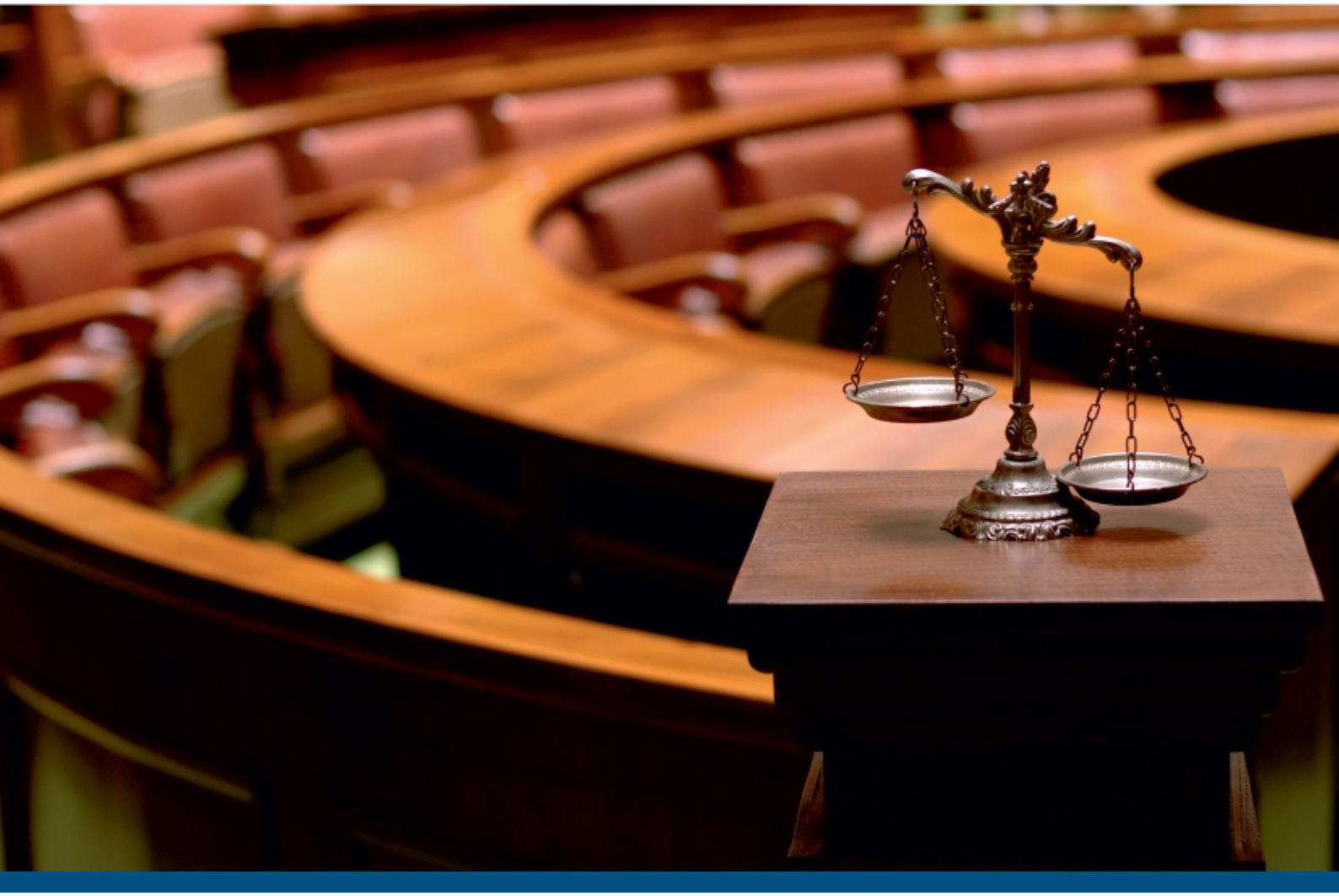
The Administrative Court and the Anti-corruption Legislation

Transparency Serbia
May 2016



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Content

Introduction

This electronic publication contains part of the results, findings and recommendations that the organisation Transaparency - Serbia prepared within the project "Strengthening the role of the Administrative Court in the fight against corruption." We conducted this project in the period from April 2015 to May 2016.

We conducted various activities. We followed the practice of the Administrative Court in the application of three important anti-corruption legislation (in the area of conflict of interest, public procurement and access to information), as well as the practice of their work in other areas (complaints, urgency, jurisprudence and general transparency). We gave recommendations to improve practices of the Administrative Court and other judicial institutions (where the Administrative Court could serve as an example of good practice). With presented the findings of the analysis to representatives of other relevant authorities (Agency for the Fight Against Corruption, the Commissioner for Information of Public Importance and Personal Data Protection, Republic Commission for Protection of Rights in Public Procurement Procedures), as well as to general public (press conference).

We paid special attention to one aspect of the work of the Administrative Court - addressing complaints in administrative disputes in cases when any of the six high authorities deny the right of access to information (situations in which there is no right of appeal to the Commissioner). In order to stimulate this important role, we organized focus groups with NGOs in Belgrade and Nis, provided assistance to citizens and journalists in preparing requests, urgency and complaints or we personally submitted numerous requests for access to information in cases of greater importance.

We would like to thank those employed on the Judicial Reform and Government Accountability Project (JRGA), the Administrative Court, headed by the president, judge Jelena Ivanovic, as well as representatives of other authorities who worked with us on this project, especially deputies Commissioner for Information of Public Importance, Mrs. Stanojla Mandic and director of the Agency for the Fight Against Corruption, Tanja Babic.

Transparency – Serbia, May 2016.

Judicial control of administrative acts

Administrative dispute is one of the mechanisms that aims to ensure the functioning of **the constitutional system of separation of powers**. The rights and obligations of citizens and legal entities are usually decided by executive government. "On the other hand, courts have exhausted the mechanisms of hierarchical control of higher administrative authority over the lower one based on the filed appeal (appellate control) and in the administrative procedure they can "assess" the legality of an administrative act, but only when a citizen (entity) whose right/obligation was decided on by final administrative act initiates this procedure before the competent court specified by legal means (in Serbia this would be a complaint)[1].

The system of judicial control has developed historically and parallel with the law through specific institutions or it was entrusted to ordinary courts. In Serbia, this type of control occurred at the end of the 19th century (State Council). In socialist Yugoslavia and Serbia, during the 20th century, administrative disputes were resolved by separate departments of ordinary courts. Several judicial reforms planned to set up a special Administrative Court, which was achieved only in 2010.

Judicial control of the administration has an important place in the structure **of anti-corruption mechanisms**. It belongs to the part of these mechanisms that aim to ensure "accountability" and "public accountability" of authorities and officials for their actions. In this respect, it stands shoulder to shoulder with the responsibility of authorities and officials to provide reasons for the decisions they make, to ensure that their work is public, to justify the spending of budgetary funds and the possibility that their work is supervised by other authorities within the administrative apparatus .

Judicial control of administration can be indirect (general) and direct (special). Administrative dispute is only one form of judicial control of the administration. Indirect (general) judicial control of the legality of administrative operations is implemented by ordinary courts (e.g. in civil and criminal procedure) and the Administrative Court (e.g. in connection with the constitutional complaint)[2].

Direct (special) judicial control of the administration presents the control of the legality of administrative acts by the court of special jurisdiction - Administrative Court in administrative and judicial proceeding called an administrative dispute. Accordingly, an **administrative dispute** presents a specific administrative procedure in which the Administrative Court decides on **the legality of the final administrative act that was passed in the administrative procedure**[3].

[1] The protection of citizens' rights before the Administrative Court, Citizens' Guide, Dejan Milenkovic, Aleksandar Maricevic, Center for Development of Serbia, Belgrade 2013.
http://www.up.sud.rs/uploads/brochures/documents/1395311149~~Zastita%20prava%20gradjana%20pred%20Upravnim%20sudom.pdf
[2] The same.
[3] The same.

Administrative disputes

Administrative disputes are usually divided into subjective and objective or disputes with limited and full jurisdiction. Subjective administrative dispute is initiated with the aim of protecting particular subjective rights and objective dispute with the aim of general protection of legality. These disputes are initiated by citizens, legal persons or other law entities, when they consider their rights were injured in administrative law proceedings resolved by the competent public authority.

"Today we have a large number of situations where citizens (and other entities) can exercise their rights only if standard administrative procedure or administrative proceeding was previously conducted and if the administrative authority conducting this procedure established that a citizen (another entity or - party) is indeed entitled to such a right in accordance with the law"[4].

Citizens who are not satisfied with the decision can use regular remedy (appeal) which is decided on by a hierarchically higher administrative authority. If this authority confirms the first instance decision, "unsatisfied party can initiate administrative dispute as an external form of administration control by a court. The court will decide on the legality of the final administrative act which was decided on in the administrative procedure"[5].

Objective administrative dispute is initiated by the competent authority (e.g. public prosecutor, public attorney) "when it is considered that administrative act which upheld the request of the party (and the party achieved a certain right) violated the law in favour of the party"[6].

A decisions in procedure of limited jurisdiction is reached on the basis of facts and evidence that are established in the previous procedure. Then, the case can be returned to the second instance authority to comply with the court order or, alternativelly, the decision of administrative authority will be confirmed. On the other hand, in the process of full jurisdiction, the court conducts an oral public hearing, because the data collected in previous phases are not sufficient for the decision. "Court decision in this case entirely replaces the disputed decision of the defendant's body"[7].

Administrative dispute against final administrative act and in case of "silence of administration"

Administrative disputes are conducted against final administrative acts. This can be an act brought by the second instance authority (the party has exercised the right of appeal) or an act brought by the first instance authority (the appeal was not even permitted). The Law on Administrative Disputes defines administrative act as a "single legal act by which the competent authority, by means of immediate implementation of regulations, decides on a certain right or obligation of a natural or legal person or other parties in the administrative matter." The Law on Administrative Procedure, adopted in 2016, provides an almost identical definition:

„(1) In terms of this Law, an administrative act presents an individual legal act where the authority, by means of immediate implementation of regulations, decides on a right, obligation or legal interest of the party or procedural issues.

(2) Administrative acts present decisions and conclusions.

[4] The same.
[5] The same.
[6] The same.
[7] The same.

(3) Decisions and conclusions may have a different name, if a special law stipulates so."

Under certain conditions, an administrative dispute may be initiated when the competent authority has not reached an appropriate administrative act on the party's request or appeal, i.e. in the case of "silence of administration". According to the Law on Administrative Disputes, "silence of administrative" occurs when a second instance authority fails to reach the decision on the party's appeal against the first instance decision within 60 days and fails to do so within the following seven days following a repeated request.

An administrative act may be challenged for the following general reasons:

- the act has not applied the law or other regulations based on the law or other legally adopted regulations or general acts;
- laws or other regulations or general acts have not been applied properly;
- an administrative act was passed by an authority not competent to do so;
- the rules of procedure were not followed when passing the act;
- factual situation has not been fully determined;
- factual situation has been incorrectly determined;
- an incorrect conclusion was established in regards to the factual situation;
- an act was passed by the discretion and the authority exceeded the limits of legal authorization;
- an act was passed by the discretion and the authority failed to act in accordance with the purpose for which he has been granted such an authority;
- the defendant repeated the act that has already been annulled by the decision;
- in order to establish the illegality of the act that was passed without legal effect.

The parties in the proceeding are a plaintiff and a defendant. Defendant is the authority that passed the act to be challenged or that was obliged to pass it (in the case of "silence of administration"). Interested party is a third party that would suffer a direct damage by the annulment of the disputed administrative act. This person also has the status of a party.

Initiating an administrative dispute

Administrative dispute is initiated by a complaint. As a rule, the complaint does not have suspensive effect. This means that the final act being disputed before the Administrative Court can also be conducted during administrative act. There is a possibility that the prosecutor requests the court to postpone the implementation of final administrative act. In order to meet such a request, several conditions need to be fulfilled – that the implementation of decision causes damage to the plaintiff which would be difficult to compensate, that the postponement of implementation is not contrary to the public interest, and that the postponement does not cause irreparable damage to the opposite party or the interested person or the damage greater than the one suffered by the plaintiff.

The Administrative Court is based in Belgrade and has departments in three major cities in Serbia (Nis, Novi Sad, Kragujevac). However, the complaint may be submitted only in the seat of the court in Belgrade, at the reception desk, from 7.30 AM to 3.30 PM on weekdays. Of course, it may be sent by post like any other written complaint to the address of the Administrative Court, Nemanjina 9, 11000 Belgrade. There is a possibility to state the complaint orally (on the record) at the premises of the Court.

The deadline for submission of complaints is 30 days from receipt of the administrative act against which the complaint is stated. When the action is brought by a state authority, the deadline may be longer (60 days, if the administrative act has not been delivered to the authority). The deadline of 60 days applies in the case of so-called "silence of administration" (unless the law prescribes another deadline for the decision).

General rules of administrative dispute predict that if the second instance authority does not reach a decision within 60 days, and does not do so upon a repeated request within seven days, the party may initiate an administrative dispute, as if the appeal has been rejected. The same stands in the event when it was not possible to state a complaint against the decision of the first instance authority. However, if a special law prescribes a different time limit for the actions of the first instance authority (e.g. 15 or 30 days), then the deadlines for administrative dispute shall commence after the expiry of that deadline.

The conditions for validity of the complaint

The Law stipulates that a complaint in an administrative dispute shall contain:

- name, address and place of residence, or name and seat of the plaintiff;
- indication of the administrative act against which the complaint is filed;
- reasons for filing the complaint;
- proposal that shows the direction and scope of the proposed annulment of the administrative act ("claim" – to annul administrative acts for illegality, for the authority to issue a decision, etc.).
- signature of the plaintiff.

If the complaint intends to compensate a subject or damage, a specific request shall be added in relation to the subject of the amount or suffered damage. The complaint is supported by a copy of the administrative act against which the action is initiated. The complaint and supporting materials are submitted in multiple copies (one copy for the court, the defendant and interested persons). The court shall forward the complaint and supporting material to the defendant for making a statement.

During preliminary proceedings, the Administrative Court determines if the complaint meets formal requirements, while the administrative disputes determines the outcome of the claim. If these requirements have not been met, the court shall reject the complaint without decision on its legality. This can happen due to complaint irregularities (absence of mandatory data, the complaint is not clear, the plaintiff did not regulate the complaint in the subsequent period), due to the breach of the deadline (or premature complaint), when disputed act is not an administrative act, when complaint is not supported by evidence, when it is clear that the disputed administrative act does not affect the right of the plaintiff or his direct personal interest based on law, due to which the complainant has no (active) standing to an administrative dispute, if after filing the complaint the disputed act was annulled upon the complaint of the other party, if the disputed administrative act can be appealed, if the complaint has not been filed on time or filed at all, if the plaintiff withdrew the complaint during the second-instance administrative procedure or if a valid court decision has been made in an administrative dispute on the same matter.

During the complaint procedure, administrative dispute is resolved and a decision on the legality of the administrative act is passed. This procedure can result in the decision to grant the claim and annul the disputed act, or in the decision to rejected the claim and, therefore, to keep the disputed administrative act in force. The court may also annul the disputed act for reasons other than those stated in the complaint.

The court shall request the defendant authority to submit all case files, but it can also continue the procedure without these documents. Further, the court shall hold a public hearing and decide on the basis of all facts and collected evidence. If the Administrative Court reaches the decision without oral public hearing, it shall

provide the reasons justifying such action. In some situations, an oral public hearing is required.

Legal remedies against the decision of the Administrative Court

There are no regular legal remedies against the decisions of the Administrative Court in the administrative dispute, but only extraordinary ones - a request to review court decision and the request to reopen the proceeding. The request to review court decision may be filed by a party and competent public prosecutor. The request is submitted to the Supreme Court of Cassation. This can be done in situations where the court has full jurisdiction for reaching the decision, or when a complaint is not permissible. Essentially, the claim is filed for violation of law or violation of the rules of procedure which could influence the outcome. This request shall be submitted within 30 days from the date of delivery.

The process completed by final judgment or court decision can be repeated upon party's complaint if the party discovers new facts, finds or obtains an opportunity to use new evidence based on which the dispute could be resolved more favourable for the party should these facts or evidence had been presented or used in the previous court proceeding; if court decision was caused by the criminal act of a judge or court employee, or the decision was reached by means of a fraudulent action of an agent or representative of a party, their adversary or adversary's representative or party's agent, and such action constitutes a criminal offence; if the court decision was based on a decision reached in criminal or civil matters and such decision was subsequently annulled by another final court decision; If the document underlying the court decision was false or fraudulently altered, or if a witness, expert or party gave false testimony during the court hearing and court's decision is based on that testimony; if party finds or obtains an opportunity to use a previous judicial decision reached in the same administrative dispute; If the interested party is not allowed to participate in the administrative dispute; If viewpoint from the subsequent decision of the European Court of Human Rights on the same matter may affect the legality of a lawfully completed court proceeding. In all this, it is important that the party was not aware of these circumstances in a previous proceeding.

The reopening of procedure may be requested no later than 30 days from the date when the party discovers the reason for reopening (except in the case of the European Court decision when the deadline is 6 months from the publication of the decision in the OG RS). In any case, the reopening of proceeding may not be requested after the deadline of five years from the lawfully reached court decision.

The Administrative Court and anti-corruption laws

Despite the importance that the Administrative Court has in the fight against corruption by examining various decisions of the administration bodies, it also has an important role in the implementation of specific preventive anti-corruption laws. This is the reason why the Transparency - Serbia conducted a special analysis of regulations and practices related to the work of the Administrative Court in the area of conflict of interest (the Law on Agency for Fight Against Corruption), public procurement and access to information.

The specific nature of actions of the Administrative Court in these cases is reflected in the fact that, unlike most other administrative disputes, this group of defendants does not belong to the circle of executive authorities. In fact, in all cases related to violation of the Anti-Corruption Law and the Law on Public Procurement, as well as in some cases related to the Law on Free Access to Information of Public Importance, the defendant is an independent authority - the Agency for Fight Against Corruption, Republic Commission for Protection of Rights in Public Procurement Procedures, or the Commissioner for Information of Public Importance and Personal Data Protection.

Differences in the implementation of these three laws are far from negligible. So, when it comes to the Law on Agency for Fight Against Corruption, the Administrative Court may correct the decisions that have already been decided by two competent authorities within an independent authority (the Director and the Agency Board). When it comes to the Law on Public Procurement, the Administrative Court may ultimately decide not only on the validity of actions of an independent authority (Republic Commission), but also in regards to the actions of the contracting authority that conducted public procurement. When it comes to the Law on Free Access to Information of Public Importance, in one group of cases the Administrative Court determines whether the independent body (the Commissioner) acted properly, but it can ultimately decide on the validity of the actions of authorities (dispute of full jurisdiction). In another group of cases the Administrative Court decides on the validity of actions of one of the six authorities whose decisions cannot be appealed to the Commissioner.

Protection of rights in public procurement procedures

Protection of the rights of participants in public procurement procedures in the Republic of Serbia is governed by the principle of two instances in decision-making, which implies that a decision on the submitted request for protection of rights, as well as on legal remedies prescribed in the Public Procurement Law ("Off. Gazette of RS" no. 112/12, 14/15 and 68/15, hereinafter: PPL), is in the first instance reached by the contracting authority, and in the second instance by the Republic Commission for Protection of Rights in Public Procurement Procedures (hereinafter: Republic Commission). The legality of the decision of the Republic Commission can be challenged in an administrative dispute before the Administrative Court.

The process of protection of rights in public procurement is initiated by filing a request to the contracting authority for the protection of rights of the participant in the procurement procedure who considers that his rights have been violated, while delivering copies of the request to the Republic Commission. The submitted request for protection of rights no longer retains all the activities of the contracting authority in the procurement process, as it was the case prior to the amendments to the Public Procurement Law (Article 150 of the Law on Amendments to the Law on Public Procurement, which entered into force on August 12, 2015). Now, the contracting authority cannot reach the decision on the award of the contract or conclude the contract until a decision is made on the submitted request. After reviewing the fulfilment of procedural requirements (after determining that complete request was submitted on time and by the authorized person) the contracting authority has two options to decide on its own merits in regards the request for protection of rights, which are: to adopt the request for the protection of rights by issuing a decision or to submit a response to a request for protection of rights with complete documentation to the Republic Commission for further action.

Administrative dispute regarding procedures of public procurement

Republic Commission was established as a "quasi-judicial authority," according to the rules and principles of judicial decision-making, which are in line with the relevant EU directives.

Public Procurement Law, Article 159 regulates the right to administrative action, so it is prescribed that the decision of the Republic Commission cannot be appealed, but an administrative dispute can be initiated within 30 days of receipt of the decision of the Republic Commission. It is also stipulated that an administrative dispute may be initiated if the Republic Commission has not reached and submitted the decision within the deadlines set out in Article 158 of the PPL. The initiation of administrative dispute shall not postpone the execution of the decision of the Republic Commission.

On the other hand, the Law on Administrative Disputes ("Official Gazette of RS" no. 111/2009, hereinafter: LAD), Article 18, Paragraph 1 prescribes that the complaint shall be filed within 30 days of delivery of the administrative act to the party which filed it or within a shorter statutory period. Also, the provision of Article 19 of the LAD stipulates a possibility to initiate an administrative dispute due to the so-called "silence of administration", as well as the deadlines for filing an action in this case.

A complaint submitted on time and properly by an actively legitimized person is delivered to defendant for response by the Administrative Court (in public procurement this is the Republican Commission). The response to the complaint is submitted within the period set by the court in each case, but the court cannot establish a period longer than 30 days for the response from the date of receipt of the complaint.

In administrative disputes, the Administrative Court reaches decisions on the basis of established facts presented during oral public hearing (which is defined as a rule), but it can also solve an issue without holding an oral hearing, only if the subject of the dispute obviously does not require direct examination of parties and special facts, or if the parties expressly agree to so. The Administrative Court resolves the dispute by reaching the decision. The decision shall approve the complaint or reject it as unfounded. If the complaint is approved, the court shall annul the disputed administrative act fully or partially and shall return the case to

the competent authority for retrial unless the new act is not required in that matter. On the other hand, if the action is approved, but the claim seeks to establish the illegality of the act without legal effects, or that the defendant repeated his previous act that had already been annulled in court - the court is limited in its decision to the requested findings.

Pursuant to the provisions of Articles 7 and 8 of the LAD, the decision of the Administrative Court is binding and cannot be appealed. According to the Article 69 of the LAD, when a court annuls an act against which the administrative dispute was initiated, the case is returned for retrial, where the authority whose act has been reversed (the Republic Commission) is bound by the legal opinion of the court, as well as by the remarks of the court regarding the procedure.

When the stated norms are applied to public procurement, this means that the Republic Commission, as an authority whose decisions and their legality may be subject to review by the Administrative Court, is obliged to abide by the court's objections set out in these decisions, if the complaint is accepted (a dispute with limited jurisdiction). On the other hand, it is evident that in some administrative disputes complaints were accepted in cases where the Administrative Court examined the legality of decisions in terms of procedural issues in protection of rights. Such cases raise the dilemma whether to fully apply the norms of the Administrative Procedure Act (hereinafter: APA), or to accept specifics resulting from the application of the PPL and the legal nature of public procurement.

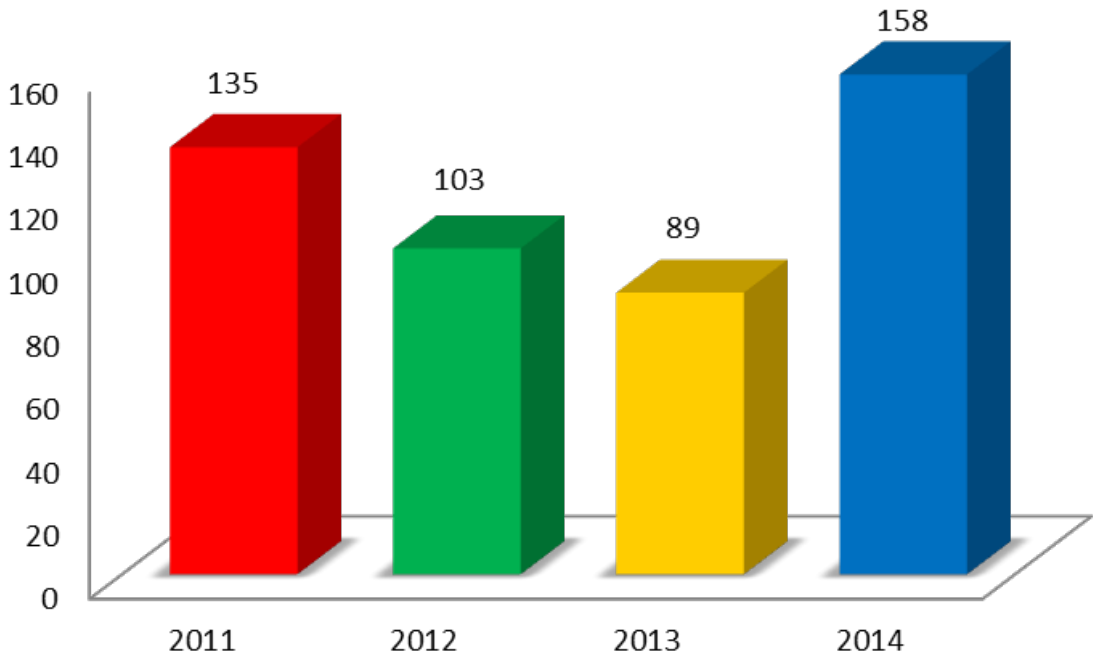
In some instances, special rules for public procurement are completely different from those stipulated by APA, or refer to the issues not acknowledged by APA.

Although there is an authorization required by the Law on Administrative Disputes, based on which the court may decide in the dispute of full jurisdiction within an administrative dispute, the Administrative Court has not yet used this authorization in deciding on the legality of the decision of the Republic Commission (in decisions that were the subject of this analysis). The dispute of full jurisdiction exists if the competent court establishes that the challenged administrative act should be annulled and reaches the decision to resolve an administrative matter, where that decision entirely replaces the annulled act. Such situation is possible if the nature of the matter allows it and if the factual situation provides a reliable basis for it. That possibility implies that the court shall reach the decision on its own merits about all the evidence and the facts on which the disputed administrative act it grounded, in this case the decision of the Republic Commission. However, it seems to us that the specific area of law and the decision-making manner of the authority also present an obstacle for thorough and final resolution of the dispute in a dispute of full jurisdiction, as the court is by default set to rule in "classic" judicial procedures, and public procurement procedures certainly do not belong to this category.

Statistical Data

The Administrative Court	*2011*	*2012*	*2013*	*2014*
Number of filed complaints	***135***	***103***	***89***	***158***

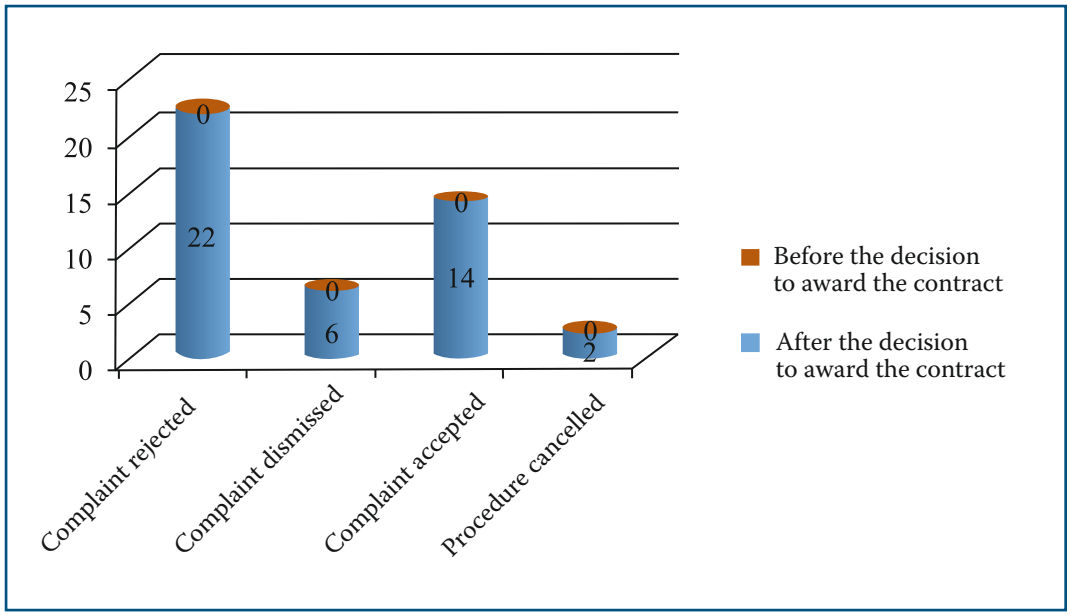
**** Number of complaints filed with the Administrative Court against decisions of the Republic Commission:***



Type of the initial act: Decision of the Administrative Court

Overview of the numbers according to the manner of resolution for the decision period from January 1, 2014 to June 30, 2014

Manner of resolution	Before the decision to award the contract	After the decision to award the contract	Total
Complaint rejected	22	0	22
Complaint dismissed	6	0	6
Complaint accepted	14	0	14
Procedure cancelled	2	0	2
TOTAL:	**44**	**0**	**44**



Questions for discussion based on the practice of the Republic Commission and the Administrative Court

For the purposes of this analysis, we have gathered from the Republic Commission more than 70 decisions of the Administrative Court. The analysis of these decisions has enabled us to observe a number of issues that deserve additional attention, both in regards to the authorities that will participate in future amendments of the law and to those who implement the existing one.
Generally, one of sources of the problem in acting upon public procurement in the administrative dispute lies in the fact that some procedural situations, arising from the implementation of the LPP, should be interpreted while taking into account the legal nature of public procurement, as well as rules governing their implementation. These rules are in some situations completely different from the rules stipulated by the LAP, or they are related to situations that the LAP does not even cover.

Analogous application of the LAP provisions

Provisions of the Article 148 Paragraph 6 envisage analogous application of the law governing administrative proceedings. Reason for determination of analogous (but not full) application of the LAP lies in the fact that the procedure of protection the rights is conducting upon special procedural rules which are established by the LPP provisions. These norms have a number of specifics that cannot be subsumed under the provisions of the LAP. Therefore, above all, the meaning of the term "analogously" should be considered, in order that the Administrative Court and the Republic Commission are applying the LAP in the way that the legal nature of public procurement, as well as principles defined in the Law on Public Procurement are respected.

Practical significance of this problem is visible from certain judgments that have been evaluated in the scope of this analysis. Specifically, it is the situations when compliance with the comments of the Administrative Court could result in acting of the Republic Commission contrary to the provisions of the LPP. One of the examples is the question of form and content of decision sentence of the Republic Commission. Administrative Court, in one of its decisions, stated that the decision from the disposition of the disputed decision was not "sufficiently clear and precise"' and according to the opinion of the Administrative Court has not been in accordance with the Article 198 of the LAP. According to the Court, the request for the protection of rights is "partially accepted", but it is not mentioning the part of the request that was rejected, ie. whether partial acceptance of submitted request refers only to the process of professional evaluation of bids and decision making on the best offer, and not on the other phases of public procurement, or partial acceptance refers only to the grounds of some of disputed bids. However, if the Republican Commission in decision making procedure, completely acts upon the Article 198 of the LAP and upon stated comments of the Administrative Court, it could possibly led toward problem of another kind – that the decision of the

Commission is contrary to the procedural provision of the LPP. According to the LPP provisions, the Republic Commission with decision approves the request for protection of rights, in whole or partially, annuls the public procurement procedure if the request for the protection of rights is grounded (Article 157, Paragraph 6, Item 1 of LPP).

Necessary documentation for the Administrative Court decision making

It is necessary to clarify what is considered as complete documentation which has to be submitted by the Republic Commission to the Administrative court to act on the complaint in administrative dispute. In some cases, the Administrative Court has been accepting complaints, pointing out that in submitted documentation is missing, for example, the original bid, even a copy of bid has been submitted. Based on data from the Administrative Court decisions, it could be concluded that in some cases the Republic Commission was not invited to submit the missing evidence. Also, one of the topics for discussion regarding acting of the Administrative Court and the Republic Commission in administrative disputes could be whether it must be required the submission of documents and decisions of contracting authorities which were published on the Public Procurement Portal, such as tender documentation, amendments of bidding documents, as well as decision of the contracting authority on awarding of contract.

Decision making which is potentially out of complaint

It should be considered and determined in which situations the Administrative Court may decide beyond the complaint. Specifically, Article 41, paragraph 2 of the Law on Administrative Disputes stipulates that the legality of the disputed administrative act, the court examines within the limits of claims in the complaint, but it is not restricted by reasons for the complaint. As an example of a potentially contentious situation in this regard is that in one of the above decisions, the Administrative Court determined that the decision of the Republic Commission signed without authorization by the Deputy President, although this is not specified in the complaint.

Adjustment of positions among the Administrative Court departments

Related to public procurement, as well as in other areas of work of the Administrative Court, it is obviously necessary that departments of the Administrative Court have harmonized actions. Disparity in acting of two departments of the Administrative Court regarding one of mandatory conditions for participation (departments in Kragujevac and Nis), have led to some legal uncertainty for the parties in public procurement procedure.

Adjustment of positions among the Administrative Court and the Republic Commission before the adoption of general legal opinions in the general session

Republic Commission endorses the general legal opinions concerning the application of legislation falling under its competences, in the general session in which participate President and all members of the Republic Commission. General session is convened by President of the Republic Commission, as necessary, upon request submitted by four members, or when contradiction arises regarding the application of legislation. General legal opinions are related to situations that are repeating as controversial in proceedings to protect rights and with respect to whom there are dilemmas by contracting authorities, and by other participants in the public procurement procedures. Whit these opinions, the Republic Commission, before deciding on any specific requirements for the protection of rights, declares how to implement certain provisions of the LPP. Also, general legal opinions are a way to harmonize acting of various chambers of the Republic Commission, and to unify the practice of this body. General legal opinions are relating to a number of same future situations and objects, whereas all members of the Republic Commission are obliged to follow them when making decisions. Consequently, these opinions are the basis for decision-making in a number of decisions of the Republic Commission, and it is important that prior to adoption to consider these opinions between

the Commission and the Court, to the extent possible and in a manner that would not compromise the performance of tasks within the jurisdiction of both state bodies. This would prevent situations that are already occurred in the previous practice - when the Administrative Court in its decisions take a different opinion from the general legal opinion of the Republic Commission, leading to some legal uncertainty. In this type of dialogue between the Administrative Court and the Republic Commission, competent committees of the National Assembly could have a certain role, which normally have certain powers in the supervision over the work of these bodies and that can initiate changes to refine the legal provisions, if necessary (Committee on finance, state budget and control of public spending, and the Committee on the judiciary, public administration and local self-government).

Possibility of specialization of judges in the Administrative Court

Bearing in mind the specific matter of public procurement, as well as public-private partnerships and concessions that also provides legal protection in accordance with the law governing public procurement (requests for protection of rights shall be submitted to the Republican Commission), the possibility of specialization of judges in the Administrative Court, which would solve these issues, has to be considered. One aspect of specialization would be training in the matter of public procurement. Second type, it would be establishment of a special department of the Administrative Court, which would decide on administrative disputes in these areas, if it is possible to do so in accordance with the provisions of the Law on Organization of Courts . In addition to these cases, the same could decide in some related areas (protection of competition). If it is not possible to establish a special department within the Court, then it should consider that the specialization of judges performs through the Annual calendar of activities determined by the president of the court.

Specialization would provide for a certain number of judges of the Administrative Court to be dedicated to resolution of administrative disputes in these areas, so that continuously make decisions primarily or exclusively in these cases. In addition, training is possible in cooperation with other state bodies, national and international institutions, Judicial Academy, etc. Exchange of experience and discussion on legal issues, which could take place in close communication among representatives of institutions, under the auspices of the National Assembly or in the context of broader legal forum is equally important.

Additional argument for specialization of judges can be found in the conditions that are put before the members of the Commission itself (whose decisions are later reviewed by the Court). Namely, members of the Republic Commission, in order to be elected, must have the legal knowledge and some experience in the field of public procurement, and each of them, per year, act in several hundred cases of protection of rights in public procurement procedures, which leads to the conclusion that they more often have opportunity to apply and interpret the provisions of the LPP then judges that are performing the control over the legality of decisions they make. This is contributed by the number of other different cases in the Administrative Court (from many diverse areas), and organizational territorial division of the Administrative Court to departments in four cities in Serbia (Belgrade, Nis, Novi Sad and Kragujevac), all of which leads to the fact that judges of that court averagely receive only a few cases related to public procurement during the year.

Considering the possibility of amendments to the relevant provisions of the LPP

In general, an administrative dispute regarding the procedures for public procurement, in the way as it is currently regulated by the provisions of the LPP and the LAD, is not an effective way for dissatisfied participants in the public procurement procedure to protect their rights. Namely, the fact is that the

initiation of administrative dispute does not suspend the execution of the decision of the republic Commission. Deadline to fill a complaint is 30 days. However, according to the collected decisions, it can be concluded that in reality acting lasts significantly longer, and it is not rare that it takes more than a year to bring a decision. Until this moment, disputed procurement is already fully realized. This fact alone, if significant increase in accuracy does not occur, indicates that the administrative dispute cannot be considered an adequate response to any eventual illegalities in the process of protection of rights. Therefore, possibility to amend the provisions of the LPP or to determine a procedure for protection of rights in the special law, should considered. In Serbia, there is an example of more detailed regulation of an administrative dispute in one specific area. Law on Protection of Competition defines specific deadlines for the submission of the complaint, the response to the complaint, the decision of the Administrative Court, as well as special determination of delayed effect of complaint, as well as decision-making on extraordinary legal remedies[8].

Deadline for filing the complaint, submitting the complaint to defendant and responding to the complaint

It should be analyzed whether to shorten deadline of 30 days for filing a complaint to the Administrative Court, so the entire judicial review of legality of the Republic Commission decisions become faster and to end before it's untimely in relation to the period of realization of a particular public procurement contract. Also, in this sense, it should be considered to shorten deadlines for submission of complaint the respondent authority and the response to the complaint by this body in relation to the deadlines stipulated by the provisions of the LAD.

Deadline for the Administrative Court decision-making

In the context of the need that judicial protection in public procurement has become more efficient and more effective, it would be important to consider the possibility of determination of shorter deadline for decision-making of the Administrative Court in administrative disputes in public procurement procedures. An example of this is mentioned Law on Protection of Competition, which in the provisions of Article 72, paragraph 5 provides that the Administrative Court make a decision on the complaint at the latest within three months of receiving the response, or from the expiry of the deadline to reply to the complaint.

Suspensive effects of complaint

Law on Public Procurement stipulates that an administrative dispute shall not postpone the enforcement of decision of the Republic Commission. While this is an acceptable solution, it should not be the only possible way. It is necessary to consider the possibility to stipulate that in certain cases, for example, through some value limits, filed complaint, however, have suspensive effect, except if the Administrative Court decides otherwise, or to grant clearer authority to the Administrative Court and to set a shorter deadline for introduction of a temporary measure which will immediately, for a limited period, suspend execution of the Republic Commission decision.

Right to submit complaint

It is necessary to precisely regulate the judicial control over the procedure of protection of rights in public procurement procedures through provisions that could be related to the right to initiate the administrative

[8]Articles 71 and 72 of the Law on Protection of Competition ("Official Gazette of the RS", No. 51/2009 and 95/2013)

dispute. Right to submit complaint should refer to persons who were parties or minor participants in the procedure before the Republic Commission. Beside, the right to initiate an administrative dispute should be given to the representative of the public interest - the contracting authority or someone who is the jurisdiction of higher level of the contracting authority (for example, founder for public enterprises, ministries for the hierarchically lower official state administration bodies, etc.). It has already been mentioned that the current opinion of the Administrative Court that the contracting authority has no right to institute an administrative dispute, as first instance instance body which decided in the procurement procedure.

Amount of the fee for filing a complaint and adjudication

Currently, the fee for a complaint against an administrative act for initiation of an administrative dispute is 390 dinars, and for adjudication of the Administrative Court, if the value of the disputed subject is estimable, is 1% of value of the disputed subject, and maximum 1,900 dinars. Compared to the fee for submitted claims for the protection of rights is in the open procedure 120,000 or 250,000 dinars, or more than these amounts (0.1% of the estimated value) if the estimated value or the price in the offer of the bidder to whom was awarded contract, is over 120,000,000 dinars, mentioned fee for a complaint is unduly low in relation to the importance and value of public procurement procedures, as well as judicial protection in these procedures.

Extraordinary legal remedies under the LAD

In preparation of amendments and additions to the LPP or for the adoption of a special law that would regulate in a comprehensive manner the protection of rights, we should also consider the issue of extraordinary legal remedies to a higher court instance with purpose to point out on irregularities in the judgments of the Administrative Court, or whether it is necessary to stipulate something special in relation to these remedies when it comes to the participants in public procurement procedures, the contracting authorities, or the Republic Commission itself as the applicant of such remedy.

Dispute of full jurisdiction

It would be important to analyze the possibility to provide more precise competences to the Administrative Court regarding the dispute of full jurisdiction. In some of observed cases, parties requesting in a complaint that the Administrative Court, in a dispute of full jurisdiction, bring a decision and practically to replace a decision of the Republic Commission. Such action of the Administrative Court would be justified in situations where the court has already annulled a decision of the Republic Commission and a new complaint was filed against the new decision of that authority because remarks of the Administrative Court were not accepted. On the other side, it could be argued, on opinion which is a part of comparative practice in some countries that it should completely exclude the possibility of a decision-making in a dispute of full jurisdiction when it comes to a public procurement and that decision on merits on the procurement procedure should be brought only by specialized and competent body (in the case of Serbia, the Republic Commission). Problem in the current legal framework can be moderated by specialization of judges of the Administrative Court in the field of public procurement.

More precise rules of procedure

Beside the time frame in which an administrative dispute should be initiated and finalized, it would be important to consider the possibility to adopt more detailed provisions regarding the procedures for conducting and acting of the court in an administrative dispute, since the general provisions stipulated by the Law on Administrative Disputes have not been fully applicable to the control the decisions of the Republic Commission, ie on the procedure of public procurement.

Publication of decisions

Practice of publishing decisions of the Commission and the Administrative Court is currently significantly different (mandatory publication, anonymization, etc.). Existing practice should be carefully observed and acts should be adopted in order to eliminate unjustified differences within the same legal system.

Administrative disputes related to conflict of interest

In 2004, the Republic of Serbia has made the first serious effort toward regulation of conflicts of interest by the adoption of the Law on Prevention of Conflict of Interest in Discharge Public Office ("Official Gazette of the RS", No. 43/04). With the Law on the Anti-Corruption Agency (Official Gazette of the RS", no. 97/2008, 53/2010, 66/2011 – CC decision, 67/2013 – CC decision, 112/2013 - authentic interpretation and 8/2015 – CC decision)[9], the matter of conflict of interest has been regulated more comprehensive. This Law, partially different from the Law on Prevention of Conflict of in Discharge Public Office, in Article 2 defines the meaning of the basic terms. Conflict of interest is defined as a situation where an official has a private interest which affects, may affect or may be perceived to affect actions of an official in discharge of office or official duty in a manner which compromises public interest. This Law regulates the conduct of public officials related to conflict of interest. Beside, these issues are regulated by other regulations (e.g. the Law on General Administrative Procedure, the Law on Civil Servants).

This Law governs the establishment of the Anti-Corruption Agency, as an autonomous and independent authority. One of competences of the Agency is to deal with issues concerning conflict of interest of public officials.

Law defines that an official may hold only one public office unless obligated by law or other regulation to discharge several public functions. An official may perform a role in a political party, i.e. political entity and participate in its activities if this is not to impede an efficient discharge of public office, further provided that such engagement is not prohibited by law. An official may not perform other jobs or engagements during his/her tenure in public office which require full-time working hours or full-time employment, but may be engaged in research, educational, cultural, humanitarian and sports activities without Agency approval if by doing so he/she does not compromise the impartial discharge and dignity of public office. An official is required to report incomes from these activities to the Agency.

An official engaged in other activity at the moment of assuming public office is required to notify the Agency of the other activity. When assuming office and during the discharge of public office, the official shall notify his/her direct superior and the Agency of any doubts over a conflict of interest concerning himself/herself or an associated person.

Procedure to establish whether there is a violation of the Law on the Anti-Corruption Agency and order measures shall be initiated and conducted by the Agency *ex officio.* Procedure is also initiated upon the request of an official, his/her direct superior officer, and may also be initiated on the basis of the report of a legal entity or a natural person. Measures which may be pronounced against an official due to a violation of this Law are caution and public announcement of recommendation for dismissal. Measure of caution and the measure of public announcement of the decision on the violation of this Law may be pronounced against an official who has been directly elected by the citizens, an official whose public office has terminated or an associated person.

Director shall issue a decision establishing whether there is a violation of this Law and an appeal against it may be submitted to the Board of the Agency. Decision of the Board specified is final and an administrative dispute may be instituted against it.

Administrative dispute in this Law is mentioned in Article 53, paragraph 2 and it represent a legal remedy that the Law provides in cases where there is dissatisfaction with a second instance decision, a decision of the Board.

In the first years of implementation of the Law on the Anti-Corruption Agency, it was happening that in resolutions of the Director of the Agency (in cases of providing approval to discharge public office or to

[9]From the day this Law enters into force, the Law on the Prevention of Conflict of Interest in Discharge of Public Office (*Official Gazette of the Republic of Serbia*, no. 43/04) shall be revoked.

perform other activities), in a legal instruction, as an integral part of a resolution, the wrong instruction on legal remedy was given that against this resolution appeal cannot be submitted to the Board, but an administrative dispute before the Administrative Court may be initiated.

As already stated, the Article 53, paragraph 2 of the Law on the Anti-Corruption Agency regulates when an administrative dispute can be initiated. Also, the provision of the Article 12 of the Law on Administrative Procedure ("Official Gazette of the FRY ", number 33/97 and 31/01 and "Official Gazette of the RS", no. 30/10), which regulates the principle of two instances procedure, stipulates that against a resolution rendered in the first instance the party has the right to appeal and that only the law may provide that in certain administrative matters appeal is not allowed, and only if protection of rights and legal interests of the party, or the protection of legality is otherwise provided.

However, it should be noted that in following years of implementation of the Law situation has changed, so when it comes to decisions of the Director of the Agency, the structure of decisions against which appeals were filed and the Board has decided in 2014 was as follows:

- There were the most resolutions on termination of public office by operation of law, measures of caution and public announcement of recommendation for dismissal (22 each).
- Following are resolutions on rejection of requests of officials to hold more public functions (20), measures of public announcement of decision on violation of the Law on the Anti-Corruption Agency (16), conclusions on rejection of request for approval, as incomplete, and untimely (14) and resolutions regarding notifications from officials on engagement in other business or activity at the time of assuming public office (11).
- The least there were appeals against resolutions on rejection of request for approval of other employment or business relations after termination of public office and conclusions on discontinuance of proceeding upon request for approval to perform other employment (one each), resolutions on rejection of request for approval of other employment or business relations (2) and conclusions on rejection of an appeal (5)[10].

It has to be noted that in 2014 the Administrative Court submitted to the Board of the Agency nine judgments on reject complaints, two resolutions on discontinuance of the proceeding upon complaint and one judgment on acceptation of complaint. At the time of preparation of the report for that year, there were 21 pending proceedings on all submitted complaints before the Administrative Court[11].

Within established cooperation on the project we have received from the Administrative Court on the analysis 15 decisions of that institution regarding complaints filed against decisions of the Anti-Corruption Agency. All analysis decisions of the Administrative Court are related to complaints resolutions of the Agency from 2010.

Statistics of observed cases:

Total decisions: 15

Judgment on acceptation of complaint -2

Resolution on rejection of complaint -11

Resolution of discontinuation of a proceeding -1

Resolution on dismissal of request -1

[10]Annual report of the Anti-Corruption Agency for 2014, Page 27.

[11]Annual report of the Anti-Corruption Agency for 2014, Page p 28.

Publication of decisions the Administrative Court web page

Within the practice, on the Administrative Court web page, several decisions in cases in which the Anti-Corruption Agency was defendant it was published[12]. These cases are classified into five categories, namely:

- Public procurement - 1 U 31468/10
- Permissions – 2 cases, related to approval for other employment 12 U 30418/10 and I-2 U 23091/10
- Conflict of interest I-1 U 30828/10
- Employment III-3 U 24246/10
- Approval to discharge of public office I-15 U 519/11

These categories were not composed in a good manner and type of dispute has not always been recognized properly. Namely, as it can be seen in certain cases, all of these cases were about possibility that a public official performs some business or perform some other public office.

Besides, it is obvious from other sources that there are many other decisions of the Administrative Court in cases where the Anti-Corruption Agency was defendant, which are not published in this database.

Administrative disputes in the reports of the Agency

In the Annual report of the Agency for 2012, administrative disputes initiated against its decisions were not mentioned, although they were apparently existed in that period as well. The same deficiency occurred and the report of the Agency for 2011. This can be referred to the circumstance that the content of the annual report on work of the Anti-Corruption Agency is not stipulated.

Report for 2013 stated that the Administrative Court handed down and submitted to the Board nine judgments which mostly concerned complaints filed in the previous years. "In five cases the Administrative Court handed down a judgment rejecting complaint, in one case complaint was dismissed, and in three cases a judgment was handed down accepting complaint and vacating the Board's resolution. Currently there are sixteen proceedings in progress before the Administrative Court instituted upon complaints filed by officials against the decisions of the Board (eleven proceedings are being conducted against the decision handed down by the Board in 2013, and the remaining proceedings concern the Board's decisions from previous years) " - stated further in this report.

In the report for 2013, the Agency cites a specific case where the Board annulled its own decision:

"In one case, during a proceeding before the Administrative Court instituted upon a public official's claim against the Board's decision rejecting the official's appeal, the Board vacated its resolution, accepted the official's appeal, and vacated the first instance resolution. This was done in view of the fact that on December 16, 2013, the National Assembly handed down the Authentic Interpretation of the provision of Article 2, indent 2 of the Law on the Anti-Corruption Agency, according to which persons elected, appointed or designated to the authorities of commercial associations founded by a public enterprise shall not be considered to fall under the term "official", defined by Article 2, indent 2 of the Law on the Anti-Corruption Agency. "

Also in 2014 a separate section of the report of the Agency refers to the proceedings before the Administrative Court. In that year, the Administrative Court has submitted to the Board nine judgments rejecting complaint, two resolutions on discontinuation of proceedings on complaint and judgment on acceptance of complaint. "Before the Administrative Court there are still 21 pending upon all so far filed complaints."

Agency has a special web page where it publishes decisions brought in cases on suspected violation of

[12] http://www.up.sud.rs/pages/cases_search/cirilica

the law by public officials. However, there is also a surprisingly small number of decisions. In fact, in only three cases out of the list can be concluded that decisions of the Administrative Court were published (Srdjan Aleksic, Milan Visnjic, Milena Stankovic - Mitrovic). In addition, it is obvious that the Agency and the Administrative Court are applying different level of anonymization - while in the published decisions[13] of the Administrative Court the name of the official cannot be seen, in judgments that have been published on the web page of the Agency, these data are visible as well. This points out to the need to harmonize the practice.

Main details of individual cases and comments on the actions of the authorities and the Administrative Court

1. **In the case 9 U. 6875/11 of August 30, 2011.**

The decision was reached to approve the complaint and to annul the decision of the Committee of the Anti-Corruption Agency, number... of ... and the case was returned to the competent authority for retrial.

The court established the following violations of certain rules:

- The disputed decision was reached by a collegial authority (the Committee), it was signed "on behalf of the President" by the person for whom there is no evidence in the documents that he or she is authorized to sign the decision, or that he or she chaired the Committee meeting at which the decision was taken. *It should be noted that the Law on General Administrative Procedure stipulates that the decision reached by the collegial authority is signed by president, unless law or regulation stipulate otherwise.*

- The records contain no minutes of the deliberations and voting of Committee members who brought the challenged decision, and no notes on the unanimous decision, which is contrary to the Law on General Administrative Procedure.

2. **In the case II-4 U. 27633/10 of October 18, 2012**.

The decision was reached to approve the complaint and to annul the decision of the Committee of the Anti-Corruption Agency, no ... of April 14, 2010 and the case was returned to the competent authority for retrial.

The plaintiff addressed the Administrative Court because the disputed decision of the Committee of the Anti-Corruption Agency rejected his appeal, filed against the decision of the Agency, no ... of February 23, 2010, which rejected as inadmissible his request for approval to proceed with the simultaneous performance of public functions in two administrative boards.

The plaintiff disputed the legality of the decision of the Committee, stating that both Administrative Boards he is a member of were constituted in 2009, before the entry into force of the Law on Agency for the Fight Against Corruption, which is why he should not have complied with the provisions of that Law, or resigned from one of these functions, as stated in the first instance decision by which his request was rejected as inadmissible.

The records submitted to the Administrative Court, with a response to a lawsuit by the Agency or by the defendant authority do not contain the record of the deliberations and voting of Committee members who brought the challenged decision or the record of the unanimously reached decision, which is contrary to the Law on General Administrative Procedure. The Court could not reliably establish whether the decision is lawful, or whether the conditions have been met for reaching the decision in this administrative dispute in accordance with the Law on General Administrative Procedure, so the complaint was upheld and the disputed decision was annulled, and in a renewed procedure the defendant was bound by Court objections.

[13] http://www.acas.rs/praksa-agencije/odluke/

3. **In the case 1 U. 31468/10 of September 14, 2011.**

A decision has been reached to suspend the proceeding. The proceeding was suspended in accordance with the Law on Administrative Disputes ("Official Gazette of RS" no. 111/09), which stipulates that if the prosecutor promptly provides the court with a written statement that he is satisfied with the subsequently passed act, the court shall issue a decision on suspension of the proceeding.

In the complaint filed with the Administrative Court on December 28, 2010 against the defendant, Agency for Fight Against Corruption, for the annulment of the decision rejecting the request of the deputy mayor for approval to continue performing his duties as a doctor and by which he is obliged to, within 30 days of receipt of the decision, stop exercising the incompatible functions and to inform the Agency.

As a response to the complaint, the Agency informed the Administrative Court that, in accordance with the provisions of the Law on Administrative Procedure, the decision no. ..... of April 15, 2011. nullified the disputed decision, since it has been established that the allegations pointed out in the complaint were unfounded.

The decision of the Administrative Court in the case 1 U. 31468/10 of May 31, 2011, ordered the plaintiff to, within 15 days of receipt of the decision, submit to the court a written statement as to whether he is satisfied with the subsequently adopted act – the decision of the Agency or if he remains in the complaint and to what extent, or whether a lawsuit is extended to a new act. The plaintiff complied with the above decision and informed the court that he is satisfied with the subsequent act and that he gives up on further proceedings before the Administrative Court, and since the plaintiff promptly delivered written statement to the court, the court issued a decision to suspend the proceeding.

4. **In the case 14 U. 1155/11 of February 10, 2011.** – the defendant: **the Agency for Fight Against Corruption**, for postponing the execution of the decision of the Anti-Corruption Agency no ..... of October 23, 2010, in the case of giving approval to perform the function. **The decision has been reached to reject the complaint**. The reason for the rejection is that, as stated in the judgment, the Administrative Court considered the request for postponing the execution of the above decision and found that the request had not been established in accordance with Article 23, Paragraph 2 of the Law on Administrative Disputes ("Official Gazette of RS" no. 111/09).

The Court has previously established that the refusal of plaintiff's request for approval to perform his function does not cause him any damage that would be difficult to compensate, and the plaintiff did not provide evidence that the adoption of the disputed decision threatens his existence.

On January 31, 2011 the plaintiff filed a complaint with the Administrative Court to nullify the decision of the Anti-corruption Agency no ... . of October 23, 2010 which rejected the request of the plaintiff for the approval to perform his function. The plaintiff's complaint proposed the annulment of the above disputed decision and his petition submitted to the Administrative Court on February 7, 2011 requested the court to, on the basis of the above Law on Administrative Disputes, issue a decision to postpone the execution of the disputed administrative act until reaching the decision on the complaint.

The prosecutor requested the postponement of execution stating that he had already been appointed to the disputed position of a member of the municipal council, which is a paid function, so he would be left without regular cash income and without significant livelihood, and, in this case, the plaintiff would suffer a damage that would be hard to compensate. As further stated, the postponement of execution of the disputed decision is not contrary to public interest, nor would its suspension cause any damage to the Agency, or the defendant.

In the filed complaint, the plaintiff also states that there is no possibility of him being replaced by other appropriate person, so the absence of the plaintiff from the work of the municipal council would prevent the council from working properly, which could lead to irreparable damage to the city municipality.

However, considering the request for postponing the execution of the above decision and plaintiff's statements, the Administrative Court established that the request was unfounded. As already pointed out, although the Law on Administrative Disputes provides for the possibility that, at the request of the plaintiff and in specific cases, the court shall suspend the execution of the final administrative act until the court's decision, in the present case, the court established that the rejection of plaintiff's request to perform his function will not cause him any damage that would be difficult to compensate, bearing in mind the possibility of subsequent disbursement of funds paid on the basis of the paid functions in the event of annuling the disputed decision of the Agency, when the prosecutor did not provide evidence that the adoption of the contested decision threatens his existence.

A question arises in regards to this case as to whether the provisions of Article 23 of the Law on Administrative Disputes provide the ability to sufficiently protect public interest. One of the reasons for the postponement stated by the plaintiff is the alleged inability for him to be replaced by another person in the municipal council. Such a claim cannot be true when it comes to this authority. However, there are certain situations when it is not possible to elect a new official, or it is not possible to do so in a short term (e.g. The governing body meets once a year). In such cases, the postponement of execution of the final act cannot be requested by the plaintiff in the administrative dispute, as no damage was caused to him. If necessary, it could be construed that the damage was caused to the authority within which the plaintiff performs the function as "interested person", which is also referred to as someone who suffers the damage in Section 23 of the Law. It is interesting to raise the question of whether such an interested person has the right to request the postponement of the execution or that right belongs only to those against whom a final decision was reached.

Since the drafting of the Law on Agency for Fight Against Corruption is currently in progress, this issue could be resolved by means of it - through the introduction of rules in regards to who can request the postponement of Agency's decision and in which cases.

5. **In the cases I-1 U. 519/11 of September 26, 2013, 2 U. 1109/11 of December 28, 2011, 2 U. 22676/10 of December 28, 2011, I-2 U. 23091/10 of September 27, 2012, III-3 U. 2426/10 of March 29, 2013, 12 U. 25217/10 of December 22, 2011, 11 U. 29028/10 of May 24, 2012, III-4 U. 29717/10 of December 23, 2011, 14 U. 30165/10 of November 10, 2011, 12 U. 30418/10 of December 22, 2011 and I-1 U. 30828/10 of September 12, 2013.**

In all cases, **the defendant is the Agency for Fight Against Corruption**, according to the complaint filed against the decision of the Agency (directors) in the case of giving consent for exercising public functions or for performing other work (depending on case to case basis). In all cases, **a decision has been reached to reject the complaint**. The reason for the rejection is that the Administrative Court established that the complaint was inadmissible because the disputed decision could have been appealed to the Committee of the Agency, but such appeal has never been filed.

All disputed decisions have been brought by the director of the Agency in accordance with the Law on Fight Against Corruption ("Official Gazette of RS" no. 97/08 and 53/10). Also, the Law on the Agency for Fight Against Corruption stipulates that the Committee of the Agency decides on appeals against director's decisions that prescribe measures in accordance with this Law. The provisions of the Law regulating General Administrative Procedure stipulate that the first instance decision can be appealed and only the law may stipulate for certain administrative matters to prevent such appeal.

In all these cases, the notice of the Agency for Fight Against Corruption about legal remedy gave wrong instructions that the above decision cannot be appealed, but instead, an administrative action can be initiated before the Administrative Court in Belgrade within 30 days of receipt of the decision.

Bearing in mind that the notice on legal remedy mistakenly advised the plaintiff to address the Administrative Court, the wording of the court's decision prescribed that the deadline for plaintiff's appeal shall begin from the date of receipt of the court's decision that dismissed the complaint as inadmissible, given that the prosecutor had not previously filed a complaint to the competent authority in regards to the Article 200, Paragraph 6 of the Law on General Administrative Procedure.

All these cases illustrate a wrong practice of the Agency, which was later rectified. Although it is difficult to understand how such mistakes could have happened at all, given the imperative provisions of the Law on the right to appeal, it should be noted that the problem could have been rectified earlier if the court had acted more promptly in this case.

Recommendations for improving regulations and practice

1. To publish more decisions of the Administrative Court related to the violation of the Law on Anti-Corruption Agency, on the web page of the Administrative Court and on the web page of the Agency.

2. In publication, decisions should be classified according to the precise legal basis from the Law on the Agency.

3. Agency and the Administrative Court should consider the possibilities for harmonization of anonymization of judgments practice.

4. Agency should unify practice of publishing its decisions on violation of the law by officials.

5. Amendments to the Law on the Anti-Corruption Agency should consider the need to protect the public interest and the interest of public officials who are suspected of violation of the law, in the way that the process will be more efficient. In this regard, consideration should be given to the need to determine a few specific questions:

    a. specifying the rules on the method of decision-making within the Board, to avoid blockage or lack of clarity regarding the content of decision;

    b. possibility to request a temporary disposal of a decision of the Agency;

    c. possibility that the Administrative Court differently resolve the legal issue then the Board of the Agency or to bring a decision instead of the Board when this body fails to bring a decision within the statutory deadline, especially bearing in mind the fact that members of the Board do not have to possess legal knowledge, but also that selection of measure which will be imposed to a public official does not depend exclusively on the legal qualification;

Protection of the rights of access to information before the Administrative Court

Law on Free Access to Information, adopted in 2004, contains many solutions that are specific to the legal system of the Republic of Serbia. Among these particularities, following can be emphasized: in the procedure on appeal (in the case of denial of right) is not deciding by a higher administrative authority, but an independent body - the Commissioner for Information of Public Importance (and Personal Data Protection); when the authority complies with the request, does not pass a specific decision to that effect, but shall make an official note of it.; "silence of administration" is illicit situation, which foresees the punishment for a misdemeanour; in each case, the authority must prove that the information should be withheld - there are no absolute exceptions, etc.

Within this Law, an administrative dispute is mentioned twice. Article 27 stipulates that an administrative dispute may be instituted against a decision of the Commissioner and „administrative disputes regarding the exercise of the right to free access to information of public importance shall be resolved in expedited proceedings". Thus, an administrative dispute is a legal remedy that this Law stipulates in cases where there is dissatisfaction with decisions of the second instance authority (the Commissioner).

Another provision is in the Article 22, paragraph 2. This provision denies the right to appeal to the Commissioner in cases when the right of access to information is violated by one of six named authorities. Those are the Government, the National Assembly, the President of the Republic, the Constitutional Court of Serbia, the Supreme Court of Cassation of Serbia and the Republic Public Prosecutor. This provision is not only unsuitable for applicants of information (instead of two, they have only one legal remedy at their disposal), but also inconsistent. So, there are other authorities of the same "rank" with the aforementioned (independent authorities, mentioned in the Constitution), against whose decisions an appeal may be submitted to the Commissioner. There is no logical connection on the basis of a possible dependence of the Commissioner and the authority against which an appeal should be submitting, except perhaps in two cases (National Assembly, which elects and dismisses the Commissioner, the Supreme Court of Cassation, to which, in deciding on extraordinary legal remedies, may come indirectly, decision of the Commissioner as well). On the other hand, decisions of the Administrative Court are exempted from the possibility to fill an appeal, although the Commissioner's decision on appeal against decision of this court can be challenged in an administrative dispute before the Administrative Court.

In implementation of the Law on Free Access to Information, especially in the early years, it was happening that the authorities, who are not satisfied with the Commissioner's decisions, in an administrative dispute, require annulling of these decisions, referring to the provisions of Article 27. Indeed, the Article 27 did not exclude the possibility of conducting this kind of and administrative dispute (it does not say "applicant" may initiate an administrative dispute, but it may be "initiated").

However, in all previous cases, and there have been dozens, the Supreme Court of Serbia, and the Administrative Court as well (since 2010) had an opinion that an administrative dispute may be initiated only by dissatisfied applicant of information, and that the authority has no active *legitimation*. Specifically, the Article 11, paragraph 1 of the Law on Administrative Disputes stipulates that the plaintiff may be a natural, legal or any other person, if he deems that an administrative act violated right or legal interests. Authority is not a party in a proceeding, because the Commissioner's decision is not deciding on the right or legal interest of the authority, but on the duty of that authority upon the request of party. Authority has the procedural position of the first instance administrative authority and in this matter it cannot simultaneously have the status of a party and to be a plaintiff in an administrative dispute (from the decision of the Administrative Court 20U17663 /10).

On the other hand, competent public prosecutor has the "active legitimation" to file a complaint to the Court, if he considers that an administrative act or decision of the Commissioner violated the law to detriment of

the public interest (Article 11, paragraph 3 of the Law on Administrative Disputes - "Official Gazette of the RS "no. 111/09)[14].

Bearing that in mind, following most common situations in which the Administrative Court decides on access to information can be stated:

- Administrative disputes against the Commissioner's decisions (resolutions and conclusions) initiated by the authority (illicit);
- Administrative disputes against the Commissioner's decisions (resolutions and conclusions) initiated by the applicant of information unsatisfied with the Commissioner's decision;
- Administrative disputes against the Commissioner for failure to act upon an appeal within the legal time limit for resolving an appeal;
- Administrative disputes against decisions (resolutions and conclusions) of six authorities from of the Article 22 paragraph. 2;
- Administrative disputes against six authorities from of the Article 22 paragraph. 2 for failure to act („silence of administration");
- Objections against resolutions of a single judge in the Administrative Court;

Within established cooperation on the project we have received from the Administrative Court on the analysis a total of 42 decisions. Among them, specifically we did not ask for those decisions in which the Administrative Court rejected, as inadmissible, the complaints of the authorities against the Commissioner.

Statistics:

Total decisions: 42

Judgment on acceptation of complaint -8

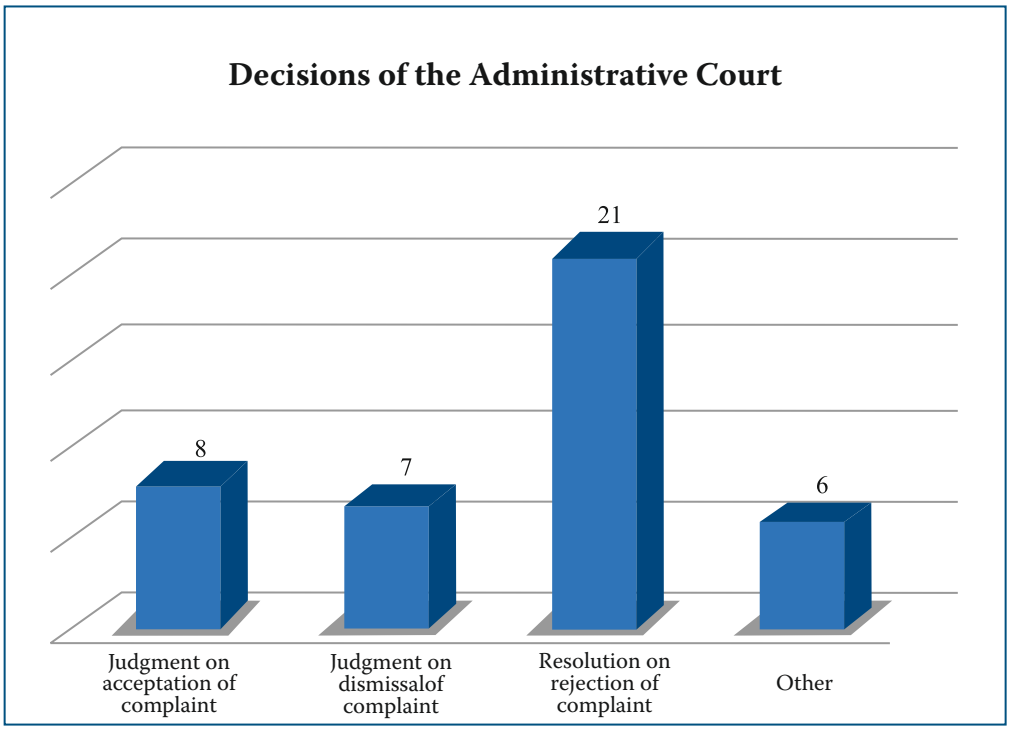
Judgement on dismissal of complaint -7

Resolution on rejection of complaint -21

Resolution of discontinuation of a proceeding -2

Resolution on dismissal of objection -3

Resolution on dismissal of proposal -1



[14] According to; http://www.poverenik.rs/images/stories/dokumentacija-nova/vodic/prirucnikzaprimenuzakonacir.pdf

Main details of individual cases and comments on the actions of the authorities and the Administrative Court

In the case 14 U. 16590/13 of February 6, 2014. – the defendant: **the President of the Republic of Serbia**, the silence of administration, in the case of free access to information of public importance. **The complaint was rejected.** The reason for rejection is that, as stated in the decision, the defendant authority does not hold the information requested in accordance with Article 19 of the Law on Free Access to Information of Public Importance. The court had previously found that the defendant notified the applicant and the Commissioner for Information that he does not possess the requested information (and the knowledge about who might possess it).

The judgment is interesting for several other issues that were contested. The plaintiff in the administrative dispute (the requester of information) states that it is true that "The General Secretariat of the President of the Republic ... does not possess the requested information, but the plaintiff also states that this information was not requested by the Secretariat, but directly from the president, as well as from public authorities". On the other hand, the institution to which the petitioner was addressed is not a public authority, and therefore, the requester could not have been referred to it in accordance with Article 19 of the Law. Also, this institution "has not yet been registered and does not have the address of its seat".

The complaint was alternatively set - due to the failure or due to the refusal (if the response of the General Secretariat can be considered as a refusal).

The defendant emphasized the inadmissible nature of an administrative dispute, citing the fact that "this is not a matter of an act of Art. 3 and 4 of the Law on Administrative Disputes" and suggested that the court should have, upon reviewing the case files, rejected the complaint as unfounded. The administrative court found this complaint as unfounded, explaining that this case is about "silence of administration" and the violation of the Law on Free Access to Information of Public Importance.

The Court has not addressed the allegations in the complaint on which the plaintiff based the claim – the question of whether the President of the Republic, as a state authority, should act on request, and if this body should be referenced to asses whether the conditions for rejection of the request have been met or not. The decision only states that "the General Secretariat of the President of the Republic of Serbia" is ... "a service that provides professional and technical support to the President of the Republic under the Article 26 of the Law on the President of the Republic ("Official Gazette of RS", no. 111/07)". This question was supposed be answered. It is not disputed that the General Secretariat provides support to the President of the Republic of Serbia (which presents state authority, and as such also presents public authority in terms of the Law on Free Access to Information - LFAI), and that, in most cases, the General Secretariat (GS) acts on requests addressed to the President. However, it is theoretically possible that the President of the Republic possesses certain information that are not in the possession of GS. In this context, the acquisition of information on this issue was justified.

4. **In the case 11 U. 2018/13 of April 25, 2013. – the defendant: The Supreme Court of Cassation**, for annulment of the act.

The decision has been reached to reject the complaint, the reason for the rejection is that the requested information does not constitute information of public importance, but an interpretation of the provisions of the Law on Amnesty, as well as the fact that the complaint was filed against the notice of the Supreme Court of Cassation – SCC (instead of the decision) in which the requester of information reveals that this is not an 'information of public importance".

We believe that in this case both the requester of information and the authority made a mistake. The authority should have decided to reject the request as inadmissible instead of only sending the decision to the requester. However, if the authority had possessed the requested information ("interpretation of the law on amnesty '), and this information could be possessed in the form of various documents (legal position of principle, technical literature, specific decision), then this information should have been delivered on request.

On the other hand, the plaintiff made a mistake in the administrative dispute because his complaint challenged the "notice" and he failed to act on the procedure in case of "silence of administration" (filing additional request and complaint), since this was his right (his request has not been addressed properly). If the Administrative Court interpreted the behaviour of the defendant as "silence of administration", there would not have been sufficient formal requirements for the complaint (or filing additional complaint), and the outcome would be the same for the plaintiff.

5. **In the case 16 U. 2464/13 of February 28, 2013. – the defendant: The Supreme Court of Cassation**, for annulment of the act of SCC.

The decision has been reached to reject the complaint, the reason for the rejection is that, according to the explanation of the Administrative Court, the notice of the SCC does not constitute an independent administrative act that decides on the right or the obligation of that party, and thus, it is not possible to file a special appeal or complaint against such act in the administrative dispute.

In the disputed notice, SCC informed the plaintiff that the question does not constitute information of public importance. The question was: "which court should be addressed when submitting a request for issuing a decision on rehabilitation by nullifying the conviction of a foreign court (the Republic of Croatia) of the year 1990 (prescribed by the Article 524, Paragraph 6 of the Code of Criminal Procedure)." SCC also instructed the requester that the answer could be found in certain provisions of the Penal Code and Criminal Procedure Code (among the listed groups of articles).

This notice does not constitute an administrative act. That was sufficient for the Administrative Court to decide that the complaint was inadmissible.

The disputed matter in this case was the action of SCC upon request. Hypothetically, SCC might possess information in regards to which court should be addressed for submitting a specific request and this information could be contained in a document. If such information was possessed, regardless the fact that it could also be found by reading a law, then SCC should have provided such information to the requester.

If such information already exists in the above laws and the requester was advised to use them, then SCC could refer to the Article 10 of the LFAI and withhold the information on the grounds that it has already been published and available.

If the SCC does not possess such information, but it could be in the possession of some other authority, or anyone else, then SCC should have acted on the basis of the Article 19 of the LFAI and inform the Commissioner about that request.

However, if the requested information cannot be found in these laws, but it can only be determined by reading and by correct interpretation of legal provisions (and if no one has done this before and left evidence in this regard), then it is considered that the SCC has acted properly in a substantial law. In formal terms, the SCC has sent an informal letter to the requester, rather than rejecting the request by reaching a conclusion.

For this reason, the requester of information should have submitted the request again and filed a complaint about "silence of the administration" if he does not obtain the information or the act that denies or rejects the request.

6. In the case 23 U. 2153/13 of February 28, 2013 – the defendant: The Supreme Court of Cassation, for the annulment of the act of the Supreme Court of Cassation, in the case of free access to information of public importance.

The decision has been reached to reject the complaint. The reason for the rejection is that the plaintiff has not complained against the defendant, but against the notice by which the Supreme Court of Cassation properly notified him that the question "from which date and by means of which provision of the Criminal Code is stipulated that those convicted and sentenced to 40 years can apply for parole after half the sentence

is served, and whether this provision is still in force" does not constitute the information of public importance within the meaning of the Article 2 of the Law on Free Access to Information of Public Importance, but it presents the interpretation of regulations, so the Administrative court founded that, in this particular case, the conditions of Art. 3 and 4 of the Law on Administrative Disputes have not been met to file a complaint in an administrative dispute.

7. **In the case 17 U. 14769/14 of November 27, 2014 – the defendant: the Government of Serbia – The General Secretariat of the Government of the Republic of Serbia**, in the case of access to information of public importance in the legal proceedings, in the legal matter of silence of administration.

The decision has been reached to reject the complaint. The reason for rejection is that the plaintiff has not submitted a copy of the subsequent request or a copy of subsequent address to the competent authority, so the court found that the procedural requirements for the initiation of administrative dispute for failing to adopt the administrative act have not been met.

8. **In the case 26 U. 964/15 of March 19, 2015 – the defendant: Office for European Integration of the Republic of Serbia,** for the annulment of the act of the defendant in the case of free access to information of public importance.

The decision has been reached to reject the complaint. The reason for rejection is that the disputed notice does not enjoy the protection of the administrative procedure.

The subject of the complaint is the completeness of the provided information or the fact that upon the request for access to information, the Government Office submitted only part of the requested data. The complete requested information have not been submitted even after urgency, but only some of the missing dana were provided.

The Administrative Court held that the "lawsuit filed against the notice" is not permitted in an administrative dispute. The Administrative Court advised the plaintiff how he was supposed to act: ".... pursuant to the provisions of the Law on General Administrative Procedure, a plaintiff may submit a request to the defendant to issue a decision by which the defendant shall decide on plaintiff's request (if the plaintiff considers that his request has not been decided in its entirety), and if the plaintiff believes that his requested has not been decided in one part, pursuant to the provisions of the Law on General Administrative Procedure, he may also submit a request to the defendant authority for an additional solution by which the defendant shall decide on the part of the request for providing information that are not contained in the defendant's notice of November 26, 2014."

9. **In the case 20 U. 1066/13 of February 8, 2013 – the defendant: The Government of Republic of Serbia – General Secretariat,** for the annulment of the decision contained in the Act of the Government of the Republic of Serbia, of December 19, 2012, in the case of free access to information of public importance.

The decision has been reached to reject the complaint. The reason for rejection is that According to the Administrative Court, the decision contained in the act of the Government of the Republic of Serbia, does not constitute an administrative act, both according to its shape and its content, and also does not constitute a final administrative act, or a final individual act, which decides on the rights, obligations or lawful interest of a natural or legal person or other party in the administrative matter, but the defendant only informed the plaintiff that the document containing the requested information was marked "strictly confidential" and that for these reasons the defendant could not meet the request of the plaintiff.

As in other similar situations, the decision was significantly affected by the previous question - whether the notice (which has some elements of the decision that rejected the request) constitutes an administrative act or not. In many cases, the Administrative Court rejected the complaints on the grounds that these cases do not constitute decisions. On the other hand, the practice of the Commissioner provides a large number of cases where the plaintiffs submitted an appeal after being rejected by the authority without reaching a decision.

There is a substantial difference between the situations of these two authorities and the outcome of their approach to requesters of information. The Commissioner is responsible for deciding on appeals both in the case when he accepts the fiction that the decision has been issued to reject the request (in the event where the public authority submits a notice that has elements of a decision) and in the case where public authority has not acted upon the request. The Commissioner's decision is somewhat facilitated by the presence of the previous notice of the authority, because he is already familiar with the arguments of the authorities for not providing the information, but the complaint shall still be sent to to the first instance authority. The only significant difference is reflected in deadlines – the appeal against the "silence of administration" can never be outdated and can be filed after 15 days (or another term in some special cases). On the other hand, if the notice is accompanied by the decision, then the appeal may be filed only within 15 days of receipt of the "decision" or "conclusion".

When the Administrative Court reaches the decision, the consequences of different approach to "notices" are essentially different. In the case of "silence of the administration", the prerequisite for an administrative dispute is submitting repeated request, which shall be followed by additional period of seven days. Therefore, when the Administrative Court interprets the "notice" as if the authority had not acted on the request, the plaintiff should meet the conditions for the complaint as in the case of "silence of administration".

13. **In the case 7 U. 4312/12 of June 6, 2014 – the defendant: The Government of Republic of Serbia – General Secretariat**, for failing to issue the decision on the request for access to information of public importance.

The decision has been reached to reject the complaint. The reason for rejection is that the Court reviewed the complaint by which the plaintiff was not satisfied with the provided response and found that this allegation had no influence on the court's decision in this administrative dispute, since the defendant acted in the execution of the Administrative Court's decision and met the plaintiff's request by informing the plaintiff that the requested information have been made public on the web page. The Court found that the defendant is not obliged to make reports at the request of the plaintiff, but only to make available the information in its possession, in terms of the Article 16 of the Law on Free Access to Information of Public Importance, which he did.

In this case, the Administrative Court established that the authority is not obliged to make reports at the request of the plaintiff, which is true. However, the requester of information did not require the authority to make a report, but to provide him with lists (if any).

14. **In the case 18 U. 4691/14 of November 3, 2014. – the defendant: The Government of Republic of Serbia**, in the legal matter of giving information of public interest - silence of administration.

The decision has been reached to uphold the complaint. The records on this administrative matter and the evidence attached to the complaint show that in the case of filing a complaint for the failure to adopt the requested act – the requested decision, the legal conditions of the cited Article 19, Paragraph 2 of the Law on Administrative Disputes have been met or that the plaintiff filed the complaint against the defendant because the defendant did not reach a decision on his request of February 27, 2014, and he did not act in the subsequent period of 7 days after the urgency filed on March 17, 2014. The response to the claim shows that the defendant authority did not reach a decision on the request of the plaintiff, but he informed the court that he did not possess the requested documents and that they could possibly be in the possession of city B. As the defendant authority was obliged to decide on the submitted request of the plaintiff regardless of whether he holds or does not hold the requested information, the Administrative Court upheld the complaint.

This decision is also interesting. As it can be inferred from the statement of reasons, the Serbian Government does not possess the requested documents. The decision ordered this authority to "decide on the filed request". However, the only right decision would be for the government to forward the request to the Commissioner and notify the requester and the Commissioner about whom might posses the requested information, all pursuant to the Article 19 of the LFAI.

19. **In the case III 26 U. 10406/14 of October 30, 2014. – the defendant: Commissioner for Information of Public Importance and Personal Data Protection of the Republic of Serbia**, for the annulment of the the defendant's decision no: …..... of July 03, 2014, in the case of access to information of public importance.

The decision has been reached to reject the complaint. According to the Administrative Court, the defendant authority's properly rejected the plaintiff's complaint filed against the first instance decision and found that the first instance authority correctly applied the substantive law. The Court reviewed other allegations from the complaint, but it found that they were of no importance for reaching a different decision and that the plaintiff may, at any time, file a request for access to the case files of the competent authority and obtain the information about the person who filed the complaint against him.

In the first instance, the Ministry of Interior Affairs (MIA) refused to provide the requester with the information about the person who filed the complaint against him. The Commissioner acted in the same way. The plaintiff claimed the violation of the LFAI and the Law on Protection of Personal Data. The Commissioner noted that "he does not question the right of obtaining the information about the person who filed the complaint against the plaintiff by some other means, but not by the legal means of information of public importance." This is generally considered as proper approach, because this is not the information that could be delivered to anyone, even in cases when it is justified to give it to the requester.

23. **In the case 15 U. 16639/14 of February 20, 2015. – the defendant: General Secretariat of the Government of the Republic of Serbia**, for the annulment of the decision .... no ..... of November 17, 2014, in the case of information of public importance.

The decision has been reached to uphold the complaint.

According to the above information and the provisions of the Article 33, Paragraph 2 of the Law on Administrative Disputes, the Administrative Court found that in this particular case, the conditions have been met for deciding on the legality of the disputed decision without holding an oral hearing, bearing in mind that the dispute is of such nature that does not require direct examination of parties and special establishment of facts, but that the court's decision in the disputed matter was based on the existence of a violation of the established rules of procedure by the defendant authority, which shall be rectified in the repeated procedure at the plaintiff's request. Based on the given reasons, the Administrative Court found that the disputed decision violated the Law to the detriment of the plaintiff and, by applying the Article 40, Paragraph 2 and the Article 42, Paragraph 1 of the Law on Administrative Disputes, reached the same decision as in the wording of the decision part. In the repeated procedure, the defendant authority shall reach a new decision based on law, where it is bound by the legal opinion and the remarks of the court regarding the procedure set out in the decision on the basis of the Article 69 of the Law on Administrative Disputes.

The case files of this administrative matter show that the disputed decision of the defendant authority rejected the repeated request of the plaintiff of November 10, 2004, by means of which he, based on the Law on Free Access to Information of Public Importance, requested the issuance of a copy of the document or all documents of the Government of the Republic of Serbia related to the planning, contracting, reporting and payment in connection with the affairs of PR services and/or lobbying services on behalf of the institutions of the Republic of Serbia abroad for the period from 2012 to 2014. The reasoning of the disputed decision cited the plaintiff's request and the provision of the Article 43, Paragraph 1 of the Rules of Procedure of the Serbian Government ("RS Official Gazette", No. 61/2006 ... 76/2014) according to which the material that constitutes state, military or official secret is referred to as confidential and also cited the provision of the Article 9, Paragraph 5 of the Law on Free Access to Information of Public Importance, stating that the presented evidence led to the same conclusion as the wording of the decision.

The decision of the Government was dismissed by the Administrative Court because the Government has not properly explained its decision: "This further means that the defendant body, given the cited provisions of the Law on Free Access to Information of Public Importance, was obliged to state the reasons for rejecting the access to the requested information in the wording of the disputed decision or to indicate the reasons why the access to the requested information might have serious legal or other consequences to the interests

protected by the law and outweigh the interests of access to information, keeping in mind that their proper application, in addition to the protection of one of the interests specified in the Article 9, paragraph 5 of the Law on Free Access to Information of Public Importance, also requires determining that the protected interest outweighs the interest of access to the requested information. In all the above, the lack of decisive reasons in the wording of the disputed decision prevents the court from establishing the legality of that decision in the substantive law, which violated the rules of procedure of decisive influence on the regularity and legality of the resolution of this administrative matter, which needs to be rectified in the repeated procedure."

26. **In the case 23 U. 11775/14 of October 3, 2014.– the defendant: the Republic Prosecutor's Office in Belgrade**, for the annulment of the decision, in the case of access to information of public importance.

The decision has been reached to reject the complaint. The reason for rejection: the Court review the plaintiff's allegations that, in the disputed decision, the defendant authority failed to apply the provision of the Article 15, Paragraph 2 of the Law on Free Access to Information of Public Importance that stipulates that, if the request refers to the information that can be considered as important for the protection of life and liberty of a person or for harming human health and the environment, the state authority shall notify the requester on the possession of such information and allow the insight in the document that contains the requested information, or to issue a copy of that document no later than 48 hours from the receipt of the request, so the Court found that this request has no influence on reaching a different decision on the legality of the disputed decision. It cannot be concluded with certainty that the submitted request refers to the information that can be considered as important for the protection of life and liberty of a person or for harming human health and the environment and the state authority is not obliged to notify the the requester on the possession of such information and allow the insight in the document that contains the requested information, or to issue a copy of that document no later than 48 hours from the receipt of the request.

The request refers to the information on the progress of the case of burning the embassies in 2008. The Republic Public Prosecutor (RPP) supported the decision on the denial of access due to the current stage of the proceeding. The Court established there is no reference as to why the information should have been be submitted within 48 hours.

Some of the questions for discussion

Cases that were the subject of this analysis have opened space for further discussion on several topics. Some of them are of importance for the upcoming amendments to the Law on Free Access to Information of Public Importance.

Who is the authority?

Who is the authority in cases when on the request for access to information is deciding by the expert service? Specifically: how to proceed in the case when the information may be in a possession of an (single-member) authority, and not of the expert service?

Existence of the information of public importance

Is the information of public importance "interpretation of regulations“? Decisions of the authorities and the Administrative Court are denying the right of access to information in such cases. However, this approach is wrong. And "interpretation of regulations“ may be contained in a document, and there are no grounds to be a priori treated that it is not an information of public importance. If the authority does not possess it, then it should act in accordance with the Article 19 of the FOIA. If it failed to do so, then the Administrative Court should oblige him to do it.

(In)admissibility of an administrative dispute when there is no resolution or conclusion

If the authority delivers a notice to the applicant, the Administrative Court considers that there is no administrative act that can be challenged in an administrative dispute. Commissioner's standpoint is totally different (in terms of the complaint procedure). Such a state (if both authorities acting correctly) is problematic from the point of uniformity of the legal system. In a case that the Administrative Court has right, then resolutions on rejection should contain a kind of advice for applicants of information - that in cases when their requests are de facto rejected, without issuing a resolution, they should act as if it was "silence of administration" (to repeat the request, and then file a complaint to the Administrative Court). Administrative Court has acted like this in rare situations – e.g. in the case of **26 U. 964/15 of 19.03.2015. Defendant: the Office for European Integration of the Republic of Serbia.**

There is a substantial difference in a situation of these two bodies and in the outcome of their approach for applicants of information. Commissioner will be competent for deciding on appeals in a case when the resolution on dismissal of the request was brought (in a case when the authority addresses a letter with elements of a resolution) and in a case when the authority is not acting upon the request at all. When the Commissioner is deciding, the existence of the previous letter of the authority will, to some extent, facilitate the work, because it is already familiar with arguments of the authority for not providing information, but in any case the appeal will be referred for statement to the first instance authority. Only significant difference is in deadlines - appeal on "silence of administration" can never be filled after 15 days is passed (or another term in some special cases). On the other hand, if the notice is aligned with resolution, then the appeal can be filed only within 15 days of receipt of the "resolution" or "conclusion".

When the Administrative Court is deciding, consequences of different treatment of "notice" are essentially different. Namely, the prerequisite for an administrative dispute in the case of "silence of administration" is making repeated requests, after which an additional term of seven days has to pass. Therefore, since the Administrative Court treats "notice" as that the authority is not acted on the request, the applicant should meet the conditions for the complaint as it was "silence of administration".

Unresolved question of practice when the request for several information was sought

In the case 15 U. 4011/13 of 27.02.2014, the defendant: the Government of Serbia; request was for several information, from which the authority provide some, and not the other, but not with a resolution on dismissal of request, neither it determined that the requested information is not in its possession. What the unsatisfied applicant could do? He/she could not fill complaint against resolution or conclusion, because the authority did not bring either of them. And the Administrative Court found that there was no basis for complaint regarding the "silence of administration", because the body "delivered a response." Thus, a circle was closed and applicant is completely deprived of his legal right.

For similar reasons, the decision in the case **7 U. 4312/12 of 06.06.2014 is disputable. Defendant: the Government of the Republic of Serbia**. In this administrative dispute, the Administrative Court noted that the authority is not obliged to prepare reports upon requests of applicants, which is true. However, the applicant of information did not require from the body to make a report, but to provide him/her with lists (if any). It is understood that, in the case if there are no lists, the authority would be obliged to declare on that.

Information was published ...

In one case, decision of the Administrative Court is disputable because of the standpoint that the authority could be "silent" if the information was published on the Internet.

Conditions for initiation of an administrative dispute

In two decisions, the Administrative Court wrongly assumed that there were no conditions for the initiation of an administrative dispute because the right of appeal was not previously used, although it is about

complaints against any of six bodies referred to in the Article 22 paragraph 2 of the FOIA.

Does the letter present the request for access to information?

In several decisions, the Administrative Court concluded that the enquiry of applicant does not present the request for access to information. It is not always clear whether it is crucial for this standpoint of the Administrative Court a formal deficiency (that it is not indicated that this is the request, an essential element is missing). And it seems that there is different practice of the Commissioner and the Administrative Court, and it should be strived for its uniformity.

No discussion, although certain issues are present

In none of these cases an oral hearing has not been conducted because the court concluded that there is no need for this and that the complaints, the answer to complaints and documents from the previous procedure are providing enough information for a decision. However, some of cases had clearly more complex nature (especially when the request asked for several information and the authority acts only in a connection with some of them), and to bring the right decision, it would be useful that such a hearing took place.

Introduction to transparency of the Administrative Court

Transparency is a prerequisite for determining how successfully an institution performs its responsibilities and, as such, it presents one of the key elements for achieving (public) responsibility, that is, the responsibility to the citizens on whose behalf the institution works and whose money fund it.

Transparency is very useful from the standpoint of achieving the goals of the institution. Thus, if an authority is open to citizens, it allows them to learn the general scope of its work, how it can meet their needs or solve a broader problem that exists in society, and how citizens can assist the authority in its work (eg. reporting an illegal action, considering suggestions for improving work).

The concept of transparency of the authorities has undergone many changes over time, some of which are the result of changes in legal interpretations and democratic progress, and others are fruit of technological innovation. Due to changes in understanding the concept of division of powers and responsibilities of institutions, now it is possible to obtain an insight into the activities of the authorities that used to be public in the past, but, more importantly, these authorities are now obliged to leave a clear written record of their decisions, including the explanation of the reasons. In other words, not only has the decision-making process become available to the public in many important segments, but now much more can be learned by gaining this insight.

Technological progress made possible for the information on the work of the authorities to become available much faster, in a significantly larger volume and with almost no costs. In this respect, a particularly large effect was evidenced by the use of computers for making electronic documents, use of electronic databases and expansion of the Internet. Another important effect of technological progress is the possibility to obtain numerous information **without any intermediaries and in an integrated form**, which reduced fears that the malicious or ignorant filtering of important and unimportant content would deprive citizens of an important data. In the time when an information can be distributed to a large number of people only by means of its transfer through the media, space and time limitations imposed by newspapers and TV and radio stations resulted in the fact that even the most important court decisions, public procurement contracts or draft legislation get summarized in the news in just few passages and distributed to the citizens. Internet offers the possibility to download all related documents, no matter how extensive they are, as well as to independently analyze them.

This does not imply that the institutional and technological development is without any negative effects to the work of authorities. The expansion of the structure of authorities, the increasing role of supranational organizations, the formation of inter-ministerial groups for the harmonization of policies, the influence of non-government entities in the decision-making and general processes and increasing the number of topics that all these entities are dealing with, have made impossible for even the most interested citizens to familiarize themselves with all important decisions, let alone with the process of their adoption. This resulted in strengthening the role of intermediaries - those who have **the power to single out the requested information**, where the selection is often not based on the public interest, but on the particular political, financial and other benefits. Even when the intermediaries conscientiously ensure the public interest is taken care of and when the relevant information is greater than what the consumers can receive, citizens are becoming more and more superficial. They incorporate "a little bit of everything," which leaves them with no opportunity to recognize the important details.

Technological progress also had similar effects. In the Internet age, especially with the expansion of social networks, in addition to the state authorities and the media, a growing number of entities (associations, companies, citizens) is able to distribute their information, views and analyses to a relatively large number of people. Although this manner provides an opportunity to bypass censorship and distribute the information that irresponsible state authorities want to hide, it can also result in distribution of completely fictitious, maliciously presented or misinterpreted documents and views. The consumers of such content, that used

to face the dilemma which media, state authority or prominent individuals to trust, and used to make such decisions based on years of experience, now find themselves in an almost impossible situation – they need to make a choice between millions of information sources they can trust.

All this is reflected in the work of the courts in many ways. The least number of changes in recent decades have been related to what presents the most important part of their work. Judicial decisions must be made in writing and must include an explanation of the reasons. Court hearings and decisions are usually public. Some details related to the work of the court is still not public - deliberations and voting in the decision-making process within the council, as well as the work of the court in situations where a judge reviews facts and evidence without an oral public hearing. Furthermore, even though the decision is reached "on behalf of the people" and its wording becomes public, a "written copy" that contains an explanation is often prepared later and, as a result, the reporting of court decisions is often based solely on the information contained in the wording and without any essential details of the reasons.

When it comes to the activities of the courts that are similar to the activities of other state organs, transparency has been increased due to new legal and technological solutions. For example, the obligation of publishing all public procurement calls on the web page of contracting authorities now also applies to courts.

Technological progress has enabled for the decisions of the courts to be presented in an accessible way, but also for the customers and other interested parties to obtain the information they need without going to court. For example, at least in case of the courts that made efforts in this field, the citizens can now access a number of decisions (anonymized decisions), as well as the data on the trial schedule, duration and stage of the case in progress and other information. The web pages of the courts also provide other advantages - enabling the court to disclose information to citizens on specific disputed issues that have already been addressed in the media, or they can provide an opportunity for interaction – for the citizens to point out the issues of interest to the work of the court.

The process of providing transparency can be classified in several ways. The division can be made according to the initiator of transparency. If an information becomes available only upon someone's request, then we can talk about "reactive" disclosure of information. The courts have been practicing this method for decades by providing insights and copies of documents to the parties that request so, and since 2004 they have an obligation in Serbia to act in regards to requests for access to information of public importance. "Proactive" disclosure of information is that which occurs on the initiative of the authorities. It can take the form of press releases in cases where the authority considers necessary to present something to the public or the form of publishing documents on the bulletin boards and web pages.

Both reactive and proactive disclosure of information can represent the fulfilment of a legal obligation, or they can be a result of the intent of an independent body to inform the public on specific matter or to meet requests of certain citizens. Therefore, voluntary or mandatory disclosure of information represent another possible division. The third division can be made according to whether the information is disclosed directly or through an intermediary (e.g. The media reports on court decisions versus the presence in oral hearings or downloading the material about the decision from the web page).

Bearing in mind the importance of transparency, and the fact that, since its establishment, the Administrative Court has led the way in many ways among judicial institutions of the Republic of Serbia on the issue of transparency, this project presents an analysis of various aspects of the work of public institutions. We shared the findings and specific suggestions for improvement with representatives of the Administrative Court during the implementation of the project, and many recommendations have already been adopted. The room for improvement still exists. It is worth noting that the Administrative Court, on the occasion of the International Right to Know Day, on September 28, 2015, received the award for its contribution to the affirmation of the right of access to public information and transparency, in the category of judicial institutions[15].

[15] http://www.up.sud.rs/cirilica/events/event/upravni-sud-dobitnik-priznanja-za-doprinos-i-afirmaciju-prava-na-pristup-informacijama-od-javnog-znacaja-i-transparentnost-u-radu

This publication contains excerpts from the analysis of the transparency of the Administrative Court, and only those excerpts that we think may be useful to other authorities, particularly in the judiciary, as examples of good practice.

Information bulletin

Information bulletins and proactive disclosure of information

"Information bulletins" are often described as the most significant **aspect of proactive disclosure of information about the work of state authorities in Serbia.** The term "proactive disclosure" should be explained: it refers to the information that state authority publishes before being requested to do so. In this sense, the opposite of proactive disclosure of information is the disclosure which is based on the request or petition of a person.

Proactive disclosure of information is increasingly becoming a legal obligation of the authorities, and even more a good practice. This trend has particularly developed after the invention of the Internet. Even though the authorities in the 21st century are obliged to publish numerous information on their web pages (e.g. data on public procurement), **there is no general obligation for the authorities to have a web page.** Therefore, all the obligations in this regard apply only to those authorities that have web pages. The problem also lies in the fact that the content and reliability of the data published on the web pages are not (sufficiently) regulated.

Information bulletins were introduced in the legal system of Serbia in 2005, when a a legal obligation was established for (some) authorities to draft a document with specific information about their bodies and work (Article 40 of the Law on Free Access to Information of Public Importance). The bylaw of the Commissioner for Information of Public Importance (Instructions for preparing and publishing information bulletins of the state authorities that came into force on September 29, 2010) more precisely defines the content of these documents and the manner of data publication (among other ways, on the web page). Special importance of information bulletins in the system of proactive disclosure of information lies in the fact that **for many authorities this is the only document which they are required to disclose and which has a prescribed content.**

All state authorities, provincial authorities, local governments and organizations entrusted with public powers have the obligation to publish information bulletins (under Articles 3 and 39 of the Law), which also includes a part of public enterprises, institutions and organizations that operate at the level of Republic of Serbia (because public authority may be delegated only by law). This shortcoming should be rectified by the amendment of the Law on Free Access to Information. These amendments were still in progress in 2011, but the proposal was withdrawn from the Assembly after the elections in 2012, and has still not been re-submitted. Certain deadlines for amending this law have already expired (the action plan for the implementation of anti-corruption strategy), and the newly proposed deadlines are too extensive (e.g. the draft action plan for Chapter 23 of European integration).

The Administrative Court Information Bulletin

The Administrative Court is undoubtedly one of the authorities that can serve as an example of good practice in terms of completeness, timeliness and efficiency of information bulletins. At the time of preparing this analysis, the document was less than a month "old" (in terms of the last data update)[16], which is enough to classify the Administrative Court among rare institutions that have fulfilled this very important legal obligation.

The method of publication is in full accordance with the Directive. The first page of the web pages provides a clear link to the document, the web page in Latin alphabet contains the bulletin that was also published in Latin alphabet and in "Word" format and which can be searched and copied so that all text is legible in the copied document, etc.

[16] http://www.up.sud.rs/uploads/pages/1456412501~~Informator%20Februar-cir.pdf

The content also follows the rules of the Directive in terms of form. The bulletin does not contain many images or scans that would make it harder to download and open the document. Page footer specifies that this is the bulletin about the work of the Administrative Court and states the date of the last update, as per the Directive. All pages contain numbers and table of content consists of hyperlinks that lead to the desired section.

The chapter on basic data contains everything we need, including direct contacts of individual officials and services and the map for the building where the court is situated.

The chapters on organizational structure present in detail all employees of the Court and their positions, and this section is connected, by means of external links, to the Rulebook on Internal Organization and Job Classification and Annual Calendar of Tasks of the Court. The presented data show the current state of occupancy. The structure is also presented graphically, showing in detail all organizational units or individual executers of tasks within the Court. In terms of presented details and the structure, this graphic presentation can serve as a model for other courts, given the similarities that exist in jurisdictions and acts that supplements this document.

This graphic presentation contains the first reference to the relevant legislation for the regulation of organizational structure - the Law on Judges, the Law on Court Regulation, the Judicial Rules of Procedure. This presentation is followed by a description of court administration and job descriptions of individual departments that operate within it (preparatory, case law, court registry office, etc.). The section that lists various types of case registers contains a link that leads to the data from this year.

The following table contains the number of employees per position according to the systematization and the number of filled positions, while the fact that there is a relatively small number of employees allowed their names to be listed as well.

The chapter on "Court presidents" contains the list of regulations governing the election and powers of Court presidents, and additional bullets list more than ten duties of a Court president. The following part of this chapter contains a resume of the current president of the Administrative Court. This is followed by the information on the legal framework of Court's operation and conditions for the appointment of judges, even though this is not a mandatory part of the bulletin. The reader of the bulletin can quickly move to the web page of the High Judicial Council (which nominates judges), open the bylaw that stipulates the criteria for the assessment of qualification, competence and worthiness of judges, rules on the evaluation of the work of judges and the current decision on the number of judges.

The description of rules related to transparency fully follows the Directive, displaying opening hours, contact details, accessibility for people with disabilities (descriptive and in pictures), description of legitimations, possibility of the presence to public trials, rules on photographing and video recording, media accreditation and more. Special attention is given to the links that lead to the notifications of the trial schedule and to the cases that are of particular interest to the public, all of which can represent an example of good practice for other courts.

"List of frequently requested information of public importance" contains several generalized examples. All these examples are useful because they contain links that lead to answers (e.g. monitoring of specific cases, complaints about late solving of cases, familiarization with the case law). The most frequently requested service is the search of case files. The chapter that states the regulations that are applied in the work of the Administrative Court contains a link that leads to the list of as many as 218 Laws that the Administrative Court applies in its work! A link is provided for each of these laws. There is also a useful (general) note on where to find the relevant bylaws.

In the three chapters on services, the Administrative Court first explained what was meant by services and the differences between the services that are specifically explained and the "regular activities" of the Court, which is described in the chapter on acting within the powers and obligations. In general, the distribution of the text between these two chapters often poses a challenge even for the authorities who have good

information bulletins when it comes to the authority whose actions within the powers and obligations are fully or dominantly conditioned by a certain request (complaint, appeal, objection, petition, etc.) of the interested party.

In addition to deciding on the cases, the Administrative Court identifies the following services that are provided to the interested parties:

- information about cases;
- reception of cases;
- acting upon complaints of citizens on the work of the court;
- reception of lawsuit, appeal and request for access to information of public importance on the record
- acting upon requests of citizens for free access to information of public importance
- bulletin board and electronic bulletin board
- trial schedule
- open day

A separate chapter (No. 10) specifies whether each of these services presents implementation of a legal obligation or not, its content, the categories of persons who are entitled to the service, the conditions to be fulfilled for receiving the service, the manner of obtaining the service, the deadline for providing the service and whether the service is provided electronically.

The Directive requirement for Chapter 11 was fulfilled by providing links for the reports on the court's work. In addition to the general report on the work for the previous year, this chapter also contains special reports on specific areas – e.g. petitions, complaints, access to information. A special sub-section contains current information on the work during this year (e.g. the number of received cases, urgencies and complaints).

The chapter on income and outcome data contains a table that is compliant with the Directive. It contains not only the data on approved and executed budget of the Court, but also on the planned funds. This chapter also contains a note on audit (that there was no audit). All costs are presented with greater detail than it is usually done in the budget - the six-digit economic classification. The bulletin also contains the data on public procurement. This chapter first presents the data on legal framework, including the most important bylaws. For this court, as is probably the case with some other judicial institutions, the Administration for Joint Services has implemented a unified public procurement of certain goods. The Administrative Court published the information in this regard (public procurement number, description, type of procedure, information about the outcome of the procedure). Finally, there is a link to a web page for downloading the contracts for these procurements. The data on state aid (i.e. the fact that they are not provided by the authority) are correctly listed. When it comes to salaries, they are presented according to certain categories of positions. Specified amounts were properly given in the form of the exact amount for the president, judges and some other persons and in the form of ranges for the officers, according to their rank.

The data on work equipment are shown in the form of a table, with numerous details, and they provide the information on the possession, quantity, years of amortization, the current percentage of amortization and the value – purchase, correction and current. Authorities often leave out the data about the used property. This bulletin contains these data with enough details that they can serve as an example for others, because they present how many premises are used by each organizational unit. This chapter contains the link to the gallery with images of these premises published on the web page of the Court. In addition, good practice is certainly evidenced by providing additional data - graphic representation of maps for individual premises and services that might be of interest to readers - the counter for the submission of documents, information desk, courtroom schedule, etc.

In regards to Chapters 17, 18, and 19, which describe the "holders of information," and then the types of the possessed information and the data on their availability, this bulletin is also much better than most of the others, although there is still room for improvement. Whenever possible, this chapter contains the links that lead to additional information on the web page of the Court. The groups of data are:

information related to ongoing processes, information related to archived cases, reports for different areas and periods, information related to the organization, employees and the like, notifications, electronic databases of regulations, internal acts of the Court, information bulletin, newsletters and similar, tenders for employment, information on work equipment and cooperation with citizens.

In terms of possible limitations, the reader is first referred to the general legal framework and current handbooks for the implementation of the Law on Free Access to Information of Public Importance. After that, the application of certain exceptions for the information in the Court's possession is considered. It is precisely stated which documents will have omitted personal data in the fulfilled requests, instead of just generalized remarks about the possible reasons for the denial of rights, which is too often present in the information bulletins of state authorities.

The last chapter, on exercising the right of access to information, is also drafted in accordance with the Directive, and contains all the necessary information - quotes from the law, contact details of the authorized person, data on compensation of costs, forms for requests and complaints. This section particularly stands out because of the fact that, by means of the provided notes, the requester is familiar with the manner in which he can successfully adapt the existing form (e.g. what shall be stated if the requestor is a journalist or an organization for the protection of human rights, in order to waive the charges of copying the documents).

Internet presentation

Transparency the Court

The method and procedure of informing the public about the work of the Administrative Court is prescribed in court procedures by the provisions of the Law on Administrative Disputes, the Law on Free Access to Information of Public Importance and the Court Rules.

In addition to what is prescribed by the Law on Free Access to Information (and what is discussed in a separate section), transparency is also achieved by the following:

- publishing court periodicals – bulletin;
- announcing the time, place and case of the trial in a visible place outside the room where the trial will take place or in other appropriate manner;
- allowing all adult citizens and media representatives to attend public hearings;
- giving notifications to all interested parties and the media on the progress of judicial proceeding, by the court president and the person in charge of public relations and media;
- publishing court's decisions;
- publishing legal opinions;
- establishing internet presentations (in case of the Administrative Court this is www.up.sud.rs), where all information related to the work of the court are regularly updated.

Trials are usually public and all adult citizens and the media have the right to attend hearings in the court. The Trial Chamber may exclude the public for the entire hearing or for a specific part of the hearing if that is required to protect the interests of national security, public order and morality, as well as to protect the interests of minors or the privacy of participants in the proceedings. The exclusion of the public is decided by the court's decision that has to be explained and publicly announced.

As stated in the notice on the web page of the Administrative Court,[17] "Representatives of the media can obtain notifications on cases of public interest from the web page of the Court."

"Media representatives are informed on matters of greater public interest by e-mail and fax, and by verbal communication. If necessary, the Administrative Court organizes press conferences. Notices of the Administrative Court on its work and on all individual cases are given by the court president and court spokesman. Protected information and information classified by special regulations as secret, whose disclosure is excluded or restricted by law, will not be disclosed."

"Photographing or audio and video recording in public hearings with the purpose of public distribution of the recording are performed with the approval of the court president, with prior approval of the presiding of the council and a judge and written consent of the parties and other participants in the recorded action.

Accreditation is required if the journalists and accompanying recording and photo teams are interested in recording inside the courthouse, with the prior written request no later than one day before photographing and recording, in order to make timely decisions. The request for accreditation can be downloaded from the web page of the Administrative Court under the section "Media accreditation" which is located under the heading "TRANSPARENCY" (link for this section is www.up.sud.rs/cirilica/akreditacije-za-medije). The request can be submitted in writing, by delivering the request to the information desk of the court, by fax 00 381 11 363 52 85, as well as electronically to the following address portparol@up.sud.rs or kabinet@up.sud.rs".

Similar notifications can also be found on the web pages of other courts, although the ones published by the Administrative Court contain much more details, so other judicial institutions can use them to improve their notifications.

[17] http://www.up.sud.rs/cirilica/javnost-rada

Court Rules of Procedure in regard to transparency

Chapter V of Court Rules of Procedure - "informing the public about the work of courts", as well as some other provisions of this act, govern the distribution of information on the work of each court. Thus, the Article 57 states that "in order to provide objective, timely and accurate notification of the public about the work of courts and court proceedings, the president, judges and court officials are required to provide the necessary conditions, as well as the correct approach to the media in terms of current information and court proceedings, taking into account the interests of the proceedings, privacy and the security of the participants in the process."

In order to achieve this goal, "the time, place and case of each trial are published daily on a visible spot outside the room where the trial will take place or in any other appropriate manner. For all trials of greater public interest, the court administration shall provide a room that can accommodate a larger number of people. By the order of the president, the Trial Chamber is obliged to hold a trial in a larger and secured room. "

Article 58 stipulates that all press releases on the work of the court in certain cases are issued by the president, the person responsible for informing the public (spokesman) or a special information service. The appointment of a special person in charge of public information - a spokesperson is regulated by specific rules. This may be executed by the republic courts, appellate courts and courts with special departments or "greater number of judges."

Court Rules of Procedure does not closely prescribe the manner of determining whether the public is particularly interested in a court case.

"The information and data presented to the public must be accurate and complete. The information which, according to special regulations, are considered confidential and all protected information whose disclosure is excluded or restricted by law cannot be distributed." It should be borne in mind that the confidentiality of data based on a certain document will not have an absolute effect because the review of the requests for access to information may require the verification if such confidentiality is still necessary (i.e. three-part test).

"Communication with the public and media shall implement modern communication means in accordance with the material and technical possibilities of the court (a press conference room - media center, reporting through web pages and the like). The president shall be in charge of the equal representation of different media at the trials". These provisions show that the publication of information on the court web pages or setting up such a page, do not constitute court obligation. Only if they have such a page, the courts are obliged to publish specific information, and the scope of this information is not clearly specified by Court Rules of Procedure.

It is interesting to note the provision on the presence of various media. Court president is certainly not a person who can ensure that the media are equally represented in the court, but it is someone who has the obligation to ensure that there is no discrimination in this process. If there is such possibility, all media should be allowed admission. If there are more interested media than the room provided, an objective criteria for enabling the presence should be applied (e.g. first come first serve basis).

The Articles 59 and 60 refer to the photographing or audio and video recording in the court building during the trial.

The Article 61 regulates the publication of information bulletins. In this respect, Court Rules of Procedure sets the obligations that are in line with the Commissioner's directive, but not completely identical. Thus, Court Rules of Procedure requires courts to publish their bulletin "at least once a year, and no later than February 1 of the current year for the previous year." This standard is in line with the Law on Free Access to Information of Public Importance, which refers to publishing information "once a year". In relation to the text of the Law, this standard presents a progress, because it sets a deadline for publication, not cointained in the LFAI. On the other hand, Commissioner's directive provides fundamentally different guidelines, while

staying in line with the provisions of the higher legal act by which the authorities are required to prepare and publish their information bulletins in **electronic form**, and to update them after any changes, and at **least once a month**.

Furthermore, Court Rules of Procedure connects the contents of the information bulletin to the "special law" and "the rules of procedure", and essentially presents the form of publishing basic information about the tasks that are of significance "for exercising the rights of citizens and the presentation of the organization of transparency in court's tasks." It further explains that the information bulletin shall contain the name and address of the court; annual schedule of tasks; contact information (phone, fax, web page and e-mail address), names of court administration executives, information on the working hours of the court and its services, names and contacts of persons authorized for reception, informing the parties and handling the complaints, the names and contacts of persons authorized for issuing certificates and verification of signatures; names and contacts of persons in charge of authorizing visits or copying files." Finally, it is noted that the information bulletin presents a collection of decisions and legal opinions **which the court may publish in print or electronic form**.

The Administrative Court web page

The Administrative Court web page is new and functional and it presents pleasant graphics solutions. It contains several temporary banners that lead to information that might be of interest to a larger number of readers - information on the proceedings before the Administrative Court, the bulletin of judicial practice or the guide for citizens on the proceedings before the Administrative Court. The top section provides a gallery of images that alternate (images of the court's seat, courtroom, reception hall) welcome message, information about the location for submitting claims and working hours.

The main page contains detailed information on the Court and important news. These include the announcement about the upcoming elections and the temporary suspension in the reception of parties (for the same reason). The suspension in the reception of parties is justified by reasonable grounds - short deadlines for the acting of judges in electoral matters.

This page also contains a somewhat older "announcement on the reception of parties". The publication of such announcement with detailed instructions can also be considered an example of good practice, because it removes the doubts and specifies the rights of interested parties.

The section "Administrative court" contains several items:

Jurisdiction[18] is presented in an accessible and understandable way. It first specifies the governing laws, the scope of administrative dispute and the court in charge of reviewing the decision of the Administrative Court. It further defines the basic terms – plaintiff, interested party, accused (defendant), the subject of administrative dispute, silence of administration, administrative cases. The last term further specifies the types of cases that may be the subject of administrative dispute. Some of these cases were illustrated for readers and certainly refer to the cases that are still of big interest.

This page further specifies the deadlines for filing a complaint (in the case of general deadline of 30 days it could be useful to note that this deadline is applied when no other deadline is prescribed by a special law) and the documents to be submitted (which does not cover the situation of "silence of administration"). It is also noted that the decision of the Administrative Court is challenged by filing a request for reviewing such decision, but there is no information about the deadline for doing that.

Organization section is also updated and contains a link for the current, two-months old job classification[19]. The same page contains the sections about the organization that is included in the information bulletin and which describes certain services and shows graphic presentation of the Court's organization.

Annual task[20] section also presents a good example of updating the content – it contains the data for the current year and the changes that were probably caused by the upcoming elections. Interested parties can use these pages to view all schedules of tasks since the Court was established and to make comparisons.

The court administration[21] page contains basic and precise data about the tasks performed by the administration, the duties of the president and his deputy, as well as all personal data of the people who constitute the court administration. It could be useful to supplement this page with contact details.

The court registry office page[22] is also informative. In addition to the description of the tasks, it also contains clearly marked contact details, working hours and a link to a separate and useful document – "The notice on the method of fling cases and petitions to the Administrative Court in the form of an electronic document".

Reports on the work page is also very important. Its significance is even greater since these data, unlike the data of many other authorities, are up to date. Another example of good practice in Serbia can be seen in the

[18] http://www.up.sud.rs/cirilica/nadleznost
[19] http://www.up.sud.rs/uploads/useruploads/sistematizacija/SISTEMATIZACIJA-2016.pdf
[20] http://www.up.sud.rs/cirilica/godisnji-raspored-poslova
[21] http://www.up.sud.rs/cirilica/sudska-uprava
[22] http://www.up.sud.rs/cirilica/pisarnica-suda

fact that the institutional memory is preserved. This page also provides easy access to all reports since the establishment of the court (2010). Special reports are published in regards to actions on the complaints against the court and urgency of particular cases, in connection with the implementation of the Law on Free Access to Information, Public Procurement Law, regulations on gender equality and the Law on Protection of Personal Data.

Transparency section consists of several items. These are the general information that have already been described. Then, there is an **electronic bulletin board**[23]. The board presents the numbers of individual cases, the date of publication on the electronic bulletin board and the date of removal from the board (one month later). The electronic board consists of three pages that can be searched and contains information about the ads from the last few months. There is also an archive. The section "trial schedule" is also very useful as it allows the search by date, name of the judge and the case number. **The data in the current year** sub-section[24]also presents an example of good practice, although there is still room for improvement. This sub-section contains statistics on the number of cases received, according to the various types of registers. **Forms** link presents a separate item in "transparency" section.

"Citizens' questions" section does not literally depict the questions from citizens, but it nevertheless provides the list of information that were mostly requested. In this sense, every court in Serbia should similarly inform visitors of their web page on key issues of its work. In this section, visitors can read how to initiate an administrative dispute, whom to address for filing a complaint and how to do that, whether the complaint postpones the execution, which legal remedies may be filed against the decision of the Administrative Court, whether a specific matter is initiated in the court and under what number, how citizens can learn about the practice of the court, and they can also learn about all questions related to one of the disputed issues - the protection of electoral rights. The answers are short and precise. Some of the explanations could be improved or refer the reader to additional literature.

Media accreditation section contains an electronic form for the accreditation, as well as the information related to the communication of the Court with the media and the method of obtaining additional information. This surely presents an example of good practice. In this section, the media can learn about generals methods of communication and how to obtain them.

Special item in this section is **information bulletin** that has already been discussed. There is also an archive that contains all bulletins since the establishment of the court until today.

Regulations

The section on regulations contains the list of numerous laws that the Administrative Court implements in its work. It would be preferable that all courts have this type of acts available to citizens and this objective could be achieved by means of connection with the respective bases of the public company "Official Gazette".

Another item in this section is "**court acts**". This item is also very important and it presents an example which should be followed by other courts. It contains the following documents:

- Rules on anonymization
- Plan to increase public confidence
- Rules on safety protection at work
- Rules on procurement
- Rules on gifts
- Rules on official clothing and footwear
- Rules on vehicles
- The program for solving old cases 2016

[23]http://www.up.sud.rs/cirilica/view_bulletin_board/1
[24]http://www.up.sud.rs/cirilica/podaci-u-tekucoj-godini

News and announcements

The Court has a practice of issuing **"announcements"**[25] on many important issues. These notifications are usually thematically related to the elections or changes in the work of the Court in regards to parties or important events. In the section **"events"**[26], the Administrative Court publishes numerous information on the activities attended by its officials (seminars, conferences, trainings), which represents valuable material for everyone interested in the work of the Administrative Court, and beyond, changes in regulations and practices and other activities in the areas covered by this institution.

Public procurement

The main difference between the Administrative Court and other authorities and the main example of good practice is the fact that this institution has continuously published all signed copies of public contracts, for which there was no legal obligation. In 2012 and 2013 the data were published for public procurement of low value, although at that time there was no legal obligation to do so.

Jurisprudence

One of the most useful segments of courts' web pages is jurisprudence. In this field, the Administrative Court also leads the way for courts in the country. Bellow are shown some of the efficient solutions.

The main page provides the instructions for searching the section of jurisprudence, according to the fields.

Database is searched according to the following criteria:

- defendant authority
- dispute type
- register
- Sentence/stance
- Title
- search (according to different parameter)

Search fields work excellent and offer solutions listed in the database (e.g. the names of the defendant authorities). A field which contains the number of sentence seems to be less useful, because it is unlikely that this number will be known to those who needed an opinion.

An example of good practice can be seen in the fact that it is possible to download a relatively large number of anonymized decisions (in a format similar to Word), but even more that it is possible to see a part of text by dragging the arrows to certain fields and without downloading it. Nearly 1200 decisions have been published on this portal and all of them have been adopted in more than five years of the work of this court. If one takes into account that in 2015 the Administrative Court decided in over 18 thousand cases, it is clear that published anonymized objects present are a distinct minority. Since it is not reasonable to expect, and probably not rational either, for all the decisions of the Administrative Court to be published and anonymized, it would be useful to present criteria for the selection of the decisions that would be emphasized in this manner, as well as the data on the dynamics of work, so that the readers, especially those who are planning a more thorough search and comparison, can in advance know what challenges they might face. Without this additional information, a less observant reader might think that the number of cases against an authority is much smaller than it actually is.

[25] http://www.up.sud.rs/cirilica/news
[26] http://www.up.sud.rs/cirilica/events/category/0/1

Why there are no some more requests and plaints?

As already explained in more detail in the analysis of the Administrative Court practice regarding the Law on Free Access to Information of Public Importance, this institution is the only one that can provide protection of the right to access information in some cases of denial. These are situations in which applicants are addressing to six "highest" authorities, i.e. the authorities referred to in Article 22 Paragraph 2 of the Law on Free Access to Information of Public Importance – the President of the Republic, Government of Serbia, National Assembly, Supreme Court of Cassation, Administrative Court and Republic Public Prosecutor.

From the beginning, Transparency Serbia advocated for elimination of this exemption and always providing applicants two legal remedies - complaint to the Commissioner and after that, the plaint to the Administrative Court (if dissatisfied with the Commissioner actions). However, in 2003, when the Law was drafted and in its subsequent amendments, this provision has remained unchanged and it is questionable whether it will be affected by the changes that are currently being prepared.

The exception has negative impact on the implementation of the Law. In situations when one of these six public authorities deny information, many applicants information did not decide to initiate an administrative dispute and thus gain legal protection. The most common reasons for withdrawal were lack of faith that they will get an information, the lack of time that should be invested in the continuation of the fight, or the fact that the applicant needed an information immediately and that it does not mean much if he/she gets it after a few months.

Furthermore, many applicants did not know who to address to protect their rights. Many are[23] addressing to the Commissioner, either by inertia, because they were doing so after submitting a request to the other bodies, either because the Commissioner is very exposed in media in the promotion of the right to access information. After the receive notification on the Commissioner's incompetence, many give up, because already has passed a long time since the submission of request.

Problem is particularly severe in situations where some of six public authorities does not reject the request with the decision, but with an informal letter or completely ignore it. Then applicant does not get an explanation on legal remedy and does not know where he/she can address or whether he has the ability to continue to seek protection of his/her rights. Unfortunately, ignoring the request is still by far the most common form of denial of the right to access information.

In this regard, there is another reason that could explain the relatively small number of proceedings initiated against these six authorities before the Administrative Court. Namely, when the request for information has been ignored, then in accordance with the Law on Administrative Disputes, applicant thas to address once again to the same authority (urgency, with the repeated request), and only after the expiration of the period of seven days has the right to initiate an administrative dispute with the plaint. It is certain that this waiting and additional step that should be made, reject one part of applicants.

One of the reasons may also be more complex procedure than the one to which applicants were used. Therefore, for example, plaints in an administrative dispute must be submitted by mail or at the registry office, while the Commissioner accepts those that were delivered by e-mail with proper evidences and it is easier for many applicants, especially when submitting a large number of requests (for example, within some research).

Finally, we should not exclude the possibility that some applicants were also influenced by the rang of the public authority against which legal remedy has to be used and even its name. Some citizens may have a fear of the consequences if "are suing the Government" or "sue the Republic Public Prosecutor", which might not have been when submitting a plaint against a decision of a public company, municipality or ministry.

Requesting information in order to change practices

Transparency Serbia has perceived another reason that prevents the occurrence of increasing number of requests for information before these six public authorities, but also before many others. It is unknown about the information that these authorities possess in general. In other words, citizens would ask more if they had the idea to which information may come. Therefore, Transparency - Serbia in 2015 and 2016 held workshops for representatives of non-governmental organizations and the media about requesting information from these six authorities, and continuously provided legal assistance to citizens, journalists, business representatives and non-governmental organizations who wanted to collect some information from the "six highest" public authorities, or to achieve legal protection in cases of denial.

In addition to helping others, Transparency - Serbia itself continued to send numerous requests to these public authorities in relation to current issues. We tried not only to get answers to important questions through these requests, but also at the system level to assure greater transparency. In this we have succeeded, although in somewhat unexpected ways. In fact, we expected to get significant progress primarily through initiation of plaints to the Administrative Court for refusing to provide information or due to non-compliance with requests, especially in cases where the Government of Serbia does not provide information.

However, change came as a combination of two factors. On the one hand, the Administrative Court has brought several decisions in which it ordered the Government to comply with the requests that were previously ignored. On the other hand, it is obvious according to a time coincidence of events, that the actions of the General Secretariat of the Government were affected with the fact that Transparency - Serbia continually emphasized this problem with the public and relevant government authorities, and especially the fact that we have issued a statement regarding a specific case which was good covered with media . When it comes to other authorities, and in the course of this project it has been confirmed that the National Assembly is among authorities that acts upon requests the most promptly and problems we could not find in requesting information from the other four authorities.

For information and inspiration for future applicants, few examples of requests that we have been submitting in this period are listed.

Examples of requests submitted by the organisation Transparency Serbia

From the National Assembly, we requested information on whether the Government reported on its actions in connection with the reports of independent state authorities. One of the most important anti-corruption mechanisms is oversight which the National Assembly should exercise against the executive power. Such oversight would, among other things, should be done on the basis of reports submitted each year by independent state bodies - Commissioner, Anti-Corruption Agency, State Audit Institution, etc. Parliamentary committees are formulating conclusions on the basis of those reports which are then adopted by the National Assembly. In one such conclusion, the National Assembly obliged the Government to report within six months of what is done in terms of eliminating the problems pointed out by independent bodies. Not only that the Government have not submitted these reports and the Assembly has done nothing on this occasion, but data on these failure remained completely unknown. After our request and response of the Assembly, these data were disclosed and failure of the National Assembly to exercise the supervisory role became obvious.

Several other requests were referred to the parliamentary committee's debates on reports of the independent state authorities. On the basis of such a request we have received a document which revealed phases in the process of decision-making within the National Assembly. Specifically, the parliamentary website publishes only the final proposals of conclusions, but not their alternatives that did not receive sufficient support of members of the parliament. Gaining drafts which were discussed at the meeting of the Parliamentary Committee for Information enabled us to present to the public how the initial proposal was restrained until recommendations for solving problems in the area of access to information did not become nearly vain.

Transparency Serbia has repeatedly pointed to problematic practice of concluding a memorandum of

cooperation between the state bodies. In fact, their relations should be based on clearly defined legal obligations. If the regulations are not precise enough to provide something they should be amended. If the regulations are not being enforced, it should be punished. In addition, there is no practice that memorandums are publishing. Several such memorandums we were requesting in this period - for example the one that was concluded between the National Assembly and the Ministry of Finance.

President of the Republic has few competences that have to do with corruption. One of them is certainly the power to return the adopted law to the National Assembly that he/she does not wish to declare. This has happened in the case of the law that allowed under special conditions to sale immovable properties owned by the state to existing users, which could potentially lead to severe damage for public property. The event aroused great public attention. However, the official reasons for the return of the law have never been disclosed because the reasoning of this decision is not publishing. Upon our request, the answer has become known.

From the Supreme Court of Cassation we were requesting information on the reasons for the temporary unavailability of the website of the institution, as well as of many other judicial bodies, which would otherwise not be communicated.

Proceedings before the Administrative Court after our request to the Government regarding the rules for the use of official credit cards by public officials and civil servants are still pending.

Memorandum of understanding signed between the Government and the European Bank for Reconstruction and Development was promoted by politicians during the signing, but has not been published. Moreover, when we asked for, we encountered a strange response. Due to the importance of this case for the practice of the Law on Free Access to Information, quote it in full:

Government of Serbia

General Secretariat
11 Nemanjina Street
Belgrade

Subject: Declaration on the request for amendment number 07-10424 / 2015 from 31. 12. 2015.

Dear Sir/Madam,

With your act, you are requested to amend the request for information from September28. 2015, in accordance to which, on December 23, 2015, we have submitted urgency. As stated in the letter, the request for information "is deficient." The reason alleged deficiency of request for access to information would be that the request apparently does not contain "a description of the requested information." You concluded that this is contrary to the Article 15 of the Law on Free Access to Information of Public Importance because it apparently requires that the request contains "a description of the requested information."

Furthermore, you are inaccurately concluding that we requested "a copy of the document without asking for information of public importance". In this regard, you are referring to the "definition of information" - "meaning we assign to data, or set of data in a context" and concluding that the request does not contain request for submission of set of data on some event. At the end you are requesting to amend the request within 15 days, under threat of rejection (without reference here or elsewhere on the legal basis - Article 58 of the Law on Administrative Procedure).

With the request we were seeking for the "Copy of the Memorandum of Understanding with the European Bank for Reconstruction and Development".

In connection with the request that you have sent, we are pointing out the following:

This letter does not represent an editing of the request for access to information, as no editing of our request from September 28 was not necessary.

In accordance with the Article 5, Paragraph 2 it is stipulated that "everyone shall have the right to access information of public importance by being allowed to examine a document containing information of public importance, by being entitled to make a copy of that document, and by being entitled to receive a copy of such document on request, by mail, fax, electronic mail or otherwise".

When a request for access to information requires a copy of an identified or identifiable document, such a request, unless otherwise indicated, clearly refers to all the information that the document contains. And otherwise, it is logical to assume that the applicant of the request seek to access or obtain a copy of the document precisely to find out certain information contained in this document. Therefore, the request (in this case, the General Secretariat of the Government of Serbia) for "editing" of request for access to information of public importance, in the manner to state the information that request refers to, is absurd. Namely, applicant (in this case Transparency - Serbia) generally does not know (and therefore can not state in the request for access) which information are contained in the document before the access is granted.

Incorrect is the assertion of the public authority (the Government of Serbia - General Secretariat) that the request for information is incomplete. Public authority is alleging only part of the provision of the Article 15 of the Law on Free Access to Information, due to which the ignorant could be mislead. In paragraph 2 of that Article, it is stipulated that applicant must specify, among other things, "as many specifics as possible of the requested information" and not as the public authority states "description of the requested information". Meaning of this provision is not that the applicant should describe which information is seeking (in a document), but if he/she does not know in which document information are contained, with his description, to help the authority to find such a document.

When a request seeks for a copy of the entire document (determined or determinable), then designation of the document or description of its essential characteristics (on the basis of which could be identified and found), is as precisely as possible "precising information". Therefore, the conclusion that we requested "a copy of the documents, without requesting information of public importance" is incorrect.

In the request for editing, you are also indicating “definition of information". However, you are not indicating where this definition is coming from or what could be its significance in this case. In fact, this is not about the definition for the purposes of the Law on Free Access to Information of Public Importance. Whether it is on the definition of any other regulation or technical text, and whether the definition is correct or not, its relevance is questionable in this case.

We believe that with this "request for editing" you severely violated our right to access to information, which is based on the Law on Free Access to Information of Public Importance (Official Gazette of the RS no. 120/2004, 54/2007, 104/2009 and 36 / 2010) and Article 51 of the Constitution of the Republic of Serbia (Official Gazette of the RS no. 98/2006). You did it because:

Firstly, contrary to the Law, failed to within the statutory deadline (Art. 16), perform in one of the ways that the law stipulates (compliance with the request, deny the request, etc.);

Secondly, because after obtaining urgency, you did not proceed in one of the ways envisaged by the Law, you sent "request for amendment", even though the request was apparently precise and it could be acted upon. In this way you further hampered the realization of the right because it could happen that the Administrative Court treat the referral of this letter as if it was interrupted "silence of the administration" and finds that the plaint is inadmissible in an administrative dispute;

In addition, in the request you specified December 31, 2015 as the date of the adoption. This act we have received on January 13, 2016. Even holidays that lasted several days during this period can not be the explanation for this big difference, so it is obvious that date of request is incorrectly labelled.

For Transparency - Serbia

Nemanja Nenadic

Belgrade, January 14, 2016

After this reply and accompanying announcement of Transparency Serbia, the General Secretariat of the Government has begun to respond to a number of requests that were previously rejected by reference to the same or similar absurd basis or were simply ignored. Thus, Transparency Serbia got answers upon some of requests that were submitted more than a year earlier.

From the Republic Public Prosecutor, as competent authority, we have got information on the RPP control over basic and higher prosecution in Novi Sad on the occasion of a specific case which was of importance for the fight against corruption.

From the Government we have got a copy of the quarterly report of the Ministry of Interior, for which otherwise there is neither obligation nor the practice of publishing. Transparency Serbia is committed to the establishment of this obligation and set of such demands could contribute to achieve this goal.

It is also important the case of requesting information on the Government decisions (conclusions) regarding the reconstruction of health facilities. It is about the emergency procurement of works for the need of reconstruction of health facilities. Government's Council for the Fight against Corruption pointed out on the problematic nature of this decisions and the analysis of Transparency - Serbia had shown that urgency and reduced competition had adverse effects on the budget.

From the RPP we requested and get statistics on the prosecution of corruption criminal acts in 2014 and 2015, which we have subsequently published. These data should become available to the public without making a request.

From the Constitutional Court on two occasions we have requested for and quickly received copies of documents - an initiative challenging the international agreements, their constitutionality and information about the proceedings of the Constitutional Court on these initiatives. We also have received copies of the initiatives for assessing the constitutionality of several other laws adopted by the Assembly (eg. the Law governing the legalization of building constructions). Although, as can be seen from the responses received, the initiatives to challenge the constitutionality and legality of the act are not secret, the public receives sufficient information about them only after the Constitutional Court decision, which could also be changed.

From the Government we we have requested for and received relevant information on two decisions on dismissal of two officials that drew great public attention. Namely, for the police director and director of CHC Dedinje it was announced that they are dismissing after years of service and life, but the reasons were not at all clearly presented nor justification of the decision on dismissal was published. In some media speculation about possible political motives were disclosed. In order to gather relevant information about that, in requests we have included not only the justification of concrete decisions but also documents that should show that the Government was acting consistently (eg. data on appointed acting directors of health facilities, data on previous appointments). Namely, when submitting the request for access to information, a direct question does not necessarily lead to the desired answer, but it is necessary to collect a significantly larger number of documents. Transparency - Serbia published data so that everyone could bring a substantiated judgement. On the other hand, we advocate for publishment of justification of human resource solutions without anyone's request.

From the Assembly we have requested information on the financial effects of regulations, as well as copies of amendments to several laws in the procedure and the opinion of the Government on these amendments. We are committed to the publication of these documents before anyone asks for them, the possibility to do so have been provided a long time ago with amendments of the Rules of Procedure, but this still has not happened.

The Assembly has got requests that discovered poor practice in specific areas which may affect changes of such practice. Thus, for example, thanks to our request, it was revealed that the National Assembly did not receive the recommendations of the Group of States against Corruption of the fourth round of evaluations, although a significant part of these recommendations relates to activities of the legislature. Another example is the formation of the Supervisory Board before the elections, which were held in April 2016. Although it was known that SB has not been established and thus the Law on the Election of Members of the Parliament was violated, until this request and response of the Assembly it was not widely known that the parliamentary groups did not submit their candidates and why this violation of the law occurred.

There are cases where documents were already available, but not at the place where stakeholders would look for. Therefore, in response to a request, we found out that the work plan and the report on work of the Government can be found, but not on the Government's website, but the website of its General Secretariat. This website is normally updated very irregularly. Another example is some conclusions about the use of the budget reserve that we found out that were published in the Official Gazette (we are advocating for publication on the website).

In many cases, we were requesting data on appointments performed by the Government that are interested for determination whether they meet the legal requirements in terms of expertise and whether the previous procedure has been carried out. Justifications that we have received were published.

From the Government we also have requested information in cases where data that have been published in media were confusing. For example, it occurred in connection with the distribution of funds collected from suspects on the basis of the Article 283 of the Criminal Procedure Code (postponement of criminal prosecution). In fact, at the moment when the news on that distribution appeared, it has not even been initiated, which we found out by requesting documents, and soon afterwards the competition for the allocation of these funds was announced. For similar reasons, we have requested and received a copy of the conclusions of the Government by which is "recommended" to local self-governments to "reconsider the possibility that farmers, who use the land without legal basis (usurpation), get the permission to report area of land they are using and justification of this conclusion-document on the basis of which it was adopted". This "recommendation" has opened a number of challenges, including the questionable legality of the recommended actions. All this happened in the absence of information on which citizens could make a judgment - not one of documents had been published. Transparency - Serbia is committed to the publication of the Government conclusions and documents on the basis of which were adopted, except where confidentiality is necessary upon legally established reasons. At the moment things are placed opposite - the conclusions of the Government are not published unless the Government decides otherwise.

Public enterprises are often the target of criticism because of poor financial management, party employment and violation of rules from the anti-corruption legislation. One of problems connected with them is that the information on business performance and control over the work is largely unavailable. Information on the work of such enterprises are prepared by ministries, but mostly it remains unknown whether they are even discussed at the meetings of the Government committees or the Government. Transparency - Serbia has proposed that this area should be systematically regulated by the Law on Public Enterprises, and in the meantime we have requested data about current actions of the Government on this point.

According to the fact that in April 2016 early parliamentary elections took place and the Anti-Corruption Agency received approval from the parliamentary committee to engage a certain number of observers of the election campaign, we were interested in the documents that a parliamentary committee had at its disposal in this decision-making. Namely, these documents were not published on the website of the Agency or on the National Assembly and approved allocations do not match with those on which the Agency would have right under the Law on Financing Political Activities.

One of the more interesting requests for information related to the decision of the Government to expose used vehicles of state bodies and public enterprises at the area in front of the "Palace of Serbia" (former SIV-1) before selling them and on the associated costs in the implementation of that decision. In fact, not only that these used vehicles could not be sold for months, but due to their placement in this area was much more

difficult for business visitors and employees to access the building in which are located a number of state authorities. In order to block the passage during working hours, police officers were engaged from two sides. Therefore, the serious doubts have arose that in this case the proceeds from the sale of vehicles brought with it substantial costs that could be avoided if the sale was done elsewhere (eg. car market). Answers we have got are not yet sufficient in order to make comprehensive conclusions, it is necessary to submit additional requests. In the meantime, we pointed out on this question to the State Audit Institution, which normally dealt with the question of the expediency of the use of official vehicles.

Data on these and other requests for access to information which Transparency - Serbia has submitting, as well as comments on them can be found on webpages
http://www.transparentnost.org.rs/index.php/sr/inicijative-i-analize-ts and
http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom

Two important decisions of the Administrative Court upon other requests

During the implementation of our project, the Administrative Court brought several judgments in cases of access to information, which are of greater importance.

Data on employment in the public sector

On September 17, 2015, the Administrative Court ruled in favour of journalist of "Danas" Bojan Cvejic, who in March this year sued the Government of Serbia for failing to provide data on the number of newly employed in the public sector. Court ordered the Government Commission for approval of employment that within 15 days decide on journalistic request, according to the judgment which was delivered to Cvejic.

Court proceedings lasted half a year. On March 17, journalist filed a plaint to the Administrative Court against the Government of Serbia because even five months after submitting the first request he did not receive answers on the number of newly employed in the public services after the decision that bans new employment by 2016 has been brought. On October 22, 2014, journalist of Danas submitted the first request for access to information of public importance to the Government of Serbia - its Commission for approval of new employment and another request with identical content was submitted on February 10, 2015. However, answer to any of requests was not provided. According to the court judgement, bearing in mind that two requests for free access to information of public importance have been submitted, the Administrative Court separated these two cases, and brought the decision on the first request, published the newspaper "Danas".

In a comment, Transparency - Serbia analyzed some issues from this court decision, but also the previous actions of the Government[27]. Otherwise, in the case from the legal point there is interesting question on reasons on which the Government Commission invoked when it was refusing to comply with the request. In response to plaint, the Commission stated that it did not comply with the request because it "is not actively legitimized public authority in accordance with the Law on Free Access to Information of Public Importance," and because certain questions are not related to the scope of work of the Commission.

Government commissions, as working bodies, are not considered as public authorities. What is the consequence of this? Certainly the consequence is not that there is no duty to proceed upon the request or to ignore it, but the opposite - the duty of the Government is to respond to the request submitted to its commission. Even the Commission itself should forward the request to the Secretary General of the Government, as soon as it was delivered.

Anyway, Cvejic first tried to obtain data on new employees despite the ban from the competent Ministry of Finance, and since the answer failed, he addressed the Commissioner for Information of Public Importance, who therefore imposed two fines - from 20,000 to 180,000 dinars. Ministry paid fines without question, of course from the state budget, and upon the repeated request from journalists to provide the number of newly employed, responded that they do not have these data. Journalist was instructed to address the Government

[27] http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7881-presuda-zbog-nedostavljanja-podataka-o-zaposljavanju-u-javnom-sektoru

of Serbia.

Since on the same question, raised twice, the Government did not respond, and bearing in mind that the Commissioner Rodoljub Sabic has no authority to act when an appeal is submitted against this institution, the only legal way that left was the filing a plaint for "silence of the administration" Administrative Court.

At the beginning of December 2013, the Government of Serbia adopted the Law on Amendments to the Law on the Budget System, which stipulates the implementation of the ban on recruitment in the public sector until December 31, 2015. Also, exceptions to the prohibition were envisaged as well and they are possible only with the consent of the specially established and temporary body of the Government of Serbia – the Commission for approval for new employment and additional business engagement in public funds users. Special resolution was brought as well which regulates how to claim the approval for new employment beside the ban and which also stipulates an obligation to publish the conclusions on approval on the website of the Government of Serbia, what was not respected.

Because of the silence of the Government, a journalist of Danas has started "by foot" from ministry to ministry and came to data that only in 2014 the Government's Commission has given approval for at least 13,500 new employments in the public sector despite the current ban - 7,218 permanent and 6,212 temporary and under contracts. Most of approval in 2014 was recorded in the Ministry of interior - even 2,960 and in the Ministry of Health, which "employed" 2,104 people.

Disclosure of public official's biographies

At the end of 2015, the political movement "Enough is enough - Sasa Radulovic"published a statement under the title "The Court ordered that Gasic publish his biography." Statement further states that the court ordered the General Secretariat of the Government of Serbia to respond "on the basis of which business references Bratislav Gasic, the outgoing defence minister and former coffee merchant, has been appointed for the President of the Board of Directors of Srbijagas in March 2013"[28]. Statement does not fully correspond with the content of the court decision. Namely, as it can be seen from the document published on the same webpage, the court annulled the decision of the General Secretariat of the Government, which had been denied access to information, but it was not deciding in the dispute of full jurisdiction. With the court decision it was in fact ordered to the Government to reconsider its arguments and after that, to provide access (in whole or in part) or to issue a new decision on denial, which would be clear, reasoned and based on the law unlike the previous one. Essentially, the judgment should lead to disclosure of a large part of requested information, because it is the information that was relevant to the legality of the appointment procedure, which means that privacy can not be absolute.

In the statement of the applicant of information is further talking about the consequences of poor management of the public company "Srbijagas", but also on the wider action "disclosure of biographies", in which this political movement filed 34 plaints to the Administrative Court because of the refusal of the Government to disclose work biographies of 160 public officials including directors, presidents and members of management and supervisory boards of state-owned enterprises. It further says that Serbia is the only country in Europe where the biographies of public officials are declared confidential data and specific examples of officials who are suspected to have higher education are cited.

With regards to this decision, Transparency - Serbia commented the question of provisions on the election of qualified employees in the Law on Public Enterprises. Specifically, during 2013 and 2014, we tried to determine to what extent the provisions of this law are respected. Here we encountered a problem - the inability to get the data on the elemental facts. The same was for the company "Srbijagas" - the Government did not respond to requests from Transparency - Serbia to submit documents proving that members of SO are complying with the statutory requirements, as in the case of other public enterprises[29].

[28] http://dostajebilo.rs/sud-naredio-da-gasic-objavi-svoju-biografiju/

[29] www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/8133-javna-preduzeca-strucnjaci-i-politicari