# IMPLEMENTATION AND CHANGE OF PROCESSUAL ADMINISTRATIVE LEGISLATION THROUGH AN INNOVATIVE WEB 2.0 SOLUTION

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**Abstract**

Various extensive public sector reforms have been carried out across the world with the clear aim of making the services concerned more efficient and responsive to the needs of their users, such as the citizens, political authorities, and administrative bodies covering other public administration fields. The ever advancing information technology has frequently been used to support such reforms. Over the last years, the public phenomenon of Web 2.0 has even attracted some attention within e-government because of its vast success in the general civic environment. The paper investigates the possibilities of implementing such a Web 2.0 solution for the case of application of legislation and management of changes made into it through the example of the Slovenian General Administrative Procedure Act – a law that is subsidiarily used by practically all administrative bodies and therefore has to be applied in different fields, coping with sectoral legislation more or less coherent with it. To present the potential, patterns and risks (such as the limited role of public administration in interpreting law) of such activities of using Web 2.0, the paper employs theory research, actual cases from different segments of the public sector, and a real example of a solution currently in the beta stage of development – the so-called Administrative Consultation Wiki, a project run by the Slovenian Faculty of Administration and the Ministry of Public Administration of the Republic of Slovenia. The findings suggest a major potential of this kind of solutions, and point to the possibilities as well as warn of the risks involved.

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## 1. Introduction

The authors employ in this paper the case of the Slovenian General Administrative Procedure Act (GAPA) – with an emphasis laid on its amended versions, and their consequences, of 2006-2008 – to present what dilemmas emerge in praxis in interpreting (new) regulation, especially when core legislation is amended, and how to cope with them to prevent inequality of clients before the law, or difficulties in implementing the currently applicable legislation. It is also in authoritative decision-making that the work of public administration regarding particular matters must not be its own end, but rather the parties to proceedings must be in the focus. Nevertheless, however, public administration cannot and must not take on the role of the legislator of the institutional level of public management by determining public policy goals, but it rather only applies adopted laws at the instrumental level by way of determining the ways and methods of realising the objectives specified by the parliament and government. The role of public administration in interpreting law is thus indispensably limited in accordance with powers and responsibilities of particular organs and the separation of powers principle.

In order to examine the extent and depth of difficulties relating to this, the Faculty of Administration (the Faculty) collaborated with the ministry responsible for the administrative procedure in Slovenia, i.e. the Ministry of Public Administration (the Ministry), to gather 181 specific questions submitted by administrative bodies with regard to actual application of the General Administrative Procedure Act which (also) emerged in consequence of acts amending this Act being drafted and adopted from summer 2007 until spring 2009 (i.e. over the past two years). Based on this, the substance of the dilemmas, their frequency by particular legal institutes and particular (types of) organs or segments of administration etc. have been analysed and, most importantly, solutions have been sought, through both deduction and induction, for a maximally efficient further application of the law in daily work of administrative bodies. We have called the project Administrative Consultation Wiki (AC-Wiki), aspiring to not only analyse the existent difficulties in understanding and interpreting a regulation like the GAPA, but proactively make interpretations of particular provisions unvaried as well as steer them toward the legislator's aim in the future. For this purpose, both the project activities and the final product/service have been located into a Web environment making use of the modern Web 2.0 principles and approaches to operation. The key activities of the project include analysis of cases, discussion, preparation of solutions and their dissemination, implemented by way of formulating specific interpretation guidelines in an answer to a particular specific question (case) relating to how a GAPA provision may be explained. Web 2.00, as a concept and a solution, makes it possible that information technology is efficiently employed, enabling communication free from any spatial or temporal limitations, the sharing of information and team work – which is vital, given the wide circle of stakeholders in the procedures concerned. The technology thus makes it possible that questions-cases are sent to a central knowledge base for civil servants and analysed

by experts and that all involved in resolving a case communicate with each other and participate, and finally the dissemination, as such a Web knowledge base is available to any interested party and enables, precisely because of the Web 2.0 technology, comments and discussion, an thus ongoing improvement of content quality.

At the beginning it has to be stressed that in Slovenia (as in Germany, Austria, Spain, Italy, Scandinavian countries, the USA, etc – in most countries, within the EU in all but France), the general administrative procedure act applies subsidiarily. In establishing relevant facts for recognising a right or imposing an obligation in the determination of clients' rights, legal entitlements and obligations under administrative law, the relevant sector-specific law is thus primarily (precedentially) applied in relation to procedural issues, while the GAPA only applies subsidiarily, or as a complement (Jerovšek *et al.*, 2004). Hence, the GAPA is naturally not tailored to the requirements and specific characteristics of a particular administrative field, but it rather applies – particularly through its basic provisions – as a cluster of rules for the minimum procedural protection of clients in all administrative sectors, regardless of the type of administrative matter or organ determining it. In Slovenia, however, sectoral laws rarely regulate the procedure (with the exception of the taxation sector), which is why problems very frequently arise in the praxis of administrative bodies in simultaneously applying substantive norms of sectoral legislation and procedural norms of the GAPA.

In order to examine the above propositions, the authors of the AC-Wiki project have analysed the submitted questions and formulation of the required answers. In doing so, we had first proposed a series of hypotheses with regard to this, i.e.:

1. More difficulties and dilemmas relating to how law (the GAPA) is to be applied arise in those sectors and those organs where the sector-specific legislation regulates issues relating to the procedure in addition to – the subsidiarily applying – GAPA, because a substantive regulation is quite commonly in conceptual disharmony with the GAPA.
2. The exposed dilemmas are not dealt with in scientific (specialist) literature, especially core works on administrative procedural law (like commentaries to the GAPA), or are not equally interpreted by different experts.
3. The Web 2.0 technology concept is a suitable way of making use of IT, as it involves an environment that participants are used to from their private lives. Therefore, it is more easily transferred into the work environment, as it entails use of a familiar technology that is simple to use as well as suitable for a quality implementation of the process concerned.

### 2. The GAPA life cycle, and the role of public administration and public service users within legislation management

Within different public sector reforms of the last years, many different activities have been introduced, usually within the legal framework, since the public administration operates within it in accordance with the constitutional principle of legality. Administrative law played an exceptionally important role in this.

Administrative law regulates relations under public law, within which authoritative organs are to ensure that the public interest is realised, or that it has precedence over benefits of particular private parties (clients) to administrative proceedings. In democratic countries, a balanced protection of both the public and private interests is attempted to be implemented by the agents of power through the regulation of administrative procedural law. In the majority of European countries (i.e. the Germanic, Scandinavian, eastern European etc. environments), a general administrative procedure act applies as an umbrella law comprising a selection of minimum procedural standards; in the territory of Slovenia, it has already applied since 1923, first as a so-called procedural code, and since 1930 as a law. The essence of the administrative procedure is thus the application of a general and abstract norm of a sectoral law – by way of making syllogistic conclusions – to the concrete actual situation of a particular client (Pavčnik, 2007, p. 406; Kaufmann, 1999). Hence, in issuing an individual administrative act, general norms of regulations hierarchically dominant over individual acts are applied, and thus legal rules incorporated and communicated by those regulations are realised. Within this, the act of applying law is at the same time the act of its creation (on this Merkl-Kelsen's theory of hierarchical levels of law). A condition for a correct conclusion, however, is the correct definition of both premises – that is to say, primarily an (unanimous) understanding of a general norm (of substantive or procedural law), or the abstract actual situation under applicable law.

With regard to this, the following is vital: if a case is defined as an administrative matter due to the nature of the right, obligation or legal entitlement concerned, the administrative procedure must ensure that the public interest is not excessively protected but also that a private interest does not have precedence over the public interest (Androjna and Kerševan, 2006; Schwarze, 1992, p. 1459; Craig, 2006, p. 639). However, no law can provide answers to all practical questions relevant in a given moment, with the social reality in which public administration operates also changing ever more rapidly, so that it is also umbrella laws that clearly need to be amended, but not on daily basis. The Slovene GAPA was published in the Official Gazette of the Republic of Slovenia, original text in No. 80/99, amendments in 70/00, 52/02, 73/04, 115/05,105/06, 126/07, 65/08; meanwhile, the seventh amending act – GAPA-G – already is underway, to start applying in 2010; so amended (too) often. Beside that some amendments brought a further systemic turn in administrative procedural law – regulation of a significant number of procedural issues was displaced to the level of implementing regulations. A further thing not to be overlooked is therefore the phenomenon of inflation of (non-)binding ministries' directives when, on top of all, implementing acts are drafted by civil servants not properly educated or trained with regard to values and technical aspects involved – as also warned by Ziller (2005, p. 267) –, resulting in a transfer of discretionary powers, and finally a democratic deficit (Craig, 2006, pp. 641-649). Such practices are unacceptable, as GAPA rules reach to all administrative fields, where several thousand different rights and obligations are recorded.

The above described must first be appropriately considered by the ministry (with regard to the GAPA, that is in Slovenia the Ministry of Public Administration) responsible for preparation of expertise to serve as a basis for amendments made to the existent laws and, in their adoption, particularly by the parliament as the legislator. That is to say, what needs to be observed in interpreting applicable legislation and assessing the need for regulatory changes is the principle of separation of powers (Constitution of the Republic of Slovenia Article 3; Šturm *et al.*, 2002) in connection with the conception of public management processes as the pursuit of public polices most socially appropriate in the given time and space. Public management is mainly carried out through lawgiving, but even in principle there arises a problem when we attempt to fully grasp an empirical phenomenon by static legal norms, and then analyse those with strict formal rules of logic and the legal science although they mainly relate to dynamic social values and facts. In evaluations, or any analysis of legal issues, close attention must therefore always be given first to how an abstract/ general legal rule is (to be) understood (interpreted) in concrete/individual matters, and then to the feedback loop, or information regarding the potential discrepancy between the setup of a norm and its realisation, and consequent amendments. The first part of this process of defining public policies is institutional (determination of goals, it is about value-based decision-making), and the second is instrumental (implementation of goals). Taken together, this entails the dynamics of an activity proceeding toward goals – a move from the situation as it is to what is desired through the management itself, and control and feedback as input in the further managerial process. Generally, management is defined as either (Kovač, 2006): (1) determination of common goals and ways of realising them, or (2) an indispensable auxiliary activity enabling smooth running of the basic activity processes. Both activities represent an integrated process (Bučar, 1969, p. 35). Public administration is defined as "official undertaking of public affairs by the public service" (Schwarze, 1992, p. 19). In this, the common denominator of administrative activity is that it is not its own end (Pavčnik, 2007, p. 577), as administration is "an always professional and indispensable, but auxiliary activity enabling the running of the basic activity". These two definitions are important, as the former points out that administration is related to, and depends on, the entire administrative-political subsystem, while the latter stresses its instrumentality in the development and work of society at large (Trpin, 1995, p. 113). This fundamental distinction serves as a basis for dualist theories (e.g. Kelsen) of the separation of powers principle, according to which state power falls into the functions of decision-making (legislative bodies) and implementation (executive and judicial bodies). Within this, part of law theory distinguishes between administrative versus legal acts by the assumption that the former (only) involve normative concretisations of legal rules. According to Pavčnik (2007, pp. 287 ff.), this does not comply with reality; he therefore proposes a distinction between administrative and other matters based on whether the stress is on administrative operations or legal adjudging and decision-making. Anyhow – an administration, as a general rule, is the executor of

the goals determined by the parliament and/or government. Compared to institutional management at the parliamentary and governmental levels, administration acts non-politically and professionally. With regard to this, there is – in addition to the trialistic one – a quadrialistic theory of the separation of powers principle, distinguishing between an executive function and an administrative function, with the former being a political function and the latter the function of concrete implementation of laws by administrative bodies. According to the substantive definition proposed by Maurer (apud Schwarze, 1992, p. 16), administration is a social agreement, based on the protection of the public interest; its basic activity is to undertake concrete measures to arrange particular relations (decision-making in concrete cases), functioning in a proactive manner.

However, the exclusive approach of "non-creative", merely instrumental administration may be misleading, as the modern administration must be more than instrumental, otherwise the entire administrative process would already have been defined by the decision made at the institutional level (Magiera *et al.*, 2008, passim). Although the administrative activity must be adapted to the basic activity, it consists of acts that have their own characteristics and a certain integrity (Godec, 1993, p. 19). It is even explicitly demanded from today's administration that it does not have an exclusively instrumental character, as this would entail that the entire administrative process has already been specified by the decision made at the institutional level. That is not so – due to the explicitly dynamic nature of the social environment, the administration must even daily incorporate into its decision-making framework new premises concerning the values and professional standards (Trpin, 1995, p. 314). The auxiliary role of the administration is further relativised by the different powers delegated to it by the decision-makers, as those levels tend to transfer their competences to the one that assists them anyway, i.e. the specialist-technical administration. The administration thus both performs auxiliary tasks and executes the process of management – decision-making. "Instrumentality" of administration already begins with its operationalising the notion of public interest in particular administrative fields, which reflects how demanding the seemingly subordinate role of administration is. Schwarze (1992, p. 1464) finds that the public interest is not clear in itself but is rather determined through an administrative act. Hence, administration is not only a productive, but even necessarily creative activity contributing to the value of the joint product, since its main characteristics include constancy, systematic nature and initiative. Also Schuppert (2000, p. 281) distinguishes between the public administration that merely ensures the execution of public services (arrangement function) and the public administration that implements/produces those services (production function). In the case of policy-making, management as implemented by the administration must be in accordance with the public interest, i.e. the general social benefit as defined by law (Jerovšek *et al.*, 2004, commentary to GAPA Article 7). Hence, decision-making within an administrative proceeding does not only entail the gathering of information and mechanical issuing of decisions, but it involves functioning defined in terms of values.

In summary, in issuing individual administrative acts, the public administration must retain a degree of creativeness but within the boundaries of the substantive and procedural discretion given to it by law. On the other hand, in the dynamic environment, the administration may be faced with different possible interpretations of a regulation, therefore it would be of benefit – primarily for the purpose of unvaried handling of clients – to discuss the purpose of norms, and consequently their most logical and legitimate interpretation, in a single forum. Such a forum should involve those having prepared the Act (the Ministry), those that have to apply it (public administration bodies), the expert public (the Faculty), and its addressees (private parties to administrative proceedings). However, the authoritative function of public administration, and responsibility for decisions in particular proceedings, cannot also be taken over in this way – they remain with the particular authorities themselves, with each of them within the scope of its powers and competences.

### 3. New information technologies and Web 2.0

#### 3.1. *New Information Technologies*

In the context of government and governance of today, it is probably difficult to imagine anything without information technologies. Among the most important ones are Web technologies that have a vast impact on the entire society today. Bicking *et al.* classify the developments expected in e-government of 2020, where Web 2.0 has a high impact value (Bicking *et al.*, 2008). As stated by Klein, Web 2.0 will enable the transformation of public administration services, development of better policies, suppression of silos, and reorganisation of public administration (Klein, 2008). Some reports forecast that Web 2.0 has great potential for shifting from service-oriented to Web-oriented technologies, i.e. Web services and mashups with the possibilities of reusing data, improving the granularity of data, and decreasing the importance of one-stop portals frequently seen today (Gartner Inc., 2007).

Web 2.0 concepts can be applied in many segments of back- and front-office domains of e-government (Osimo, 2008). As concerns political participation, a fine example is the case of the recent American presidential election, where funds were raised with the help of sympathisers using Facebook and MySpace. Another example of service provision are the Web 2.0-based virtual embassies implemented in the virtual world of Second Life, where Sweden, Estonia, Malta and other countries are already involved (Zappen, Harrison, and Watson, 2008). An example from legislative field is Politicopia, where new legislation is published, and commented and discussed by the citizens and politicians. In the domain of regulation, the U.S. Patent and Trademark Office uses a Web 2.0-based system Peer-to-Patent for ranking and grading patent declarations. The users can comment on the originality of a patent, and their grades are used by the Office in the decision-making process (Farber, 2007). Intellipedia is another back-office example of exchange of information between agencies, i.e. a closed wiki of national security. The European Union also offers some examples. The well-known epractice.eu portal is also based on the Web 2.0 concept, and it includes news,

real cases, online workshops, and a great deal of other information ranked, graded, commented and scored by the users, including an e-participation wiki. All these examples indicate that Web 2.0 is already highly relevant for the government context.

**Table 1:** Web 2.0 user engagement, extended form

| Engagement level description | Activity | Results | Contribution and participation type |
|---|---|---|---|
| 1. providing attention, testing data | typing in search words, clicking | information on the most frequent search words and the most favoured links | unintentional contribution, participation |
| 2. providing ratings, reviews | commenting, reviewing, rating | other users' decisions influenced by this information | positive (optimistic) contribution, participation |
| 3. producing content | correcting, creating, designing | content used or reused by others | active contribution, participation |

**Source**: (Osimo, 2008)

Web 2.0 exists because of the users and their active participation. The three numbered categories (Table 1) represent activities of contributing and participating (either intentionally or unintentionally). The first category represents users who are passive from the viewpoint of the Web 2.0 principles. They contribute unintentionally by clicking on links, typing in search words, etc. These data can be collected and processed by computers to improve the solutions offered to users. On the other hand, this enables exploitation of user-generated content or, as Petersen puts it, "an architecture of exploitation that capitalism can benefit from" (Petersen, 2008). The second level requires a more deliberate activity on the part of the users, since they participate by ranking or assessing information. They add comments, which again can be viewed and commented or ranked. These characteristics can be regularly seen in the private sector (for example Amazon.com). The third level comprises the users who actively participate and co-create the contents. Through indirect collaboration, they improve them, share their knowledge and make impossible things possible. We need but to think of the well-known Wikipedia – created and managed by millions without any payment, but equal as concerns data quality, and more up-to-date than the famous Encyclopaedia Britannica (Giles, 2005). Engagement levels are related to the number of users, which can reflect specific engagement levels. We can say that all Internet users are involved in level 1, much fewer of them in levels 2, and the smallest number in level 3. Hence, in order to achieve a better value of Web 2.0, more users have to be persuaded or drawn to get involved in the higher two levels to achieve better participation and more creativity and enjoyment.

### 3.2. Wiki

Web 2.0 is a much wider term then a wiki. It includes concepts, models, technologies (AJAX, SOAP, etc.) and applications (blogs, wikis, RSS, etc.). But since Web 2.0 depends so much on users, they must be the primary focus in the development of solutions. They represent the success and risk factors. We must therefore focus on risk management rather than risk avoidance. The Gartner report warns to plan Web 2.0

solutions very cautiously, as they require good control, especially in the e-government context (Gartner Inc., 2007). In addition, e-government users are more cautious than the users in the private sector, primarily because in the private sector everyone is prepared for at least a certain degree of risk, while in the public sector mistakes are not tolerated so readily (Klein, 2008).

The concept of wiki first appeared in 1995 (Leuf and Cunningham, 2001). We must not confuse the wikis with Wikipedia, which is just one example of how a wiki can be used. Wiki is at once a technology, a software, a product and a concept. It is a simple content management application, using the Web environment and being platform-independent, and can therefore be used anywhere. It includes certain elements of content management, like audit trails, templates, user rights management, change logs, etc. (Wagner, 2006). It can be used for collective and simple content creation (articles), cooperation and community building (Ebersbach, 2006). Each page is called an article, and several articles interconnected by links represent a wiki. Each article includes a talk page, where commenting and discussion can be established. A wiki solution can be open, accessible to and editable by anyone (like Wikipedia), or limited to a certain group of users (i.e. enterprise wikis like Intellipedia). Mader (2007) suggests some possibilities of implementing a wiki in praxis:

- creation of constantly expanding contents (peer lists, knowledge bases or support sites);
- group work and collaboration (project management, product development, event planning, document creation); and
- communication platforms (intranets or extranets, blogs, external communication, publicly accessible Web sites).

A strong point of the wiki technology is that it is frequently free and open-source, although other variants are available. Consequently, implementation can be inexpensive. Since an open source is used, everyone can improve the solution or correct errors (bugs), and forums and knowledge bases about wiki implementation are widely used. Upgrades are regular and tested in many different environments. Add-ons or extensions are available for many particular situations. Help is available using interactive chat rooms, forums, blogs and wiki sites. Some of the most important fundamental principles, benefits and risks of the wiki concept lie in that it is:

- (can be) very open, since every user can edit any page at any time;
- alive, since both the structure and contents are open to editing and evolution, and are therefore continually changing; and
- linked, since no pages without links are supposed to exist.

Other principles, posing more risks, especially within e-government, include trust and sharing. As concerns trust, users of a wiki are supposed to trust each other and the process itself, and to enable trust-building. Since everyone can create, edit and control the contents, wikis rely on the assumption that readers have honest intentions and act for the common good. Reports from the practice, though, indicate both successful solutions (mentioned above) and failures (Wikitorial at Los Angeles

Times). The other problem is sharing, which is a critical issue within government. The problem of silo effect is more present here than in other work environments. Within a wiki, however, users need to share information and publish it to get the most out of it. If all these risks are carefully addressed and managed, wiki as a participation tool can be successful. But it is not only the preparation and implementation phase that have to be considered, but an ongoing management of wiki throughout its use.

As regards users, they have to be divided into groups based on their roles as in every other process. Even in the Greek agora, the citizens (from within a particular city state) could vote, while others could just listen. It was in agorae that ideas were born and topics discussed and voted on, and that democratic principles evolved. In a wiki, users can also say anything and be heard. Whoever listens can reply. Although, as known, something can be deleted, history is always recorded and the deletion can be seen and put back into place at any time. This is the responsibility of editors. Though editors can only manage the content, they, or some other role, must ensure proper behaviour (like a supervisor or guard in the agora). Rules have to be published and obeyed and are there to protect users and give them a framework to work within. What is initially published is similar to the speech of a philosopher like Aristotle in the agora, where a level of trust is established based upon the person's reputation. In a wiki, the status of an author (if an article is written by a legislator, for example) has a similar effect, depending on his or her reputation, official rank, previous published content in the wiki, references used, etc. Information gained at a wiki can be used in many ways: educating the listener (gaining knowledge), acting according to it (making a decision based on that information), influencing other areas of listeners' lives (changing the way of life or work).

## 4. Administrative Consultation Wiki

### 4.1. Project description – its goals and activities

The Administrative Consultation Wiki (AC-Wiki) is a project, or approach, of presenting questions and searching for answers related to the practical application of the General Administrative Procedure Act through active participation of all interested parties regardless of the role of a user of the environment in which the AC-Wiki is set up. It is a Web solution worked out by Web 2.0 technology principles, and completely open (only limited, in accordance with the principles of agora, by the "procedural" editor). The expected main active users are public officers, who have to daily apply the GAPA in conducting administrative proceedings at their employer – a public administration body. It is a fact that it is public officers who are most frequently faced with the GAPA and the dilemmas of its application/interpretation that it brings along. This is confirmed by the formalised questions received from public officers by the Ministry of Public Administration as the sectoral ministry taking care of a consistent application of the law, and the Faculty of Administration as the expertise-providing player in the field and the provider of trainings – approximately 100-150 annually. Also growing is the number of questions by private parties to administrative proceedings being faced with either non-competence of public officers or even their partiality,

or unlawful and non-correct actions (malpractice); in 2007 and 2008 approximately 10% of those were recorded in the sum of all questions submitted to the Ministry and the Faculty.

The purpose of the AC-Wiki is that it will operate as a forum and a knowledge base of all players interested in the interpretation of the GAPA, rather than be a substitute for the legislator's role in the mandatory explanation of a regulation, since such role is not within the scope even of powers delegated to the sectoral Ministry, yet alone the Faculty as a representative of civil society, although the two institutions have initiated the project. For this purpose, all webpages are marked with a clear warning to the users that the establisher of the website denies responsibility for any mistaken understanding either of the project or of the answer to a certain question. The purpose of this is to ensure a level of protection of those involved in running the project, as AC-Wiki content cannot be a (single) legally valid basis for an organ's decision-making or, e.g., used as an argument within a judicial proceeding. The disclaimer applies both to public officers and clients as well as others asking questions, although it is only intended as a safeguard for borderline cases; for all other instances, there remains the above described value added about the reliability of information and the fact that those interested participate in the AC-Wiki by their maximum ability. The same purpose is served by the indication for each case of the date when the answer was prepared, as regulations are subject to change. According to consistent Constitutional Court's case law, the law applied in Slovenia in particular matters is – for the purpose of equal rights protection (Šturm *et al.*, 2002, commentary to Constitution of the Republic of Slovenia Article 22) and of legitimate expectations (or legal certainty; Craig, 2006, p. 608) – the substantive law applying when a decision was issued at the first instance also in repeat proceedings, and the procedural law – strictly by the principle of legality – whichever applies at the time of determination even if it is changed in the course of a proceeding (Jerovšek *et al.*, 2004, commentary to GAPA Article 325). Further, within an AC-Wiki reference to sectoral legislation a link is published, through the title of the relevant regulation, to the official governmental register of legislation (www.zakonodaja.si), so that the user attains information on the applicable provisions in the very course of reading an answer, and the author does not cite all amending regulations published in the Official Gazette, but only the regulation as such. Furthermore, given the non-possible 100% security, it may happen that a content is changed or deleted within a malevolent intrusion in the system, possibly without anyone noticing this, which gives an additional dimension to the disclaimer of responsibility.

The AC-Wiki cannot and may not replace the jurisdiction of administrative bodies in determining rights, legal entitlements and obligations in particular administrative working fields in accordance with the sectoral and general legislation. If this were not so, doubt would arise concerning the fundaments of law-governed state with jurisdiction as the main element of formal legality (Craig, 2006, p. 29). Jurisdiction entails a delegated power and duty (responsibility) for a decision unique to a single organ – by the sector and territory it covers (subject-matter and territorial jurisdiction)

as well as the level of authority (although one branch of power has several instances; in addition to first-instance organs, the GAPA defines the appellate instance and the administrative control body; cf. Jerovšek *et al.*, 2004, Androjna and Kerševan, 2006). If those rules were broken, this would result in a delegation and devolution of jurisdiction, which is strictly forbidden by the GAPA, representing an absolute procedural defect (GAPA Article 237), or even a ground for a decision's voidness (GAPA Article 270). Further, if there were binding (or at least referential) guidelines for the organs through the AC-Wiki, we could speak in individual cases of a drop of the system's efficiency below the limit where its validity begins to be sapped (Pavčnik, 2007, p. 408). It is therefore of exceptional importance that despite the participation of the Ministry as the provider of expert bases for (amendments of) the GAPA and the issuer of implementing regulations pertaining to it, the AC-Wiki is (only) defined as a specialist forum, i.e. a so-called knowledge-providing legal source (Pavčnik, 2007, p. 371). In relation to administrative bodies and their clients (persons asking the questions), the answers at the AC-Wiki are thus only a supplement to formal legal sources – findings of the administrative discipline formulated in a user-friendly (directly applicable) way. The AC-Wiki responds to a question with an answer that is, if possible, defined through applicable law, and that, at most, notifies the user of any possible open dilemmas or non-consistent administrative practices or judicial case law or different positions in academic literature. Based on this, the user can be more professionally competent in either adopting a decision in a given situation (if this is a public officer) or realising his or her legal entitlement (if a client). Unlike in the mere discussion forums, however, the user may, through the wiki environment, co-create the predominant expert view of a particular problem. That is to say, both users who are the askers of questions and legal experts giving the answers participate in such forums. Users may give their opinion of the topic of a question or submit information regarding their own equal or similar case, as well as comment the answer itself by way of agreeing with it, supplementing it or providing additional information for a better understanding of the answer or clarification of other dilemmas, thereby cooperating with the legal experts actually preparing the answers.

At the side of the existent case law and the academic literature as a knowledge-providing legal source, the purpose of the Administrative Consultation Wiki is to provide concise answers to relatively simple or short questions or questions comprising a solution to a partial problem. If designed more broadly, it would only entail a duplication of the supply, or even an opposition to conclusions of other sources, and would not represent any value added for the users. The purpose of the AC-Wiki is thus to provide an answer to a concretely put question in accordance with the applicable diction of GAPA norms. It is not meant to define a particular client or particular circumstances of a case in concrete terms, but to define the facts providing the basis for the (non-)application of the GAPA, or the application of provisions in a certain order. Problems are not dealt with fully or with theoretical broadness but, if possible, through a maximally non-ambiguous interpretation. By way of example, we cite some such questions, both in their original form and generalised (Table 2) so that the dilemmas and the subsequent questions are of use for a wider circle of customers.

**Table 2:** Examples of questions or exposed dilemmas in the AC-Wiki

| Original question | Question in a generalised form |
|---|---|
| In the procedure of issuing a building permit to a Municipality as the investor, our administrative unit received the relevant claim submitted by a lawyer. This lawyer submitted the power of attorney granted to him by the Mayor directly on the claim for the issue of a building permit itself (as enclosed). We required the lawyer to submit a separate power of attorney – did we act correctly? | An administrative body is conducting a proceeding initiated at the client's request submitted by his authorised attorney, with the client having submitted the power of attorney he granted to the applicant on the same application as the claim itself. Does such a power of attorney directly on the claim comply with the GAPA that requires the submission of a written power of attorney? Must/may the administrative body require from the applicant a power of attorney as a separate document? |
| In January 2009 the Slovenian Health Insurance Institute issued to an insured person a decision on the right to sick leave until the end of 2009. Five months after issuing the decision, the organ learnt that the information and medical documentation submitted to the panel of medical experts by the insured person concerning his condition were false. What are we to do, as the right should not have been recognised? | An organ issued to a client a decision on the recognition of a right valid for a specified time (the right can be exploited until 31 December 2009). Five months after issuing the decision, the organ learnt that the actual situation which the decision was grounded in is no longer of the nature that would justify the right concerned. What may or must the organ do? |

Answers to questions of that type are equally concise as the questions, but always formulated by way of references made to provisions of the GAPA (or other, related regulations). Each answer has a pre-determined standard form (template), whose elements are the matter comprising key words by which the user searches a certain question, the date of when the answer was prepared, the question itself, the answer and its categorisation (classification; see the example of the entire handling of a generalised question and answer in Table 3).

The links in an answer can be internal – to legal acts directly incorporated into the Wiki –, or external – to websites of publications of legal acts, generally to the register of regulations or the official journal of the Republic of Slovenia. The purpose of creating internal links is that a link may be created directly to a certain article of an act, with the user simultaneously also seeing the neighbouring articles. Indeed, this involves the problem that a legal act copied into the Wiki must be updated if it is in fact changed – amended –, but on the other hand, this enables users to comment such act within the Wiki and submit opinions on the (in)appropriateness of it or a particular article of it, and a further discussion among all users about the topic concerned. This is another reason why the selection of acts directly incorporated into the Wiki is minimum (only the GAPA and its basic implementing act, i.e. the Decree on Administrative Operations). As a general rule, the answer also cites an additional scholarly source, especially if case law related to a question is not consistent. This represents a basis for a public officer to decide more easily on how to act in the real situation (evidence-based decision making), but he or she is neither bound to follow the answer nor thereby released from the responsibility to correctly conduct a proceeding under his or her own jurisdiction.

Both those participating as propounders of questions and those in the roles of providers of answers and researchers for the needs of preparation of expert bases for a further systemic decision-making concerning procedural law solutions acquire through the AC-Wiki a synergic increase in their capacity for resolving urgent public management issues, their competence, understanding of each other, equality in the availability of public services and authoritative measures, opportunities for a higher level of legal protection (Croft and Beresford, 1993, p. 55). Finally, technical terminology is being consolidated and developed, as it is attempted that despite correctness of content, GAPA provisions are formulated and interpreted in a maximally clear manner (also to those not having studied law).

**Table 3:** Example of an answer to a question

| Matter: | Execution of an obligation (already) during the proceeding, prior to or after the issue of the decision |
|---|---|
| Date of answer: | 31 May 2009 |
| Question: | An administrative body issued a decision, which the client objected to in a complaint. The complaint was rejected; the client therefore took action with the administrative court and prevailed at the court. The administrative court upheld the action filed and remitted the case for re-examination. The administrative body received a copy of the judgement from the client's representative. How is the organ to proceed, considering that measures need to be taken as soon as possible, or with equal promptness as in the initial proceeding, since these are emergency measures in the public interest? |
| Answer: | Under Article 304 of the GAPA*, it is possible to issue a so-called Provisional Order for Securing the Fulfilment of an Obligation, provided that the obligation is at least likely to be proven. An order is thus issued even if the original, i.e. basic proceeding has not yet been concluded, yet alone a decision issued or enforcement commenced. Such a securing order is thus already possible before the enforcement procedure, and even before a document permitting enforcement (the decision) is issued.<br>The GAPA determines special conditions for the securing order: there must be a reasoned expectation (suspicion) that the liable party (in the concrete case, e.g., a child's parents) will prevent the fulfilment of their obligation if and when it is determined by a decision. The provisional order for securing an obligation must give grounds for the likelihood of both the obligation and, separately, that the liable person will prevent or at least obstruct the execution of the obligation.<br>Enforceability can already be set out in the decision imposing the obligation (a clause on non-suspensiveness of a complaint, possibly also immediate execution if these are emergency measures in the public interest). This is possible under Article 236 of the GAPA* and third paragraph of Article 290 of the GAPA*.<br>It is thus possible to use a combination of provisions of Articles 236, 304 and 290 to secure immediate execution of an obligation if already at the beginning of the relevant administrative proceeding it is likely that the obligation will in fact be imposed and its fulfilment obstructed by the liable person. |
| Categ.: | Enforceability and enforcement |

\* Marked text (underlined sections) represents a hyperlink directly to the full text of applicable provisions of the cited Article of the GAPA or other regulation.

As planned, the AC-Wiki project has two basic phases. From January until August 2009, the questions already received by the Ministry and the Faculty in 2007-2009 are being first edited in terms of content and form together with answers to acquire the desired form, and classified by topic areas (chapters, or GAPA institutes) for the purpose of easier overview and search. Thus, a basis is being established of already asked questions and formulated answers that are appropriately nomotechnically edited, supplemented if needed, supplied with generalised data, classified and technically edited. In this, the wiki technology is efficiently used, enabling group project work in a Web environment. All participants are active in a single website, wherefrom they jointly create the content, edit it, and co-operate in the process by way of indirect communication. As the AC-Wiki is simple to manage, all the users (editors of contents) have mastered work with it within a few hours, effectively performing their tasks. As regards administration of the site, all changes in the way of work are simply and promptly published, while the technology enables efficient control over what is going on, management of versions (immediate return to (the) previous step(s), i.e. undoing of changes or errors), management and supervision of users, etc. Each question, together with its answer, makes up one case or article in the Wiki (one webpage), with a talk page belonging to it. Each such article is placed within a determined, pre-prepared category – classified. After the website's public production, planned for October 2009, there will follow an ongoing posing of new questions and formulation of answers to them and, depending on users' interest, a more or less intense reshaping of the answers already set or discussion of them. For reasons of traceability and assessment of the planned project impacts, this phase is divided into two parts: a) pilot implementation until 31 December 2009, and – provided there is interest on the part of administrative bodies and clients (upon a prior promotion) – b) regular operation for further annual periods.

From the public production on, the process of posing a question and formulating an answer will be in accordance with the operation model (Figure 1).

A user (most frequently a civil servant) will search for help and explanations (contents) relevant for his or her current situation or a problem related with interpretation of a legal act. If he/she does not find a solution at the AC-Wiki, the person will send an email with the question and a description to a specific email address (a Web form could also be used). Email will be employed because the message can include personal information, environment information, etc. that must not be published at the AC-Wiki, but helps to clarify the situation and the environment of the problem, facilitating its further discussion or suggesting the path toward a solution. A manager (legislative expert) will receive the message and assess how difficult the problem is. If an answer or a solution can immediately and easily be produced, he/she will immediately publish it (as a use-case) at the AC-Wiki, and email the link to the appropriate use-case article to the user concerned. If producing a solution is more complex, the manager will select an editor from a list of editors to be charged with particular assignments (at the beginning, editors will be selected from among the best students of the Faculty of Public Administration). Selection can depend on specific knowledge or expertise of a
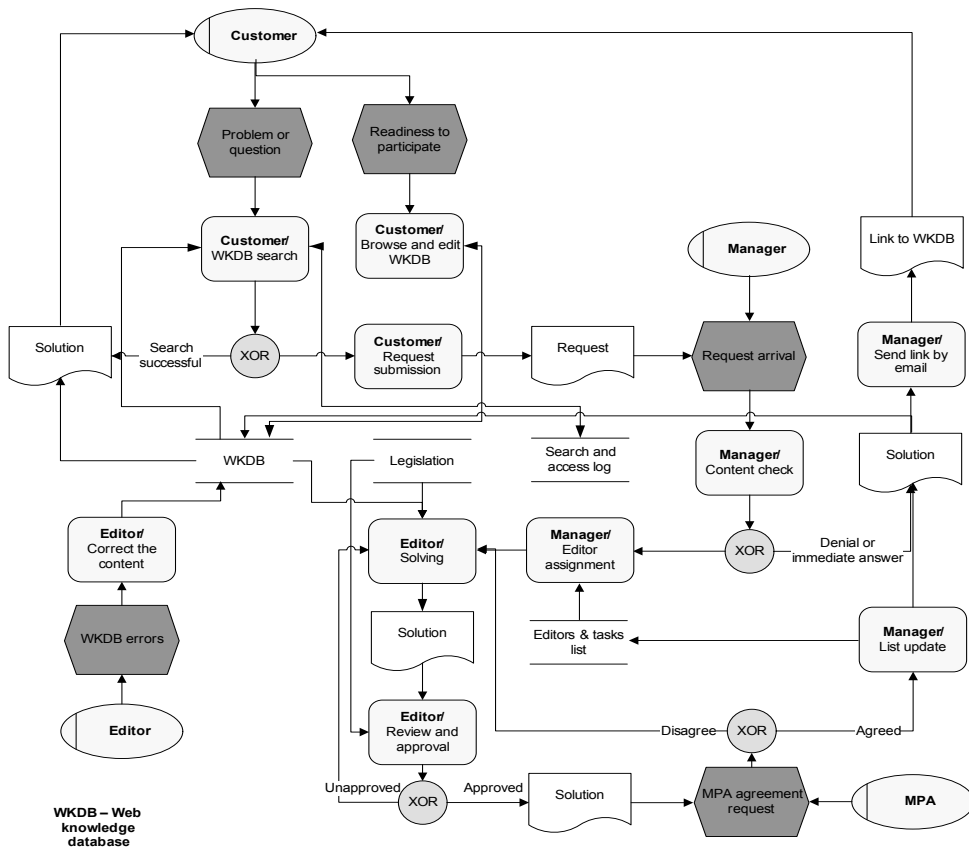
**Figure 1:** Model of operation of Administrative Consultation Wiki

particular editor or on the number of cases currently assigned to different editors (to avoid overload). The editor will then resolve the problem. Questions will be generalised so as to cover broader problem sets to which the problem relates. The editor will then send the solution to the manager (a professor in a field of administrative law or public administration) to review it, either approving it or demanding an improvement. If the use-case is approved, it will be sent to the Ministry of Public Administration. They will have to check it and agree upon the content while being enabled to edit and correct it. If the use-case is then agreed upon, it will be published at the AC-Wiki and, as an expert opinion, immediately become available to all other users. If agreement on a position cannot be reached, all different possible interpretations will exceptionally be published. The manager will inform the user who posed the question about the solution using email. In addition, editors will have to regularly track changes made in the contents, comments and discussions, and help correct any mistakes or other irregularities that might emerge at the AC-Wiki. It is very important that this process is also familiar to the users. Editors will also be obliged to control the changes in the Wiki made by others.

## 4.2. The solution

The Administrative Consultation Wiki (AC-Wiki) is a Web 2.0 wiki solution aimed at making good use of all the advantages of Web 2.0 concepts within e-government, legislation processes and, especially, interpretation of legislation. We must stress again that it is more like an enterprise wiki or extranet solution then a Wikipedia-styled solution. The general public is allowed to read the contents while only registered users are allowed to edit and create content. The Faculty of Administration is the proprietor of the solution, having been initially supported by the Ministry of Public Administration. All work done so far has been voluntary and non-paid. The aims and the expected benefits of the AC-Wiki correspond with the aims and benefits of Web 2.0 in general. It is a simple and user-focused solution (based on the Mediawiki 1.15 open source application) that is highly transparent and user-friendly, and encourages the users to participate in it. Additionally and in consequence of those benefits, a networked social environment can also be formed. Another goal is to provide a reliable service and content provision for all the participants. In addition, many different players are involved in this process, including the employees at the Ministry drafting the acts and their amendments, legislation experts often being in the role of problem solvers, the civil servants applying the applicable provisions during the administrative processes, and the clients affected by them.

By using the wiki technology – considered to be simple enough for most users –, the data are published and available to all the users (the general public; no accounts or permissions needed). Additional extensions were also added to additionally ease the usage. Based on the logic of search and click – an activity familiar to any Internet user who starts his or her day with Google –, this technology is expected to enable a comfortable, user-focused and familiar work environment. Users search data by entering search words or use a special index based on legislation topics. Its simplicity in terms of editing and adding suffices to enable the users to participate and help to upgrade the quality of the data. For adding comments and other talk data, users must be registered using their functional email address (an email address conformation message has to be processed). During their actions, they can also indirectly communicate with each other (adding data to talk pages), for example by commenting, criticising, asking questions, replying to comments, etc. Primarily because of a certain degree of the system's openness, the AC-Wiki has an in-built function of tracing the history of how texts were being changed. This is traceability of changes, enabling the retrieval of something corrected or deleted if a user enters incorrect data out of either malevolence or incompetence (entries calling attention to varied interpretations, however, have a different character, and are welcome).

Reliability is achieved at two levels. Firstly by the AC-Wiki process of use-case management, where the quality, importance, logicality and potential impact of a given content are first handled by legislative experts (i.e. professors, and experts from the Ministry of Public Administration), then processed by university students of public administration, and finally rechecked and confirmed by legislative experts.

The second level involves the participation of all the AC-Wiki users, i.e. either civil servants or other users such as the citizens or people from the private sector. Their comments and ratings provide others with information on how reliable specific pieces of information seem to be. In the case of the AC-Wiki, the government (as represented by the Ministry of Public Administration and the Faculty of Administration) plays two roles: as an active provider and promoter of the service, and as a passive subject letting the users use the contents and upgrade them, communicate and participate.

In our opinion, thus, the optimum way for resolving the dilemmas that arise to facilitate unvaried practices and the formulation of expert bases for new amendments of the GAPA is a combined development of internal approaches within the public administration (administrative bodies and the Ministry) in collaboration with the academia (the Faculty, students and graduates) and the general public (clients), who jointly identify the selection of open dilemmas and attempt to arrive at a unified interpretation in a single spot.

### 4.3. Testing of the hypotheses about the considered cases of 2007-2009

With regard to the assumptions and hypotheses about the management of interpretation and amendment of a law like the GAPA presented in the Introduction, the authors of the AC-Wiki project have analysed, in the first phase, the actual form of the 181 examples of open questions of the period 2007-2009. This analysis is important to test the degree of appropriateness of the stated starting points for further work in the project or its redefinition and a (potential) establishment of similar projects concerning other regulations.

To test the hypothesis that more difficulties and dilemmas concerning the application of the law (GAPA) emerge in those sectors and those organs where sector-specific legislation regulates issues concerning the procedure in addition to (the subsidiarily applying) umbrella law because substantive regulations are quite commonly in conceptual disharmony with the GAPA (point 1), we have overviewed all questions, considering which of them relate to procedural problems that at least partly are also handled by sectoral laws rather than only the GAPA. A further assessment criteria was whether a particular question pertains to a special procedural arrangement or it involves the application of the GAPA and thus a general dilemma – the (non-)possibility of generalising this question irrespective of the concrete organ/field from where it had arrived. Out of the total of 181 questions, there were 23% such that indeed referred to special characteristics of a certain administrative field, regulation or organ, or even case, meaning that the hypothesis can be largely rejected. On the other hand, this share is not entirely insignificant, as this is nearly one quarter of cases. Out of this, however, one half of the questions (22 out of 42) were such that a question analogous to the GAPA could be worked out, which was actually done in the AC-Wiki. Hence, there only remained 12% of questions that exclusively reflect special provisions of sectoral regulations having precedence over, or supplementing the GAPA. Dilemmas relating to the interpretation of procedural law issues in particular administrative

proceedings as exposed by public officers are thus mainly dilemmas of the general administrative procedural law, or the application of the GAPA, regardless of the field of work or the organ where an administrative procedure belongs.

**Table 4**: Shares of exposed dilemmas relating to general
rules (GAPA) or special procedural arrangements under sectoral regulations

|  | Dilemmas of the GAPA (general) | Dilemmas of procedural issues under sectoral regulations | Dilemmas exclusively relating to a specific regulation/sector | Total |
|---|---|---|---|---|
| **Number of cases** | 139 | 42 | 22 out of the total of 42 | 181 |
| **Percentage share of cases** | 77% | 23% | 12% (out of 23%) | 100% |

Significance of the GAPA as a general regulation is thus very pronounced. Within this framework, it is interesting to overview which particular institutes of the administrative matter (i.e. of the administrative procedure and the subsequent administrative dispute as a judicial review of legality of administrative acts) were among those more frequently exposed, i.e. caused (the most) difficulties in praxis. As expected, this is the very communication between participants in a proceeding, and the direct decision-making/ decision made. In the first group we may thus observe – despite, or precisely due to, the superior position of the administrative body – a direct conflict among the interests in a proceeding (Jerovšek *et al.*, 2004, commentary to GAPA Articles 7, 9, 140, and related Articles), which becomes apparent or manifest in the very decision as a document permitting enforcement.

With regard to the hypothesis that the exposed dilemmas are not dealt with in scientific literature, particularly core works on administrative procedural law (like commentaries of the GAPA), or are not equally interpreted by different experts, we found that this indeed is so (Figure 2). This assures us in our belief that there is a need for a project like the AC-Wiki as a complement to the discretion of public administration in the application of general rules to particular and specific situations. That is to say, the degree of the discretion, or the legal blank, or the inconsistency of case law as the guideline in decision-making (or a non-formal legal source), is quite frequently so high that it obviously even represents a threat to the equal protection of clients' rights.
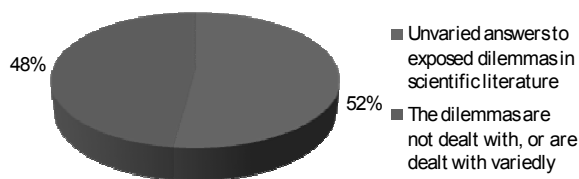


**Figure 2:** (Un)varied consideration
of exposed dilemmas in scientific literature

Finally, we are confirming the hypothesis that the Web 2.0 technology concept is a suitable way of making use of IT, as the transfer of an environment well-known to the participants from their private life into the work environment entails use of a familiar technology that is easy to use and suitable for a quality implementation of the process concerned. To sum up, we have found that the AC-Wiki project, at least for the case of the GAPA as an umbrella regulation, is suitable and needed, taking into account certain elements and limitations. A key element to be singled out is the "methodological" aspect which, through the process of open participation of anyone interested, creates a democratic platform of co-making public policies and protecting equality before the law. However, in explanations of open dilemmas, not even the sectoral Ministry, yet alone particular public administration bodies or non-authoritative players such as the Faculty, can or may interfere with the domain of the parliament as the single democratic legislator in a law-governed state. Nevertheless, projects like the AC-Wiki operationalise the guideline-providing functions of public administration which ought to become the focus of work of the currently bureaucratic administrative organisations, with those organisations analysing the actual situation(s) and envisaging the future to create conditions for an appropriate strategic and further operational decision-making. In this, however, interpretation of the GAPA in the form of the AC-Wiki – despite the sponsorship of the Ministry as a sectoral player – cannot be binding for the organs, as the only competent interpreter of the law is the legislator. The aspiration pursued by the AC-Wiki is thus primarily a specialist discussion among interested persons about the possible and most legitimate understanding of the norm.

### 5. Conclusions

Through the approach of identification of problems and joint search for answers by a holder of power (the Ministry), the science (the Faculty) and the interested public (in addition to public officers, clients as players), the public space is jointly created through the participation of the regulated in public management at the strategic and the operational level. By such approach, the state learns of the real situation of (non-) implementation of a regulation in praxis, which is indispensable in the administrative process for the regulatory feedback loop to come full: if there are too many dilemmas, or answers cannot be unified solely by interpretation, the law must be changed.

Approaches such as the Administrative Consultation Wiki thus represent an instrument of good governance, in which the agents of power share their jurisdiction over the creation of compulsory norms – and thereby the responsibility for their legitimacy and implementation – with the civil society. In this, method is of equal importance as are goal and content. In this regard, Web 2.0 approaches entail a big opportunity.

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