Centar za građansko obrazovanje
Centre for civic education

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THE LAW IS NOT DISPUTABLE, BUT ITS APPLICATION IS

Centre for Civic Education (CCE) assesses that frequent and badly prepared amendments to the law represent one of the greatest enemies of the rule of law, especially if they are being made without analysis of the effects and problems in the imeplemtation of the current law.

In the case of amendments to the Law on General Administrative Procedure (LGAP), their analysis can clearly determine that they are not based on analysis of the implementation of the provisions of this Law from 2003. Precisely the changes related to the shortening of deadlines for decision-making will not contribute to a better and more efficient exercise of citizens' rights merely by themselves.

The CCE notes that the problem in exercising the rights of citizens is not whether they are exercised within 15 or 30 days, or 30 or 60 days, but in the manner of conducting the procedure, its content and manner of collecting the evidence. It is important to remind that the provisions of the existing LGAP, which prescribe the content of the evidence and its collection and presentation, are largely not being respected. **For example, the authorities usually do not determine what is indisputable, and what is disputable in a certain administrative matter and what should be proved and by which evidence**. Also, rarely it is being respected the extremely important norm of the existing LGAP that there is no need to prove facts that are generally known, as well as facts which are presumed by the law. **Furthermore, in presenting the evidence authorities do not use data from the information records, nor do they consider facts contained in a public ID to be proven (i.e., identity card, birth certificate, etc.)**. The problem is that authorities that are conducting procedure do not obtain documents *ex officio* when they are obliged to it by the law.

These and a number of other circumstances related to the conduct of proceedings annihilate the establishment of deadlines for administrative actions. In practice, authorities often, without any basis and needs, request from the parties numerous evidences which acquisition has no influence on the resolution of administrative matters, including even those evidence that the authority is obliged to obtain *ex officio*. **This leads to situation that administration authorities and public services exercising public authority do not receive applications until the parties provide all required, numerous and unnecessary evidence**. In this inefficient conduct of authorities, it is with no significant impact from the standpoint of protecting the rights of citizens whether the authority is going decide upon the obtained evidence within 30, or 15 days. **Another important problem within the exercise and protection of citizens' rights is a manner of resolving appeals in the second instance where, as a rule, the second-instance authority in addition to indisputably determined facts of the case to which the substantive law was mistakenly applied, does not decide on the merits, but returns to a retrial**.

Placing a party (a citizen or a legal person) in a vicious circle of proving and decision-making for months and years to finality in complex matters and those of vital interest to the parties, but also for society, is a fertile ground for corruption and organized criminal. This especially refers to the area of urban planning and construction (issuance of urban requirements and construction permits), entrepreneurship (licensing), disposition of state assets, determining and collecting taxes and other charges, and conduct of authorized inspections in these and other administrative areas. **The CCE believes that this should be in a focus of program activities for improving the legal framework and ensuring the legality of actions at all levels** instead of variety of strategies, action plans and updates of such which stride away from the core problem.

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