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RELATIONSHIP OF GENERAL AND SPECIAL ADMINISTRATIVE PROCEDURE - SOME CURRENT ISSUES

Abstract:

The Law on General Administrative Procedure regulates the matter of administrative law in a general way. However, other laws that regulate the same matter in a special way are also valid at the same time. In this case, the rules of the special law are applied, that is, the application of the general law is excluded. The Law on General Administrative Procedure is applied in situations where no deviations are prescribed for cases from a special law. Bearing in mind the above, it seems that any action under a special law “automatically” turns into a special administrative procedure. That is why there is also the Register of Administrative Procedures (RAP), established by a special law - the Law on the Register of Administrative Procedures, which “regulates the establishment, management and management, content, manner of use and other matters of importance for the management of the Register of Administrative Procedures. The Republic Secretariat for Public Policies (RSJP) is responsible for the part of the public administration reform that relates to the modernization and transformation of public administration services. The role of the Registry is to ensure, together with the public administration bodies, that all information about the procedures through which citizens and the economy address the public administration are displayed in one place, in a simple and transparent manner.

Key words: *Law on General Administrative Procedure. Special procedures. Register of administrative procedures. Republic Secretariat for Public Policies.*

1. INTRODUCTION

Administrative procedure, as a form of exercising the rights and legal interests of citizens and legal entities before public administration bodies, is one of the key instruments of the effective functioning of the rule of law. In the modern administrative law of the Republic of Serbia, the relationship between general and special administrative procedure is gaining more and more importance, especially in the context of improving legal security, transparency and efficiency in the work of the administration.¹

1 Lilić, S. (2022). *Commentary and critical analysis of the law on general administrative procedure*,

The basic normative framework for the regulation of administrative proceedings is the Law on General Administrative Procedure² (hereinafter: LGAP), which is applied if no deviations are prescribed by special laws. At the same time, numerous substantive regulations governing various areas of public administration also contain procedural provisions that define “special administrative procedures”. This raises a number of questions regarding the legal nature of those procedures, the relationship between the general and the particular, as well as the application of procedural guarantees and standards.

A particularly topical issue in the domestic legal order is the establishment and function of the Register of Administrative Procedures (RAP), whose goal is to contribute to the transparency, accessibility and uniformity of administrative proceedings. The practice of public administration increasingly points to the need for standardization, rationalization and digitization of procedures, which inevitably leads to the re-examination of the classic concepts of general and special procedure.

This paper aims to, starting from the normative and theoretical framework, analyze the relationship between general and special administrative procedure, point out the current problems and challenges in implementation, as well as the importance of modernization instruments, such as RAP and the roles of the Republic Secretariat for Public Policies (RSPP). The intention of the authors is to contribute to the understanding and improvement of administrative procedural practice, in accordance with the principles of good administration and the rule of law.

2. LEGAL FRAMEWORK OF THE GENERAL ADMINISTRATIVE PROCEDURE

The Law on General Administrative Procedure is the basic procedural regulation that governs the actions of public administration bodies in exercising the rights or obligations of citizens and legal entities. Adopted with the intention of enabling equality, legal certainty and efficiency in the work of administrative bodies, the LGAP foresees general rules of conduct procedures that are applied in all administrative matters, except when otherwise prescribed by a special law.³

LGAP is based on a number of principles, among which the following stand out: the principle of legality, the principle of legal certainty, the principle efficiency and economy of the procedure, the principle of material truth, as well as the principle of proportionality. These principles serve as a landmark not only in the application of this law, but also in the interpretation of procedural provisions contained in other regulations.

The application of the LGAP ensures uniformity in the actions of various administrative bodies, which is particularly important in legal systems with a complex regulatory structure. However, due to the specificity of certain administrative areas (e.g. tax administration, inspection supervision, health or educational regulations), the legislator envisaged the possibility of applying deviating rules for certain administrative matters - through the so-called special administrative procedures. Although it is a matter of subsidiary application, the LGAP is still valid as a starting

Belgrade, Official Gazette, p. 38.

2 Law on General Administrative Procedure, Official Gazette of RS, no. 18/2016 and 95/2018 – authentic interpretation

3 Lilić, S., Cerović, D. (2025). *Administrative law*, Podgorica, Faculty of Law, University of Montenegro, p. 54.

point and basis for the interpretation of special norms, especially in situations where special laws are unclear or incomplete. This indicates the importance of understanding the relationship between the general and the particular, not only from the point of view of formal hierarchy, but also in terms of systemic coordination and compliance of procedural law regulations.

3. SPECIAL ADMINISTRATIVE PROCEDURES - CONCEPT AND CHARACTERISTICS

Special administrative procedures represent a derogation from the general administrative procedure, that is, a set of rules that are applied instead of the provisions of the Law on General Administrative Procedure, if this is expressly prescribed by a special law.⁴ This kind of normative relationship between general and special law represents the concretization of the principle of *lex specialis derogat legi generali*, in accordance with the legal system that allows normative divergence, with the condition of systemic coordination. Special procedures arise due to the need to regulate certain administrative matters with specific, often complex and professionally oriented rules, which cannot be adequately covered by the general procedural framework. In this sense, they occur in areas such as tax administration, health insurance, pension system, energy, telecommunications, ecology, public safety...

What characterizes special administrative procedures are material specificity, procedural adaptation, exceptionality in relation to the general regime, combination with general rules - in cases where special regulations are not complete, the rules of LGAP are applied as a subsidiary norm. However, in practice, the appearance of "parageneral" procedures in which the general rules are essentially applied, but with minimal modifications, is increasingly common - which raises the question of the justification of separating a particular procedure as "special". This is precisely where the space for normative and institutional reflection arises, that is, the question of the boundary between the need for special regulation and the danger of excessive legal fragmentation arises.

In this sense, the question arises: when does a procedure deserve the status of "special" and does every law that foresees procedural norms necessarily establish a special (administrative) procedure? If the answer to this question is not uniform, there is legal uncertainty, selective application of rules and a reduction in legal predictability, which is contrary to the principles of good administration. Precisely for this reason, the understanding of the concept and characteristics of a special administrative procedure must be precise, theoretically grounded and practically oriented. Only if the logic of subsidiarity of the LGAP is preserved and the criterion of normative explicitness is consistently applied, it is possible to preserve the coherence of the administrative procedural system and contribute to legal certainty. This is especially because in some administrative procedures, such as the provision of public services (Articles 31-32 of the LGAP), it happens that there is even no administrative jurisdiction, as for example in the case of a request for disconnection from the district heating system, which, by its legal nature, represents a request for the termination of the contract on the purchase and sale of thermal energy, so in the event of a dispute, the court of general jurisdiction is competent.⁵

4 Lilić, S. (2025). *The lex specialis clause in administrative proceedings*, Collection of Papers "Consultation on Current and Disputed Issues of Contemporary Law", Belgrade, Association of Lawyers, p. 425.

5 Lilić, S. (2022). *Administrative Court Practice - Selected decisions of the Administrative Court, the Supreme Court of Cassation and the Constitutional Court made since 2010*, Belgrade, Official Gazette, p. 10.

4. RELATIONSHIP BETWEEN GENERAL AND SPECIAL ADMINISTRATIVE PROCEDURE - THEORETICAL AND PRACTICAL ASPECTS

The relationship between general and special administrative procedure is one of the most delicate issues of administrative procedural law. From a theoretical point of view, this relationship is based on the classic legal principle *lex specialis derogat legi generali*, which implies that in the event of a collision between general and special law applies special.⁶ However, in practice, this relationship is not always clear or unequivocally solvable. The Law on General Administrative Procedure expressly provides for its subsidiary application. LGAP stipulates that this law is applied in all administrative matters, unless a special law prescribes otherwise. With this, the legislator recognized the primacy of a special law in certain situations, but at the same time limited that dominance to clearly prescribed exceptions.

The essential theoretical dilemma arises from the question: what constitutes a special administrative procedure and when does a certain regulation really exclude the application of the LGAP?⁷ If the law contains several procedural provisions- such as the prescribed deadline for decision-making, the composition of the competent body or the method of delivery - did this automatically make the whole procedure special?⁸ Or can only fully regulated procedures, with their own logic and structure, be considered a separate administrative regime?

The practical implication of this issue is reflected in the work of administrative bodies. In many cases, the authorities, referring to the “special” nature of the procedure, decide to completely ignore the provisions of the LGAP - although in the specific regulation there is no comprehensive regulation of the process, nor an explicit exclusion of the application of the LGAP. In this way, a situation of “normative gap” arises, in which the parties lose the protection they would have had if the general law had been applied. An even greater challenge arises in proceedings that combine the provisions of several laws - for example, inspection procedures in which both the LGAP and the Law on Inspection Supervision are applied, or procedures for issuing licenses, where both the special regulation on the activity and the general rules of the LGAP apply. Administrative practice often does not have a clear methodological framework for assessing which part of the procedure is subject to which law, which leads to fragmentation, arbitrariness and legal uncertainty.

Judicial practice plays a particularly important role in improving this relationship. The Administrative Court of the Republic of Serbia sometimes indicates the unjustified exclusion of LGAP, especially in situations where a special regulation does not provide adequate procedural guarantees. In this sense, the court acts as a corrective to the unclear legal wording and arbitrary behavior of the administration, but also as an incentive to the legislator to more precisely regulate the relationship between the general and the special.⁹

6 Lilić, S., Cerović, D. op. cit., p. 54.

7 Lilić S. (2020). Special administrative law, Belgrade, Official Gazette

8 Milošević, D. *On power of attorney and proxies in certain special administrative procedures in the positive law of the Republic of Serbia*, in the magazine Law and Economy 1/2025, p. 116.

9 Urošević, R. (2017). *Commentary on the Law on General Administrative Procedure*, Novi Sad, Paragraph Lex, p. 62.

5. REGISTER OF ADMINISTRATIVE PROCEDURES (RAP) AS AN INSTRUMENT OF ADMINISTRATION MODERNIZATION

Contemporary trends in administrative law are increasingly moving in the direction of digitization, transparency and simplification of administrative procedures. In this context, the establishment of the Register of Administrative Procedures (RAP) represents one of the most significant steps towards the modernization of public administration in the Republic of Serbia. RAP was established by the Law on the Register of Administrative Procedures¹⁰ as a unique electronic database that contains information on all administrative procedures carried out by public administration bodies. The basic idea of this instrument is to provide citizens and the economy with an easy, fast and transparent access to data on how they can exercise their rights before the administration, what documents they need, what the deadlines and costs of the procedure are, as well as which competent authorities are. RAP¹¹ has a dual function: informational - citizens and business entities can get information in one place about the way the procedure is conducted, which reduces legal uncertainty and administrative costs; both reform and normative- the state gains insight into all the procedures that exist in the public administration system, which enables the abolition of redundant procedures, harmonization of practice and better control of the application of law.

One of the key reasons for the introduction of RAP was precisely the existing fragmentation between general and special administrative procedures. A large number of special laws that provide for different procedures, often without consistent application of the LGAP, it led to confusion both among the parties and within the administrative bodies themselves. RAP tries to “translate” this complexity into a clear, accessible and standardized description of each procedure.

In this sense, RAP is not only a register in the formal sense, but becomes a tool for systemic improvement of administrative process practice. It also acts as a mechanism for identifying inconsistencies between general and special law- if, for example, it is determined that a certain procedure deviates from the rules of the LGAP, the RAP makes it visible and enables the justification of those deviations to be assessed. Also, the Registry supports the process of ex post assessment of regulations (regulatory impact assessment)¹², because it represents the basis for the analysis of the so-called regulatory burden, number and complexity of procedures, number of required documents, average duration and other indicators.

By systematizing all administrative procedures, RAP encourages the standardization of terminology and practice, which further reduces the risks of arbitrariness and discretionary actions of public administration bodies. In this sense, it serves as a “bridge” between the general principles of administrative procedure and the concrete practice of their application in various administrative matters.

According to the reports of the Republic Secretariat for Public Policy (RSPP), the RAP contains thousands of recorded procedures, many of which are systematically described and published in a transparent manner for the first time. According to available data, the total number of administrative procedures for citizens is 716, and they are carried

10 Law on the Register of Administrative Procedures, (“Official Gazette of RS”, No. 44/2021)

11 Register of administrative procedures, <https://rap.euprava.gov.rs/privreda/home>, June 30, 2025.

12 Milovanović, D., Nenadić, N. and Todorić, V. (2012). *Study on the improvement of the legislative process in the Republic of Serbia*, Belgrade, GIZ, p. 78.

out by 135 public administration bodies, while the number of administrative procedures for the economy is 4,878, before 120 public administration bodies.¹³ This represents significant progress in the direction of realizing the right to good administration and legal certainty in the actions of public authorities.

6. THE ROLE OF RSPP AND IMPROVEMENT OF LEGAL SECURITY

The Republic Secretariat for Public Policy (RSPP) is a key institution in the process of public administration reform in the Republic of Serbia. His role in the establishment and management of the Register of Administrative Procedures (RAP) is only one of the segments of his wider competence that this body has in the domain of rationalization of administrative functions, improvement of the regulatory framework and strengthening of legal certainty.

RSPP was established as an expert body of the Government with the task of coordinating the development of public policies, analyzing the impact of regulations and monitoring the effects of law enforcement. In the context of administrative proceedings, RSPP has a special role in: standardization and classification of administrative procedures; elimination of unnecessary procedures and administrative burden; providing normative support to ministries and other bodies - RSPP provides guidelines regarding the harmonization of special laws with the general rules of administrative procedure, which directly affects the harmonization of the legal system; and encouraging digitization and e-government - as an important aspect of modern administrative procedures, which improves the accessibility, speed and transparency of administrative processes.

One of the most important influences of RSPP on the system of administrative law is reflected in the creation of conditions for strengthening legal certainty. In legal theory, legal certainty implies the ability of an individual to predict in advance the consequences of his actions and the actions of public authorities.¹⁴ This principle is an essential condition for the rule of law and good governance.¹⁵ It is precisely this role that RSPP fulfills through the RAP, but also through constant control of the normative framework. It is precisely this role that RSPP fulfills through the RAP, but also through constant control of the normative framework. By ensuring that each procedure is regulated in a transparent, accessible and predictable manner, the Secretariat indirectly ensures the consistent application of the LGAP and prevents the arbitrary exclusion of its provisions. Furthermore, through its role in drafting guidelines for the drafting of regulations, the RSPP insists on respecting procedural standards arising from the LGAP, which reduces the space for arbitrarily constructing "special procedures" in new laws. This is particularly significant in light of the frequent practice of legislators to prescribe procedural rules without sufficient compliance with the existing administrative procedural framework.

7. CURRENT ISSUES AND CHALLENGES IN IMPLEMENTATION

13 Register of administrative procedures, <https://rap.euprava.gov.rs/privreda/home>, June 30, 2025.

14 Milovanović, D. (2014). *The role of public administration in the improvement of the legislative process*, Proceedings "Legal security in conditions of transition", p. 212.

15 Lilić, S. (2024). *Administrative law of Serbia: theory and legislation*, Belgrade, Faculty of Law, University of Belgrade, p. 112.

Although the normative framework governing the relationship between general and special administrative procedures is relatively clear in a formal sense, in practice numerous problems still arise that hinder its consistent application. Current issues arising from this can be classified into several groups, which refer to: normative inconsistency, institutional inconsistency, insufficient transparency and limited application of the principles of good governance.

7.1. Normative non-compliance of special laws with LGAP

One of the most common challenges is the existence of special laws that contain only fragmentary procedural rules, without a clear exclusion of LGAP. In such cases, administrative authorities often make an arbitrary assessment of whether to apply the provisions of the general law or not, which leads to legal uncertainty. An example of this is the Environmental Protection Act¹⁶, which in some parts prescribes deadlines, but not all other procedural rules, while not referring to the LGAP as a subsidiary source.

7.2. Institutional inconsistency and different practices of administrative bodies

It is not uncommon for different administrative bodies, and even different organizational departments within the same institution, to have different approaches to the application of LGAP. Thus, it happens that in one case the same procedure is conducted according to the general rule, and in another as a “special procedure”, which violates the principle of equal treatment. For example, procedures in the field of construction and issuance of construction permits, which are under the normative influence of special laws, are often conducted without a clear application of general principles such as hearing the party and explaining the decision.

7.3. Limited application of procedural principles of good governance

Although the LGAP is based on a number of principles that reflect the concept of good administration, such as proportionality, economy, conduct of proceedings within a reasonable time, hearing the party and legal certainty- many of these principles are neglected in practice, especially in the so-called mass administrative procedures (social benefits, tax returns, cadastral procedures). Formalism, rigidity and lack of individual approach often dominate here. Therefore, pointing out all the mentioned principles, united, is of extreme importance. As the above represents the basic role of RAP, its importance is clear.

16 Law on Environmental Protection, Sl. Gazette of the RS, no. 135/2004, 36/2009, 36/2009 - dr. law, 72/2009 - Ph.D. law, 43/2011 - US decision, 14/2016, 76/2018, 95/2018 - dr. law, 95/2018 - Ph.D. law and 94/2024 - dr. the law

8. CONCLUSION

The relationship between general and special administrative procedure is a fundamental issue of administrative procedural law, but also more broadly - the issue of organization and functioning of public administration in the modern legal order. While the Law on General Administrative Procedure (LGAP) formally represents a pillar of administrative law and a guarantor of procedural fairness, numerous special laws, which regulate different administrative areas, often deviate from the general regime, often without clearly defined boundaries, explanations and compliance. The consequence of this is legal and institutional fragmentation, which manifests itself through unequal treatment, legal uncertainty and difficult access to justice.

The theoretical basis of the relationship between *lex generalis* and *lex specialis* in the administrative procedure must be more precisely conceptualized, and their application in practice more consistent. Not every deviation from individual provisions of the LGAP can be considered a separate "special procedure", nor is every regulation that contains elements of procedural regulation automatically a *lex specialis*. Administrative proceedings must be structured so that the general principles of administrative law are always applied when this is not explicitly and justifiably excluded, and that administrative authorities do not act arbitrarily when assessing the applicability of certain provisions.

In this sense, it is necessary to: normatively define more clearly the criteria for classifying the procedure as special; introduce the obligation of explicit explanation in each separate law about which provisions of the LGAP are excluded and for what reason; specify the obligation to apply the LGAP as a subsidiary source in all procedures that are not fully regulated by a separate law; ensure mandatory control of compliance of the draft law with the LGAP during the legislative process.

Of particular importance is the institutional role of the Republic Secretariat for Public Policies (RSPP), which represents the central institution of public administration reform in the direction of greater transparency, rationality and legal certainty. Register of Administrative Procedures (RAP), as a technical-normative instrument, it has the capacity to act as a cohesive mechanism that overcomes conflicts between the general and the particular. Its full functionality, however, requires institutional support, up-to-date data entry, obligation of use by authorities and recognition of the legal relevance of the data it contains.

Numerous challenges continue to arise in the practice of Serbian administration: from the incomplete application of the LGAP, through different interpretations of procedural rules within the same authorities, to insufficient understanding of the basic procedural principles. The problems of legal certainty, selective application of law, discretionary treatment and lack of transparency are not solely the result of a bad normative framework, but also institutional inertness, lack of professional staff and insufficient control in law enforcement. Precisely for this reason, the relationship between general and special administrative procedure should no longer be viewed exclusively as a matter of technical-legal interpretation, but as a key component of good administration, which also includes: respect for the procedural rights of the parties, access to justice, publicity and transparency of proceedings, predictability of actions of authorities, as well as equal treatment of all persons before the administration. The procedure is not a mere form; it is the essence of the rule of law in administrative action.

Finally, it is important to emphasize that legal certainty, as one of the key values of a democratic society, cannot be ensured without a clear, transparent and fairly regulated administrative procedure. That procedure must be consistently applied - either in general or in a special form. And if the authors could leave the zone of law, they would say that not only individual legal fate depends on the quality of that decision, but also trust in institutions as a whole



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ОДНОС ОПШТЕГ И ПОСЕБНОГ УПРАВНОГ ПОСТУПКА- НЕКА АКТУЕЛНА ПИТАЊА

Апстракт:

Законом о општем управном поступку на општи начин регулисана је материја управног права. Међутим, истовремено важе и други закони који на посебан начин регулишу исту материју. У овом случају, примењују се правила посебног закона, односно искључена је примена општег закона. Закон о општем управном поступку примењује се у ситуацијама када за случајеве из посебног закона нису прописана одступања. Имајући у виду наведено, чини се да се свако поступање по посебном закону “аутоматски” претвара у посебан управни поступак. Због тога постоји и Регистар административних поступака (РАП), који је установљен посебном законом- Законом о Регистру административних поступака којим се „уређује успостављање, управљање и вођење, садржина, начин коришћења и друга питања од значаја за управљање Регистром административних поступака”. Републички секретаријат за јавне политике (РСЈП) одговоран је за део реформе јавне управе који се односи на модернизацију и трансформацију услуга јавне управе. Улога Регистра је да се органима јавне управе обезбеди да све информације о поступцима кроз које се грађани и привреда обраћају јавној управи, буду приказане на једном месту, на једноставан и транспарентан начин.

Кључне речи: Закон о општем управном поступку. Посебни поступци. Регистар административних поступака. РСЈП.

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