence-acceptance« provision to produce the expected results, it is necessary to fulfil all the following conditions stipulated by the law 1) it has to be a procedure initiated by a request of a party; 2) the form and content of the request must be established by the law; 3) the period for acting, i.e. passing a decision, by the body competent for acting in the procedure is established by a substantive law.

These are the conditions stipulated by Article 129/1. In the second subsection of the same Article it is stipulated that »In the cases from Section 1 of this Article, if the competent body does not decide within the stipulated term, it will be considered that the request of the party is accepted within the procedure and conditions stipulated by law«. At first sight, these legal changes do not stipulate stringent conditions with regard to the application of the new »silence-acceptance« principle. However, the situation is entirely different. In order for the new procedural principle to be applied in an administrative procedure, it is necessary to change even the existing substantive law through which government bodies and organizations with public authority function when deciding on citizens' rights, obligations and legal interest. Thus, every substantive law must stipulate the form and content of the acts that each competent body will pass. According to the LGAP, it must also stipulate a specific term if the legislator wishes to derogate the general terms for conducting administrative procedures.

The amendments to the LGAP connected to the institute of silence of administration are also related to the shortened terms for passing administrative acts. Thus, the general term for simple administrative cases, in which not all legal procedural actions are necessary, is shortened from one month to 15 days. In complicated cases, where it used to be two months, the term has been shortened to 30 days.

Furthermore, Article 221/2, which stipulates that if a competent body does not make a decision within the stipulated term and does not send the administrative act to the party; and an appeal is permissible, the party has the right to appeal as if his/her request has been rejected. The fact that this Article remains within the legal framework is odd, because it is in full collision with the newly legislated »principle« that silence of administration means acceptance of the request. Nevertheless, there has been an amendment to Article 221/2 stating, »Unless it has been stipulated

differently by the law«. That would mean the creation of yet another, fourth condition for a request that is not answered, to be presumed as accepted – in substantive laws it is explicitly stated that silence does not mean rejection, i.e. that silence represents acceptance. Now we can refer to the four conditions that must be fulfilled for each concrete case to lead to »silence-acceptance«:

- 1) the procedure begins with a request of a party;
- 2) the form and content of the request are established by law;
- 3) the term for acting by the body conducting the procedure is stipulated by a substantive law;
- 4) it is established by the law that the party does not have the right to appeal as if its request has been rejected, when the decision has not been made within the stipulated term.

Article 227 of the LGAP regulates the competences of the bodies deciding on appeals in administrative procedures. Partial amendments have been made to this article. With regard to the concrete acts passed by the Government, the latest legal changes have stipulated that administrative dispute can be launched against these acts by filing a lawsuit, since appeal is not permitted. This change represents an attempt at conformity with the Law on Administrative Disputes (LAD), which was adopted one year after the LGAP (2006), and where there is an article stipulating that all concrete administrative acts passed by the Government are under jurisdiction of the Administrative Court. Another novelty within the administrative procedure is contained in the amended Article 227/5 of the LGAP that stipulates, »In all cases within administrative procedure when a second-instance decision-making body has not been defined, the party can decide to file a lawsuit and launch an administrative dispute against the first-instance decision«. Article 227/5 would make more sense if Article 227/1 were abrogated. Article 227/1 stipulates that the body competent for deciding on appeals against first-instance administrative acts is the government committee for second-instance administrative decisions. Recently, an excellent idea has been circulated in the public – it suggested eliminating the second-instance government committees that are established in accordance with substantive laws. It is not difficult to conclude that the Government prepares amendments to each substantive law that regulates specific kinds of administrative matter, including the articles within these laws that stipulate the existence of second-instance government committees and their competences. In order to abolish these

government committees, it is necessary to abrogate the article from the LGAP that establishes them as second-instance bodies.

Article 242 has been amended with subsection 3, according to which a second-instance body, when deciding on an appeal for the second time (against an administrative act that has already been nullified once and returned so that a second decision is permitted), is obligated to solve the case in a competent manner. This should be the brightest part of amendments to the LGAP. It also means strengthening the responsibility of both the controlling and the controlled bodies. The competences of the Administrative Court to decide in full jurisdiction have been widened immensely by both the LAD and the LGAP. When deciding for a second time on appeal against an already abrogated administrative act, the second-instance (control) body must solve the case and prevent the party from endlessly abusing his/her procedural rights. Whatever may be the case, such a situation renders possible the silence of second-instance administrative bodies. Since in such a situation the legislator has not presumed that silence is acceptance, the articles from the LAD remain in force. According to these articles, the party has the right to a lawsuit against silence of the second-instance body, as if his/her request has been rejected.

2. The procedure according to which silence should become acceptance

After a short overview of the most important amendments to the LGAP connected to the institute of silence of administration and its meaning, we will proceed by analysing the final two articles related to the procedure through which »silence is acceptance« principle becomes operational. Concretely, we refer to Articles 293/1 and 293/b that have been transferred into an entirely new chapter XVIII titled »Special articles for exceptional cases when Article 129 of this Law is applied«. Through these, an entirely new, specific, and fairly complex administrative procedure is established; one that must be undertaken only if the previously mentioned four conditions, according to which silence becomes acceptance, apply. In essence, through these two articles the legislator has intended to implement declaratively the principle contained in Article 129, which states that silence sometimes becomes acceptance. The procedure is as follows:

- 1) The condition that form and content of a party's request must be regulated in advance, so that not answering becomes acceptance, is reemphasised once again. Still, a serious problem arises because of the contradiction between the two articles from the same Law – Article 129/1 stipulates that the form and

content of the request should be determined by a substantive law, while Article 293 stipulates that this can be done by either a substantive law or secondary legislation. The legislator has made a flagrant mistake by allowing the contradiction of two articles from the same amendments, so that bodies conducting administrative procedures now have discretion to choose which article from the Law they will apply. It is unnecessary to outline the changes created by the regulation of an issue with a law and its regulation with secondary legislation.

- 2) The request should be filed in a form prepared by the body conducting the procedure. Without such a form, the party cannot initiate an administrative procedure. The body must provide written instructions for filling in the form.
- 3) The party is obliged to fill in and file two identical forms (and one enclosure of evidence) of which the second (that must be signed by the entity authorized for receiving filings) is kept by the party. The entity authorized for receiving filings is obliged to record the name of the body, the date of reception, and any enclosures on the forms.
- 4) The competent body cannot remove the filing as incomplete if it is correctly filled in and has all the requested and necessary supplements incorporated and filled in within the form.
- 5) The competent body is obliged to decide on the filing in a term determined by the substantive law. It must be emphasised that in the entire procedure where silence becomes acceptance the general terms stipulated in the LGAP do not apply, but rather the terms stipulated in the specific substantive laws are applied, if such exist.
- 6) The competent body has a period of three (3) days from receiving the filing to check whether it contains all the necessary information. If the filing contains formal deficiencies, the body will require the party that filed it to remove them within a stipulated period. If that is not done, the body will pass an act establishing that the filing has not been filed at all (a specific appeal against such a procedure is allowed).
- 7) Within Article 293/b, the legislator has described what will occur if the competent body is »silent«, i.e. does not make a decision within the term established in the substantive law. In such a situation, the party that filed the request (from the expiry of

the period for making a decision) can, within 3 days, require the head of the competent body to make a decision concluding that all conditions for silence of administration have been fulfilled, and that the request is accepted. This would mean that if in the substantive law there is a term of 8 days for the competent body to make a decision, and it does not do so, the citizen within the subsequent three days can refer to the official. In a case when the three-day-term has expired, the party can only file two new forms once again; they would need to be archived, completed with supplements, etc.

- 8) Once an official has received a request from a citizen (on the grounds of silence of administration) the official is obliged, within five days, to make a decision that will declare that the preconditions for silence of administration exist, and that the party's request is accepted (Art. 129/a). The official declares an existing situation in this declarative act. It is well known in administrative-legal theory that declarative administrative acts do not create action themselves, but rather serve as a basis for passing constitutive acts, which can create genuine legal consequences. That is why the legislator has been inconsistent and has not answered the question of where the party should refer, and what he/she should do with the official's decision, which in a declarative manner states that the request of the party is accepted. Does the official *ex officio* send this decision to the competent body that has been silent, or does it have to be done by the party? Is the competent body, after receiving the decision, obliged to pass an act that it previously has not, in the stipulated term? Does the official have the right to order the competent body to pass certain administrative act? Does this not lead to breaching of the principle of autonomous deciding on administrative issues, as a basic principle of the Law on Organization and Functioning of the State Administrative Bodies? Many issues have arisen with the implementation of amendments to the LGAP, and the legislator has not answered proficiently, i.e. has left a curtailed legal text.
- 9) The situation that is solved with the new Article 293b/3 is »silence of the official«. Thus, the legislator has established that if the competent official does not pass the appropriate declarative act within five days, the party has the right to initiate an administrative dispute. This stipulation deserves the strongest dis-

approval. It is completely unclear against whom the party will initiate an administrative dispute. Administrative disputes can only be conducted against final administrative acts, yet here, because of the new concept of terms and deadlines, it is unclear when decisions not made by competent bodies become finalized. Actually, administrative disputes can only be conducted against decisions that have not been made by the official, which is not necessary to the party. On the contrary, it would mean a lot more to the party if he/she received the concrete permit or licence, rather than receiving a declaration that their request has been accepted. Thus, it would be much better if the party could file an administrative dispute against the body in charge of issuing specific permit. However, that is impossible because an appeal against the silence of administrative bodies is not permitted, only a request to the official to make a decision for declaring that the request is presumed to be accepted. There is no finality of the act so it is unclear how the Administrative Court will act on such lawsuits.

3. *Old-new shortcomings in the Law on Administrative Disputes (LAD) of 2006*

The LAD granted the right to conduct administrative disputes against secondary legislation, i.e. regulations passed by the Government and by-laws passed by the bodies with public authority for the first time (Article 2/2). Of course, some limitations were stipulated (to prevent conflict of competences between the Administrative Court and the Constitutional Court) according to which these regulations can be overseen in the constitutional-judicial control only if they regulate individual relations. The Government often passes decrees, and thus fully regulates *inter partes* relations i.e. enforces obligations or limits the rights of specific subjects, which in such situations have no judicial protection of their rights. That is why it would have been wise to keep such an article within the LAD: Unfortunately, the Constitutional Court (finding that such an article belongs among its competences) abrogated this article by a decision of 13th February 2008.

Since 2007, not a single step has been taken to amend the LAD. This only makes the work of administrative judges harder and worsens the citizens' position as parties in administrative disputes. It is necessary to reiterate

the most important legal inconsistencies once again and make suggestions for their surpassing.

The number and types of regular and special legal remedies and the competences of the Supreme Court within the framework of administrative-judicial protection are among the most important and complex issues. The basic intention of Article 40 is to strengthen the efficiency of administrative dispute. However, at the same time it contains colossal technical mistakes that cause substantial problems during the implementation of the LAD, and complicate everyday duties of the Administrative Court.

Concretely, Article 40 enumerates all the situations where the Administrative Court is obliged to decide with full jurisdiction. It refers to a wide array of subjects, i.e. it lists the cases of obligatory, competent judicial decisions that as a rule go further than the previous legal solutions (in practice this led to a situation where there are no cases of full jurisdiction). If the new legal solution is applied in practice, administrative dispute will have the character of a dispute of full jurisdiction, and by exception a dispute of legality. However, for such a noble idea not to be misused nor turned into an empty promise, it is necessary to amend Article 40 immediately. Specifically, this article stipulates that the Court must decide in full jurisdiction in the following cases:

- if it is related to wrong application of the law;
- if it is related to disputes on administrative contracts;
- if it is related to the acts passed in a misdemeanour procedure;
- if it comes to the prolonging of a procedure, and is related to a matter in which the factual situation is established in an administrative-judicial procedure;
- if the competent body, after abrogating one administrative act, passes another administrative act contrary to the legal opinion of the Court, or contrary to the comments of the Court in relation to the procedure, so that the party files a new lawsuit, and
- in a situation where there is silence of administration.

In the first reading of the Article, it is obvious that lines 5 and 6 regulate exactly the same material i.e. they duplicate each other. Line 6 is wider than line 5 so it should be left within the new legal text, while line 5 should be abolished.

The last line is rather contemporary, since it is connected to the meaning of silence of administration. Administrative judges will face a very serious dilemma as to how to continue in the future.

Furthermore, Article 40/5 of the LAD contains a contradiction in relation to the solution contained within Article 40/1, line 6. Specifically, it defines the silence of administration as a matter on which the Court is obliged to decide in a dispute of full jurisdiction. In our opinion, such a solution should be supported. Nevertheless, within the same Article 40/5 it is stipulated that when a lawsuit is filed on the basis of silence of administration, and the Court finds it acceptable, it can accept the lawsuit by a verdict and choose in what manner the competent body will decide! This mistake seems technical at first, but in essence, it represents a preference of numerous problems and bewilderment when the Court decides upon a case. The Law stipulates two different imperative solutions for the same matter. This means that it is up to the concrete judicial council whether it will pass a competent decision that will fill the void that caused the initiation of proceedings and administrative dispute (public administration's failure silence, i.e. failure to decide on a party's request). Furthermore, the judicial council can also reach a verdict that will oblige the body that has been silent to make a decision – something that will obviously not please the party in pursuit of justice. We assume that the second solution will be applied more often in practice if it continues to remain a legal possibility. Such misjudgement and flippancy with technical preparation of such an important legal text should not have occurred. Unfortunately, this was not the only mistake in the LAD.

In an administrative dispute, appeal as a regular legal means, has always been an exception rather than a rule. Such an attitude can be supported with the fact that a regular two-instance proceeding exists within public administration, supplemented with seven special legal remedies, as well as the specialized administrative-judicial control over the legality of administrative acts. The possibility of appeal against all verdicts of the Administrative Court would only delay and tear the administrative-judicial protection. Thus, we feel that the appeal should only be allowed against the verdicts of the Administrative Court handed down in cases of full jurisdiction. Unfortunately, the legislator has not stipulated such a possibility within Article 40, i.e. in the Article where all cases of obligatory competent deciding by the Court are listed. In fact, the legislator has not established appeal as a regular legal remedy against the verdicts of the Administrative Court, at all. The appeal is mentioned only in one article of the Law, but it is an obvious mistake, i.e. a solution that has been taken over from the previous Law, or from one of the many draft versions of the LAD. Article 39/2 stipulates, »Appeal against a verdict from Article 30/3 of this Law is not permitted«, which is completely out of context. Oddly

enough, Article 30/3 stipulates the reasons why a party can request an oral hearing. It is obvious that an appeal cannot be in relation to this issue. The Administrative Court does not even decide with a formal verdict on conducting oral hearings.

What do the coarse mistakes of the people who drafted and adopted the LAD mean? A logical conclusion is that the Supreme Court no longer has any competences in relation to administrative disputes. As we can see from the analysis of legal provisions, the new LAD has not established appeal as a legal remedy in the administrative-judicial procedure. In relation to the renewal of the administrative-judicial procedure (as the only special legal method), the situation is even clearer. Article 45 of the Law established the competences of the Administrative Court in deciding on repetition in administrative-judicial procedures: »After a lawsuit for repeating the procedure, the decision is made by the Court that originally decided on the case, and to which the reason for repetition is related«.

From everything that has been said so far, it follows that the current form of Article 40 of the LAD is clearly inappropriate. It states, »Administrative disputes in the Republic of Macedonia are decided by the Administrative Court as a first-instance court, and the Supreme Court of the Republic of Macedonia decides (here a shortcoming is the implication »when«) on special legal remedies«. This article is not only inappropriate, but also incorrect in the part where the competences of the Supreme Court are outlined!

What is strange, and even disturbing, is that fact that the LAD was published in the National Gazette two years ago, and the Ministry of Justice has not taken a single step towards editing this illogical and imprecise text. This could have been done with the simplest amendments to the Law. A few months ago, the competent officials within the Ministry formed a committee for drafting the amendments to the Law on Administrative Disputes. Since the working group's suggestions have not been put up for public discussion it is assumed that they have still not finished.

Hoping that this paper will help to create a route for amendments to the LAD, particularly in relation to legal remedies that can be used in the administrative-judicial procedure, we suggest the following:

- Firstly, appeal should be introduced, but only against decisions of the Administrative Court made in cases of full jurisdiction, i.e. when an administrative case is decided by a verdict of the Administrative Court, which takes over the disputed decision entirely. In such a case, the right to appeal should be stipulated for both

the party that initiated the administrative dispute, and the body that passed the administrative act that has been nullified by the administrative dispute.

- Secondly, it is important to think about the court that will be competent to decide on appeal.

The following alternatives are possible, and each has advantages and disadvantages:

- Firstly, the Supreme Court can decide on appeals (which would mean burdening the highest court with administrative-legal issues – something that has so far caused the largest number of backlog cases in the Court). This would mean once again forming a specialized Administrative Unit within the Supreme Court. Nevertheless, this method would allow for devaluation as the basic means of appeal, and would ensure greater independence in deciding;
- Secondly, a council of five judges can decide on appeals, within the Administrative Court. This solution is in accordance with the principle of specialization of judges who decide on administrative cases, and is in line with the long awaited functional decentralization and intended relief of the Supreme Court. However, in this manner the issue of devaluation of appeal is put into question, as well as the objectiveness of decision-making. When first-instance and second-instance decision making is given to the same court, there is an obvious problem of jurisdiction.

3. Conclusion

Administrative-procedural matter is regulated by two key laws, which are adopted by a two-thirds majority in the Assembly of the Republic of Macedonia; the Law on General Administrative Procedure and the Law on Administrative Disputes. It is obvious that both laws need to be tested in practice, i.e. in real societal relations between administrative bodies and citizens. Unfortunately, certain legal provisions within both Laws lack applicability – their application in citizens' everyday lives seems to be quite impossible. Thus, the point of our paper is to inform about the mistakes, contradictions, and empty spaces that are found in these key procedural laws. The final decision in terms of (not)taking tangible measures remains

in the hands of the competent bodies – the Ministry of Justice, the Government and the Assembly of the Republic of Macedonia.

*REALIZING THE RIGHTS OF CITIZENS THROUGH THE
ADMINISTRATIVE PROCEDURE AND ADMINISTRATIVE
DISPUTE IN THE REPUBLIC OF MACEDONIA*

Summary

The first Macedonian Law on General Administrative Procedure was passed in 2005 and was aimed at modernizing administrative procedures. The amendments of 2008 challenged certain core solutions, such as the silence of administration institute. There is a change from negative presumption to positive presumption, when first-instance public administrative body is inactive. In other words, when such a body, at citizens' request, does nothing in certain term, the presumption is that it accepts citizens' request. The aim of such a legislative solution is to increase the efficiency of public administration. Detailed legal analysis of the new regulation is presented in the paper. It is followed by similar analysis of the Law on Administrative Disputes of 2006. Numerous shortcomings are identified and certain proposals for improvement are presented in the paper, both with regard to administrative procedure and administrative dispute.

Key words: general administrative procedure – Macedonia, administrative dispute, silence of administration, legal protection of the citizens' rights, administrative efficiency

OSTVARIVANJE PRAVA GRAĐANA U UPRAVNOM
POSTUPKU I UPRAVNOM SPORU
U MAKEDONIJI

Sažetak

Prvi makedonski Zakon o općem upravnom postupku donesen je 2005. da bi se moderniziralo upravno djelovanje. Novela Zakona iz 2008. donijela je duboke promjene nekih od ključnih instituta, kao što je šutnja uprave. U pogledu postupanja prvostupanjskih upravnih tijela prešlo se s negativne presumpcije na pozitivnu presumpciju – kad prvostupanjsko upravno tijelo u povodu zahtjeva stranke u određenom roku ne donese upravni akt, smatra se da je zahtjev stranke usvojen. Svrha je takvog rješenja povećati efikasnost u javnoj upravi. U radu je u detaljno analizirana nova pravna regulacija upravnog postupanja, kao i Zakona o upravnom sporu iz 2006. Utvrđeno je mnoštvo nedostataka te predloženo više poboljšanja, kako u pogledu upravnog postupka, tako i u pogledu upravnog spora.

Ključne riječi: opći upravni postupak – Makedonija, upravni spor, šutnja uprave, pravna zaštita prava građana, efikasnost javne uprave