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Corresponding author: nedeljko.krajisnik@fpsp.edu.rs

APPEAL IN THE ADMINISTRATIVE PROCEDURE DUE TO, SO-CALLED, "SILENCE OF THE ADMINISTRATION"

Nedeljko Krajišnik
Faculty of Business Studies and Law,
''Union - Nikola Tesla'' University, Belgrade, Republic of Serbia,
e-mail: nedeljko.krajisnik@fpsp.edu.rs

***Abstract**: In this paper, the author tried to point out a specific problem in the functioning of public administration in the countries of the Western Balkans, which is not specific to other European countries. This specifically deals with the conscious/unconscious neglect of the obligation of the public authority to respond to the party's request. This type of non-action of public administration, in practice has been called ''administrative silence''. That failure to exercise public powers conferred by law, leads to legal uncertainty, because the party cannot be sure that he will exercise the right that he demands, ie, for which he submits an application. In this regard, this paper did not ask whether the request was founded at all, but only whether the administrative body responded to the request. Whether the response is positive or negative for this type of problem is not important, because when the administrative body makes any decision, a positive or negative one, the party is allowed by law to challenge such a decision if he believes that the administrative body made a mistake. Therefore, the problem arises when the applicant is prevented from trying to exercise his right by means of legal remedies, before the administrative authorities or later before the competent court. Unfortunately, we see this type of problem often in our administrative practice, and it is necessary to point out the problem, in order to reduce this illegal phenomenon as much as possible and eventually eliminate it completely from practice.*

***Key words:** public administration, administrative silence, appeal, court decision, repeating the administrative procedure*

INTRODUCTION

In order for man to arrange and organize his daily life, he needed to create a system that would have the authority and ability to manage the entire society, so the state was born from that need, as a kind of apparatus for regulating relations within that community-state. With the help of that apparatus, man is enabled to realize his rights, but also, on the other hand, that same apparatus imposes obligations on him, as a condition for the existence of a society, because apart from different individual interests, there is also a general interest, and without organizing that system according to the principle of granting rights and imposing obligations, the system could not function, because then anarchy sets in. That part of the state, or more precisely that part of the government as the basic characteristics of the state, represents the state administration, the part of the executive power with which in practice individuals exercise their guaranteed rights, but on the other hand, there are also obligations and restrictions, so that others could also exercise their rights, that is, that the entire system could function.

Therefore, the basic characteristic of state administration is enabling individuals to exercise their rights, which are provided to him by another part of the state power - the legislative power, but also imposing obligations on each individual, as well as limiting certain of his acquired rights, for the sake of the overall functioning of a state. that is, of the state apparatus.

So, it is very important that the state administration bodies respond on time and in accordance with the applicable regulations to every request made by an individual, for reasons of legal certainty, so that the same individual knows at every moment how many rights he has, what he does not have, and what he must to do or to refrain from doing, in order for the whole system to function.

When these things are viewed in the above way, it seems quite simple to maintain that balance between individual and general interest, because the authorities entrusted by law with the exercise of public powers, only have to look at each individual request and examine whether it is based on the regulation that is already in force, and apply the applicable regulation to the facts thus established and make a decision based on the request. If the party is dissatisfied and believes that the authority made a wrong decision, that it did not properly assess and evaluate all the facts that the applicant pointed out, or that it did not properly apply

the regulation referred to, the party has the right to file an appeal against the decision made and to demand to have that decision reviewed by a higher authority that is competent to control the authority that makes the first-instance decision.

However, in practice it happens differently, so it often happens that the authority that received the request does not respond according to the set request within the set deadlines, that is, it does not respond even later according to the submitted request. In such a situation, it could hypothetically happen that the party who submitted the request does not have the possibility to exercise his right, which he believes belongs to him according to some regulation, nor does he have the opportunity to request a higher authority to review the decision of a lower authority, because there is no first-instance decision organs that would be subject to control.

Nevertheless, the legislator noticed these anomalies and deficiencies in the system, so he enabled the party in such cases, under proper conditions, to address a higher authority and file an appeal as if the first-instance authority had rejected his request. Such occurrences are, unfortunately, quite common in the legal systems of all countries of the Western Balkans, and such action, i.e. failure to act by the first-instance authorities according to the set requests, creates legal uncertainty, regardless of whether the set request may be obviously baseless, but a decision must be made on the request.

This paper tries to point out that problem, so the paper is composed of four parts, the first of which generally points to state administration, as part of the system of government, and to the concept of administrative act and the basic principles of administrative procedure, the course and rules of administrative procedure, which all state authorities would have to adhere to. In the third part, the action of the higher authority determined by the law on the appeal filed due to the non-decision of the first-instance authority is specified. In the fourth part, the role of the court is stated, in the sense of judicial control of administrative acts with an example from practice, and at the end, the conclusions and opinions on the mentioned issue are given.

1. ADMINI.STRATIVE ACTS, PRINCIPLES AND FLOW OF ADMINISTRATIVE PROCEDURE

1.1. Administrative acts

The administrative-legal relationship represents such a relationship in which public bodies enter in an authoritative manner with individuals, legal entities and other parties. One party in an administrative-legal relationship is always a public authority, an administrative authority, another state authority or an institution that exercises public authority. Administrative-legal relations arise most often on the basis of an administrative act, i.e. an act containing a specific authoritative decision of a public authority.

An administrative act is a basic act passed by administrative bodies within their jurisdiction. The term administrative act is of French origin (acte administratif), and was created as an expression of the need for the administration to which the principle of legality is applied, to get its own legal institute. Today, this term is used more in the theory of administrative law than in legislation and practice.

All essential elements that characterize an administrative act can be found in the definition of Prof. Lukić:

"In order for the administrative act could be determined by its content, as an individual act that determines the disposition, which binds the subject whose behavior it regulates, even against his will." [1]

For the administrative act, it is important to state that the disposition it contains can be enforced, i.e. that violence can be carried out.

In legal theory, there is a greater number of divisions of administrative acts, but in this paper we will touch on only one division, which is the division of administrative acts into positive and negative ones.

Positive administrative acts are those administrative acts that produce some change in existing legal relationships, whether these acts create new relationships, change existing ones, or terminate or cancel existing legal relationships. Negative

[1] Lukić R. (1957) Teorija države i prava, knjiga II, Beograd

administrative acts are such administrative acts that reject changes in existing legal relations. They are regularly passed at the request of the party, if the party does not meet the conditions for the granting of a right (for example a decision rejecting a request for a license to carry weapons, to open a craft shop, etc.). Refusal of a party can be a negative act, i.e. if the authority passes an act stating that it does not want to change the existing situation, and it can be without passing any act, the authority simply remains silent, it does not resolve the party's request. In that case, it is about "silence of the administration", or "adminisrative silence", which is what we are talking about in this paper.

1.2. Principles of administrative procedure

On this occasion, just for the purposes of the topic covered by this paper, we will briefly remind you of the principles of administrative procedure, for the reason that it would be clearer how many mistakes the first-instance body makes, i.e. how many basic postulates it violates, when it does not make a decision according to the party's request.

The basic principles of the administrative procedure are:

- the principle of legality,
- the principle of protection of the rights of the parties and the protection of the public interest, the principle of efficiency,
- the principle of truth, the principle of hearing the party,
- the principle of free assessment of evidence,
- the principle of independence in resolution, the principle of two-stage resolution,
- the principle of finality and finality of the resolution,
- the principle of economy of procedure,
- the principle of providing assistence to an ignorant party,
- the principle of use of language and letters and
- the principle of access to information and data protection.

When we look at all the above-mentioned principles and put them in the context of non-action by the administrative authority, i.e. failure to make a decision

according to the party's request, then we can see that the competent authority thus violates at least six basic postulates or principles of administrative procedure.

This, first of all, refers to the principle of legality, which stipulates that the acting authority must act on the basis of valid regulations, and then to the principle of protection of the rights of the parties and protection of the public interest, which stipulates that the authorities are obliged to enable the parties to protect and exercise their rights, while taking into account that the exercise of their rights is not to the detriment of the rights of other persons, nor in conflict with the public interests established by law, the principle of truth which prescribes that the true state of affairs must be established in the procedure, and to that end, they must be fully and correctly determine all the facts and circumstances that are important for the adoption of a legal and correct decision, then the principle of the principle of two-stage resolution (right to appeal), which prescribes that against the decision made in the first instance, the party has the right to appeal, the principle of finality and finality of the decision, which stipulates that a decision against which no appeal can be filed (final decision), nor can an administrative dispute be initiated (final decision e), can be annulled, repealed or amended only in cases provided for by law, and the principle of economy of the procedure, which prescribes that the procedure is conducted quickly and with as few costs as possible for the party and other participants in the procedure.

Therefore, failure to issue a decision based on the party's request represents a serious violation of the legally prescribed procedure of the administrative procedure and its basic principles.

1.2. The flow of the first instance administrative procedure

1.2.1. Submitting a request from a party

Administrative proceedings are initiated in two ways: at the request of a party and ex officio. In this paper, we will emphasize the procedure that was initiated at the request of the party, because the topic of the paper is the failure of state authorities to act on the submitted request of the party.

Initiating a procedure ex officio is the right and duty of an administrative body and exists in two different cases: when it is determined by law or another regulation

and when the administration determines or learns that the procedure should be initiated to protect the public interest.

In the first case, a positive legal regulation is the basis for initiating an administrative procedure, so it is predetermined which procedures are initiated and in which cases, and the authority initiates the procedure on the basis of that prescription (eg the obligation to initiate a procedure for tax collection is prescribed). In the second case, the administrative body initiates the procedure when it assesses that it is necessary to protect the general interest. That assessment is made on the basis of the knowledge of certain facts, and the knowledge may be the result of direct inspection by the administrative authorities or if certain information was provided by citizens or other state bodies.

The procedure that is initiated ex officio aims to establish some obligation of the parties or to cancel or reduce some of their rights, and very rarely it is conducted in the interest of the party, that is, to recognize some right of the party.

The procedure initiated by a party's request is initiated in cases where it is provided for by law or when it arises from the very nature of the case. In these cases, the request of the party is necessary and without it the procedure cannot be started, and it is conducted with the aim of recognizing a right, or canceling or reducing a party's obligation.

If the administrative body after the submitted request of the party determines that there are no conditions for initiating the procedure, i.e. that there are no grounds for initiating the procedure according to the positive legal regulation to which the party referred, then the acting authority makes a conclusion on the rejection of the party's request. The party can file an appeal against this conclusion, and request that a higher authority decide whether the conditions for initiating the procedure have been met. If the request is submitted to a non-competent authority, the latter will without delay submit the request to the authority competent for conducting the procedure, provided that the request is undisputed which authority is competent.

1.2.2. Abbreviated and special examination procedure

There are two types of administrative procedure: abbreviated and special examination procedure. In essence, this division does not have any essential importance in the procedure itself, but only indicates two ways in which the established factual situation is reached, and on which the decision, i.e. the solution, is based: in a shorter and faster way, or in a longer way which entails establishing the factual situation through the procedure itself, with the help of several different means of evidence.

Abbreviated procedure, or direct decision-making procedure, is a type of procedure where a decision, i.e. a solution, is made immediately after the initiation of the procedure. This procedure is simplified, because no special examination procedure is conducted, which means that no new evidence is collected and conducted, and the parties are enabled to exercise their rights quickly.

The main characteristic of the abbreviated procedure is that only positive decisions are made in it, by which the party's request is satisfied, because if the authority rejects the party's request, it must at least listen to the party beforehand, because otherwise it would violate one of the basic principles of the administrative procedure.

However, only four situations, which are determined by law, can be resolved in the abbreviated procedure:

- if the party in the request stated facts or submitted evidence on the basis of which the state of affairs can be determined, or the state of affairs can be determined on the basis of commonly known facts or those known to the authority;
- if the state of affairs can be determined by direct inspection, i.e. on the basis of official data available to the authority, and it is not necessary to hear the party in order to protect his rights and legal interests;
- if the regulation stipulates that the matter can be resolved on the basis of facts or circumstances that are made probable, and it follows from all the circumstances that the party's request should be granted;
- when urgent measures are taken in the public interest that cannot be postponed, and the facts on which the decision should be based have been established, or at least made probable.

Outside of these four cases, it cannot be resolved in an abbreviated procedure, which means that the administrative body is obliged to conduct a special examination procedure.

Conducting a special investigative procedure involves establishing the factual situation by conducting various means of evidence. It is conducted in all procedures for which the law did not provide the possibility of a summary procedure, and in procedures in which the obligation to hold an oral hearing is prescribed by law.

Evidence in the administrative procedure is the totality of activities aimed at establishing the factual situation as a basis for making a decision, a decision on an administrative matter. In order to be able to make a decision on the subject of the procedure, it is necessary to establish the truth, the true state of affairs to which the relevant legal norm should be applied.

Evidence (probatio), according to the legal formulation, is any fact on the basis of which the existence of essential facts and circumstances of a concrete administrative matter is verified, and the instrument of evidence (instrumentum) is any procedural-legal means (source of evidence) that is suitable for establishing (verifying the existence of decisive fact) of the actual state of affairs and which corresponds to a particular case. [2]

The evaluation of all evidence conducted is carried out by an official who is in charge of conducting administrative proceedings, and another of the principles of administrative proceedings is applied here, which is the principle of free evaluation of evidence.

1.2.3. Decision, constituent parts and deadlines for adoption

On the basis of decisive facts established in the procedure, the authority responsible for resolution makes a decision in the administrative matter that is the subject of the procedure. [3]

[2] Lilić, S. (1991) Upravno pravo, Pravni fakultet Beograd

[3] Article 190, paragraph 1 of the Law on General Administrative Procedure of the Republic of Srpska

So, after the procedure has been completed and all evidence has been presented in the same, the authority issues a decision, by which it decides on the merits of the request. The decision has a form prescribed by law, so it is prescribed that every decision must contain an introduction, dispositive, explanation, instruction on legal remedy, and the signature of the official and the stamp of the authority issued the decision.

The introduction of the decision contains the name of the authority, the number and date of the decision, an indication of the regulations on the competence of the authority, as well as the legal basis for making the decision, the name of the party, and a brief description of the subject of the procedure. The disposition of the decision is the most important part of the decision, because it decides on the request of the party, as well as on the costs of the procedure. The dispositive must be short and definite, and when necessary it can be divided into several points. The reasoning of the decision contains a brief presentation of the parties' requests, the established factual situation, as necessary, and the reasons that were decisive in the evaluation of the evidence, the reasons for which one of the parties' requests was not accepted, regulations and reasons that, in view of the established factual situation, refer to the decision that is given in the provision. The instruction on the legal remedy is a notification to the party whether he can file an appeal or initiate another dispute against the adopted decision.

The deadlines in which the authority is obliged to make a decision are also prescribed by law, so when the procedure is initiated at the request of the party, i.e. ex officio if it is in the interest of the party, and before making the decision, it is not necessary to conduct a special examination procedure, nor are there any other reasons for which a decision cannot be made without delay (resolving the previous issue, etc.), the authority is obliged to make a decision and deliver it to the party within 30 days at the latest, counting from the day of submission of the formal request, i.e. from the day of initiation of the official procedure duties. In the second case, if it is necessary to conduct a special examination procedure or solve other issues before making a decision, the authority is obliged to make a decision and deliver it to the party within 60 days at the latest, if a shorter period is not specified by a special regulation.

From the above, we can clearly see that the deadlines for making a decision in the administrative procedure are quite short, all for the reason that all the

principles of the administrative procedure would be respected, primarily to enable the party to exercise his rights as quickly as possible, which ultimately means that the purpose of the administrative procedure has been achieved as a very important segment of the state administration, in which the parties directly demand from the state the rights that it has made possible for them, and which cannot be realized without the direct action of the state apparatus.

The aforementioned brief overview of the administrative procedure itself, both its basic principles and rules, as well as the deadlines for action, gives us a picture of how the state authorities should behave when the administrative procedure is initiated. The problem arises when state authorities ignore the requests of the parties and break the deadlines prescribed by the same state. Then we come to a situation called "administrative silence", which is unfortunately quite common in the countries of the Western Balkans.

2. "THE SILENCE OF THE ADMINISTRATION" IN LEGAL THEORY

From the above presentation, it was presented how the legislator defined the administrative procedure itself in great detail, which we can freely say is the way to exercise the rights of the parties that are enabled by law, but also cases when the authorities, which are entrusted with the exercise of public powers, do not act in a very rules clearly defined by law, thus preventing the party from exercising its rights guaranteed by law or other regulation.

However, even such detailed legal solutions leave a certain area insufficiently defined. Thus, for example, the question arises whether the party submits the appeal to the first-instance or directly to the second-instance authority. The law defines that the appeal is submitted to the first-instance authority with which the case file is located and which has certain powers related to the appeal, such as examining the timeliness and admissibility of the filed appeal. But, when it comes to the appeal due to the "silence of the administration", perhaps it is more logical to define the obligation to submit the appeal directly to the second instance authority. Also, there is the question of the time limit in which the second-instance body is obliged to request statements from the first-instance body due to the failure to issue a decision, as well as the deadline in which the first-instance authority is obliged to

submit the requested statement, which should also be more precisely defined, all with the aim of more efficient decision-making by the second-instance authorities. In addition to the above, the law does not regulate the procedure of the second-instance authority if the first-instance authority makes a decision within a later deadline. Some legal theorists believe, and this is supported by judicial practice, that the second-instance authority in that case will suspend the appeal procedure with a conclusion, and that after that the "regular administrative procedure" continues, i.e. the parties are provided with a decision against which they have the right to file an appeal.

As for the term "silence of the administration", it is defined in legal theory in a narrower and broader sense. In a narrower sense, the "silence of the administration" is treated as missing the legally prescribed deadlines in the administrative procedure for the adoption of administrative acts by the competent authorities. In a broader sense, the "silence of the administration" means missing the legal deadlines for undertaking all forms of administrative activity.[4] "Administrative silence" in the narrower sense represents the classic understanding of this legal institute. Judicial practice has expressed itself in this sense, although such an understanding of the term "silence of the administration" is limited to only one segment in the work of the administration, yet that segment is the most important, and that is the adoption of administrative acts, i.e. deciding on a party's request for the recognition of a certain right.

Therefore, the "silence of the administration" is legally equated with the rejection of the party's request, so this decision is based on the fiction - that the administrative body has decided, and the legal assumption - that it has decided negatively, that is, that it has rejected the party's request. This model of "silence of the administration" as a negative act is also dominant and generally accepted in comparative law.

[4] Dimitrijević, P. (2005) Odgovornost uprave za nečinjenje, sa posebnim osvrtom na „ćutanje uprave“, Istočno Sarajevo

3. APPEAL PROCEDURE IN THE CASE OF (FAILURE) TO MAKE A DECISION - ADMINISTRATIVE PROTECTION OF THE PARTY

3.1. Appeal against the first-instance decision

The party has the right to appeal against the decision on the submitted request, made by the first-instance authority. This means that the party, if it believes that the first-instance authority committed a violation of the procedure, that it incorrectly established the factual situation based on the evidence presented during the procedure, or that the authority incorrectly applied the material regulation on which the party based its request, and such the action affected the decision not to be what the party expected, may request that a higher authority reconsider the decision of a lower authority.

In accordance with the results of the examination of the first-instance decision, the second-instance authority makes its decision, by which it can reject the appeal as untimely or filed by an unauthorized person, it can reject the appeal as unfounded if it determines that the first-instance authority correctly established the factual situation and applied the material regulation, then it can accept the appeal , cancel the first-instance decision and return the case to the first-instance authority for re-decision, or it can supplement the procedure itself and make a decision according to the request, thus resolving the administrative matter on its merits.

The term in which the second-instance authority must make a decision on the appeal is a maximum of 60 days, unless a shorter term is specified by a special regulation, but the law defines that the decision on the appeal must be made and delivered to the party as soon as possible, so even in a shorter period than the maximum prescribed by law.

3.2. Appeal when the first-instance decision was not made

In the previous part, the legal frameworks that define the possibility of filing an appeal and the decision of the second-instance authority on the appeal filed are listed.

However, it often happens that the authorities, entrusted with the exercise of public powers by law, do not act according to the procedure prescribed by law, and do not make a decision within the deadlines prescribed by law. Since the legislator also recognized such a practice, he prescribed a way to protect the party's rights when the first-instance authority fails to act according to imperative norms, that is, when it does not make a decision based on the party's request within the deadlines prescribed by law. In that case, the party has the right to file an appeal due to the failure to issue a decision, due to the so-called "silence of the administration", in the same way as if the party's request was refused.

The law stipulates the obligation of the second-instance authority to request a statement from the first-instance authority about the reasons for the non-provision of the decision in the case when the appeal was filed by a party whose request was not issued within the legally prescribed time limits (30 or 60 days from the date of submission of the request). If it is determined from the statement that the decision was not made for justified reasons or due to the fault of the party, the second-instance authority will leave the first-instance authority a deadline, which cannot be longer than one month, to issue a decision. Otherwise, if the reasons for not passing a decision are not justified, the second-instance authority will ask the first-instance authority to submit the file for decision.

If the second-instance authority can resolve the matter on its own according to the case files, it will issue its decision, and if it cannot, it will conduct the procedure itself and resolve the administrative matter with its decision. Exceptionally, if the second-instance authority finds that the first-instance authority will conduct the procedure faster and more economically, it will order it to do so and submit the collected data to it within a certain period, after which it will resolve the matter itself.

It is clear from the legal provisions that the intention of the legislator was to enable the party to exercise its rights in cases of "silence of the administration" and to overcome this kind of legal vacuum due to the failure to make a decision on the set request in the shortest possible time, so this procedure is quite well legally defined.

4. ADMINISTRATIVE DISPUTE DUE TO "THE SILENCE OF THE ADMINISTRATION" - COURT PROTECTION OF THE PARTY

Administrative dispute is a type of judicial control of administrative acts. Initiating an administrative dispute by submitting a lawsuit to the competent court due to the "silence of the administration" represents another type of protection of the party's rights, this time before the competent court.

In this case, the party can use the provisions of the Law on Administrative Disputes prescribed by law, which stipulates that the party, except against the final administrative act, can also file a lawsuit due to the "silence of the administration", in the event that the second-instance authority is not within 60 days or in a special regulation within a shorter period of time, has made a decision on a party's appeal against the decision of the first-instance authority, and does not make it even within a further period of 15 days after a repeated request, then the party can initiate an administrative dispute as if the appeal was rejected.

Here we see a situation of "administrative silence" on the part of the second-instance body, which is also a widespread phenomenon in practice, because the second-instance body often does not make a decision on an appeal against a first-instance decision within the legally prescribed period. So, here we have a case where the first-instance authority conducted the procedure and made a decision according to the party's request, but made a negative decision, that is, the request was rejected, so the party filed an appeal, according to which the second-instance authority did not make a decision within the prescribed period.

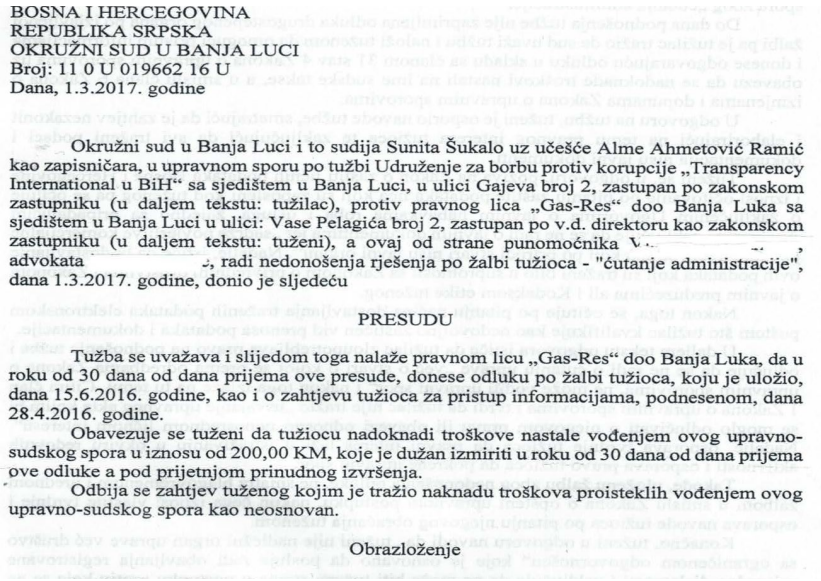
In this situation, the party is obliged to apply in writing to the second-instance authority with a request for a decision on the appeal filed within 15 days, and if the authority does not make a decision within that period, the party can file a lawsuit with the competent court and initiate an administrative dispute as if the appeal had been rejected. At this point, we can notice that the legislator again started from fiction - that the administrative body decided, and the legal assumption - that it decided negatively, that is, that it rejected the party's appeal, and that, fictitiously, we have a final administrative act with which the party is dissatisfied and against which an administrative dispute can be initiated, as a form of judicial review of an administrative act.

Apart from the cases when the first-instance authority does not make a decision based on the party's request, and when the second-instance authority does not make a decision within the legally prescribed time limits following an appeal against the first-instance decision, legal situations also occur in practice when the first-instance authority does not make a decision in accordance with the request, and the party appeals to the second-instance authority due to the "silence of the administration", and then the second-instance authority does not make a decision based on the appeal, so in fact we have an example of "double silence of the administration". In this case, too, the party can file a complaint with the competent court and start an administrative dispute, which we will show with an example from practice.

Namely, an administrative dispute was initiated before the District Court in Banja Luka due to the "silence of the administration", because the plaintiff was not answered and no decision was made by the first-instance authority on the submitted request for the provision of data in accordance with the Law on Freedom of Access to Information, nor was the second-instance authority passed decision based on the appeal filed by the party (in this court case by the prosecutor) due to the "silence of the administration". So, we have the case that a special regulation - the Law on Freedom of Access to Information, made it possible for interested persons to obtain information held by bodies entrusted with the exercise of public powers. In this particular case, the plaintiff from this proceeding used that right and submitted a request to the first-instance authority for the delivery of certain data held by that authority. As the request submitted to the party-plaintiff was not answered, the party used the possibility provided by law to file a complaint due to the "silence of the administration", as if the request for access to information had been refused.

However, since neither the second instance body nor after the urgency of the party, within a subsequent period of 15 days, made a decision on the filed appeal, the party, in accordance with the provisions of the Law on Administrative Disputes, filed a lawsuit with the competent court due to the "silence of the administration". The district court accepted the lawsuit and ordered the first-instance authority to make a decision on the plaintiff's appeal within 30 days, and to decide on the submitted request for access to information.

In the specific case, when we analyze the explanation of the verdict, we can see that the court stayed on examining the conditions prescribed by law for starting an administrative dispute due to the "silence of the administration", and when it determined that they were met, it granted the claim. This practically means that the court only examined whether it was allowed to file an appeal against the first-instance decision, and whether the second-instance body failed to decide on the appeal. In addition to these conditions, the court determined whether the plaintiff addressed the second-instance authority with a request for a decision on the appeal in a later period, and having determined that these conditions were met, the court accepted the claim and obliged the defendant to make a decision within the given period according to to the filed appeal and decides on the submitted request of the party. At the same time, the court also decided on secondary claims from the lawsuit, which is a decision on the costs of the proceedings, and obliged the defendant to compensate the plaintiff for the costs of the administrative dispute.



BOSNA I HERCEGOVINA
REPUBLIKA SRPSKA
OKRUŽNI SUD U BANJA LUCI
Broj: 11 0 U 019662 16 U
Dana, 1.3.2017. godine

Okružni sud u Banja Luci i to sudija Sunita Šukalo uz učešće Alme Ahmetović Ramić kao zapisničara, u upravnom sporu po tužbi Udruženje za borbu protiv korupcije „Transparency International u BiH" sa sjedištem u Banja Luci, u ulici Gajeva broj 2, zastupan po zakonskom zastupniku (u daljem tekstu: tužilac), protiv pravnog lica „Gas-Res" doo Banja Luka sa sjedištem u Banja Luci u ulici: Vase Pelagića broj 2, zastupan po v.d. direktoru kao zakonskom zastupniku (u daljem tekstu: tuženi), a ovaj od strane punomoćnika V..., advokata ..., radi nedonošenja rješenja po žalbi tužioca - "ćutanje administracije", dana 1.3.2017. godine, donio je sljedeću

PRESUDU

Tužba se uvažava i slijedom toga nalaže pravnom licu „Gas-Res" doo Banja Luka, da u roku od 30 dana od dana prijema ove presude, donese odluku po žalbi tužioca, koju je uložio, dana 15.6.2016. godine, kao i o zahtjevu tužioca za pristup informacijama, podnesenom, dana 28.4.2016. godine.

Obavezuje se tuženi da tužiocu nadoknadi troškove nastale vođenjem ovog upravno-sudskog spora u iznosu od 200,00 KM, koje je dužan izmiriti u roku od 30 dana od dana prijema ove odluke a pod prijetnjom prinudnog izvršenja.

Odbija se zahtjev tuženog kojim je tražio naknadu troškova proisteklih vođenjem ovog upravno-sudskog spora kao neosnovan.

Obrazloženje

Figure 1. Example of the introduction and sentence of the verdict due to the "silence of the administration"
(Source: https://www.ti-bih.org/wp-content/uploads/2017/05/Gas-Res-doo-Banja-Luka_11-0-U-019662-16-U.pdf)

It is important to mention that the court did not deal with the justification of the party's request, so it did not go into the merits of the administrative matter, but instead focused on the protection of the party's right to make a decision (positive or negative) based on its request, and that if the appeal is filed within the time limits make a decision (which can also be positive or negative).

Therefore, as stated in the explanation of the analyzed judgment, the purpose of these legal provisions is to enable court protection to a party in an administrative dispute, in cases where the second-instance authority has not made a decision within the legally prescribed time limits following an appeal against a first-instance decision or in an appeal due to the failure to issue a first-instance decision. that is, because of the "silence of the administration".

From this example, we have seen how judicial protection of the party works in practice due to the "silence of the administration", as another type of protection, in addition to the previously described procedure of administrative protection

CONCLUSION

In the administrative systems of the countries of the Western Balkans, unfortunately, there is considerable inactivity and inertness of the administrative authorites entrusted by law to exercise the public powers. This becomes especially important when we take into account that in administrative proceedings the parties try to realize their rights guaranteed by the state through various regulations.

In such situations, the parties must resort to the protection provided by the legislator, namely protection through administrative proceedure (administrative protection) or protection through court proceedure (judicial protection).

In the administrative procedure, the law provided for the possibility of protecting the party in such a way that a party that did not receive a decision from the first-instance authority on its request within the prescribed time limits can appeal to the second-instance authority, as if its request had been rejected or the administrative body decided negatively. In those cases, the second-instance authority has the possibility to determine whether the non-action of the first-instance authority is justified or not, and then make a decision or order the first-

instance authority to make a decision in a short period of time. Although there are certain vaguenesses in the legal solutions themselves, which can be corrected through changes in the law, this type of protection still works relatively well in practice and enables the party to exercise its rights in a relatively shorter period of time.

Another type of party protection stemming from the so-called "silence of the administration" is judicial protection, through the initiation of an administrative dispute. This type of protection can be used when the second-instance authority did not make a decision on an appeal against a first-instance decision, that is, when it did not make a decision due to failure to issue a first-instance decision, ie, after an appeal was filed due to the "silence of the administration". In these cases, the law allowes the party to file a lawsuit and initiate an administrative dispute, as if the appeal against the first-instance decision had been rejected. Similar to the legal procedure, the assumption is made here that the authority acted and made a negative decision, which the party disputes before the competent court.

Therefore, from everything stated above, it is clear that the non-action of the authorities entrusted with the exercise of public powers according to the requests of the parties to exercise their rights is a very bad phenomenon that contributes to legal uncertainty and as such must be reduced to the minimum possible extent. One of the ways is certainly to use the rights given by law to the parties to submit legal remedies due to the "silence of the administration" in any case when the authority fails to make a decision on the submitted request within the deadline. Considering that the law foresees relatively short deadlines for deciding on the set requests, the parties have the possibility to file a complaint immediately after the expiry of those deadlines (30 or 60 days) due to the "silence of the administration", so when this becomes a daily practice, we believe that it will certainly force the authorities management to act more up-to-date in their work and in their relationship with the parties..

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