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Corresponding author: dragana.barjaktarevic@fpsp.edu.rs

ADMINISTRATIVE-LEGAL PROTECTION OF ENVIRONMENT IN THE REPUBLIC OF SERBIA

Dragana Barjaktarević

Faculty for Bussines Studies and Law,
„Union – Nikola Tesla" University, Belgrade, Republic of Serbia,
e-mail: dragana.barjaktarevic@fpsp.edu.rs

Abstract: *Administrative-legal protection of environment in the Republic of Serbia is exercised within administrative procedure and administrative dispute. The framework of this protection is created by the Law on General Administrative Procedure as well as separate laws such as the Law on Free Access to Information of Public Interest, Law on Environmental Impact Assessment, Law on Strategic Environmental Impact Assessment and Law on Integrated Prevention and Control of Environment Pollution.*

Within the administrative procedure, the right to legal protection can be exercised by filing a complaint against a decision which a party considers unsatisfactory. Within the procedure of exercising right to access to ecology-related information, as information of public interest, a dissatisfied party may file a complaint to the Commissioner for Information of Public Importance if they consider that their right to the access to these pieces of information was violated. In addition, administrative-legal protection of environment is exercised within the procedure of inspection and monitoring of implementation of provisions of the laws regulating the environmental field.

An extraordinary importance of administrative-legal protection is reflected in its preventive nature which is mirrored in the issuance of relevant permits, inspection monitoring, taking certain preventive activities and other measures because if such kind of protection is missing, there is no possibility to have further civil-legal protection within the judicial procedure which would address the issue of damage compensation.

Taking into account all of the above as the starting point, this paper analyses administrative procedures where environment protection can be exercised bearing in mind that a great number of ecological law norms belong to administrative law. For example, within the environmental impact assessment procedure, the right to a complaint can be exercised within the second phase of the procedure

– the phase related to the establishment of the scope and content of the environmental impact study against a decision of a competent body adopted upon a filed request while, against a decision of a competent body adopted within the third phase of this procedure – the procedure related to the decision-making on the approval of the impact assessment study, an administrative dispute can be initiated.

In addition, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters which established the right to environmental protection within administrative and judicial procedure is especially important.

Key words: *administrative procedure, administrative dispute, Aarhus Convention, right to access to ecology-related information, public participation in environment protection procedures, administrative-legal protection of environment*

INTRODUCTION

Bearing in mind that a great number of ecological law norms are of administrative nature, which advocates for the interconnection between administrative law and ecological law, the issue of adequate legal protection in the environmental field certainly deserves special attention.

The legal protection framework consists of highly developed regulation, i.e. it consists of a great number of laws which improved the situation in this field significantly. One should particularly mention the Aarhus Convention, Law on Environment Protection, Law on Free Access to Information of Public Interest, Law on Environment Impact Assessment, Law on Strategic Environmental Impact Assessment, Law on General Administrative Procedure and Law on Administrative Disputes.

A question which requires an adequate response is the relation between separate laws and the Law on General Administrative Procedure, i.e. whether the common rules which settle all administrative issues given in the Law on General Administrative Procedure should prevail or special rules given in separate laws actually prevail (Drenovak Ivanović – Đorđević 2013: 29).

1. PROTECTION OF RIGHT TO ACCESS TO ECOLOGY-RELATED INFORMATION

The right to an access to ecology-related information is regulated by the Law on Environmental Protection and the Law on Free Access to Information of Public Interest. With reference to this, the right to an access to the ecology-related information as information of public interest should be exercised by everyone under the same conditions with exceptions prescribed in Art. 9-14 of the Law on Free Access to Information of Public Interest. The exceptions from the exercise of this right refer to situations when an authority which has the required piece of information at their disposal may deny the access to the persons asking for it if the provision of such a piece of information could create consequences for another important good or more important interests as well as in case of the abuse of this right (Law on Free Access to Information of Public Interest).

1.1. Right to access ecology-related information and Aarhus Convention

The preamble of the Aarhus Convention states that environment protection is elementary for the exercise of basic human rights, including the right to life. It further states that in order to exercise the right, citizens have to have the information about the situation in the environment at their disposal and that they have to have the right to adequate legal protection. Legal protection here means protection in the administrative and judicial procedure (Aarhus Convention, Preamble).

In terms of the right to legal protection, Article 9 of the Convention states that every signatory will secure within their national legislation that any person who considers that their request for the submission of information was ignored, denied without any grounds, either partially or fully or that it was treated inadequately in any manner will have access to the procedure of reconsideration at the court or any other independent and impartial authority established by the law (Lilić - Drenovak Ivanović: 2014, 87-88).

The Convention signatories will secure that the decision reconsideration procedure at the court is efficient and either free of charge or cheap. According to

the Convention, final decisions are binding for the public authority with information at their disposal and the reasons for the denial of access to the information of public interest must be justified in the written form (Article 9 of the Aarhus Convention).

The Aarhus Convention became a constituent part of the legal order of the Republic of Serbia by the adoption of the Law on Ratification of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters on May 12, 2009.

1.2. Right to access to ecology-related information and the Law on Free Accaess to Information of Public Interest

The Law on Free Access to Information of Public Interest regulates the rights to access to information of public interest available to public authorites and a Commissioner for Information of Public Interest is established in order to exercise the right to access to these pieces of information (Article 1 of the Law on Free Access to Information of Public Interest).

The procedure for the exercise of the right to access to ecology-related information is initiated by filing a request to an authority which has the required piece of information at their disposal. The second instance authority in this procedure is the Commissioner for the Information of Public Interest to whom the person asking for the information may file a complaint in case the authority to which the request was filed either denies it or rejects it, does not give any feedback to the request (the so-called „administrative silence“) or in other cases prescribed by the Law on Free Access to Information of Public Interest.

The Commissioner may also initiate the procedure on his own initiative in order to protect citizens' rights and to control the work of state administration bodies. Administrative dispute may be initiated against the decision of the Commissioner.

In their annual report which is submitted to the Assembly, the Commissioner indicates the data on their activities during the previous year, data on deficiencies in the work of state administration and they also submit proposals for the upgrade

of the position of citizens with respect to state administration bodies (Barjaktarević 2021: 18).

2. PROTECTION OF RIGHT TO PUBLIC PARTICIPATION IN PROCEDURES FOR ECOLOGY-RELATED DECISION-MAKING

One of the rules of ecological law is the rule of right-to-know and public participation which implies the right of the public to participate in the procedures preceding the adoption of decisions which may have an impact on environment. In order to make the public, i.e. interested public, a party within the procedure, they need to have standing recognised by relevant regulations. In practice, it is very important to differentiate these two terms bearing in mind that interested public represents the segment of the public whose rights may be endangered by the adoption of a decision on a certain administrative issue which is why they have an interest to participate in the procedure.

2.1. Protection of right to public participation in the procedure according to the Law on Environmental Impact Assessment

The public has the right to participate in all three phases of the procedure of project environmental impact assessment. Within the first phase of the procedure, the authority to which the request was submitted informs the interested public on the request which was filed within the prescribed timeframe in order to create conditions for all parties interested in the result of this procedure to submit their opinions which will be taken into account when a decision on the necessity of assessment of environmental impact of a certain project is adopted. A complaint may be filed against such a decision (Art. 10 and 11 of the Law on Environmental Impact Assessment).

Within the second phase of the procedure, within the prescribed timeframe, the competent body invites the interested public to submit their opinions and suggestions to the request which was filed by the main project contractor for setting the scale and content of the document. The competent authority also informs the interested public on the adopted decision in order to enable them to submit a complaint to the competent second instance authority in line with the law regulating environment protection (Lilić - Drenovak Ivanović: 2014, 150-151).

In the decision-making phase on the approval of the impact assessment study which is also the last phase of the procedure, interested public is informed on the possibility to have public insight, to participate in the public hearing and express their objections to the given study publicly. These objections will be taken into account during the relevant decision-making procedure. The interested public may initiate administrative dispute against the decision of the competent authority adopted within the third phase of this procedure (Art. 20-26 of the Law on Environment Impact Assessment, Lilić - Drenovak Ivanović: 2014, 151-153).

2.2. Protection of right to public participation in the procedure in line with Law on Strategic Environment Impact Assessment

Within the procedure of strategic environment impact assessment of certain plans and programmes, the public is present no sooner than in the last phase of this procedure – the decision-making phase, i.e. the approval or denial of approval of the strategic assessment report. In this phase of the procedure, the public participates by having public insight into the plan and programme and the public also participates in the public hearing before the competent body submits a request to the ministry competent for environment protection for approval purposes (Article 19 of the Law on Strategic Environmental Impact Assessment, Lilić - Drenovak Ivanović: 2014, 160).

The Law on Strategic Environmental Impact Assessment neither regulates the right to complaint nor the right to administrative dispute. On the other hand, Article 151, paragraph 1 of the Law on General Administrative Procedure prescribes that a party is entitled to a complaint against the decision of the first instance authority. Paragraph 2 of the Law prescribes that a complaint against the decision of the Government is not allowed (Article 151 of the Law on General Administrative Procedure). In addition, the Law on Strategic Environmental Impact Assessment does not provide a possibility to the representatives of the interested public to participate in all phases of this procedure which means that they do not have the full capacity of a party within the procedure. It is still unclear whether someone can file a complaint, i.e. initiate an administrative dispute against the given approval of the report on strategic environmental impact assessment and who would be the one filing it (Drenovak Ivanović – Đorđević 2013: 83-84).

3. PROTECTION OF RIGHT TO PUBLIC PARTICIPATION IN PROCEDURES CONCERNING ENVIRONMENT WITHIN ADMINISTRATIVE DISPUTE

According to the Law on Environmental Impact Assessment, a decision of the competent authority on the approval of environmental impact assessment study or on the denial of approval of imact assessment study is final and the file applicant and the interested party can initiate an administrative dispute against it (Art. 24 and 26 of the Law on Environmental Impact Assessment).

The Law on Integrated Prevention and Control of Environment Pollution prescribes that a complaint against a decision of the competent body on the issuance of the permit, i.e. on the denial of the request for the issuance of the permit is not allowed and that an administrative dispute may be initiated (Article 15 of the Law on Integrated Prevention and Control of Environment Pollution). The very norm does not strictly establish who can have standing, i.e. who is eligible to initiate an administrative dispute. However, if the Law on Environment Protection is analysed, i.e. Article 81 thereof, it prescribes that the interested public in the procedure related to the exercise of the right to healthy environment, as a party, is entitled to initiate the procedure on the review of the decision with the competent body, i.e. the court, in line with the law, one can conclude that the interested public has standing in the procedure (Drenovak Ivanović – Đorđević 2013: 86-87).

The Law on Strategic Environment Impact Assessment does not establish the right of parties to initiate an administrative dispute.

4. PREVENTIVE NATURE OF ADMINISTRATIVE-LEGAL PROTECTION

Regulations in the environmental field include certain preventive measures in order to prevent harmful effect of certain activities to environment. These preventive measures reflect in the establishment of inspection monitoring, keeping a polluters' cadaster, issuance of an integrated permit, environmental impact

assessment of these activities which could have a negative impact to environment and in other protection mechanisms.

Inspection monitoring includes certain preventive authorisation of inspectors which includes the issuance of proposals, instructions, prior approvals, consent or issuance of approval for the initiation of certain activities. The preventive nature of these measures is aimed at the prevention of illegal actions of monitored entities (Živković 2011: 296-305) in order to prevent serious consequences which may arise in the environment.

The Law on Inspection Monitoring prescribes that the inspection monitoring is the task of the state administration which is done in order to provide legality and safety of operations of monitored entities or to prevent or remove harmful consequences to protected good, rights and interests by preventive action or by imposing measures (Article 2, paragraph 1 of the Law on Inspection Monitoring). This monitoring which is primarily of preventive nature is performed by the ministry via an ecological inspector (Barjaktarević 2021: 20).

CONCLUSION

The right to access the ecology-related information, the right to have public participation in the adoption of ecology-related decisions and the right to legal protection in ecological matters can be exercised within the administrative procedure with the competent body.

Article 3 of the Law on General Administrative Procedure regulates the issue of relation between this law which includes general rules for the settlement in all administrative issues and the provisions of certain laws adopted in order to regulate actions when settling administrative issues in special administrative matters. Special laws which are referred to in this law are miscellaneous by their content since they regulate material and legal issues of a certain area as well as certain process issues, i.e. issues related to the decision-making procedures in that field. The implementation of provisions of the Law on General Administrative Procedure in these situations would be inexpedient from the standpoint of expediency and adequacy of settling a certain administrative matter (Tomić: 2017).

This is why it is important to establish which rules of procedure should be chosen when settling a concrete ecological issue. For example, when it comes to the access to ecology-related information, one should detect the relation between the Law on General Administrative Procedure and the Law on Free Access to Information of Public Interest and when it comes to public participation in the decision-making procedure on ecology-related matters, one should detect the relation between the Law on General Administrative Procedure and the Law on Environmental Impact Assessment, Law on Strategic Environmental Impact Assessment and Law on Integrated Prevention and Control of Environment Pollution, depending on the procedure within which a relevant decision is adopted (Drenovak Ivanović – Đorđević 2013: 29).

The representatives of the public should have their standing recognised and they should be provided with the right to legal protection in other procedures where these entities could have an interest in the adoption of a certain decision as well, such as the procedures of importance for air protection, issuance of permits for waste management and others since the outcomes of these procedures always have a certain impact on environment.

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