NOTIFICATION AS A LEGAL INSTRUMENT UNDER THE NEW LAW ON GENERAL ADMINISTRATIVE PROCEDURE IN THE REPUBLIC OF SERBIA

Dragan Vasiljević, PhD[1]
University of Criminal Investigation and Police Studies, Belgrade, Serbia

Abstract: The new Law on General Administrative Procedure envisages several forms and methods of communication between the parties and public law authorities. These include notification as a form of communication between an authority and a party or third parties in a proceeding. The said legal institute encompasses the following issues: the notion, manner and place of notification; notification in special cases; persons authorized to receive notifications; notification procedures; delivery. Notification is of great practical and legal significance for the parties and the achievement of their rights and duties and for the authority issuing the relevant document, i.e. for normal, efficient and cost-effective unfolding of an administrative procedure.Solutions envisaged in the new Law on General Administrative Procedure stipulating the issue of notification appear to be not only more broadly conceived than in the past, but also significantly improved.

Keywords: administrative procedure, authority, party, notification, delivery, authorized persons, delivery note.

INTRODUCTION

The new Law on General Administrative Procedure (LGAP)[2] of the Republic of Serbia has given due attention to the institute of notification as a form of communication between the authority in charge of proceedings on the one hand and a party and other participants in the proceedings on the other. As for third parties, the rules for notifying the parties apply to them as well, except in cases when the Law or some other special law stipulates exemption.

The solutions pertaining to the institute of notification allow for the continuity of the proceeding, protection of the public interest and exercise and protection of the rights of citizens and legal interests of the party and third parties to the proceedings.[3]

---

1 dragan.vasiljevic@kpu.edu.rs
2 Службени гласник РС, бр. 18/2016.
3 Д. Миловановић, Однос општ(ој)ег и посебн(ој)их управнопроцесних закона, Полис, Тема броја-Реформа административних процедура, август 2016, бр. 11.

Compared to the existing solutions relating to the delivery of notifications, new provisions have been not only broadened through the institute of notification, but also improved. It is the reason to devote this paper to the analysis of the provisions pertaining to this legal institute that are currently in place.

THE NOTION, MANNER AND PLACE OF RENDERING NOTIFICATION, NOTIFICATION IN SPECIAL CASES, AND PERSONS AUTHORIZED TO RECEIVE NOTIFICATIONS

Notification is an act by which the authority, in an appropriate way, informs a party and any other participants about actions in an administrative matter. The authority chooses the method of notification, unless otherwise stipulated. In doing so, the authority is obliged to take into consideration the legal protection of the party, publicity of information, economic expenditure of resources as well as the simplicity of the procedure.[4]

The authority may notify the party by electronic means, by mail, by delivery or in another appropriate manner. If the party is present in the official premises of the public law authority, the notification may be spoken.

Brief and urgent information may be given by telephone, electronically or in another appropriate way, of which a note is made and added to the file containing the personal name of the persons giving and receiving the notifications. The rule is that the public law authority notifies the party itself, unless the party is represented by a legal representative, proxy or authorized representative, who shall be notified instead.

It is possible for an error to occur during notification. Thus, when an obvious mistake is made in the notification, the notification shall be deemed to have been delivered on the day when it is actually delivered. Notification errors may vary (errors in entering the required data in the delivery note or a missing delivery note, sending the document to a wrong email address, etc.). Hence, all available evidential means are used to establish the exact date and time when the notification was actually delivered.[5]

Regarding the place where the notification is made, the Law envisages three rules: 1) the party is, as a rule, informed in the place of abode, business premises or at workplace; 2) an attorney is notified in his/her office, whereby the notification can also apply to a person employed in the office; 3) notification is also possible elsewhere if the recipient of the notification consents to it.

4 Д. Васиљевић, Јединствено управно место као правни институт у новом Закону о општем управном поступку Републике Србије, Криминалитет у Србији и инструменти државне реакције, I Тематски зборник радова, Криминалистичко-полицијска академија, Београд, 2016, pp. 225-235.
5 З. Р. Томић, Коментар Закона о општем управном поступку, Београд, 2017. pp. 334-363.

In the event of a change of the place of residence, place of abode or the seat of the party or the party's legal counsel, the public law authority must be informed about it immediately, without delay. If they fail to do so, and the official cannot contact them, the party shall be further informed by public delivery.

The competent authority must also be informed about the change of residence or place of abode of the attorney or representative authorized to receive notifications during the procedure. Otherwise, the notification shall proceed as if the representative has not been appointed.

The Law also envisaged the rules of notification in special cases. Notification in special cases includes three categories of persons: 1) natural and legal persons who are in a foreign country are informed directly or through diplomatic channels, unless otherwise provided for by a ratified international treaty; 2) persons who are in the army of Serbia are informed through the competent command, and members of special units of the Ministry of the interior through their command; 3) persons deprived of their liberty shall be informed through the management of the institution in which they are located.

In all of these three cases notification has been performed when the written document is delivered to the recipient.

We have already pointed out that the public law authority notifies the party itself. However, when a party has the representative authorized for receiving notifications, he/she will be notified instead. The person authorized to receive notifications is a special type of representative to whom all written documents addresses to the party are serviced. The party appoints his/her representative in such a way by informing the public law authority in charge of the proceedings about the representative either orally or in writing. The representative for receiving notifications has a narrowly specialized power. He/She is not authorized to take procedural actions on behalf of and for the account of the party, but only to receive the correspondence in the proceedings for the party.[6]

If the party or the legal representative of the party are in a foreign country, and do not have an attorney in the Republic of Serbia, the public law authority shall, when sending the first written document to them, set a deadline that cannot be longer than 30 days to appoint the representative for receiving notifications. The authority therein warns them that if they fail to do so, a representative for receiving notifications shall be appointed at their expense.

The receipt of a notice by a special representative in question is deemed to be a reception by the party, especially as regards the time of receipt.

For the purpose of efficiency and cost-effectiveness of the procedure, more than five parties in the same procedure that do not have opposing interests or a joint representative shall be obliged, at the request of the authority, to appoint a joint representative authorized to receive notifications within the deadline set by

6 З. Р. Томић, Опште управно право, Београд, 2017. pp. 362, 388.

the authority. If they fail to do so, the authority shall appoint a joint representative for receiving notifications at their expense.

The person authorized to receive notifications does not represent the party and is therefore obliged to forward every notification immediately upon the receipt, without any delay. However, if the written notification cannot be forwarded to a party, and the party may miss the deadline for a legal remedy, then the representative is authorized to declare a legal remedy on behalf of the party.[7]

Manners of informing/notifying

As regards the manner of notification, the Law envisages the following three ways of communicating: 1) notifying by electronic means; 2) notifying by mail; 3) delivery.

Notifying by electronic means can be formal or informal. Formal communication by electronic means is performed in accordance with the law and, unlike informal communication, involves a mandatory confirmation which proves the receipt of the document. Formal notification by electronic means is equalled with the delivery.

Notification by mail may be performed by regular or registered mail. A written document sent by regular mail is considered received by the recipient on the seventh day from the day it was handed over to the postal operator if it is sent to an address in the Republic of Serbia or on the fifteenth day after it has been handed over to the postal operator if it is sent to an address in a foreign country. However, the recipient can prove that he/she received the mail later or that they have not received the mail at all.

In case of a document sent by registered mail, it shall be deemed to have been received on the day stated in the note on the receipt of the consignment. The notification by registered mail equals delivery.

Delivery

As a form of notification, delivery can be personal, indirect and public.

Personal and indirect delivery are performed by the public law authority through an official, through the postal operator or by electronic means, in keeping with the law. Only exceptionally, the recipient of the written document may be summoned to take over the document if the nature or significance of the document should so require.

---

7 З. Р. Томић, Д. Миловановић, В. Цуцић, Практикум за примену Закона о општем управном поступку, Београд, 2017. стр. 89-97; Д. Васиљевић, Концепт ванредних правних средстава по новом Закону о општем управном поступку Републике Србије, Правни живот, Београд, бр. 10/2016, том II, pp. 215-225.

Delivery is a type of formal notification of parties and other participants in the proceedings by the public law authority. This procedural action consists of sending and delivering different writings (summonses, decisions, etc.) by the authority to the persons they are intended for in order to create all necessary preconditions for the persons to become acquainted with the contents thereof.[8]

If the party to the proceedings is a legal person, then delivery to such a subject is done by delivering the document to its seat, to a person employed by the legal person, or to a special address for receiving mail which has been registered in accordance with the law or to the legal person's representative to his address from the public register or to the address of his residence.

The rule is that the action of delivery is performed on a working day from 8 to 20 o'clock. However, the authority may decide - for particularly important reasons - to perform the delivery also on the day when deliveries are not made or after 20 o'clock. This legal possibility should not lead to abuse in practice, i.e. to unnecessary disturbance of the citizens. That is why this legal possibility should be interpreted very strictly and every case of such 'extraordinary' delivery should be justified. This means that the forwarder is obliged to warn the addressee that such 'extraordinary' delivery is performed based on a decision of the competent authority and on the Law on Administrative Procedure.[9]

Speaking of delivery, the Law makes distinction between: personal delivery, indirect delivery and public delivery.

Personal delivery is mandatory in the following cases: 1) when the time starts expiring on the date of delivery and the deadline cannot be extended unless otherwise provided by law; 2) when required by law. Personal delivery involves servicing a written document to a person to whom it is addressed. The person receiving the document is called the recipient. The stipulation of mandatory personal delivery is in some cases motivated by the very significance of a certain document or legal effects related to its delivery.[10]

If the recipient of the written document refuses to receive it, the authority's representative or the postal operator (forwarder) makes a note on this and then leaves the notification in the place where the document was to be serviced. The notification specifies the personal name of the recipient, the data identifying the document, the office within the public law authority premises where the document can be taken over, the deadline within which it has to be taken over, and the date when the notification is left.

However, if a public law official or a postal operator (forwarder) does not find the recipient of the document at the address where the document is supposed to be delivered to them, the forwarder shall repeat the attempt of delivery within the

8 Д. Васиљевић, Управно право, Београд, 2015. pp. 294-297.
9 Д. Миловановић, В. Цуцић, Нова решења Нацрта закона о општем управном поступку у контексту реформе јавне управе у Србији, Правни живот, бр. 10, том II, Удружење правника Србије, Београд, 2015, pp. 95-110.
10 Р. Марковић, Управно право, Београд, 2002. pp. 347-354.

period of 24 hours. If the recipient is yet again not found at the address where the document is supposed to be delivered, the forwarded makes a note about it and leaves the notification in the same manner as explained in the paragraph above.

In any event, personal delivery is deemed to have been performed upon the expiry of 15 days from the date when the notification is left in the place where the document is supposed to be delivered.

The Law also provides for indirect delivery. Thus, if personal delivery is not mandatory, and the recipient is not found at the address where the document is supposed to be delivered to him/her, it can be delivered to another person who accepts to hand it over to the recipient and it should primarily, and if possible, be an adult member of the recipient's household or a person who works with the recipient – if the document is to be delivered to the recipient's work place. The only restriction here is that the document cannot be delivered to a person who is an opposing party in the same proceeding. Given the nature of the matter, it is likely that such a person would not take sufficient care about handing the document over to the addressee.

The other person to whom the document is delivered shall sign the delivery note. The forwarder shall enter the relationship of the other person with the recipient and the date when the notification was delivered to the other person in the delivery note.

If the other person does not accept the delivery of the document, it is left in the place where it is supposed to be served to the recipient, and the time and date of leaving the notification and the deadline after which the delivery shall be deemed to have been made are indicated on the envelope and the delivery note.

An indirect delivery is deemed to have been made upon the expiry of 15 days from the date of serving the document to another person or when it is left in a place where it is supposed to be handed to the recipient.

The delivery note is a confirmation and represents proof that the delivery has been made either personally or indirectly. It contains the personal name and address of a person, as well as the data identifying the delivered document. It is signed by the delivery officer and the recipient or another person to whom the document has been delivered. In addition, figures and letters are used to enter the date of delivery of the document on the delivery note. The delivery note may be in paper or electronic form.

If the recipient or another person to whom the document has been delivered refuses to sign the delivery note, the forwarder specifies this in the delivery note and uses figures and letters to write the date of the delivery of the document, whereby the delivery is deemed to have been duly performed. This situation should be distinguished from the situation in which the recipient of the document refuses to receive the document in case of personal delivery. Namely, in such a situation, the delivery has not been made, as the recipient has not come in possession of the document that is delivered. As we have already explained, the

forwarder produces a notification on the possibility to take over the document and possibly a note on the rejection of the reception. In the former situation, the delivery has been performed, as the document has been delivered - only the recipient or another person have refused to sign the delivery note. That is why there is no delivery deadline, as the delivery is considered to have been duly made as soon as the forwarder writes on the delivery note what happened and when.[11]

The Law also includes provisions on delivery by public announcement. Public delivery, as a rule, represents a subsidiary form of delivery and is used in the following situations/cases: 1) if no other form of delivery is possible; 2) if the decision is delivered concerning a larger number of persons who are not familiar to the authority, and the delivery in another way is not possible or appropriate; 3) in other cases stipulated by the law.

Obviously, this type of delivery is resorted to only when personal or indirect delivery regarding a specific matter is not possible.[12]

Delivery by public announcement consists of publishing the document on a web presentation and the notice board of the public law authority. The document may be published in an official gazette, daily paper or in another appropriate manner.

Delivery by public announcement is deemed to have been made within 15 days of the day when the document was published on the web presentation and the notice board of the authority. The authority can for justified reasons extend this deadline. If a decision is subject to public delivery, its justification may be omitted. The decision is accompanied by the data on the place, premises and manner of insight into the justification. The reason for this lies in the fact that persons other than the addressee could find out confidential or classified data or the data on the addressee's personality contained in the justification of the delivered decision.

CONCLUSION

Notification is an important legal institute of the general administrative procedure. It essentially encompasses a set of actions relating to the procedure for delivering official documents (summonses, decisions and other documents) to the persons they concern, or are communicated to them in another way. Notification is of great practical legal significance both for the parties and for exercising their rights and duties, and for the authority issuing the given document, i.e. for normal, efficient and cost-effective unfolding of the administrative procedure.[13]

11 Д. Миловановић, В. Цуцић, *Унапређење пословног окружења у Србији у светлу нових решења Нацрта закона о општем управном поступку*, Усклађивање пословног права Србије са правом ЕУ (ур. проф. др Вук Радовић), Правни факултет Универзитета у Београду, Београд, 2015, pp. 445-469.

12 Б. Мајсторовић, Коментар ЗУП-а, Београд, 1978.

13 В. Цуцић, Унапређење правне заштите грађана у управном поступку, Полис, Тема

In this sense, the delivery of a decision to a party is an integral part of passing the decision, and the decision can be deemed passed when the party has been duly notified about it. This is because the decision is passed when it can produce legal effect. The decision made in an administrative procedure cannot produce any effect until it has been communicated to the party. This is why the provisions of the Law pertaining to notification are very elaborate in respect of the delivery techniques.[14]

These rules have a twofold aim: 1) to protect the addressees against possible arbitrariness of the authority and from harmful consequences of improper notification; 2) to prevent all kinds of abuse by unconscientious individuals who would disregard the act of notification and thus avoid getting acquainted with the contents of the document in an attempt to avoid legal consequences deriving from the document.[15]

The provisions contained in the new Act pertaining to notification will hopefully lead towards achieving the said goals.

REFERENCES

1. Васиљевић, Д., Јединствено управно место као правни институт у новом Закону о општем управном поступку Републике Србије, Криминалитет у Србији и инструменти државне реакције, I Тематски зборник радова, Криминалистичко-полицијска академија, Београд, 2016.
2. Васиљевић, Д., Концепт ванредних правних средстава по новом Закону о општем управном поступку Републике Србије, Правни живот, Београд, бр. 10/2016, Том II.
3. Васиљевић, Д., Управно право, Београд, 2015.
4. Васиљевић, Д., Облици управног поступања по новом Закону о општем управном поступку Републике Србије, Правни живот, Београд, бр. 10/2017, Том II.
5. Vasiljević, D., Legal nature and significance of guarantee act as provided for in general administrative procedure bill, Međunarodni naučni skup Dani Arčibalda Rajsa, Tematski zbornik radova međunarodnog značaja, Kriminalističko-policijska akademija, Beograd, 2016, Tom I.
6. Јевтић, Љ., Шранек, Р., Управни поступак и управни спор, Београд, 1969.
7. Мајсторовић, Б., Коментар ЗУП-а, Београд, 1978.

броја-Реформа административних процедура, август 2016, бр. 11.

14 Д. Васиљевић, Облици управног поступања по новом Закону о општем управном поступку Републике Србије, Правни живот, Београд, бр. 10/2017, том II, pp. 351.363; D. Vasiljević, Legal nature and significance of guarantee act as provided for in general administrative procedure bill, Međunarodni naučni skup Dani Arčibalda Rajsa, Tematski zbornik radova međunarodnog značaja, Kriminalističko-policijska akademija, Beograd, 2016, pp. 44-54, Vol. I.

15 Љ. Јевтић, Р. Шранек, Управни поступак и управни спор, Београд, 1969., p. 9.

8. Марковић, Р., Управно право, Београд, 2002.
9. Миловановић, Д., Однос општ(ij)ег и посебн(ij)их управнопроцесних закона, Полис, Тема броја - Реформа административних процедура, август 2016, бр. 11.
10. Миловановић, Д., В. Цуцић, Нова решења Нацрта закона о општем управном поступку у контексту реформе јавне управе у Србији, Правни живот, бр. 10, том II, Удружење правника Србије, Београд, 2015.
11. Миловановић, В. Цуцић, Унапређење пословног окружења у Србији у светлу нових решења Нацрта закона о општем управном поступку, Усклађивање пословног права Србије са правом ЕУ, Правни факултет Универзитета у Београду, Београд, 2015.
12. Томић, Р. З., Коментар Закона о општем управном поступку, Београд, 2017.
13. Томић, Р. З., Опште управно право, Београд, 2017.
14. Томић, Р. З., Д. Миловановић, В. Цуцић, Практикум за примену Закона о општем управном поступку, Београд, 2017.
15. Цуцић, В., Унапређење правне заштите грађана у управном поступку, Полис, Тема броја-Реформа административних процедура, август 2016.

Legislation

1. Закон о општем управном поступку, Службени гласник РС, бр. 18/2016