

INITIATION AND CONDUCT OF ADMINISTRATIVE PROCEDURE

Milan Stipić, LL.M

ABSTRACT General administrative procedure act contains legal norms that are valid for all identical cases. In addition to the general, there are special administrative procedures, customized to the specific administrative areas. Procedure initiation is regulated. Administrative procedure can be initiated at the request of the proponent and ex officio.

When the official determines that the conditions for the conduct of administrative procedure are met, before making a decision, all the facts and circumstances relevant to the resolution of administrative matter have to be identified. When there are no legal requirements for the initiation of procedures, the official shall make a decision to reject the application of the party. The procedure is initiated ex officio when stipulated by law or when protection of public interest requires it.

When initiating procedure ex officio, the public authority shall take into consideration the petition or other information that indicate the need to protect the public interest. In such cases the applicant is not a party, and the official is obliged to notify the applicant, if initiation of procedures is not accepted ex officio. Based on the notification, the applicant has a right to complain, including the situation when there is no response within the prescribed period of 30 days.

Public authority may, therefore it is not obliged to, initiate administrative procedure by public announcement only in a situation where the parties are unknown, while it is obliged to initiate procedure by public announcement when this method of initiating the procedure is prescribed by law. Initiation of procedure with public announcement occurs in rare cases.

Due to the application of efficiency and cost-effectiveness principle, two or more administrative procedures can be merged into one procedure by a conclusion. The condition for this is that the rights or obligations of the parties are based on the same legal basis and on the same or similar facts. Modification of the application of a party is possible before rendering a decision of first instance, provided that the amendment request is based on the same facts. A party may withdraw their application, without the obligation to provide reasons for it. In such a situation a decision to terminate the procedure is made.

The settlement is in its legal nature a special kind of contract between the parties in a procedure, expressing their free will as a way of completion of administrative procedure. The settlement as a prerequisite for making the decision to terminate the procedure is not possible if it is contrary to law, public interest or the rights of third parties.

KEY WORDS: procedure, party, official, termination of administrative procedure, decision, complaint, settlement.

JEL: K20, K33, K42

1. INTRODUCTION

Administrative procedure is regulated in detail by legal principles of general administrative procedure. These principles regulate who participates in the procedure, what are the conditions, competences and obligations.

The phases and stages of administrative procedure are prescribed, the role of individual phases is described, as well as what actions are taken, by whom and in what circumstances. It is specified what categories of acts are passed, what is the possibility of their disputing, the defraying of expenses of the procedure and the party, the execution, and several other questions. With respect to the criminal, offense and civil, the administrative procedure is most common in practice, the implementation of which we may find in almost all activities and conduct of citizens and legal persons.

The most important source of rules of administrative procedure is General Administrative Procedure Act, representing the codification of rules of general administrative procedure (hereinafter APA)¹. By prescribing the fundamental principles, the act also includes the rules of that procedure, with provision of article 3 of APA allowing that special laws of administrative procedure rules be prescribed by means of a special act, which are to be implemented to that administrative area. According to this legal provision, a special regulation of administrative procedure rules, as well as deviation from those rules, may be possible only under strictly prescribed conditions, namely, if special prescription is necessary for action in individual administrative areas and if it is not contrary to fundamental provisions and the purpose of APA.

All the activities taken by an official² whilst conducting an administrative procedure can be subdivided into several phases. The phases of the procedure can be: initiation of the procedure, examination of the procedure, decision-making process-decision reaching pro-

¹ General administrative procedure act was promulgated by Croatian parliament (Sabor) at its session on 27 March 2009. The act is published in Official gazette Nr. 47/09 of 17 April 2009, and entered into force on 1 January 2010. With this act entering into force, the General administrative procedure act, Official gazette Nr. 53/91 and 103/96 RACRC (Ruling of Administrative Court of the Republic of Croatia) ceased to be valid.

² Definition of an official is prescribed by provisions of article 23 of APA. These provisions specify the following:

- (1) In administrative proceedings, an official shall act within the scope laid down for conducting the proceedings concerned by regulations determining the organisation of the public authority concerned.
- (2) An official conducting proceedings or deciding in administrative matters in a public authority shall have the appropriate degree of education, the necessary work experience and shall have passed the state professional exam.
- (3) When in a public authority there is no person authorised to decide in administrative matters, the decision shall be rendered by the head of the body.

cess on the matter, procedure of complaint and execution. The general goal of conducting a procedure in all its phases is regular and legal resolving of the administrative matter at hand. Without this phase, we could not talk about its existence. We shall therefore in the paper elaborate this first phase – initiation of the procedure.

2. MANNER AND TIME OF INITIATING A PROCEDURE

Administrative procedure is typically initiated upon a proponent's request with implementation of party – dispositive – principle or on official duty (ex officio or principle of officiousness - articles 40, 41 and 42 of APA, and exceptionally by public announcement, articles 40 and 43 of APA.

The procedure is considered initiated in the moment of an orderly submitted application to a public authority³. The party's application to exercise rights or protection of interest is considered filed within a set time limit if it has been received before the set time limit in the public authority competent for the ruling in that case. An assumption to a valid ruling is an application understandable by its content. Provisions of article 71 of APA cover the following: categories of motions, application to initiate an administrative procedure as a special category of motions, content of the application, manner of submission of the application, official's duty to confirm its receipt upon request, signature of application.

Besides the possibility of immediate submission, including the filing of an application for initiating the procedure by an oral statement before an official and on the records, the application may be submitted by means of post or submitted to the authorised provider of postal services. In that case, the day of submission to the post is taken as the day of submission to the public authority which it is addressed to, paragraph 1 of article 41 and paragraph 2 of article 72.

This does not exhaust the communication possibilities between the party and the public authority. Paragraph 3 Article 75 prescribes electronic communication. An application for initiating an administrative procedure submitted electronically is considered filed in the moment when it is noted on the server for sending of such messages. The public authority is obliged, without delay, in the same way, that is electronically, to confirm the receipt of the motion.

³ Article 1 of APA includes subjects obliged to act according to the provisions of APA. Pursuant to these provisions, mandatory applicants of APA are bodies of state administration and other state bodies, the bodies of units of local and regional self-government and legal entities vested with public authority, with the Act naming them uniquely as public law authorities. By introducing the phrase „public law authorities“ to the legal text, the phrase „public administration“ is abandoned. This is in the Final draft of General administrative procedure act, the second reading of the DA (Draft of Act) Nr. 277 explained as the following „...its legally-theoretical and experience-related terms make it too wide and unspecified“ and „...it most certainly better corresponds not only to the postulates of the new APA, but also to the good administrative practice of EU Member States, because it emphasizes more the aspect of public services with respect to the administrative conduct of the state in relation to the rights, obligations and legal interests of citizens and other parties...“, from part of the Explanation to the Article 1 of the Final draft of the General Administrative Procedure Act.

When in practice a new legal institute of a unique administrative place will have been realized, provided for by article 22 paragraph 1 of APA, viewed as the possibility of submission of several applications at one place to the public authority, with the applications submitted within a set time limit, it shall be considered that all the applications will have been submitted within that set time limit. The public authority that has received such applications shall deliver those, without delay, to the competent public authority.

With procedure *ex officio* there is no application by a proponent. The procedure *ex officio* is initiated in the moment when an official of a public authority takes any action with the purpose of conducting the procedure *ex officio*, paragraph 3 article 40 and article 42 of APA. No special decision is required in order to initiate a procedure *ex officio*. Several special laws impose an obligation to the official to inform the party to be participating in the procedure initiated *ex officio*. In such a case the content of the notice should include the legal basis to initiate the procedure, the indication of the case the procedure is referring to with the marking of the content of the public interest the procedure is initiated for, and some other matters of importance in the procedure at hand.

With the procedure being initiated *ex officio*, the official is obliged to take due care that it will not render a decision on the matter that is decided upon the party's application. Should this still occur, and the party subsequently either in utterance or tacitly does not agree to, application of provision of article 128 paragraph 1 provision 5 of APA would be implemented, namely, the decision would be proclaimed null. A null decision does not have a legal effect, therefore null shall also be deemed legal effects of that legal decision.

3. INITIATING ADMINISTRATIVE PROCEDURE AT THE REQUEST OF A PARTY

In matters where by law or by nature of things for initiating and conducting administrative procedure an application by a party is necessary, the authorised public authority may initiate and conduct the procedure only in case of such an application.

The way in which a party⁴ files a motion to initiate administrative procedure is prescribed by a provision of paragraph 1 article 41 of APA. According to this legal provision,

⁴ Article 4 of APA thoroughly specified the notion „party in an administrative procedure“. The provisions are as follows:

(1) Parties in administrative proceedings are natural or legal persons at whose request proceedings are instituted, or against whom the proceeding are raised or who have the right to participate in the proceedings for the purpose of protecting their rights or legal interests.

(2) Parties may also be bodies of state administration and other state bodies, bodies of units of local and regional self-government or other public law authorities without legal personality and their regional branches, i.e. branches or groups of persons associated by a common interest, provided they may hold the right or obligation which is being resolved in the administrative proceedings.

It should be noted that the definition of a party in an administrative procedure with respect to decisions of an earlier APA has been somewhat changed. Namely, the phrase „citizen“ has been replaced by „natural person“. In such a way a dilemma has been resolved with respect to the question does the notion citizen include also foreign citizens and persons without citizenship. Very significant is the novelty in the existing definition, namely, that processual capability of a party is also prescribed to public law authorities, although it is known that the Republic of Croatia is a legal person from the area of public law, and public law authorities for this legal person perform the given matters, now as parties in a procedure.

a motion to initiate the procedure the party may immediately file with a public authority in written form or orally on the records and may such a motion submit by post or electronically. In practice, the most common case for initiating the procedure is upon a party's request, addressed by the party to a public authority in written form. Submission by post follows. Less common is filing a motion in oral form on the records, and with the introduction of information technology in communication of public law authorities and parties, an increase in sending the application electronically has been noticed.

After having received the application, the official is obliged, without delay, to establish the following: is the public administrative body in accordance with the legally prescribed scope authorized to act in the administrative matter of the case, have all the assumptions been met, is the party's application incorrect.

Should the official establish there are no legal assumptions to initiate a procedure, a decision shall reject the application. As an illustration we can cite an example where a public authority has established a matter that cannot be resolved in an administrative procedure (namely, it was a matter of judicial jurisdiction). In such a situation the meritum of the application is not discussed, what is decided is whether upon the application of the party the procedure will be initiated or not. A party may file a complaint or initiate an administrative dispute against the decision to reject the application of a party.

When a public authority is not competent to resolve applications of a party in full, or only a part of those, provisions of article 18 of APA will be acted upon, regulating the rules of conduct of a non-authorized body regarding an application (motion). Should the official assess that the party's application is not accurate, it is not understandable or it is incomplete, the official is obliged to render a conclusion in which it will alert the party of the deficiency and specify a time limit within which the deficiency must be removed, with the alertion of legal consequences should the deficiency not be removed within the specified time limit. In case the party does not remove the deficiency, and the official person assesses that the motion cannot be acted upon, the official is obliged to reject the motion by a decision⁵. The provision of paragraph 2 article 73 of APA specifies this.

3.1. Merger and separation of administrative matters

The provision of article 44 of APA provides for the possibility of procedure against several persons to be merged into one procedure, or several persons may exercise their rights with only one application. Both cases require a conclusion brought by an official in whose job description there stands conduct of the procedure or decision on administrative matters, in accordance with the regulations on the structure of state bodies. An assumption to merge two administrative matters or more with the purpose of conducting only one administrative procedure are limited by three conditions, namely: the rights and obligations

⁵ An incorrect motion cannot be considered a motion according to which in the process of establishing the facts the official is ex officio obliged to collect data on the facts the official record of which is kept by the public authority the procedure is conducted at, that is an another public authority or court, paragraph 2 article 47 of APA.

of parties must have the same legal bases, rights and obligations of parties must be based on the same or similar factual state and the public authority conducting the proceeding is virtually and locally competent to conduct the motion in all the matters merging into one procedure. If the three conditions are not met simultaneously, merger of two or more administrative proceedings into one cannot occur.

Paragraphs 1 and 2 of article 77 of APA include the legal basis for rendering a conclusion on merger of administrative matters. There can be no complaint proclaimed against that conclusion, but the conclusion may be disputed by a complaint against the decision by which the meritum of merged administrative matters is being resolved, paragraph 5 article 77 of APA. If several administrative matters are merged into one procedure, each party in the administrative matter of the case holds the right to come forward individually.

Provisions regulating the merger of administrative matters are of dispositive legal nature, those do not have a binding character, meaning that such a possibility is assessed by an official of public authority conducting the procedure upon the application of several parties. When using such a possibility the official shall take into consideration the reasons of exercising the principle of efficiency and cost-effectiveness, article 10 of APA. Besides the possibility of merging the applications of more parties under the prescribed conditions, several applications of one party may be merged as well, and in both cases the official brings one legal record. APA does not provide for the possibility of merging several matters in one procedure before a public authority of second instance, however, the possibility of merging a complaint stated against two or more decisions of first instance under the same conditions as in the procedure before a body of first instance, is allowed by administrative court practice one has reached to by applying the provisions of article 127 of APA, Official gazette nr. 53/91 and 103/96.⁶

Besides the possibility of merging administrative matters, paragraph 2 article 44 of APA provides for the possibility of separation. The official shall first separate the process of deciding on administrative matters that had been merged into one procedure, in order to conduct special procedures of each of those separated matters. As with merger, a conclusion must be brought with respect to separation as well.

3.2. Amendments of the application

After the initiation of the procedure a party may, until the bringing of decision of first instance on the administrative matter amend his/her already filed motion or file another, a completely new application, paragraph 1 article 45 of APA. The requirement for this is that those applications be based on the same factual state in the assumptions that matter, with the legal basis not necessarily being the same. Without this requirement we cannot talk about the amendment of the application.

When the official confirms there are no conditions to amend the motion filed or to bring another application, a decision shall be rendered rejecting the application by the

⁶ See the ruling of Administrative court of Republic of Croatia Number: Us-11059/93 of 21 April 1994.

party, paragraph 2 article 45 of APA. The party has the right of complaint against such a decision. The explanation of the decision may include as reason to reject the application for amendment of an earlier filed or for filing a new application firstly the fact that the amendment or filing a new application is not based on substantially the same factual state.

4. INITIATING ADMINISTRATIVE PROCEDURE EX OFFICIO

There are two legal assumptions to be met in order to initiate a procedure ex officio. With respect to this, paragraph 1 article 42 of APA provides for two cases, namely: when the initiation of the procedure ex officio is prescribed by law or when this is necessary in order to protect the public interest.

When initiation of procedure ex officio is prescribed by law, the official is not in position to assess shall he/she initiate the procedure and whether the procedure is of public interest. Here, we mean that the legislator himself, by bringing the act for a specific administrative area, has chosen that a procedure be initiated ex officio and be conducted for public interest; for some cases the legislator has even prescribed the protection of public interest. Should it be established that in a procedure initiated there are no more prescribed legal assumptions for further conduct of procedure, the official shall terminate such a procedure by rendering a decision, the legal basis of which is included in paragraph 5 article 46 of APA.

When assessing the existence of reasons to initiate the procedure ex officio the public authority is obliged to take into account the petition and complaints⁷, namely, other notifications which refer to the need of protecting the public interest. Bodies of state administration and other state bodies, bodies of local and regional self-government, natural persons, economic and other subjects may be the sources of information should a procedure be initiated ex officio.

If the official establishes there are no conditions to initiate a procedure ex officio and that initiation of procedure will not occur, he/she is obliged to notify the applicant thereof as soon as possible, no later than within 30 days following the day petition i.e. the notification was filed, paragraph 3 article 42 of APA. The right to lodge a complaint is guaranteed to the applicant of the petition should the public authority not accept the proposal to initiate the procedure. Such a complaint, as a remonstrative legal remedy, is stated to the public authority who the notice on not accepting the initiative to initiate the procedure has been received from, and it may be stated no later than 8 days following the receipt of the notice. Not only is the complaint possible when the party's initiative is not accepted, the complaint may be filed even to the tacitness of a public authority with respect to the initiative to initiate a procedure. The complaint is decided upon pursuant to the provisions of article 122 of APA.

⁷ Petitions and complaints are a constitutional category included in article 46 of Constitution of Republic of Croatia, Official gazette Nr. 56/90, 135/97, 8/98 - consolidated text, 113/00, 124/00 - consolidated text, 28/01, 41/01 - consolidated text, 55/01 - correction, 76/10 i 85/10 - consolidated text. The provision is as follows: Everyone shall be entitled to file petitions and complaints and to submit proposals to governmental and other public bodies, and to receive responses thereto.

If the initiative of the applicant of the petition is accepted and the procedure is initiated ex officio on the basis of the received petition and the notice, the applicant of the petition in such a procedure does not act as a party. The same reasoning is taken by the Administrative court of the Republic of Croatia with respect to the implementation of article 124 of the earlier version of APA, so such a legal reasoning of the Court has the power of legal rules. Namely, according to the Conclusion of the assembly of judges of the Administrative court of the Republic of Croatia rendered on 15 March 1994 the inspection process may only be conducted ex officio unless the law itself does not state otherwise. The reasons are:

The inspection procedure to protect the public interest is initiated by an administrative when in hold of knowledge of existence of the facts that require a conduct of procedure as prescribed by provision of article 124 paragraph 1 of General administrative procedure act in the Republic of Croatia, and where it is not stated that such a procedure may initiate a party as well.

In material law it may be prescribed that even a party may file an application to initiate a specific inspectional motion.

Normally, when a person requires an inspectional procedure, and in substantive law there are no special provisions regarding this, the request has a meaning of a petition the organ is not obliged to render any decision about, but it only must take it into account, because this is a warning of the occurrence of such a factual state that it imposes to him/her the obligation of initiating the procedure in order to protect the public interest.

A party suffering damages due to failure to initiate an inspectional proces has another legal path that may protect his/her right. The party may ask in a judicial procedure damages, that is the removal of the danger from creation of damages or require the protection of freedom and rights guaranteed by the Constitution, when those freedoms and rights are breached by work of an official according to the Act on taking over the administrative disputes act.⁸

There are other cases (besides in matters of inspectional supervision) in which the motion is initiated ex officio, and the traits of the protection of public interest are evidenced in that the inspectional supervision is organized by the state, the motions are initiated ex officio, and the protection of the parties – consumers, namely the users of services is, basically, free of charge to them.

5. INITIATION OF ADMINISTRATIVE PROCEDURE BY PUBLIC ANNOUNCEMENT

Initiation of procedure by public announcement is a specific way of initiating a procedure ex officio and it represents an exception to the rule that an administrative procedure

⁸ On initiation of procedure due to filing of petition the Administrative court of the Republic of Croatia has stated itself in actual cases. According to the Ruling U-2683/80 of 9 January 1981 - By filing a petition to an inspectional organ to take certain measures against the persons performing professional activity without the authorisation of the competent organ, the applicant does not acquire the function of a party in an administrative procedure, nor the legitimation to file a complaint against the conclusion of the organ of first instance, due to its failure to render a conclusion regarding the petition within a statutory time limit. Or Ruling Nr Us-9836/01 of 12 January 2006 – A body is not obliged to render a conclusion upon an application, but inform the applicant on the inspectional measures taken.

is initiated according to a specified person by name or more of them. Provision of article 43 of APA stipulates this way of initiating a procedure.

There are two legal reasons when a public authority may by public announcement initiate a procedure, namely: when the parties are unknown or when such a way of procedure is prescribed by law. Given the fact that the procedure is initiated according to a greater number of persons that are unknown to the public authority, these persons have in common only the way of initiating the procedure. Such a procedure should be available to all the parties it applies to, regardless the public announcement not being considered an administrative act, namely, it does not bring neither a conclusion nor a decision. Initiation of procedure by public announcement has more of a delivery meaning in the sense of article 95 of APA.

The content of the announcement by which the procedure is initiated should have the following notes, necessary for participation of a party in a procedure: designation of administrative matter (e.g. expropriation due to motorway construction on section YX), specification of the persons it is referred to – this is not a list of individual persons but some other characteristics of those persons – (e.g. all the owners and landlords of real state at the section of road construction are summoned), the way those persons participate in the procedure – in person or via a proxy – the time limit within which the persons the announcement notice refers to must act upon, and the warning of the consequences of not answering to the public notice within a specified time limit.

Public announcement must include a time limit of at least 30 days to answer to the public announcement.

An alternative way of posting of public notice is prescribed, official gazette (e.g. official gazette of the Republic of Croatia is „Narodne novine“), a means of public communication or any other adequate way which will enable due information about the announcement to the persons invited. The form of posting public notice and initiation of administrative procedure, taking into consideration the efficiency of the notice, is decided upon by an official of a public authority before which the administrative procedure will be conducted.

To our mind, after an administrative procedure has been initiated by public notice, it can be considered that the party has been summoned orderly to an oral hearing, and in case of failure to attend the hearing due to any unjustified reasons, the official may conduct an oral hearing without the party's presence, paragraph 5 article 45 of APA.

6. WITHDRAWAL OF THE APPLICATION AND TERMINATION OF PROCEDURE

In the course of a administrative procedure as a whole a party may, without stating the reasons, withdraw from his/her application. The statement expressing the withdrawal from the application must be clearly specified and not conditioned by anything. Given that administrative procedure of both first and second instance make one whole, a party may withdraw from the motion (application) in the procedure of the first and (from complaint) in the procedure of second instance.

Withdrawal by a party from the application is a logical consequence of his/her disposition with the application, especially when the procedure, without the request by a party would not be possible to initiate. It is common that the party shall withdraw from his/her application in written form which is immediately submitted or delivered to a public authority conducting the procedure. However, permissible is withdrawal from application by oral statement on the records or electronically. We should note that withdrawal from application in the course of the procedure before a body of second instance is not the same as withdrawal from complaint. Regardless the decision on the termination of the procedure being rendered in both cases, paragraph 2 article 46 of APA provides for the decision to withdraw from application, and paragraph 3 article 106 provides for withdrawal from complaint. When a party withdraws from complaint, a decision of first instance becomes executive as if there was no complaint at all. Decision on termination of procedure, if we are dealing with a two-party matter, should be delivered to the opponent party. The explanation stands in the fact that the opponent party as a participant in the procedure is entitled to know the outcome of the procedure he/she participated in. Additionally, by delivery of such a decision to the opponent party, a possibility of filing a complaint is available, and if we are dealing with an executive administrative legal record (decision of second instance becomes executive by delivery to the party), an initiation of an administrative dispute is permissible before the competent Administrative course in Zagreb, Rijeka, Osijek and Split⁹.

Decision on withdrawal of the procedure shall be brought *ex officio* and in the case when from conduct of the party or from other circumstances it may be concluded that the party has withdrawn from the application. This can be a situation in which a party has not filed a proof of filing an application within a given time limit to resolve the prior matter.

Legal consequences of termination of administrative procedure due to party's withdrawal are equal to those as if the procedure has not been conducted.

In a situation where a party shall withdraw from application and the official assesses the matter is of public interest, the procedure shall not be terminated, but continued by conducting such a procedure. It remains unclear should in such a case the official render a special decision on continuation of the procedure. To our mind, in order to continue a procedure it is not necessary to render a special decision because the party will be able to contest the decision by a complaint, although it was him/her that withdrew from the application. A possibility of termination of administrative procedure is provided for even when the party does not withdraw from its application, paragraph 5 article 46 of APA. Withdrawal of administrative procedure even when the party does not withdraw from his/her application occurs when the official establishes there are no more assumptions to conduct a procedure. Even in such a situation, namely, when reasons of termination of legal assumptions to conduct a procedure come about, a decision is rendered and it is delivered to the party in one of the ways of prescribed forms of delivery according to the provisions of articles 85 to 95 of APA.

⁹ See Administrative disputes act Official gazette Nr. 20/10, which entered into force 1 January 2012.

7. SETTLEMENT OF PARTIES AS A WAY OF TERMINATING AN ADMINISTRATIVE PROCEDURE

Administrative procedure may terminate not only by rendering a decision entitling to a party a right or imposing an obligation, or by rendering a decision on termination of the procedure due to party's withdrawal from application, but by settlement of parties¹⁰ as well. It is in the interest of the parties – legal and natural persons -, but also of the social community, to have as less as possible disputes. Consequently, article 57 of APA includes provisions on settlement as a way of termination of procedure (settlement as executive decision); in such a procedure, however, also participates the official of the public authority where the procedure is conducted.

7.1. When settlement is possible

When two or more parties with opposing interests participate in a procedure, the official shall try to reach a settlement in the course of the procedure, either completely or with individual issues contested paragraph 1 article 57. Emphasized clearly is the role of the official on reaching the goal of termination of procedure by settlement of parties completely or with individual issues contested. Accordingly, the official is obliged to offer legal aid to the parties, bounded by article 7 of APA, the principle of aid to the party, especially in the part referring to the aid including the settlement not being to the detriment of the rights entitled by law.

When parties reach a settlement (completely) on all the items contested, we are dealing with a complete settlement. Partial settlement is the one where parties have settled only on some of the matters contested. A settlement cannot be stipulated if all three conditions have not been met, namely: mandatory is a two-party or multiple-party matter, applications of parties are opposing, in question are only the rights the parties freely dispose of (typically, a settlement in legal matter in the procedure conducted in public interest is excluded).

The most convenient and the most common is the phase of administrative procedure in which a settlement may occur is oral hearing of the procedure of first instance. According to paragraph 1 of article 54 of APA, an oral hearing is mandatory to precisely for resolving matters in which two or more parties with opposing interests participate. Additionally, APA does not prevent the parties to decide on their own outside the main dispute, even when not invited, to approach the authority conducting the procedure with a purpose of reaching a settlement. Due to the stipulation of the legal norm in the part of paragraph 1 article 57 of APA, „the official shall endeavour to reach a settlement between the parties throughout the entire course of the procedure...), the possibility of reaching a settlement between the parties completely or in individual issues is not excluded and in the procedure of second instance, all the way until an authority of second instance does not render a decision on the complaint and it delivers the decision to the party.

¹⁰ On other legal assumptions to terminate a procedure see provisions of articles 39, 46 par. 3 and 5 (general authority – there are no legal assumptions to conduct a procedure) 54 par. 5, 56 par. 4, 57 par 4, 106 par. 4, and article 161 par 3 of APA.

7.2. When settlement is impermissible

Paragraph 2 article 57 of APA regulates cases when settlement is impermissible. Those cases are: settlement is contrary to regulations; it is contrary to public interest or contrary to the rights of third persons. The official has to observe those circumstances *ex officio* and notify the parties throughout the entire course of the procedure. If any of those cases would arise, the official shall continue to conduct the procedure and cannot accept stipulation of settlement. When the official refuses to accept stipulation of settlement, there is no legal requirement to issue particular legal act based on this circumstance, however we believe that according to professional rules of engagement this fact has to be verbally communicated to the parties and conclusion to refuse stipulation of settlement would have to be entered in the records. This conclusion is not a type of separate legal act, which is decided upon in procedural matters, but rather the fact identified in procedure and entered in the content part of the records. As already mentioned, one cannot file a complaint against conclusion which is a separate legal act, however as any other conclusion, it can be contested by complaint against decision in administrative matters.

7.3. Settlement is stipulated by signing the records on stipulated settlement

According to paragraph 1 article 76 of APA, a record of administrative procedure shall be made in the form of minutes of oral hearings, on-site inspections or other activities of importance in the procedures, as well of important oral statements by the parties or third parties in the procedures. Statements by the parties on agreement and content of settlement are undoubtedly important statements the records are based upon. Settlement is stipulated when parties sign records on stipulated settlement. A certified copy of records is delivered to the parties, without their explicit request. The settlement constitutes content part of the records and the official shall take into account all provisions from paragraph 2 to 5 article 76 of APA which regulates the formal layout of records.

7.4. After stipulation of settlement, decision on termination of administrative procedure is issued

When administrative matter is decided by stipulation of settlement, the official issues decision to terminate the procedure. As the subject of the procedure does not exist anymore, this is a logical next step in the procedure. If parties had reached a partial settlement and the procedure is terminated partially, the procedure continues on all the points on which parties did not reach a settlement.

If settlement only partially solves disputed issues, in the dispositive part of decision the official shall specify the issues on which the settlement is reached. For the purposes of reaching the intelligibility of the dispositive part of a decision, it would be good to specify issues where settlement is not reached and, respectively, those issues where administrative procedure continues. In fact, a partial settlement of open issues requests that the official renders a decision on the remaining disputed issues if the parties did not withdraw their

applications. As in other cases when a decision is issued, the parties have the right of complaint or to initiate an administrative dispute.

7.5. Enforcement of settlement

Paragraph 6 article 57 of APA provides for an attribution to the settlement to have the power of an enforcement decision issued in an administrative procedure where decision issued in administrative procedure is enforced only when it becomes final, paragraph 1 article 133 of APA¹¹. Parties that have stipulated the settlement have a natural obligation to enforce this settlement. A question occurs as to what to do if parties do not enforce their settlement. Although settlement is not a decision, in the case of its forced enforcement there has to be writ on enforcement according to article 139 paragraphs 1-3 of APA. Against this writ a complaint is allowed only in terms of time, place and manner of enforcement. Complaint against a writ of enforcement does not produce a deferral, i.e. a suspense effect, paragraph 4 article 139 of APA. The enforcement of settlement is carried out to accomplish pecuniary and non-pecuniary obligations, according to article 137 (the enforcement of pecuniary obligations is carried out by the court) and article 138 (the enforcement of non-pecuniary obligations is carried out by the public authority which decided in the first instance) which stipulate the writ of enforcement.

Although a settlement has procedural effects, as it terminates procedural activities, it has features of contract/agreement and it cannot be disputed by complaint in administrative procedure, nor by action in administrative dispute. For settlement dispute, as it has all features of civil legal matter, the only possibility left is civil procedure, only for faults in will. Those cases are when settlement would be stipulated in delusion, fraud or by threatening the use of physical or mental force.

BIBLIOGRAPHY

Books:

Crković, Vladimir / Dupelj, Z., Application of the General Administrative Procedure Act, IV. edition, Zagreb 1998. Informator.

¹¹ Provisions from article 133. paragraph 2, 3. and 4. of APA:

(2) A first instance decision becomes final after the expiration of the time limit for an appeal provided no appeal is lodged, on receipt by the party of the decision when no appeal is permitted, on receipt by the party of the decision if the appeal does not have a deferring effect, or receipt by the party of a decision rejecting or dismissing the appeal, on the date the party waived its right to appeal and on receipt by the party of the decision terminating appellate proceedings.

(3) A decision of the second degree resolving the administrative matter shall become final on receipt by the party thereof.

(4) When the decision sets out that the action which is the object of enforcement may be performed within a given time limit, the decision shall become enforceable upon expiry of this time limit.

Derđa, Dario, General administrative procedures in the Republic of Croatia, Zagreb 2010. Inžinjerski biro.

Kristijan, Pero, Commentary on the General Administrative Procedure Act, Zagreb 2004. Novi informator d.o.o.

Turčić, Zlatan, Commentary on the General Administrative Procedure Act - Pravo 73, Zagreb 2011th Organizator.

Manuals:

General Administrative Procedure Act, seminar organized by the Ministry of Administration, Center for Professional Training of Civil Servants, Zagreb, 2010., pg. 1-53.

Almanac of decisions 1977-2002. Administrative court of the Republic of Croatia, Narodne novine d.d. 2002.

Legal acts

Croatia, Republic of

General Administrative Procedure Act, Official Gazette no. 47/10.

General Administrative Procedure Act, Official Gazette no. 53/91. and 103/06.-RACRC.

Court practice:

When the administrative proceeding is initiated ex officio and request to initiate such action was taken as a petition within the meaning of article 124. Paragraph 2 of APA, person who has submitted the respective request has the right to appeal if it considers that the violation of law or the public interest, for which the proceedings were initiated, also violated her right or direct interest based on law. (Supreme Court, U-4302/68. dated 17 January 1969)

Filing a request by the party to initiate administrative proceedings does not mean that the procedure is initiated, but the procedure is initiated when authorized body makes the first action in procedure initiated by the party. (Administrative Court of the Republic of Croatia, Us-388/96. dated 22 May 1997)

Competent authority does not make a conclusion of the initiation of administrative proceedings. (Administrative Court of the Republic of Croatia, Us-3818/94. dated 6 October 1996)

There is no possibility to continue administrative procedures for the issuance of a building permit when the party abandoned its claims and there is no legal basis to continue with the procedure in the public interest. (Administrative Court of the Republic of Croatia, Us-1163/84. dated 7 June 1984)

There is no possibility to conduct administrative proceedings in the case of dispute on the use of building parcel. Dispute is to be resolved by competent court. (Administrative Court of Croatia, U-6568/76. dated 15 February 1978)

There are no requirements for the administrative procedure for agreement on determination of compensation, when municipality actually took possession from former owner.
(Administrative Court of Croatia, U-5759/79. dated 12 March 1980)

There cannot be administrative proceedings to determine the identity of a person.
(Administrative Court of Croatia, U-2559/82. dated 15 December 1982)

Cadastre application form is not an administrative act against which party can file a complaint in administrative procedure or initiate administrative dispute.
(Administrative Court of Croatia, U-5894/82/76. dated 23 March 1983)

There is no possibility to conduct administrative proceedings in the case of application for recognition of the right to penalty interest in connection with the payment of compensation under the law on employment.
(Administrative Court of the Republic of Croatia, Us-1847/93. dated 21 April 1993)

Appellate body may merge complaints filed against various first instance decisions according to terms of Article 127 of APA.
(Administrative Court of the Republic of Croatia, Us-11059/93. dated 21 April 1994)

When there were prerequisites to merge proceedings for multiple parties, the fact that conclusion was not issued is not such a breach of proceedings that could affect the outcome of the matter.
(Administrative Court of the Republic of Croatia, Us-13275/93. dated 1 September 1994)

There is no possibility to merge proceedings in the case of complaint against decision on essence and complaint against conclusion on the permissibility of execution of this decision.
(Administrative Court of the Republic of Croatia, Us-4241/99. dated 3 May 2001)

Once final decision has been made, there is no possibility to terminate proceedings due to party's withdrawal of request. If administrative procedure has been initiated against such a decision, decision can be rendered within the meaning of Article 260 of APA.
(Administrative Court of Croatia, Us-4108/81. dated 18 November 1981)

The party cannot give up its claims in the course of an administrative dispute.
(Administrative Court of Croatia, Us-943/85. dated 12 July 1985)

APA does not have an institute of settlement annulment entered into in the course of administrative proceedings. Settlement on compensation concluded between the parties in the process of expropriation cannot be annulled within the meaning of Article 31 of Law of Expropriation.
(Supreme Court of Croatia, U-7556/69. dated 22 April 1970)

Agreement on compensation for expropriated real estate has a meaning of settlement within the meaning of Article 134 of APA, which has the power of enforceable decision made in administrative proceedings, so it follows that, against the settlement complaint is not allowed.
(Administrative Court of Croatia, Us-2880/78. dated 1 November 1978)

Settlement where parties have agreed on the matter that cannot be resolved in the administrative proceedings cannot gain power of enforceable decision.
(Administrative Court of Croatia, Us-1627/80. dated 10 July 1980)

Examples of acts

- initiating the procedure upon party's request,
ex officio or by public announcement**



REPUBLIC OF CROATIA
CITY OF ZAGREB

*Municipal Office of Economy, Work and Entrepreneurship
Department for Administrative and Legal Affairs
Sub department for determination of minimum technical
and other conditions for performing economic activities*

CLASS:

REG. NO.:

Zagreb, 20 February 2012.

Municipal Office of Economy, Work and Entrepreneurship, Department for Administrative and Legal Affairs, Sub department for determination of minimum technical and other conditions for performing economic activities based on Article 13 Paragraph 2 and 3 of the Trade Act (Official Gazette No. 87/08., 96/08., 116/08. i 76/09.) following the request _____ d.d. from Zagreb, Radnička cesta 228 in the case of determining the minimum technical condition, renders a

DECISION

1. *It is determined that sales facility, equipment and supplies in Zagreb, Rudeška cesta 83, meet the prescribed minimum technical and other requirements for this activity:*
 - *47.28 retail sale of bread, cakes, flour confectionery, sugar confectionery in specialized stores including baking and sale of semi-frozen bakery products;*
 - *47.29 Other retail sale of food in specialized stores such as milk, dairy products, flour, sandwiches and soft drinks all in original packaging.*

Form of sales facility: Specialized shop for grocery products.
2. *Retail facility area from article 1 of this decision is 54,44 m2.*

Statement of grounds

_____ d.d. Zagreb, Radnička cesta 228, filed an request to determine whether sales facility, equipment and supplies in Zagreb, Rudeška cesta 83 meet the prescribed minimum technical and other requirements for this activities: - 47.28 retail sale of bread, cakes, flour confectionery, sugar confectionery in specialized stores including baking and sale of semi-frozen bakery products and 47.29 Other retail sale of food in specialized stores such as milk, dairy products, flour, sandwiches and soft drinks all in original packaging.

The request was accompanied by:

- *a contract to lease office space closed with Maja S.K. from Zagreb, Viktor Car Emin 6 as landlord dated 30.11.2011.*
- *extract from the register of the Commercial Court in Zagreb from 15. 12. 2011. (MBS: 010015470 and OIB 62296711978);*
- *use permit by City office of planning, town building, construction and utilities, Department of construction - Central department of construction Class: UP/I-363-05/10-01/158 from 21. 9. 2010.;*
- *decision of the Ministry of Health, Directorate for Health Inspection, Office of the County Sanitary Inspection, the Department for the City Class: UP/I-540-02/11-08/60 from 24. 1. 2012. that measures are in place to protect against noise, for daily, evening and night working conditions of underlying sales facility, and other documentation in accordance with special regulations.*

This body has on 24.1.2012. inspected sales object with surface area of 56,44m² (of which retail space 28,20m², handy storage of 21,80m², toilets and dressing room for employees of 6,44m²) equipment and supplies in Zagreb, Rudeška cesta 83 and after the procedure determined that it meets the conditions specified in the Regulations on the classification of shops and other retail trade (Official Gazette No. 32/09.) the Regulations on the minimum technical requirements for the sale of goods outside the stores (Official Gazette no. 66/09., 108 / 09 and 8/10), the Ordinance on food hygiene (Official Gazette no. 99/97., 27/08., and 118/09) and the Ordinance on Occupational safety in workplaces, facilities and areas (Official Gazette 6/84., 42 / 05th and 113/06.) to carry out the activities specified in the request.

Based on the above facts and legal regulations decision had been made as in dispositive part.

Legal remedy:

This decision may be appealed to the Ministry of Economy, within 15 days of its receipt. The appeal shall be submitted directly or sent by mail to the body and may be made orally on the record. Administrative fees for an appeal are to be paid in stamp duty in the amount of 50.00 kuna according to Ta. 3 of Administrative fees tariffs of Act on Administrative Fees (Official Gazette 8/96., 77/96., 95/97., 131/97., 68/98., 66/99., 116/00., 163 / 03, 17/04., 141/04., 150/05., 153/05., 129/06., 117/07., 25/08., 20/10., 69/10. 126 and / 11).

The administrative fee per Ta. No.1. and 61. Of the before mentioned Act in the amount of 420,00 kn has been paid and canceled on request.

ADMINISTRATIVE CONSULTANT
FOR ECONOMIC ACTIVITIES
Z. S.

Deliver to:

1. _____ d.d. Zagreb,
2. Ministry of Economy
3. Ministry of Finance, Tax Administration
4. State Inspectorate, Branch Office Zagreb
5. Ministry of Health, Department of Health Inspection
6. Central Bureau of Statistics
7. The records here



REPUBLIC OF CROATIA
Name of the public legal body

CLASS:

REG. NO.:

Place and date:

RECORD

Of the inspection of operations of company _____ Zagreb, Andrije Žaje 32, made on _____ 2013 in business premises of the shop no. _____ in _____ street _____ no. _____

Inspection subject : _____

Inspection conducted by: 1. _____ (title of the official - inspector)

Present on behalf of the party:

1. _____
2. _____

Examination was carried out based on authority from Article _____ Acto of _____ Official Gazette, no. _____.

The party has been, pursuant to the provisions of Article 30 and 52 of the Law on Administrative Procedure, Official Gazette No. 47/09. alerted to the right to participate in all stages of the proceedings and the right to comment on all the facts and circumstances as determined by the inspector.

Begun in _____ hours.

Determined situation (finding)

After examining the general and specific acts, conditions and methods of work, premises, products, devices and equipment, required books and records, documents and other business documentation in the presence of the party it has been determined by inspection:

1. After examining the decision of Commercial Court in Zagreb _____ registration no. Tt _____, number of entry _____, subject registered with the registration no (MBS) _____ and OIB _____, it was found that as the business activity of the company _____ has inscribed the following activities _____
2. After examination of the calculations, assignments of shops accounts and other documents related to the sales price, it has been determined _____

3. Through review of products in order to assess their quality in warehouse and shop it was found _____

In order to test the quality of _____ samples have been taken and separate record on this has been made.

4. Examination of business premises, installations and equipment, warehouses and stores (specify which), it was found _____

5. After examining the general regulations of the Company it was determined that responsible for irregularities in business performance _____, shop manager.

6. Invited to comment on the established facts that have been identified by inspection, representative of the party _____ stated: _____

(If the representative of the party refused to make a statement, this is marked in records.)

Record were read and this objections were made: _____

(If no objection was made, then it is so indicated).

The record was made in _____ copies.

A copy was handed over to the party's representative, or the person who participated in the inspection.

Completed in _____ hours.

Signature of the party

Signature of authorized person



REPUBLIC OF CROATIA
Name of the public legal body

CLASS:

REG. NO.:

Zagreb, 2013.

(Name of the public legal body initiating the proceedings by public announcement), based on Article 43 of the Law on General Administrative Procedure (Official Gazette no. 47/09.) announces

INITIATING THE PROCEDURE BY PUBLIC ANNOUNCEMENT

- 1. This body has initiated a proceeding (specify particular administrative process issue which is being addressed), and calls upon all people which in this process might have a status of a party to report to this body (or to submit certain requirements, applications, evidence, to respond to the investigation etc.).*
- 2. Responding to the call or submitting documents shall have deadline of 30 days. Period of 30 days begins on the day following its publication. Skipping the specified deadline will result that the procedure is carried out without the people who have not responded to the call.*
- 3. In accordance with paragraph 4 Article 43 Law on Administrative Procedure, launching a public announcement will be published in the (official gazette of public legal body and / or the media).*

Signature of authorized person

