

LEGAL PROTECTION AGAINST ADMINISTRATIVE SILENCE

UDC 35.077

342.9(497.11)

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Abstract. *The subject matter of this paper is legal protection against administrative silence, i.e. non-performance of the administration. The first part of the paper explores the concept of administrative silence and presents two dominant models of administrative silence: the negative model and the positive model. The second part focuses on administrative proceedings dealing with administrative silence, with specific reference to statutory time limits pertaining to legal protection against administrative silence. The third part elaborates on the consequences and effects of initiated proceedings, including available legal options and solutions for resolving such disputes in the future. The fourth part provides an example of proceedings in an administrative silence case. In conclusion, the author sums up the key issues that are have to be addressed in order to improve the efficiency and effectiveness of proceedings in such cases. The problem of legal protection against administrative silence is surely not an important subject in the legal science but it certainly has a huge practical effect on the establishment of the legal system and citizens' trust in it.*

Key words: *administrative silence, omission to act, positive model, negative model, proceedings before the administrative court*

1. INTRODUCTION

The concept of administrative silence and the possible ways of dealing with this problem are explored in a number of scientific papers. This paper explores how legal protection against administrative silence actually works in the Republic of Serbia, and what kind of protection is provided in administrative proceedings related to omission to act or non-performance of the administration. The negative model of administrative silence prevails in Serbian administrative practice, which means: when no individual administrative act is issued in a prescribed statutory time limit, it is assumed to be a fictitious rejection. This negative model has a long tradition in Serbia and neighboring

Received August 8th, 2021 / Accepted October 26th, 2021

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countries. After exploring the conceptual framework of administrative silence, the author examines administrative proceedings on this subject matter, focusing on the negative aspects of administrative silence, real examples illustrating those negative aspects, and possible solutions.

2. THE CONCEPT OF ADMINISTRATIVE SILENCE

In determining the concept of administrative silence, we should start from the imprecision of this phrase. Namely, administrative silence is quite common and allowed in the work of a public administration. Due to the protection of the public interest, there are cases where the administration is both entitled and obliged not to inform citizens about certain data, even though it is obliged to keep records and collect such data. However, the concept of administrative silence that is the subject matter of this article does not refer to this kind of administrative “silence”. Here, we explore administrative silence that represents a non-performance, a failure or an omission to act in a prescribed statutory time limit, in cases where the public administration has the obligation to act.

Given that the public interest represents the sum of the common interest and the (possible) private interest of an individual who can encounter such a situation, it raises the question whether administrative silence should be allowed or not. If we assume that administrative silence should be allowed, the next question is whether waiting for an individual administrative act is in the public interest. As the answer is negative, we consider that administrative silence should not be allowed from the aspect of protection of the public interest.

Non-performance of the administration is legally impermissible because it is against the basic legal principles. An omission to act constitutes a substantial violation of the administrative procedure which can have a negative impact on exercising the rights, responsibilities and legal interest of citizens and other legal subjects (Dimitrijević, 2005:54). Hence, “administrative silence” should not be allowed because it is a negation of legal principles, unlawful behavior, and a special case of administrative unlawfulness which may be redressed by filing legal remedies. In order to fight against the “silence” of the administration, responsibility for an omission to act should be established (Fatić, 1975:23).

Administrative silence is an infringement of the constitutional principle of equality since an administrative body does not reject to decide in all cases but only in some of them, which is a direct breach of the principle of legal equality (Petrović, 1981:271).

The Constitution does not explicitly envisage legal provisions related to timeliness of administrative decisions. It does not provide general administrative time limits, nor specific provisions on legal protection against untimely decision-making by government authorities. Administrative time limits are commonly regulated in a general administrative-law act or administrative procedure act, usually in combination with sector-specific laws (Dragos, Kovač, Tolsma, 2020:6). In the process of writing a constitution, legislators usually do not regulate the concept of protection against administrative silence, nor do they prescribe statutory time limits obliging an administrative body to issue an act (either a negative or a positive one). All these issues are regulated in the general administrative law or administrative procedure acts.

2.1. Models of administrative silence

In the process of solving the problem of administrative silence, there are two dominant models. The first one is called the negative model; it entails a presumption of a negative response to the request within a statutory time limit. The second one is called the positive model, which entails a presumption of a positive response to the request. In the text below, these two issues will be explored in more detail.

2.1.1. Negative model of administrative silence

The negative model of administrative silence stands for a legal presumption that, if an administrative body does not decide in the legally prescribed time limit, it will be considered that the request has been negatively solved, i.e. rejected. It safeguards the principle of legal protection, only for the benefit of the inefficient administration. This model of administrative silence is said not to have any negative consequences either for a party or for the administration; it only leads to the same legal situation that was present before making of a request (Dimitrijević, 2005:64-68).

In effect, a party can never be in the same situation. The situation is actually far worse because a party has lost valuable time, sustained some damage, etc. The administration seems to be in the same situation because it has not done anything; in fact, it seems to be in a better situation because, if a decision was negative, they would have to invest some time and effort, incur “unnecessary” costs, etc. By taking no action, they have the same effect, or even a better one. The interested party is still waiting for the decision, and he/she is ready to pay civil servants to accelerate the procedure. Thus, the administration only buys time, which clearly illustrates the elements of misuse of power (Dimitrijević, 2005:65)

The negative model of administrative silence seems to be based on the assumption that a party's request is *a priori* unfounded, that a party does not have the right that he/she is legally entitled to until the right has been approved by relevant authority, and that the given rights depend on the mercy of the administration. Administrative conduct based on such assumptions puts citizens in an inferior position when compared to the administration (Matović, 1982:166)

In the late 19th and early 20th century, there was a good legal solution for the problem of administrative silence. The solution was designated as “a legal need” or “a valuable civilization achievement” since it allowed a citizen to get a legally binding decision for a request that he could not possibly get from the administration (Sagadin, 1934: 353). Nowadays, due to a huge number of legal issues, the aforesaid solution seems outdated; considering that a citizen is vested with an individual right, he/she is not required to ask for a legally binding decision.

2.1.2. Positive model of administrative silence

Legal theory and positive-law regulations provide a different model of dealing with of administrative silence. It is based on the assumption that a request is (tacitly) accepted after the prescribed time limit and that a citizen can use and enjoy the legally prescribed rights/. The administration is responsible for all possible consequences of failing to fulfill its respective administrative duties. This conception challenges a deeply ingrained *a priori* presumption that the administration is always right, turning it into a presumption that it is always right until proven otherwise (Matović, 1982:167).

2.1.3. Characteristics of negative and positive models of administrative silence

Although neither of these two models of administrative silence seems to be dominant, we should sum up their positive and negative aspects, which point to their similarities and differences. Table 1 provides a comparative overview of their key characteristics.

Table 1 Two main models of administrative silence and their characteristics

	Negative model or deemed refusal	Positive model or tacit (silent) authorisation/approval/consent
Social context	The model tries to insure that conflicting interests are balanced in the decisions; it relies on the pre-eminence of the public interest.	The model tries to deal with administrative red tape and speed up administrative procedures; it is business oriented, and it relies on deregulation, legal certainty.
Legal context	The model is based on the fact that accountability lies with the public authority and that administrative competence is exclusive; it requires a merit review of the matter to insure that conditions to grant a right are fulfilled.	The model relies on the principle that the burden of administrative inactivity must not be ascribed to the party, hence, any claim not refused in due time is deemed granted
Basic characteristics	Non-observance of the time limit by the administration leads to an application to be deemed to be rejected. The party can lodge an administrative appeal and/or court action, leading to a devolution of competence	If there is a deadline breach in issuing an act, the application is deemed granted and rights claimed is acknowledged. However, some further procedural steps may be required in order to get the proof of that
Exceptions	When the system is mainly based on this model, exceptions are usually those cases in which sector-specific laws regulate the positive model, mainly based on the Service Directive	Exceptions seem to be numerous, stipulated in general and sector-specific laws for sensitive cases where tacit approval is considered to be risky: international obligations, public finances, environment, heritage, social matters, urban planning
Advantages	There is no danger that public interest and third parties' rights may not be balanced during the decision making process. Also, there is a long tradition in some legal systems to employ this model	It stimulates authorities to comply with deadlines by "threat" that they will need to allow enforcement of private rights otherwise and then be held accountable.
Disadvantages	Long procedures ("late decisions"); the principle of reasonableness is ineffective alone; the model legitimizes inactivity and equalizes situations of delays due to objective and subjective reasons; possible intentional delays in order to transfer accountability to decide to the courts	Potential recognition of rights disregarding the public interest; risk of corruption; problems with operational enforcement (e.g. no proofing document, no clear dates); false expectations of the beneficiaries; alleged speeding up of procedures does not happen, as the administration quickly adapts to the model and requests new documents before the deadline expires; the assumption that deadlines cannot be observed for lack of resources is a false premise for establishing a system of decision-making.

Source: Table 1. Dragos, *et al.*, 2020:13

3. ADMINISTRATIVE SILENCE PROCEEDINGS

3.1. Administrative silence proceedings before the first-instance administrative body

In order to take relevant action, an administrative proceeding should be initiated before an administrative body. It can be done in two ways: a) at a party's request, or b) *ex officio*.

An administrative proceeding is initiated when personal interests of a party have been confirmed, or when it is prescribed by the law, or when it is a condition without which the proceeding cannot be initiated. The initiation of proceedings required by law is strictly prescribed in the legislative rules. Such a proceeding can be initiated either when an administrative body is authorized to do so, or when the body determines that the protection of the public interest is necessary (Tomić, 2019: 429)

Article 145 of the General Administrative Procedure Act (GAPA)¹ prescribes a time limit during which a decision should be reached and a party should be informed about it. The GAPA actually differentiates two possible time limits (applicable either in case of a party's request or *ex officio*). The first one is a 30-day time limit which applies if the administrative body decides within its own jurisdiction. The second one is a 60-day time limit which applies when an administrative body decides outside its own jurisdiction (Tomić, 2019: 583-588).

In practice, the provisions raise a real question: what will happen if the issue has not been decided in a prescribed time limit, and how should such a situation be addressed? First, there is always the possibility of a judicial intervention. Second, there is an attempt to persuade an administrative body to decide. Third, there is a threat that they will be reported to a superior body by filing an appeal or a criminal complaint. However, only the second method will be further explored in this section.

This omission to act is a daily problem and it can be defined as a regular practice of administrative bodies, or as a system anomaly. It is caused by a number of factors, which *inter alia* include: unskilled public servants, disorganized administrative bodies, contradictory provisions in legislative acts and bylaws, and making requests which cannot be decided upon (due to contradictory provisions) or requests made by some disinterested parties.

Under Article 161 of the GAPA, a party may file an appeal with the second-instance authority if a decision has not been issued within the prescribed time limit by the first-instance authority. It should be noted that this legal provision is in collision with Article 159 of GAPA, which provides that an appeal has to include the decision which is being challenged, the name of the body that issued the decision, the number and the date of the decision, and the signature of the appellant. If an appeal does not have at least one of these elements, the appeal will be considered incomplete, and it will be rejected as incomplete. Notably, when an appeal is submitted to the second-instance authority, these elements cannot be included because the decision of the first-instance authority has never been issued (Tomić, 2019:647-651). This inconsistency can be solved by amending Article 159 of the GAPA, by adding that the elements listed in Article 15 (para.1) do not refer to appeals lodged for non-performance of the first-instance administrative body.

After submitting an appeal to the second-instance authority, the first-instance authority has an option to decide on its own initiative. That decision will be considered issued after the prescribed deadline. This appeal cannot be transformed into an appeal on

¹ The General Administrative Procedure Act (GAPA), *Official Gazette RS*, nos.18/2016, and 95/2018

the merits because the appellant does not know the content of the first-instance decision at the time when it is issued. If an appellant is dissatisfied with the decision after it has been issued, there is a prescribed deadline for initiating legal action against the decision.

However, Article 173 of the GAPA states that, if the first-instance authority has not issued a decision within the prescribed time limit, the second-instance authority will insist on receiving justification by the first-instance body on the reasons for not issuing the decision in time. If the second-instance authority finds the reasons justifiable, it will extend the deadline for issuing the decision for as long as the justified reason(s) lasted, but no longer than 30 days. On the other hand, if the second-instance authority finds that there was no justifiable reason for not issuing the decisions, it will decide on the administrative matter or order the first-instance authority to issue a decision within a period 15 days (Art 173, para.1 and 2 GAPA).

Moreover, Article 210 of the GAPA states that the Ministry of Public Administration is obliged to initiate a disciplinary action against a civil servant who does not issue a decision within a legally prescribed time limit. Although it is a novelty in our legislative system, it seems to have already given some results.

Administrative silence is quite common and an omission to act is something we should fight against. However, it is subject to statutory limitations. According to Article 153 (para.2) of the GAPA, in case an administrative body does not issue a decision within a legally prescribed time limit, an appeal may be filed after the expiry of that time limit, but not later than one year after the expiry. The legislator has made the right decision by envisaging a one-year statute of limitation period; thus, if parties are not interested in the decision within a one-year period, they will not have the right to seek legal protection against administrative silence.

There are also cases where an appeal against the first-instance authority cannot be lodged. In such a case, the Administrative Disputes Act (ADA)² prescribes the possibility of seeking judicial protection before the Administrative Court. Thus, in case the first-instance body has not issued a decision (on an issue which is not subject to appeal) within the prescribed time limit, nor within the additional period of 7 days after receiving the party's subsequent request, the party may initiate legal action against the administrative body for failure to issue the requested act (Article 19, para.2 ADA).

3.2. Administrative silence proceedings before the second-instance administrative body

The proceeding can be initiated in two ways: a) by a party's appeal, and b) *ex officio* (when the body notices that a legal act has been issued in an unlawful manner). However, the second-instance administrative body is not immune to administrative silence or an omission to act within a prescribed period. Article 174 of the GAPA states that the decision on appeal has to be issued without delay, within 60 days from the appeal submission date, unless the law prescribes a shorter deadline.

In case of administrative silence or omission to act, the Administrative Disputes Act envisages the possibility of pursuing judicial protection before the Administrative Court. Thus, in case the second-instance administrative body does not issue a decision on appeal within the 60-day time limit (or within a shorter period prescribed by the law), nor within an additional 7-day period following the party's subsequent request for decision, the party

² The Administrative Disputes Act (ADA), *Official Gazette RS*, no.111/2009

may file a complaint (initiate legal action) before the administrative court on the grounds of administrative silence (Article 19 para.1 ADA). Moreover, Article 153 (para.2) of the GAPA envisages a one-year statute of limitation for instituting proceedings on administrative silence.

3.3. Administrative silence proceedings before the Administrative Court

The Administrative Court is a forum for resolving administrative disputes (Article 8 ADA). Yet, similar problems may be encountered by the Administrative Court in handling the problems caused by administrative silence or an omission to act of the lower-instance bodies. As everyone is entitled to equal protection of rights in court proceedings, particularly the right to an appeal and other legal remedies (Article 36 of RS Constitution)³, we may also refer to proceedings on an omission to act instituted before the Administrative Court.

An administrative dispute is initiated by filing a precisely written legal complaint. After it is submitted, there is a time limit for a reasonable judicial protection. During this period, relying on the right to a trial within a reasonable time, a party may seek some legal remedies.

The Act on the Right to a Trial within a Reasonable Time (RTRT)⁴ envisages a number of legal remedies for the protection of this right, including: 1) an objection (aimed at speeding up the court proceeding); 2) an appeal; and 3) a request (motion) for just satisfaction (Article 3 RTRT Act). The proceeding on this issue starts by filing an objection with the court in charge of the court proceedings. This proceeding can be initiated only if the final decision has not been rendered by the Administrative Court. The decision on the objection is rendered by the president of the court, who may also appoint one or two judges to assist him. The time limit for rendering the decision is two months for the date of submitting an objection (Article 7 RTRT Act). In the decision, the court should state the reasons why the party's rights were violated, order procedural actions to accelerate the proceedings, and determine a time limit for specific actions which have to be taken by the judge adjudicating the case. The time limit cannot be shorter than 15 days, nor longer than 4 months (Article 11 RTRT Act).

A party has a right to appeal in case the objection has been rejected, or if the president of the court has not decided on the objection within a period of two months from the objections submission date (Article 14 RTRT Act). The appeal shall be filed within 8 days from the date of expiry of the prescribed two-month period (Article 15). The appeal is submitted to the president of the court who decided on the objection, who forwards it to the president of an immediately higher court, who conducts the appeal procedure and decides on appeal (Article 17 RTRT Act).

4. CONSEQUENCES AND LEGAL EFFECTS OF ADMINISTRATIVE SILENCE: SUGGESTIONS FOR A MORE EFFECTIVE ADMINISTRATION

4.1. Non-systemic legal solutions

A great number of legal systems envisage time limits for administrative silence, as well as the effects of non-performance and legal options available to an interested party. Considering that this subject matter is regulated by the General Administration Procedure Act, can such regulation be designated as a systemic solution? In order to have a legal

³ The Constitution of the Republic of Serbia, *Official Gazette*, no.98/2006

⁴ The Act on the Right to a Trial within a Reasonable Time (RTRT Act), *Official Gazette*, no. 40/2015.

solution perceived as a systemic solution, that solution has to provide a legal procedure, and it also has to be effective and implemented in due time.

Even though the Administrative Court can be involved in solving the issue of administrative silence in Serbia, we cannot completely rely on its efficiency. Namely, if we establish the proceedings and state the deadlines for meritorious administrative decision-making, we are still faced with long time frames and inefficiency of public servants.

Article 173 of the GAPA prescribes a time limit of 30 days or 60 days (respectively) for the first-instance administrative body to render and issue a decision. If the decision has not been issued within the prescribed time, an appeal may be filed with the second-instance administrative body that has a legal obligation to decide within a period of 60 days (Article 174 of the GAPA). If the decision has not been issued by the second-instance administrative body within the 60-day time limit, a party has to submit a request for intervention. After the expiry of a 7-day time limit, the party has the right for to initiate a legal action in the Administrative Court on the ground of administrative silence. The Administrative Court has a deadline of 2 years to decide; if the complaint is complete, the decision is usually issued within a period of several months. In some rare cases, the Administrative Court issues a decision on merits, which means that the second-instance authority has to decide within the legally prescribed 60-day time limit. If the authority does not decide again, the party may request intervention again and, after a new 7-day period, the party may initiate an administrative dispute proceeding. The next decision is expected to be issued within a few months, but it may extend to 6 months due to the Administrative Court caseload. After all this, the Administrative Court cannot reverse the case to the second-instance authority but has to deal with this administrative situation on its own. At that moment, the party can actually understand the real legal effect of administrative silence.

If we sum up all the deadlines pertaining to administrative silence, we may come up with the following account: first, there is a 60-day time limit for the decision of the first-instance authority; then, there is a 60-day time limit for the decision of the second-instance authority plus a 7- day period for intervention, plus a subsequent period of a few months (let's say 6 months) for returning the decision to the second-instance authority, which is followed by a 60-day time limit for rendering the decision at second instance, plus a 7-day period for intervention; after that, the case goes to the Administrative Court, which has a few months to decide (let's say 6 months), after which we come to a decision on the merits.

Therefore, the entire process lasts around 18 months and half, for which reason it cannot be considered effective. This is the average length of proceedings, not the longest possible length. The longest period to get a decision on the merits is 54 months after a party's appeal.

From all the above, we can conclude that the prescribed 60-day or 30-day time limit is a reasonable deadline for an administrative body to decide. However, we cannot consider a period of about 18 months and a half to be a systemic solution; it is a solution that has been made in favor of the first-instance body, the second instance body, or the Administrative Court. Thus, there is no legal protection for parties but only a formal right to initiate administrative silence proceedings; a party is misled by the promise that the issue will be decided in a few months. By analogy, if a party makes a misleading promise in company law or civil law, penalties are quite strict but, in administrative law, it is quite common and taken for granted. We should never forget the constitutional rights calling for equality. It is morally wrong to keep a party intentionally misled, which surly happens in case of administrative silence. In case of justified delays, a party may at least be notified of the reasons, instead of having no response at all.

4.2. Low quality of the issued decisions

Considering the tradition deeply rooted in administrative bodies, we may raise the following question: will the quality of decisions issued in the prescribed time limits be good enough?

The answer to this question is not an easy one. Apart from rendering and delivering decisions, there is a possible lack of competence of the decision-making body. It is generally assumed that the administrative body has true and up-to-date facts and data about the issued decision, that the body is in contact with the other bodies involved in the proceeding and that a civil servant has a monthly or annual quota of cases that have to be processed; however, it is rarely the case.

From all the above, it can be concluded that it would not be fair to initiate a disciplinary action against a civil servant for an omission to act within the prescribed time limit because there is a high probability that the facts and decisions are out of civil servants' control. However, this problem may lead to a situation in which a civil servant just issues a decision in the prescribed time limit without focusing on the content and possible consequences of that decision. Such action of a civil servant, taken under the "pressing" time limits, brings the party back to square one again. Given that the party's interest is to resolve the problem (not just to get a decision), these administrative proceedings are often perceived as a vicious circle, where a wrong decision is followed by a new action aimed at rectifying the wrongly and unlawfully issued decision. This process takes as long as the previous one, and sometimes even longer. In such a situation, the administrative body can resort to the privilege of administrative silence.

The main reasons for inefficiency of administrative bodies are non-systemic solutions and low quality of the issued decisions. In addition, it is necessary to provide some solutions for fixing the problems related to administrative silence. Firstly, we have to understand that the first-instance body cannot make an administrative act, which calls for providing some appropriate time limit. However, the problem is that the second-instance body has the same or even longer time limit, plus an additional time limit of 7 days as if the initial 60-day time limit is not enough. The solution to this problem would be a 15-day time limit for the second-instance body, whose job is to supervise the first-instance body. Moreover, in some cases dealing with substantive rights (e.g. getting a pension), we may suggest the use of a positive model of administrative silence (after the prescribed time limit); thus, a party should be able to demand a pension payoff as if the request has been accepted. This solution can be also applied in other administrative proceedings involving dominant material gain.

5. AN EXAMPLE OF ADMINISTRATIVE SILENCE PROCEEDINGS

5.1. A party's request

In a tax administration case⁵, the party made a request for tax exemption for inheritance by authorizing an attorney on 23 December 2019. All the necessary documents were provided. In that request, the lawyer asked for exemption of administrative act charges but receive no reply

⁵ Case no. 073-432-00-17820/2019-0000; the first-instance proceeding conducted by the Tax Administration, Sector for separate activities, Department for control of separate activities Nis, Ministry of Finance, RS.

from the competent body. The party made an appeal for an omission to act on 25 February 2020.

5.2. The first instance decision of Tax Administration

On 18 June 2020, Tax Administration issued the first instance decision and exempted the heir from tax payment, stating that heirs of the first line of succession are excluded from tax payment irrespective of the administrative act charges.

5.3. A request for a supplementary decision

In order to accelerate the proceeding, the attorney made a request for a supplementary decision, which seemed more effective than filing an appeal. The request was submitted on 30 June 2020. However, given that the administrative act charges had not been decided on yet, on 16 October 2020, the attorney submitted an appeal on the grounds of failure to issue the supplementary decision. On 28 October 2020, the first instance authority finally decided on the matter (10 months after the request was submitted) and rejected the request for charges.

5.4. The proceeding before the second instance authority

Based on this decision, the attorney made a meritorious appeal against the supplementary decision.⁶ The appeal was filed on 18 November 2020. As the second instance authority did not act, the attorney submitted a request for intervention on 26 January 2021. As no action was taken after the expiry of the 7-day time limit, the attorney initiated an administrative dispute proceeding before the Administrative Court of the Republic of Serbia on 4 February 2021.⁷

5.5. The proceeding before the Administrative Court

The second-instance authority's decision was issued on 6 March 2021, and it was delivered to the attorney on the 1 April 2021. In this decision, the second-instance authority annulled the decision of the first-instance authority. The first-instance decision was incomplete, which may possibly be a result of the speed of issuing it. After this decision, the proceeding before the Administrative Court was dismissed, and the 60-day time limit was given again to the first-instance authority to issue a new decision.

Taking into account that these proceedings started on 23 December 2019, and that the first-instance authority was required to issue a new decision on 1 April 2021, we come up to 18 months as the total length of proceedings (as previously noted). It also has to be emphasized that this is not a complex administrative proceeding, but a simple one (involving a request to exempt an heir from tax payment and from paying the charges of the proceeding).

Notwithstanding the reasons for administrative silence, such conduct cannot be justified. Although these administrative bodies are funded by the government and have a number of qualified employees, it seems that they have difficulty in decision-making. In the author's opinion, every administrative body has to stand the consequences of non-performance,

⁶ Case no. 401-00-05598 / 2020-39; the second instance proceeding conducted by the Sector for second-instance tax and customs procedure, Department for second-instance tax procedure Nis, Ministry of Finance, RS..

⁷ Case no. II-3 U.2552 / 2021; the administrative dispute proceeding conducted by the Administrative Court RS.

including a failure or an omission to act. Having a dominant position, an administrative body should not act recklessly or negligently in performing its duties; instead, it should be responsive and capable of handling the workload.

6. CONCLUSION

Considering all the above, we can conclude that legal protection against administrative silence is slower than the legislator intended. Administrative silence seems to be widespread and a violation of related rights is quite common. Thus, the rights related to protection against administrative silence should be fully acknowledged and effectively protected.

Apart from the violation of rights and inefficiency of the administration as the most important issues, there are also negative consequences and effects of administrative silence. Some of them are the lack of trust (which seems to be increasing due to corruption) and abandoning certain rights that cannot be easily obtained.

Moreover, the rights that are directly related to issuing an administrative act are not always administrative by nature. The rights which are essential for the economy are intellectual property rights, industrial property rights, and property rights (e.g. the right to a fee for an expropriation of land which directly depends on the land owner and the municipality where the land is located). In addition, “delays” in decision-making may potentially cause pecuniary losses (e.g. the time spent for getting a building permit). All the mentioned situations are not to be easily disregarded. Their economic value increases on a daily basis, which leads to the conclusion that the inefficiency in the functioning of the administration is the leading problem in the economic development of the Republic of Serbia.

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Upravni spor II-3 U.2552/2021 (administrative dispute proceeding), Upravni sud Republike Srbije.

PRAVNA ZAŠTITA OD ČUTANJA UPRAVE

Predmet ovog rada je pravna zaštita stranka od nepostupanja uprave. Najpre je predstavljeno pojmovno određenje pojma čutanja uprave, a nakon toga postupak zaštite od čutanja uprave. U radu su navedeni i određeni nedostaci trenutnog načina zaštite od čutanja uprave, kao i mogući modeli za rešavanje ovog pitanje u budućnosti. Kao dominantni modeli rešavanja čutanja uprave predstavljeni su i upoređeni pozitivni i negativni model. Poseban akcenat je stavljen na vremenski protok od pokretanja postupka do dobijanja željenog rezultata. Problem pravne zaštite od čutanja uprave definitivno nije dominantna tema u pravnoj nauci ali zasigurno je da ima veliki praktični uticaj na uspostavljanje pravnog sistema i poverenja građana u isti.

Ključne reči: čutanje uprave, nedonošenje rešenja od strane upravnog organa, pozitivni model čutanja uprave, negativni model čutanja uprave, upravni spor