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THE CONTEXTUALIZATION OF THE PROVISIONS OF THE LAW ON GENERAL ADMINISTRATIVE PROCEDURE WITH A SPECIFIC OVERVIEW ON THE CONCEPT OF AN ADMINISTRATIVE CONTRACT

ABSTRACT: Based on the premises that public administration should serve as an open, digitally developed and work-transparent public service, the aim of the paper is to analyze the notion and purpose of an administrative contract as a part of new Law on General Administrative Procedures. Simultaneously developed with the Public Administration Reform as its corner stone, several aspects of the law have been analyzed, just for the purpose of comparing novelties. Having in mind that such a contract represents a novelty here, but not in the European administrative space, it is our goal to determine and conclude whether this agreement provides an essence of citizens' social and economic demands. The concept of establishing this kind of a 'symbiotic' contract finds its purpose in being *differentia specifica* from any other contracts, thus having government on one side. It still stands as an open issue how such a kind of an agreement will be fully executed, monitored and regulated.

Keywords: *public administration, administrative contract, the Law on General Administrative Procedures, public service, public administration reform.*

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1. Preliminary explanations

The wholesome concept of public administration, including public services as well as administrative procedures, should be realized as an overwhelming project set in motion with the purpose to modernize and develop a certain country. In order to do so, Serbian public administration has undergone profound legal, structural and bureaucratic changes. The symbiosis of variables in public administration reform has provided us with novelties that can go hand in hand with some of the most prosperous countries of the world. The concept of reformation can be viewed as a living organism, not quite depending only on changing the legal procedures (directly administrative procedures) but also on proper citizens' response, application and acceptance of these novelties. Having in mind that the Republic of Serbia has shown "severe" determination to alter, adapt and apply new procedures within the legal core of each institution, it is advisable to calibrate the new Law on General Administrative Procedures with the aftermath it has provided.

It should be said that the changes prior Law has "endured" were the initial pace to put public administration on modernized, legally stable and sustainable grounds; needless to say that it was way past time to reform the structure that has been the matching point, the liaison between government and people. Nevertheless, it must not be disregarded that in orderfor us to analyze the novelties that this Law has carried upon us, it should be mentioned that this very performance of public administration has always been somewhere in between of being a public service and a tool of government officials.

The essence of providing public services on a regular basis presents the welfare of an entire community, thus satisfying a giant specter of social, health or economic demands. Therefore, all administrative activities serve as an organizational and functional system of public services (Tomić, 2021, p. 45). As Tomić points out, "in developed countries– administrative means of providing public services are at all times legally based, regardless of them being strictly legal acts, regulatory implemented or being unilateral or bilateral (administrative contract)".

2. Novelties in the Law on General Administrative Procedure as specific regulators of citizens' demands

In order to properly understand the context of administrative contracts, we have to bear in mind that from the moment the entire process of reforming public sector was set in motion, each effort was made with the intention to

conceptualize and make public administration accessible to each individual; that is to say – position of an individual is now enhanced by proper legal elements, which stand for security and legal protection (Tomić, 2021, p. 80). As Krbek (1937) so virtuously wrote "in a legally determined procedure, held by an appropriate authority, a citizen is considered to be a party, a client with his own rights" (p. 286). Since the first Strategy (back in 2004) it should be stated that Serbia has evolved gradually in identifying the key problems and both legal and structural procedures that must be implemented in order to create good governance, quality public services, professional officials and satisfied citizens and legal entities. Subsequently, we must understand and appreciate the novelties that legal frame, specifically the aforementioned Law brought, and as criticized as it might be, it included provisions that have never been included in a legal framework before, and it was created as a result of prior Strategic reforms (2014-2018). As stated in Public Administration Reform Strategy for 2021-2030 and the Action plan for the period from 2021 to 2025 (2021) - aims, measures and activities in each of the fields are settled to enhance legal and organizational frame, institutional and human resources capacities, as well as creating citizen – related organizational structure[1].

New Law on General Administrative Procedures (2016) was one of the many changes that have been encompassed by the grandiose undertaking of the reformation. Being so, its adoption came simultaneously with the reformation process and has become an inevitable and crucial part of it, not only as to provide drastically increased legal security to citizens, but also to differentiate administrative activities in terms of explicating novelties in a useful and efficient manner.

In order to enable the performance of public administration concerning the public welfare, to be precise, we should firstly (before discussing further changes in the Law) focus on digitalization and the Law on General Administrative Procedure e-platform. The modernization of public administration was one of

[1] In the European Commission Annual Report on Serbia 2020, it was clearly stated that in the field of public administration reform Serbia had been moderately prepared. In general, no progress has been made in this area due to the excessive number of senior public officials, including the lack of transparency.
European Parliament resolution of 25 March 2021 on the 2019-2020 Commission reports on Serbia (2019/2175 INI).
Furthermore, a new platform has been established, named Monitoring the Progress of Public Administration Reform Online, where non-governmental sector, the academic community, international organizations, the press, civil servants, and other interested parties have been advised to access a brand new platform that offers all information about the progress in the area of public administration reform in one place.

the specific and targeted key points that were included in the prior strategies. Nevertheless, it is not sufficient enough to declare the importance of e-Government expansion in order to transform government operations into digitally capable information technologies to promote democracy, improve effectiveness, efficiency, service delivery. Its reach is by far on of the most "tangible" ones when it comes to perfecting public service performance, and thus needs further investments in tools, means and processes, in order to connect citizens with government agencies. "Serbian Electronic Government Development Strategy 2015 – 2018" and E-Government Development Programme of the Republic of Serbia 2020−2022 have proven to provide digitalized administration, in all three areas: government to citizens, government to business and government to government (National Alliance for Economic Development, 2016).

Regarding the definition and innovation of the administrative procedure context, new Law defines the administrative procedure in a broader sense, that of administrative management, subsequently expanding the concept of an administrative matter (Law on General Administrative procedure, 2016). The former definition was solely related upon deciding on the recognition of one's rights or determining the legal obligation of a party, whereas new context of administrative matter refers to different forms of administrative performance (adoption of guarantee acts, closure of administrative contracts and provision of public services) (Lilić, Manojlović Andrić, & Golubović, 2018, p. 35). The regulation of administrative procedure according to the previous Law was strictly conducted on situations of resolving legal issues, subsequently followed by a proper administrative act(decision, permission). Apparently, some administrative situations that were'out of reach', not being directly applied by the law, hadn't been included, such as concluding public/administrative contracts.[2] Subsequently, the definition of an administrative matter, is now thorough and not only intertwining legal actions, but also providing legal protection when it comes to public services provision. Be as it may, it is inevitable to rely on the Strategy of Public Administration reform which has only 'intended' to provide functional and quality performance of state administration and public servants, properly training them to carry to burden of being informationally and communicationally (digitally) literate. New Law on General Administrative procedure has therefore been equipped with

[2] Lilic skillfully criticizes the definition of an administrative procedure. Although it can be seen as a progress there being a definition at all, he stresses out that is quite a theoretical one, inevitably failing to sustain the material definition with clear procedural instructions (Lilić, 2018, p. 37).

specific provisions and alterations (Public Administration Reform, 2021). We have to stress out that crucial advances in public service delivery, protection of fundamental rights and facilitating both a natural person and a legal entity to perform their businesses straightforwardly have augmented gradually ever since the adoption and implementation of this new Law in 2016.[3]

Proper empowerment of the new Law and its provisions has its practical and factual application seen at best with the usage of a warranty act as well as administrative contracts as new institutes stipulated by this Law. Explained strictly theoretically, this act serves as an obligatory duty of the authority to pass a certain administrative act (on party's request) when stipulated by special law. Consequently, pursuant to a guarantee act, government authority is obliged to pass a proper administrative act when a party makes a request that is not in confrontation with the public interest or legal interest of third parties (Law on General Administrative Procedure, 2016). We have to take into consideration that although the notion of a guarantee act is new in this Law, Serbian legal system recognizes it in several laws (Law on Citizenship of the Republic of Serbia, Law on Inspection Supervision etc.) When discussing the purpose of including such legal institute into the core of governmental practice, the basic starting point of the legislature has been to include a guarantee act into much wider implementation, thus creating safe business and legal environment (Lilic et al., 2018, p. 94).

3. The concept of an administrative contract. Understanding the innovation

With regards to European standards of conducting public administration, it is inevitable to notice that this legal innovation was created as a direct result or influence of Serbian integration processes and negotiation within the European Union and a corner stone of strategic reforms.

Be as it may, theoretically its 'intention' was to provoke more active participation of citizens in cooperation with public administration (stressing here both state administration and public services). How "active" this relation really is,

[3] "The legal framework for simplification of administrative procedures has been in place since the 2016 Law on General Administrative Procedures. However, there continues to be regulatory uncertainty for citizens and businesses due to considerable delays with aligning sector legislation with this law. Citizens are often not aware of their improved rights, allowing the administration to apply old cumbersome procedures. The capacities of the Ministry of Public Administration and Local Self-Government to exercise an efficient oversight of the implementation of this law are limited, and there are overlaps in coordination with the Public Policy Secretariat." Source: European Commission, Commission Staff Working Document, Serbia 2019 Report, Brussels, 29.5.2019 SWD(2019) 219 final.

still stays to be revealed, since many of the parties (both normal persons and legal entities) are not quite accustomed to what this contract really provides. The trend towards flexibility in public administration is actually quite characteristic: the basic administrative concern for the public welfare universally requires recourse to new forms, more flexible, better adapted to concrete needs and more efficient, thus creating an analogy between the two types of activity traditionally distinguished as public and private (Langrod, 1955, p. 325). On a material level, the interpretation of any administrative contract requires a proper analysis of the exact terms in the aforementioned act. Let's not get misguided by the grandiosity of the power embedded in the government to act as co-contractor, because as tempting as it may sound, it has its limitations and specific terms. In order to fully grasp the notion of an administrative contract as a "liaison" between public and private law, we have to make a comparative study within French and German definitions of these contracts, but also to conceptualize the very notion of the core of administrative contracts.

Whereas French legal system recognizes administrative contracts (etymology of the word is French *contrat administratif*)[4] subjected to special legal regime separated from the contracts the state concludes by the rules of the Civil law, German system perceives and interprets these contracts as any other contract regarding the legal equality of the parties included (counting the fulfillment of contractual obligations). French administrative contract is also based on consensual will, but the legal ground is quite unequal (Tomić, 2021, p. 234). The determination of the elements of an administrative contract is based on the qualifications of one contracting party as a public entity. However, as Davitkovski points out, the contract must have the characteristics of public administration performance expressed either through the subject of the contract - performing public service, or through the regime by which the contracting parties concede that they will be subjected to clauses derogating from general law. In French law, where administrative contracts come from, these clauses are known as clauses *exorbitantes du droit commun* (Davitkoviski, 2011, p. 3).[5] Tomić and Blažić further point out that in addition to the existence of a

[4] With administrative contracts, we have willing adhesion to create an administrative-legal relations.(Richer, 2002, p. 88–90).

[5] One of the decisions of the Council of State (Conseil d'Etat) contains a definition of the term clause *exorbitante du droit commun*: "a clause which aims to give the contracting parties rights, or, by their nature, obligations, different in nature from those which are subject to free approval under civil and commercial law".
Clauses exorbitantes represent a subjective element of the contract. It usually depends on the will of the contractor (p. 4).

public entity, an administrative contract may directly include the performance of public services or contain administrative regulations, in accordance with the above-mentioned clauses by which specific parties decide to apply administrative regulations of public law. This also implies the adjudication of a possible dispute by special administrative courts (and not general, "civil" judiciary ones)[6] (Tomić & Blažić, 2017, p. 202). The French theorist Gaston Jéze developed the most detailed theory of administrative contracts according to which he classified them as contracts for the supply of movables (*marche de fourniture*) and contracts for investments in public buildings (*marche de travaux public*) (Vukićević Petković, 2015, p. 88). On the other hand, León Deguit argued that there was no fundamental difference between civil law contracts and administrative contracts. According to him, a contract is a legal category and if the elements that constitute it exist, it always exists with the same character (Milovanovic, 2011, p. 117). Tomić and Blažić also state the fact that at the beginning of the 19th century, administrative agreements were considered being a private legal matter, which were placed under administrative jurisdiction. Continuous performance and functioning of public services as the effect of the existence of administrative contracts became a prerogative in French law, when the contradiction of concluding public procurement contracts with the municipality started having private law features (Tomić, Blažić, 2017, p. 205). A critical understanding of the very essence of an administrative contract can perhaps best be understood by comparing it with the German comprehension of an administrative contract that has a public law character. Filipović points out that it is completely legitimate that a public law contract can replace the approval of an administrative act, without any special legal authorization, as long as the contract is drafted in an appropriate form. He adds that the administrative contract and the administrative act can be profiled as two completely different and separate legal institutes, or that the administrative contract can be understood as a special type of administrative act - an administrative act that is not the result of a unilateral declaration of public authority, but the consent of the addressee (Filipović, 2017, p. 91).[7] Milovanovic, referring to the authentic interpretation of Professor Slavoljub

[6] Authors state that within the French system of administrative contracts "the notion of inviolability of contractual content ceased to exist due to the invigorating essence of public interest which carried the entire contract. According to them, the principle*pacta sunt servanda* failed to fulfil its purpose.

[7] The author specifically distinguishes that the Administrative act is passed on the basis of the unilateral will of the public authority, while the necessary consent of the public authorities and the citizens is crucial in order to conclude an administrative contract.

Popovic, emphasizes the position of Otto Maier, who said that legal acts of administration were normally unilateral acts, since they imposed the will of the administration unilaterally, and therefore these acts represented acts of authority and command. In addition to the administrative acts of the "purely unilateral" nature, he also distinguishes acts adopted with consent, such as: concession, appointment of officials, etc., since these acts do not have the character of a contract, where the consent of interested parties is a necessary condition for their legality (Milovanović, 2011, p. 121). Vukićević Petković (2015) sees their sources as a parallel between the French and German administrative agreements and notes that the first ones arose from court practice, while in Germany the administrative agreements were established by law; the similarity is reflected in the fact that in both legal systems, disputes arising from administrative contracts have jurisdiction over administrative courts (p. 92). The essence of the difference according to Tomić and Blažić (2017) lies in the fact that the French administrative contract is in accordance with the will on an unequal legal basis, which emphasizes the importance of public interest, but also the supremacy of public law, while German legal doctrine insists on legal equality both during and after the conclusion of the contract (pp. 203–204).

Milenković (2017) initially states that social and technological concepts, transferred to public administration from the private sector, have contributed to phenomena such as privatization in the public sector, competition, outsourcing and transfer of certain public services from the public to the private sector in the areas of health, education, and social welfare, which in the concept of the welfare state, especially on the European continent, was performed by the state or its public services (p. 68).

Our legal system defines an administrative contract as a written, bilaterally binding act concludedbetweenthe public authority and a party with the purpose to create, modify or terminate a legal relation in that administrative matter(Law on General Administrative Procedure, Article 22.) It is absolutely understood that a contract cannot be contrary to the public interest or legal interest of the third parties, but it should be also stressed out that this public interest IS the main purpose of complying. The very essence of satisfying the public interest is the scene on which an entire legal performance is played (Tomić, 2021, p. 230).[8] Tomić and Blažić dwell on the

[8] Tomić accentuates further that whereas with civil contracts public interest was only the boundary, here we have an aim that needs to be achieved. This public interest is the cause, thus not being strictly interested and functionally oriented towards the relation between contractors.

above-mentioned mentioned classification, emphasizing that the notion of public service is crucial for defining administrative contracts, but that not all contracts concluded by the state with other entities should be characterized as administrative ones (lease or sale agreement). The attention must be paid to the following components: the purpose of conclusion is always the continuous functioning of public services, but also the manner of their execution, given that the state is obliged to protect the public interest and to control and unilaterally change the terms of the contract (Tomić & Blažić, 2017, p. 208)[9] Milenković synthesizes the way in which administrative contracts are identified according to three basic criteria for determining and recognizing an administrative contract when it is not explicitly regulated by law: criterion of the party; goal criterion, and special authority criterion (Milenković, 2017, p. 71). The procedure for concluding administrative contracts is specific and it separates it from civil contracts. Namely, in order to conclude a certain contract, it is necessary to conduct a public announcement, select a candidate who accepts to perform contractual obligations (Vukićević Petković, 2015, p. 67). Filipović emphasizes the fact that the state can apply sanctions in case there are shortcomings in the performance of obligations of the co-contractor (money, means of coercion to terminate the contract), but also the right to unilaterally change the scope of obligation the contractor formerly agreed upon. However, in connection with this authority of the state, the co-contractoris entitled to compensation for obligations imposed on him and which would disturb the financial balance of the contract and finally the right to terminate the contract at any time (Filipović, 2017, p. 72).When confronted and compared, the characteristics of both public and private law are quite explainable, which cannot be the case with an administrative contract, since it tends to comprise both elements. Although the main clause can be shared, that of willingness of both parties (consensual) it is without any doubt an institute of public law, for its main purpose of conclusion is to satisfy vital social needs and not private interests of natural persons and legal entities (Miljic, 2016, p. 13). It is therefore impossible to observe this phenomenon as acting *inter partes*, instead, due to its wide specter of influencing and facilitating public services and social and economic climate it most certainly can be seen as acting *erga omnes.* Therefore, the determinationof bringing this administrative tool onto the legal playground was quite justifiable, since

[9] In his dissertation, Filipović explains in detail two theories here, starting from the standpoint of French legal theory, of which the first is the theory of arbitrariness (*fait du Prince*), and the second is the theory of unpredictability (i*mpervision*).

(as shown and witnessed in the EC reports) our public administration sector needed strategical and legislative aid due to having issues with accountability of the public sector and ineffective and inefficient progress. For quite a while public administration had failed to provide incentive to legal entities, failing to meet citizens' demands and instead of creating a modernized version of its own, it had actually managed to do quite the opposite. This synallgamatic (*Greek org*.) agreement can be explained as having several crucial elements – 1. Having effect on everyone, it does serve as a way of obtaining public interest with benefits to legal entities and other clients (read: citizens); 2. Having authority, that is to say, one of the basic elements of the state, that of power, enables one side to inevitably hold its supreme position. Administrative contracts are recognized by the fact that they are contracts of public bodies, where management functions of these bodies are also their responsibility for the general welfare. According to this, the public regime has a need for flexibility in contractual performance, which allows variability of public interest needs. "At the same time, co-contractors must be protected from the consequences of such contract changes, in order to ensure the continuity of contract performance, as well as the capacity and will of the contractors to perform public affairs in the future" (Davitkovski, 2011, p. 3). Tomić and Blažić critically claim that the state concludes an administrative contract with private legal entities for the sole purpose - ensuring the functioning of the public service, i.e., the realization of some common good, public interest, or achieving socially significant results. The authors thus emphasize that administrative contracts differ from private law contracts in defining the private purpose of the latter ones. There are other differences, in terms of ways of drafting contracts, their form, "asymmetric legal position of the parties", but also in terms of jurisdiction (Tomić, Blažić, 2017. p. 206).If due to unforeseeable circumstances following the conclusion of a contract, the fulfillment of the obligation for one' s party becomes more difficult, the party can make a request from another contracting party for the contract to be changed or modified (Article 23.). This request for modification comes into consideration if the changes of the contract do not cause damage to the public interest; otherwise, the authority will reject the request by bringing a decisionif the contract changes tend to provoke greater damage to the public interest than the damage that may be caused to the otherco-contractor. It is absolutely clear that the administration here has coercive powers which are not available to the ordinary private contractor, and becomes what is called the *mise en regie*. Furthermore, the *resiliation* of the contract is a unilateral act on the part of the administration which puts another party in a legal

cul-de-sac, where a contract can be modified or terminated (Mewett, 1959, p. 222).

Following the aforementioned observations, noteworthy enough is to make a clear distinction between administrative contracts and administrative acts, and likewise comparing public to private law and its provisions and regulations, these apparently similar legal formulations differ in a few variations: namely, an administrative act stands for a supreme will of the public subject, which in that very authoritative manner defines this legal relations.[10] Furthermore, it is not the legal situation of the public authority that is being decided upon, but an administrative matter of a party, whereas with administrative contracts we have bilateral legal transactions which are concluded upon a certain administrative matter (Tomić, 2021, p. 234).[11] Perhaps the most discussed discrepancy is that of a legal inequality of the parties in the contract. Tomić further points out that the contractual balance is simply inevitable and logical, since the public interest stays the dominant orientation; althoughthe contractual parties conclude it willingly, consensually and in written form, it is nevertheless the contractual technique of an entirely administrative matter (Tomić, 2021, p. 236).[12] Legal and lawful synergy resulting from the merging of a public body with an individual or a private entity for the benefit of public administration certainly requires a more detailed analysis of the administrative contract and concessions. Tomić and Blažić, further analyzing the very

[10] This is visible and evident even when it comes to granting some rights to an opposite party (or even issuing an order, prohibiting certain rights).

[11] The administrative contract is firmly linked to unilateral acts of the administration, and especially with the administrative act. Usually an administrative contract is concluded after adoption of an administrative act (selecting the contracting party that will enter into a contractual relationship with public administration) (Miljić, 2016, p. 33).

[12] For the purpose of explaining the notion of administrative contracts we can briefly analyze the Law on public-private partnership and concessions, where it is clearly stated that the provisions of this Law and the relevant provisions of the law and other regulations that govern public property and budgetary system apply to all the investments of publicly owned assets into a joint company with a private partner exclusively for the purpose of realization of public-private partnership projects. Regulating of conditions, manners and procedures for conclusion of public contracts is based on the following principles: protection of public interest, efficiency, transparency, equal and fair treatment, free market competition, proportionality, environmental protection, autonomy of will and equality of contracting parties. The private partner selection procedure is either a public procurement procedure laid down in the law regulating public procurements, or the concession award procedure laid down by this Law. (Zakon o javno-privatnom partnerstvu i koncesijama [Law on Public-Private Partnership and Concessions]. *Službeni glasnik RS*, br. 88/2011, 15/2016 i104/2016).

notion of concession[13], additionally indicate that the concession is a contract of a special type, which by its function is a public law instrument (Tomić, Blažić, 2017, p. 210).[14] It is important to mention that the administrative contract terminates upon the expiration of the term for which it was concluded, and as concessions are granted for a certain period of time, the concession contract ceases to be valid upon the expiration of that period. Hence, to summarize, contracts are bilateral legal agreements inthe domain of public law, which are however subjected to strict legal terms and conditions, since when it comes to the control over the conclusion of administrative contracts, understanding the importance and the legal matter of these contracts can be overviewed form the perspective that actually clarifies out legal perception. As Stanicic states "firstly, public legal bodies which form them do so by exercising their own public powers which are without doubt subjected to legality control; secondly, in forming administrative contracts, public funds are used, which again require strict control; thirdly, forming administrative contracts often imply using public goods" (Staničić, 2016, p. 233). In the end, Filipović points out that the administrative contract ceases to be valid by fulfilling the obligation that was agreed; upon expiration of the term, termination of the subject of the contract, termination of the existence of the contracting party, termination by agreement, unilateral termination or by the decision of the Administrative Court (Filipović, 2017, p. 81).

[13] The concession act implements the substitution of the subject in the exercise of rights or functions intended exclusively for the state, so that this position is occupied by a private entity (Tomić, Blažić, 2017, p. 210).

[14] Analyzing the judgments and concessions, the publication entitled "Selected Judgments of The Court of Justice of The European Union on Public Procurement" announces: In the case of a public procurement contract, the contracting authority itself is responsible for that compensation. In the case of concessions, the fee consists of the right to exploit the works or services. The Contractor may charge for the use of these works or services. Therefore, all or part of the compensation comes from a source other than the client. The CJ considers that there is a service concession when the agreed method of compensation consists of the right of the service provider to use its own services for a fee (C-382/05 Commission v Italy). The CJ has introduced another key element in deciding whether a particular contract constitutes a concession contract. The main feature of the concession is that the concessionaire assumes the main or at least a significant part of the operational risk (C-274/09 Privater Rettungsdienst and Krankentransport Stadler, C-348/10 Norma-A on Dekom, and C-206/08 Eurawasser). Risk must be interpreted as the risk of exposure to unpredictable market changes, which may include the following: • competition from other entities; • insufficient provision of services to meet demand; • inability of those responsible to pay for the services provided; • insufficient revenue to cover the costs of these services; • liability for damage caused by inadequate services. Selected Judgments of The Court of Justice of The European Union on Public Procurement Public Procurement Directorate., SIGMA, p. 378.

4. Final considerations

Applying and maintaining proper legal order, ensuring that every principle of legality and constitutionality is respected have never been an easy task. Quite the contrary, its normative side has always been strict and organized, whereas its factual nature has somehow always depended on quite a number of factors. When implementing new Law, especially the one that is to affect the entire specter of subjects and entities, issues concerning the practical application, proper response from the citizens, adequate training and knowledge of the officials of state administration (public authorities) inevitably, the light is thrown on many collaborating institutions and public welfare as well. Theoretically, we have advanced greatly in defining new law provisions and making an effort to implement them. Strategically, we have augmented the work of legislature and Councils up to a level worth praising, bringing documents into actions, ensuring that numerous aspects of the Strategy are well conducted and controlled. On a more mundane, citizen-level of apprehension, many of the novelties stay unclear to a regular individual who comes seeking for its rights. It happens on numerous occasions that a citizen fails to be granted with a certain right of his own, due to the fact that he didn't even know it was his right. Although many of the novelties do serve as a facilitator of public service performance, including the one of electronic notifications, it is up to different institutions to make the public digitally literate. Or is it? Is the social, economic and even legal climate just unprepared for so many modern-world legal innovations? As Vasiljevic (2019) skillfully points out, the adoption and introduction of special laws in respective administrative areas and their compliance with the relevant provisions of the Law should be ensured (p. 172).

Even though public contracts (EU term for administrative contracts) aroused onto the scene in XX century, the question was whether they were introduced as means to help individuals and legal entities to perform their activities and businesses more effectively, without red type and delays, or just as a way of facilitating their own overburdened service, servants and cut costs on the way? On the other hand, having a collaboration and legal connection between public and private sector is perhaps what was needed for both sides, enabling one to become more 'elasticized' and open to private sector offers instead of being rigid and strict (public authorities are now obliged to respect the deadlines, basic principles of efficiency, transparency and utmost legitimate usage of public means and goods). On the other hand, regarding the other side, there is finally a chance to create a more developed and modernized socio-economic

climate by gaining certain profit for its own, but by being constantly supervised by public authorities. Grasping the dynamic nature of public sector, an entire phenomenon of providing public service to an extent that would always guarantee satisfied 'clients', most automatically calls for a shift in orientation towards work, provision of services and continuousness in making progress. Because of them, making constant changes in the provisions of laws, moving them towards citizens and cutting costs in the process is a never-ending cycle, and an incentive and aim each public administration strives to achieve. How successful, lucrative and beneficial that would be, is yet to be revealed and explained, for our legal system along with administrative procedures should not only strive for legal equality, but equity as well. Considering that the most important element in administrative contracts is the public interest, this indicates that they do not hinder the efficiency of the administration, moreover, the existence of administrative contracts enriches its activity (Vukićević Petković, 2015, p. 68).

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KONTEKSTUALIZACIJA ODREDBI ZAKONA O OPŠTEM UPRAVNOM POSTUPKU SA POSEBNIM OSVRTOM NA KONCEPT UPRAVNOG UGOVORA

REZIME: Rad se bavi determinisanjem javne administracije kao efikasne, digitalno razvijene i transparentne javne službe. Cilj rada je analiziranje odredbi Zakona o opštem upravnom postupku, sa posebnim osvrtom na pojam i svrhu upravnog ugovora kao dela novog ZUP-a. Simultano razvijanje reforme javne administracije, napredne Strategije i konstituisanje raznovrsih tela angažovanih na razvijanju i napretku javnog sektora, uslovilo je i mnogobrojne promene u Zakonu o opštem upravnom postupku, od kojih su neke pomenute u radu. Imajući u vidu da upravni ugovor ovde predstavlja novinu u našoj zemlji, ali ne i u Evropskom administrativnom prostoru, cilj nam je da utvrdimo i zaključimo da li ovaj sporazum pruža suštinu socijalnih i ekonomskih zahteva građana. Koncept uspostavljanja ove vrste 'simbiotičkog'

ugovora pronalazi svoju svrhu u tome da se razlikuje od bilo kojih drugih ugovora, imajući vladu kao ugovarača. Još uvek ostaje debata kako će se ovakva vrsta sporazuma u potpunosti izvršiti, nadgledati i regulisati.

Ključne reči: *javna administracija, interes građana, upravni ugovor, Zakon o opštem upravnom postupku, reforma javne administracije.*

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