

## CODE OF SILENCE ADMINISTRATION

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### ABSTRACT

The right of each state can't be rigid legal norms to regulate the overall behavior or operation of citizens in all spheres of social life. Therefore there is a necessity as some behaviors that border between morality, good governance, good behavior and the right to regulate, or to predict the specific moral legal norms contained through various ethical codes that will complement the legal gap in behavior in the respective professions. Not accidentally, the violation of such standards of conduct contained in ethical codes and pulls some sanction other than purely legal character, but of moral, disciplinary, political or similar nature.

State administration and public administration are authorized and competent to perform various activities within its general administrative function. However, their most important activity is resolving administrative issues. turn means that they are authorized to decide the rights and obligation citizens and legal persons in public law sphere.

**Key words:** *right, ethical codes, moral legal norms, procedures, administrative function.*

The adoption of the 1991 Constitution of the Republic Macedonia began to recover a different political system based on the relevant institutions of democracy. But why, responsibility and accountability for its work and procedures, absent the most important tenet of the rule of law or the government, and the realization of all other public professions and positions in our state.

Being in the field of public administration, the Macedonian legal system there are more regulations governing the status, rights and obligations of public servants. Thus, in the Inheritance listing can go from the Law on Civil Servants, who are joining the myriad pieces of legislation governing the status of employees in different segments of the public sector, and all of them are part numerous bylaws, such as government Decree on the description of the ranks and the adequacy of the jobs in groups and positions established by law for state employees, classification of positions of civil servants, regulations for the systematization of jobs of each authority/Organization Department and other general legal acts of ministries, other state authorities, regulatory bodies, institutions and organizations with public powers.

As a feature of public sector, the above mentioned laws and by-laws already adopted special called rules of good conduct for employees, systematized and included in the ethical codes of any authority, organization or institution separately. In recent years adopted codes of ethics for civil servants, local officials, university ethical codes, etc.. These codes aim, public responsibilities to be performed by holders in accordance with the law, which will ensure transparency, efficiency and total dedication to work and the public interest.

A simple procedure is to resolve the administrative and legal relationship that takes place relatively quickly, but if the procedure is complicated then it needed more time. But she/procedure should not be postponed indefinitely, but the standard „reasonable time“. Is there already is a problem: „What is reasonable time?“ What is the silence of administration and whether it is ethical code, in which citizens are impatient, as interested as possible to realize the right and authority are not advertised at their request, following their request?

This immediately creates a situation regarding citizen - public Administration, which exhausts the citizen to unconsciousness - a situation in which citizens are ignorant and powerless and that legal means to act against the mighty power of public Administration.

The current behavior and performance of state administration does not lead to that in Macedonia there is urgent need to adopt ethical codes that govern good behavior and proficiency of all employees in administration. No question, only to government ministers, but specific ethical codes for each category of officials who would have applied and would be true for all of them together.

Ethics must in itself contain rules and principles towards/for good behavior and proficiency, which are not formally given the legal provisions, but again, shall arise from them. In everyday practice, codes accurately and visibly actualize unacceptable behaviors, while contributing to better performance, to which the government must strive. Without honest and professional performers and creators all this can be frustrating, even counterproductive. Ethical codes have exactly this noble task to lay down the contours of the good, honest and professional conduct.

This causes a „*tsunami in the citizen*“ of this legal situation, then pointed to the legal and security instrument as citizens and legal persons to be protected during this passive situation and how to exercise constitutional and legal right (and international laws) for to solve the problem or request in a reasonable time.

All employees in Administration, carry out their activity in a specific area, which is between politics and law, so we have to activate specific norms that the legal structure not every day, but it will cover almost all activities and actions that public administration applied in the implementation and application of its function.

Explanations will be processed according to the following thematic areas and in the following order:

- First Resolve administrative cases;
- The second Resolve administrative cases within a reasonable time and silence of the administration, and
- The third Protection from the silence of administration as follows:
  - a) within issuing prime solution;
  - b) when the first level appeal decision is made;
  - c) the administrative proceedings in the case of silence of the administration;
  - d) the court's silence regarding the complaint about the administration's silence,
  - e) the silence of the administration in fulfilling court judgment administrative dispute.

In the regulation of socio-economic, cultural, social and other relationships through the prism of the adopted material standards and regulations by the state administration, and are obliged to pursue, implement and specifically applied to certain administrative and legal situations and relationships. It is the essence of the activity of administrative bodies in resolving administrative matters, through the (legal) application of general material norms, with the citizens and other legal entities specified administrative and legal relations that comes until finally settling in with their legally defined rights, responsibilities and interests in which all legally expressed in the specific administrative act or decision.

The exercise of this official action is left to the absolutely free will of the administrative authorities and other bodies and organizations and communities address administrative issues on the public authority, but is regulated by the Law on General Administrative Procedure.

Under the general administrative procedure, all relevant authorities to resolve administrative matters are obliged to adhere to legal procedures in establishing the material truth, and in compliance with the full range of administrative-procedural institutions (rules) that guarantees the legality of the procedure of adjudication.

Fundamental activity of administrative bodies is resolving administrative problems characteristic of the authorities, so in case decisions are not carried out voluntarily - beyond their actual performance stand-force instrument of state authorities.

Are administrative activity constantly getting new content in the new social relations? Exist two benchmarks: the first, the administrative authorities are obliged its functions to realize the correlation with the position of the citizen or the resolution of administrative problems to comply with the new constitutional legal position. The second benchmark stresses that through its rights and duties of administrative bodies are obliged by their activity citizens and other legal entities to ensure effective exercise of their rights and interests.

The first aspect is the manner of exercise of administrative function or activity in the resolution of administrative problems, which means that administrative bodies when creating administrative-legal relations when decisions will have to do so, in correlation with the position of citizen in a democratic civil society, in accordance with their guaranteed freedoms, rights and duties, with their free creativity, association activities, and the principle of equality.

The second aspect is that in solving administrative problems questioned the duty of administrative bodies, through which the citizens are ensured effectively realization of their rights and interests in creating conditions and in taking measures to facilitate and enable faster and more complete realization of their rights and interests, or the performance of their obligations and to give assistance in achieving and protecting their rights and interests.

Special place to take provisions for accountability of staff employed in public administration in Macedonia for violation of guidelines and rules of conduct laid down by the next code, and the behavior of staff employed in public administration, covering the most sensitive activities, must be reversed Sixteen void of legal, moral and ethical regulation of relations arising in achieving the highest administrative and political functions.

The purpose of the Code of Ethics is not plumbing but should be clearly and precisely defined: prescribing mandatory standards of conduct for employees in public administration, which will ensure fair and transparent operation of government as well as the state administration and strengthening citizens' confidence in state institutions. Fundamental principles that can lead to the stated purpose, the following:

- Commitment to function as main and only activity;
- Professionally, responsibly and conscientiously carrying out public mandates in the interest of the citizens of the Republic of Macedonia;
- Avoiding any conflict between private interests and public duties and powers;
- Avoiding impacts through the use of status in order to satisfy their own material interests, the interests of families or interests political party;
- Ethically correct behavior that excludes request or receive personal gifts or services from organizations or citizens who need to obtain or retain acquired service or assistance from the state.

Resolve within a reasonable time is explicitly request for economical and efficient resolution of cases, a reasonable duration of proceedings, standard that should raise the level of general and fundamental principle of administrative procedural law. Reasonable time is a norm or standard length of time in resolving certain administrative cases. How long it will take some administrative action will depend on the complexity of administrative cases, the type of legal protection required in this case, the number of parties and participants in the administrative proceedings, and other specific elements and criteria.

The term reasonable time is a not quite precise legal formulation that is relative and depends on the severity and complexity of complaints to be resolved. Therefore, the starting points in finding and establishing a generally accepted limit for solving the difficult and complex problems. That period in general is two months or, in justified situations further one month, and for simple administrative, items important rule they are addressed urgently and in the shortest reasonable time.

Resolving administrative cases need to be accomplished within a reasonable time and without delay, because citizens expect to enforce or protect their constitution and the law defined rights, in regular administrative practice limited to a month or two months later, many often a long, uncertain and slow.

Slow resolution of administrative disputes, which are sometimes extremely important for the parties (pension, welfare, etc.) For the parties mean illegal and unlawful refusal of official obligation and duty by administrative officers. All this discourages citizens to believe in the principle of legality and rule of law, and ultimately to have faith in the legal state.

This is not a problem lately, but linger is very long. States undertook numerous measures to overcome it before, but it exists today and in Macedonia. You need to find safe and effective remedies that society will defend the inaction of the administration. Silence of the administration's failure in the performance of official duty which a legal way to regulate, to limit and sanctions.

There are two assumptions in the silence of the administration: the first assumption is that, when silent, is considered the body positively decided case. It e very rarely (exception to the rule) and only the legally stipulated cases as might come to the intentional misuse of his frequent use. The second assumption is - when the administration to remain silent is considered that the requirements of the parties shall be rejected.

In the Republic of Macedonia with the Strategy for reform of state administration, procedural changes in the Law on General Administrative Procedure, the new law governing disputes and many personal, technical and other innovation measures (introduction of single window system and electronic administration) are seriously trying to make significant shifts in the direction of acceleration of administrative procedural actions in resolving the complaints within a reasonable time.

When the party will initiate an administrative dispute over the administration's silence (the defendant authority to issue the administrative act), and the court finds that it is justified, he court shall grant the appeal and will determine in what sense the competent State authority reaches a decision (Article 52 Law on Administrative Disputes ). The judgment in the dispute over the administration's silence specific kind judgment, because here the verdict is not an administrative act, because it has not and so the court can not reverse. The court in this case, according to the logic of things, you can choose. between two alternatives: to resolve the administrative matter or dispute, in which case the competent authority will need to adopt an administrative act, or to grant the complaint and determine in what sense the competent authority reaches its decision. Our Law on Administrative Disputes adopted alternative, so the verdict in the case of the administration's silence does not resolve the dispute, but determined in what sense the competent authority reaches a decision, the court is acting under judgment because of the silence of the administration. If the competent authority after the annulment of the administrative act is not made immediately but no later than 30 days, a new administrative act or an act of enforcement action taken after due silence of administration, the party may, by special request for passing such an act of court rendered judgment. If the competent authority passed an act within seven days of this request may require the party making such an act by the court. After such a request the court will ask the competent authority on the reasons for the failure to issue the act. The competent authority shall give this notice immediately and within seven days. If he does not, or if the explanation provided by the court's finding does not justify non-enforcement of the judgment, the court shall decide who shall replace the act of the competent authority. This court decision will be submitted to the competent authority for enforcement and shall inform the body that supervises. The body responsible for enforcement is obliged to enforce this decision (Article 53 Law on Administrative Disputes).

### **Summary**

Therefore, code of ethics of public administration must not only adopt, but to really be accepted by that act as a guide, a sort of basic guide in their operations, and to achieve more

efficient and transparent perform their function. In order not to become a dead letter on paper, and all have adopted codes of ethics in this country, surely that would have to provide some sort responsible for his ignorance. This matter is before the constitutional category, but the listing of persons (bodies) that could occur as initiators of political responsibility for performing duties contrary to the legal, ethical, moral and political principles, we believe that a violation of constitutional provisions. It is perfectly clear that the final decision to initiate proceedings for political responsibility and dismissal of the minister will be conducted by competent authorities under the Constitution of the REPUBLIC OF MACEDONIA.

„Silence of administration“ detail is analyzed and explained through the legal situation „silence of administration“ and to elaborate and present legal-protective mechanism of citizens and legal persons as to protect themselves and disadvantage their passive position, in order to exercise their constitutional and legal, so according to international laws, right - to solve the problem (application) within a reasonable time.

Problem is treated by resolving administrative cases; resolve administrative cases within a reasonable time, the silence of the administration, and protection from the silence of administration, very solid, complex and profound in all phases of the administrative and the administrative and judicial proceedings.

#### **Bibliography**

1. Проф. д-р Александар Христов: „*Управно право*“, Скопје, 1981 год.
2. Проф. д-р Велимир Иванчевиќ: „*Шутња администрације*“, Анали правног факултета, Београд, бр. 4/54 год.
3. Проф. д-р Иво Крбек: „*Странка у управном поступку*“, Загреб, 1928 год.
4. Проф. д-р Никола Стјепановиќ: „*Управно право СФРЈ*“, Београд, 1964 год.
5. Проф. д-р Бранислав Марковиќ: „*Положај и улога странке у управном поступку*“, Београд, 1995 год.
6. Проф. д-р Стеван Лилик: „*Управно право*“ Београд, 1995 год.
7. Проф. д-р Зоран Томиќ: „*Управно право*“, Београд 1991 год.