

SPECIFICS OF THE UNIFIED ADMINISTRATIVE PROCEDURE IN THE REPUBLIC OF SERBIA

ABSTRACT: The unified procedure represents a set of activities and procedures carried out by the competent authority in connection with the construction, extension and reconstruction of buildings, i.e. the execution of works. This procedure is constructed in such a way that it is carried out in phases that are mutually correlated in a cause-and-effect relationship, and in most cases the administrative action in one phase is conditioned by the completion of the previous one. In certain phases, the administrative body undertakes administrative actions, while in others it issues administrative acts. The unified procedure is carried out entirely in electronic form. It is carried out by the administrative body responsible for urban planning and construction works, within the legally prescribed short deadlines, with the authority to obtain, ex officio, all necessary acts from other administrative bodies and legal entities entrusted with public powers. The author's intention is to show through this work the specifics of the unified procedure, which are reflected in a well-designed organization, by clearly prescribing the rights and obligations of both the parties and all authorities participating in it, and the way in which transparency and cost-effectiveness are ensured in its implementation. Also, since the unified procedure is most often regarded in scholarly theory as an example of the single administrative place — an institution governed by administrative

*LLD, Senior Advisor, Republic Geodetic Authority, Belgrade, Serbia, email: milica.office1@gmail.com



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procedural legislation — this paper will demonstrate that it bears greater similarity to the concept of the electronic single administrative place established by the law governing electronic administration.

Keywords: *unified procedure, single administrative place, special administrative procedure, electronic administration.*

1. Introduction

One of the many areas of social life, which is organized by the norms of administrative law, is the area of planning construction land and construction of buildings. The advantages of a clear, unequivocal and complete organization of the way the competent authorities act, as well as a clear prescription of the rights and obligations of citizens and legal entities in this area, are multiple, starting from the planning of the living space, to the provision of safe and humane housing and enabling the unhindered performance of life and professional activities of all citizens. In addition to the procedure stipulated by law, the modernization and development of administration, from the previously emphasized bureaucratic to the currently adopted concept of “good administration” with emphasis on the social role, necessarily implies the professionalization of administration, its efficiency and transparency (Torbica, 2023a, p. 401). The state’s determination to reform the administration from an administrative apparatus with an emphasized role of coercion to a public service adapted to citizens and their needs is reflected in the continuous adoption of strategic documents (State Administration Reform Strategy in the Republic of Serbia, 2004; Public Administration Reform Strategy in the Republic of Serbia, 2014 and Public Administration Reform Strategy in the Republic of Serbia for the period from 2021 to 2030, 2021) and their elaboration through action plans, starting from 2004 until today. The result of such a political attitude, and in accordance with the need to establish administrative capacities adapted to all the challenges and innovations that are put before the administrative bodies and the way and objectives of their activities, was the adoption of the Law on General Administrative Procedure in 2015. With that law, as an umbrella and basic law that governs the manner of action of all administrative bodies, as well as other bodies and organizations entrusted with public powers when performing administrative activities, the legislator tried to obtain such an organizational-legal solution that could successfully and in the future satisfy diverse and growing social needs (Rabrenović, 2022, p. 10). Since this law changed the concept of the previously valid procedural law with a tradition of

more than eighty years long, (Lončar, 2009, pp. 181–184) it is logical that the scientific and professional public, both before and after its adoption, actively advertised (Dimitrijević, 2010; Milovanović & Vasiljević, 2011; Milkov, 2013; Lilić, 2013). Criticisms were conflicting, from positive to negative, but it is unambiguous that this law provided an opportunity for further modernization of both general and special administrative procedures, as well as mutual cooperation and connection of various administrative bodies and organizations entrusted with public powers in order to implement procedures and make decisions.

The field of construction has been regulated by legal acts from the earliest periods, since the time of ancient Rome, and the state has always shown an interest in standardizing the way construction land is used and construction possibilities. Issuance of building and use permits, as a document by which the competent authorities monitor the construction process from the very idea to the realization and start of use of the building, and even during the subsequent use of the building through the actions of inspection authorities, is known in our legal literature and has been organized in the last more than a hundred years. The beginnings of comprehensive legal regulation of this area of social life and the obligation to issue administrative permits known today date back to the Construction Law for the Kingdom of Yugoslavia from 1931. With this law, the field of construction and urban planning was regulated in a unique way throughout the territory of the country at that time, thus all the various regulations of the former Austria-Hungary and the Kingdom of Serbia ceased to be valid. From then until today, the issuing of building and use permits has always been an integral part of the actual competence of administrative bodies, either at the local or at one of the higher levels of government organization. This practice has been maintained to this day, with the necessary changes in tightening the conditions for issuing administrative documents that are in accordance with the requirements in the field of construction today. The basic specificity of the unified procedure is that it was standardized during the validity of the previous law that regulated the general administrative procedure as well as the shortened administrative procedure, i.e. in the period when our procedural legislation in the field of administration did not foresee such a modernized special administrative procedure nor such a type of organization and mutual cooperation of different administrative bodies and organizations exercising public powers. Therefore, although the earlier procedural law provided for decision-making in abbreviated administrative proceedings by electronic computer, such a legal solution did not enable the development of a newly standardized procedure of the unified procedure,

which from the very beginning was provided exclusively as electronic (Law on General Administrative Procedure, 1997).

However, although the very beginning of the application of the norms concerning the unified procedure did not have a legal basis in the law regulating the general administrative procedure, that legal basis was created a year and a half later, with the adoption of the new Law on General Administrative Procedure in 2016. This legal situation can only be justified by the long period of drafting the law regulating the general administrative procedure, i.e. the fact that already at the time of the legal formulation of the unified procedure, a position and basic guidelines were taken on the necessity of modernizing the administrative procedure through the amendment of long-overdue procedural solutions, the need to apply certain legal standards related to the work of administrative bodies that arose from the process of European integration of the Republic of Serbia, as well as the incentive provided by the civil public for the necessity of formulating such a procedure in the field of construction through which the administrative bodies will satisfy all the requirements for transparency, economy and efficiency of their work.

2. Phases of the unified procedure and decision-making method of the competent authority

The unified procedure is a common name for several administrative actions and special administrative procedures carried out by administrative authorities in the area of construction, extension or reconstruction of buildings, i.e. the performance of works on buildings. It was introduced into our legal system in 2015 (Act on Amendments to the Law on Planning and Construction, 2015, Art. 110–160), which carried out a complete reform in the way our administrative bodies act in this area. As we noted, the legal formulation of this administrative procedure, with all the characteristics of a modern administrative procedure, preceded the reform of the procedural legislation related to the general administrative procedure. Through its implementation, the newly introduced concept of “administrative action” is fully expressed, which, unlike “state administration affairs”, has a broader concept and refers to all situations in which the position of a party is legally or factually influenced (Milkov & Radošević, 2016, p. 737). This can be shown in the best way by pointing out the specifics of each phase of the unified procedure, which can be observed individually, but in most cases, making a positive decision in each phase necessarily precedes the same decision in the next one. Namely, the issuance of a use permit is always preceded by the

issuance of a building permit, and it is preceded by the issuance of location conditions. However, there are certain procedures that are part of the unified procedure but are not necessarily connected to the others, such as the issuance of a decision allowing the demolition of a building and the issuance of a work permit for those types of buildings that can be built, that is, those works that can be carried out without obtaining a building permit.

Those phases that are mutually conditioned and have their own order prescribed by the law are: issuance of location conditions, adoption of a decision on approval for the construction of the building (building permit), confirmation of the application for works and adoption of a decision on approval for the use of the building (use permit). Issuing location conditions and confirming the application of works represent administrative actions, i.e. material acts of authorities that affect the rights, obligations or legal interests of the parties, (Jovanović, 2018, p. 1098) while the procedures for issuing building and use permits are special administrative procedures, i.e. the specifics of this administrative area dictated that certain issues of administrative procedure be regulated by a separate law (Lončar, 2016, p. 1234). The location conditions and their contents are a public document that contains all urban, technical and other conditions and data required for the preparation of the preliminary project, the project for the building permit and the project for the execution of works on the building that the competent authority can determine by itself, by reviewing the planning document, or on the basis of obtaining the necessary information from other authorities or holders of public authority (Ordinance on Location Conditions, 2023, Art. 3, 13 and 53a). They are issued in relation to the cadastral plot, and not in relation to the applicant, and contain conditions that are necessary for designing and connecting to the infrastructure network (electricity, water, gas), as well as other conditions that are foreseen by the planning document for construction on a certain cadastral plot. Therefore, from the content of this act, the party receives useful information about all the conditions that the future object must fulfill. If the applicant is not satisfied, he has the right to file an objection within the period specified by law (Regulation on location conditions, 2023, Art. 15). The objection is submitted to the second-instance authority, which in this case is the city or municipal council, if the first-instance authority is the administration of the local self-government unit, the executive authority of the autonomous province, if the decision was made in the first-instance procedure by the administrative authority of the autonomous province, i.e. the Government, if the first-instance authority is the competent ministry of the Republic of Serbia. The decision on the objection made by the competent

second-instance authority is final in the administrative procedure, and the protection of the rights of the parties is ensured by the possibility of initiating an administrative dispute (Law on Planning and Construction, 2009, Art. 15). At this point, it is necessary to point out a possible, but legally unjustified, situation in which the second-instance authority, upon objection, decides to adopt it and issue new, amended, location conditions. Namely, the issuing of location conditions is an administrative action, that is, such an activity of the administration that cannot be the subject of an administrative dispute. On the other hand, the subject of the administrative dispute is the decision by which the competent second-instance authority decides on the complaint (Radošević, 2021 pp. 612–613). In the mentioned situation, the second instance authority makes a decision by which it approves the complaint and issues location conditions, so with the decision in the administrative procedure, which was initiated by the complaint, it also decides on something that represents an administrative activity, which is not carried out according to the rules of the administrative procedure, that is, an administrative action. Taking into account that an administrative action cannot be the subject of an administrative dispute, it would be more correct if the legislator designated the head of the body responsible for implementing the unified procedure for deciding on the complaint, whose decision would be decided upon appeal by the city or municipal council, the executive body of the autonomous province or the Government. In this way, upon complaint, an administrative procedure would be carried out and an administrative act would be passed, against which an administrative dispute could be initiated.

In the second phase of the unified procedure, the competent authority issues, if all the conditions prescribed by law are met, a building permit, i.e. passes a decision approving the construction of the building (Law on Planning and Construction, 2009, Art. 133–147). According to the rules of this procedure, the competent authority can issue a decision on a construction permit, a temporary construction permit, a construction permit for preparatory works, and a temporary construction permit for the performance of preparatory works. The authority responsible for issuing construction permits is the line ministry, while the authorities of local self-government units and autonomous provinces perform these tasks as entrusted tasks. In this procedure, the competent authority makes a decision in accordance with the previously issued and valid location conditions, as well as on the basis of technical documentation prescribed by law, with fulfilled conditions regarding property rights on the land on which the construction of the facility is planned (Regulations on the procedure for implementing the unified procedure, 2023).

According to the rules of this special administrative procedure, the competent authority can make three types of administrative acts, two negative decisions by which the request is rejected, due to procedural deficiencies and incomplete documentation, and reject even if it is formally correct, if the technical documentation is not in accordance with the locational or legally prescribed conditions, as well as a positive decision by which the request is adopted and the construction of the facility is approved (Vučetić, 2021, p. 83). If the decision was made by the administrative body of the local self-government unit or the autonomous province, the party can protect its right before the second-level authority, the departmental ministry or the executive body of the autonomous province, if it concerns the construction of a facility on the territory of the autonomous province. When the competent ministry decides in the first instance, that decision is final and the dissatisfied party can protect its rights by submitting a lawsuit to the administrative court (Martinović, 2018, pp. 200–204). In the third phase of the unified procedure, the competent authority acts on the application of works, which it can confirm if the legal requirements are met or reject due to formal deficiencies. If it confirms the application of works, the competent authority is obliged to submit the valid building permit issued in the previous stage of the procedure, as well as the confirmation in the application of works to the authority responsible for state survey and cadastre affairs, for the purpose of pre-recording that object in the real estate cadastre records and the competent building inspection, which is authorized to carry out inspection supervision. Therefore, the confirmation of the application of the works, together with the decision on the building permit, is an act that initiates the initiation of a special administrative procedure of registration in the real estate cadastre records *ex officio* (Torbica, 2023b, p. 467). Since at this stage of the procedure, the competent authority for the implementation of the unified procedure performs an administrative action, the party has the right to object to the rejection of the application for works, and the authority to decide on the merits of the objection and the manner of action of the administrative authority have already been explained in the part of the work concerning location conditions. In the process of reporting the completion of the construction of the foundation and the completion of the construction of the building in a constructive sense, the competent authority for the implementation of the unified procedure initiates the inspection supervision procedure, which the construction inspection is obliged to carry out within the legally prescribed period, regardless of whether such reports contain any formal deficiencies.

In the fourth stage of the unified procedure, the authority, at the request of the party, decides in the procedure for issuing a use permit, i.e. a decision approving the use of the built object. The competent authority also decides in this procedure in accordance with the attached documentation, and can make two types of decisions, positive and negative. A negative decision, a decision rejecting the request, is made by the competent authority if the formal conditions stipulated by the law are not met. In both cases, the party has the right to file a complaint, i.e. filing a lawsuit, to initiate a second-level administrative procedure, i.e. an administrative dispute in order to protect its rights and interests. The decision by which the authority decides at this stage of the procedure does not have a validity period, after the technical control, the building is considered fully built in accordance with the law, and the legally binding decision of the competent authority can only be examined after the investment of extraordinary legal means. The procedure for issuing a use permit is a shortened administrative procedure, and since it is fully regulated by a special law, it is a special administrative procedure. The competent authority, upon acquiring the legal force of the decision on the issuance of a use permit, ex officio, initiates the procedure of registration in the real estate cadastre records (Law on Planning and Construction, 2009 Art. 154–160).

In addition to these stages of the procedure of the unified procedure, which are in mutual correlation, which precede or follow each other, a special administrative procedure for issuing approval for the execution of works for those types of buildings that can be built, i.e. those works that can be performed without obtaining a building permit, is foreseen. In this case, too, the competent authority decides upon the request of the party, assessing the formal correctness of the submitted documents and the content of the request, according to which it can refuse, reject or accept the request. The decision refusing the request is made exclusively in a situation where it is necessary to obtain a building permit for the construction of a specific object (Law on Planning and Construction, 2009 Art. 143–145).

3. Electronic administrative procedure in the unified procedure

One of the basic characteristics of the unified procedure is that it is fully implemented electronically, with precisely and accurately defined roles of authorities and parties, and with prescribing short deadlines in which the authorities are obliged to act. Also, all acts, except for the decision issuing the use permit, which are adopted by the competent administrative authorities in the unified procedure, are of limited effect and cease to be valid after the

expiration of certain legal terms. That is, if the party does not use the right that the administrative body established for it by its decision, it remains without it. After the expiry of the validity period of the acts issued in this procedure, the party has the right to initiate new procedures in order to realize their rights and interests, which will continue to be conducted in accordance with the rules and conditions valid at the time of submitting new requests. The entire procedure is further elaborated in a by-law, (Regulations on the implementation of the unified procedure electronically, 2023) in which this area is fully regulated, and all possible dilemmas and ambiguities in the legal solution are overcome. By prescribing such a decision-making procedure of the competent administrative authorities, the meaning and importance of all principles of the general administrative procedure are respected without reducing the guaranteed rights of the parties, i.e. legal, efficient and effective decision-making on the rights and obligations of legal and natural persons is ensured.

Competence for the implementation of the unified procedure is divided between administrative bodies at the republican, provincial and local levels, depending on the type of facilities whose construction, extension or reconstruction is planned. Each of the aforementioned bodies is obliged to designate a special organizational unit in its composition, for the implementation of all procedures and activities that make up the unified procedure (issuance of location conditions as well as their amendments, decisions on the removal of buildings, building permits as well as their amendments, confirmation of work applications, use permits, as well as the issuance of decisions for buildings for which a building permit is not issued), whose manager is responsible for its effective implementation (Law on Planning and Construction, 2015, Art. 8). All acts submitted by the parties or acts obtained by the authority ex officio from other holders of public authority, as well as acts decided by the authority in the process of implementing the unified procedure, have the form of an electronic document (Golić, 2023, pp. 46–52). That is, the entire procedure and exchange of documents and submissions is done in electronic form, and an exception is made only in the situation of submission of submissions declaring legal remedies or requiring recognition of the status of a party in the proceedings. In those cases, the competent authority is obliged to digitize the submissions received in paper form and confirm the identity of the copy with the original, in which way the copy acquires the same evidentiary force as the original. In addition to the short deadlines prescribed for the action of the competent authority in the unified procedure, (Law on Planning and Construction, 2015, Art. 8 d) deadlines are also prescribed for public authority holders who are

addressed by the authorities responsible for the implementation of the unified procedure, with a request for the issuance of certain acts from their jurisdiction in order to complete their own cases and collect all the documents necessary for making a decision. The legislator ensured compliance with the prescribed deadlines by all participants in this procedure by the obligation to initiate misdemeanor proceedings and to impose legally prescribed fines for failure to act, by determining the range of fines, cases in which the persons authorized to initiate misdemeanor proceedings are obliged to initiate them, as well as the persons against whom the misdemeanor proceedings are initiated (Law on Planning and Construction, 2015, Art. 211a and 211b).

4. Dilemmas about the legal nature of the unified procedure

In legal theory, there are dilemmas as to whether the unified procedure is a set of special administrative procedures that are certainly connected since the decisions in certain procedures represent a preliminary issue for deciding in some other procedures, or whether the unified procedure is decided in accordance with the mutual cooperation of the competent authorities and decision-making as a single administrative place. Various special administrative procedures and administrative actions are included in the unified procedure, which are interconnected and conditioned both by the timely reaction of the parties, timely submission of requests and delivery of correct documentation, as well as by the mutual cooperation of various administrative bodies and holders of public authority. The administrative body that is responsible for the implementation of the unified procedure, after submitting the party's request, has a central role in the procedure and by performing the administrative tasks for which it is responsible, initiates the initiation of various procedures with other administrative bodies or holders of public authority. He is also authorized to initiate misdemeanor proceedings if he does not receive a timely response from them.

The essence of a single administrative place is to enable one or more authorities to act in paper or electronic form, in order to exercise one or more rights or legal interests of users of public services and satisfy their needs (Regulation on the detailed conditions and criteria and criteria for determining the single administrative place, as well as the manner of cooperation of competent authorities in connection with the conduct and performance of work at the single administrative place, 2023, Art. 1, Law on General Administrative Procedure, 2016, Art. 42). A single administrative place implies the coordinated action of authorities that resolve the requests of the parties, timely mutual notification and timely exchange of documents and

acts *ex officio*. What is specific to a single administrative place, a place where a party can come and submit a request to initiate multiple proceedings, is that the party can also receive legal assistance at the same place regarding the content of the request it submits, regarding the necessary documentation to be submitted, information on the progress of the case, as well as notification of the decisions that the competent authorities may have made. On the other hand, the establishment and maintenance of electronic connection and communication in public administration is regulated by the Law on Electronic Administration adopted in 2018, and the emphasis on mutual cooperation, coordination and assistance between all public administration bodies is prescribed by all laws regulating special administrative procedures. Namely, all public administration bodies are obliged to make available the data on which they keep official records (registries, data on residences, citizenship, data on ownership of real estate, data on registration of business entities) through a unique information and communication network and service bus. In this way, data is exchanged between public administration bodies, i.e. the party is no longer obliged to prove certain facts and circumstances on its own, if the body leading the procedure can obtain such information and documentation through data exchange with the body that originally possesses them. The Law on Electronic Administration (2018, Article 4) introduces the notion of an electronic single administrative point as a web portal or other software solution that enables electronic administrative action of one or more authorities in one place for the exercise of one or more rights. This definition is quite broad and closer to the actions taken by administrative bodies when deciding according to the rules of the unified procedure, than to the definition of a single administrative place. But, when it is taken into account that the single administrative place is regulated by law in the part entitled “Cooperation and official assistance”, we can assume that it is still the intention of the legislator to achieve a form of communication between different administrative bodies through this institute, all with the aim of enabling the parties to exercise their various rights and interests faster, simpler and easier. Although this institution is poorly defined, it has been overcome, except for certain procedures conducted before the competent authorities of the local self-government unit, since the procedures in which different administrative authorities are engaged are already standardized so that their cooperation is carried out *ex officio* and the party is not obliged to obtain such documents on its own (Dimitrijević, 2023, pp. 9–11). Therefore, by interpreting the legal norms, we come to the conclusion that the essence of a single administrative place is not the networking of administrative bodies, but rather enabling a party to initiate

multiple administrative procedures in one place in order to protect its interest and to be able to obtain information about all these procedures in one place. With the unified procedure, the party initiates only one procedure, and all other actions and the obligation to collect various public documents, as well as the eventual initiation of other special administrative procedures, are performed by the competent authority *ex officio*, which is closer to the electronic single administrative place. This is certainly logical since the authorities responsible for the implementation of the unified procedure act entirely electronically.

5. Conclusion

The unified procedure is a set of special administrative procedures and administrative actions performed by competent administrative authorities in the field of construction of buildings and development of construction land. By editing it, the reasons for shaping new forms of administrative procedure in the law regulating the general administrative procedure become clearer. Although these terms are insufficiently clearly defined and demarcated from each other, and the connection with the rules of administrative procedure is apparent, it is possible to standardize such a procedure, which fully implements all the prescribed principles of administrative procedure, and protects the rights of the parties in an efficient, economical and transparent manner. Also, the impossibility of defining the legal nature of the unified procedure and subsuming the general part of administrative law under the foreseen institutes, indicates an inconsistency in the standardization of the single administrative place and its electronic version. By analyzing the electronic administrative procedure in the unified procedure, we found that it represents an electronic single administrative place that is regulated by law, the subject of which is not the rules by which administrative authorities act in administrative matters, but the way in which administrative authorities establish, maintain and use electronic administration. In this regard, we can assume that the will of the legislator was to enable the administrative authorities to participate in the realization of the rights and interests of the parties in the most effective way through administrative action according to the rules of various electronic procedures. Therefore, the unified procedure in the field of construction, as a unique example, exists in our legal system as a set of different, but interconnected and conditional, administration jobs, with precisely and clearly defined rights and obligations of all its participants. Its norming is allowed by new conceptual rules of general administrative procedure, often justifiably criticized by the scientific public, and represents a true example of giving

primacy to the social role of administrative law to the detriment of clearly and consistently defined administrative law institutes. Administrative proceedings through a unified procedure implement all principles prescribed by law, and the degree of protection of the rights of the parties is not only not reduced, but protection is ensured by mandatory sanctioning of actions of participants in this procedure that are contrary to the prescribed rules.

Conflict of Interest

The author declares that she has no conflict of interest.

Funding

This research did not receive any additional funding.

Data availability statement

Original contributions presented in the work are included in the manuscript itself, and additional questions can be directed to the author.

Informed Consent for Participation in the Study / Institutional Review Board Statement

Not applicable.

Torbica Milica

Republički geodetski zavod, Beograd, Srbija

SPECIFIČNOSTI OBJEDINJENE UPRAVNE PROCEDURE U REPUBLICI SRBIJI

APSTRAKT: Objedinjena procedura predstavlja skup aktivnosti i postupaka koje sprovodi nadležni organ uprave u vezi sa izgradnjom, dogradnjom i rekonstrukcijom objekata, odnosno izvođenjem radova. Ova procedura konstruisana je tako da se sprovodi u fazama koje su u međusobnoj korelaciji, u uzročno-posledičnoj vezi i u većini je slučajeva upravno postupanje u jednoj fazi uslovljeno okončanjem prethodne. U određenim fazama organ uprave preduzima upravne radnje, dok u drugim donosi upravne akte. Objedinjena procedura u celini sprovodi se u elektronskom obliku. Sprovodi je organ uprave nadležan za urbanizam i građevinske

poslove u zakonom propisanim kratkim rokovima sa ovlašćenjem da po službenoj dužnosti pribavlja sve neophodne akte od drugih organa uprave i pravnih lica kojima su poverena javna ovlašćenja. Namera autora jeste da kroz ovaj rad prikaže specifičnosti objedinjene procedure koje se ogledaju u dobro osmišljenoj organizaciji, u jasnom propisivanju prava i obaveza kako stranaka tako i svih organa koji učestvuju u njoj, te u načinu na koji je obezbeđena transparentnost i ekonomičnost u njenom sprovođenju. Takođe, budući da se objedinjena procedura u naučnoj teoriji najčešće posmatra kao primer jedinstvenog upravnog mesta – instituta normiranog upravnim procesnim zakonodavstvom – u radu će se prikazati njene veće sličnosti sa pojmom elektronskog jedinstvenog upravnog mesta predviđenog zakonom kojim je normirana elektronska uprava.

Ključne reči: *objedinjena procedura, jedinstveno upravno mesto, poseban upravni postupak, elektronska uprava.*

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