

EFFICIENCY OF THE ADMINISTRATIVE APPEAL (THE CASE OF SERBIA)

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Abstract

This paper completes the research of the administrative appeal under the Serbian law. It is preceded by two articles containing normative analyses of the general regime of the administrative appeal as prescribed in the General Administrative Proceeding Act and administrative remedies in special policy domains. The main part of the paper is an empirical research concerning the efficiency of the administrative appeal. Efficiency is understood as a precondition for preventing appellants from seeking judicial protection and thus reducing the workload of the court. The remaining part is dedicated to the efficiency of two other administrative legal remedies, as well as to the efficiency of the work of the Ombudsman. The purpose of the latter is to provide material for the consideration of possible amendments to the regime of the administrative appeal, which could enhance its efficiency.

Keywords: administrative appeal, efficiency, Ombudsman, administrative legal remedies.

1. Introduction

This paper completes the research of the administrative appeal under the Serbian law. It is preceded by two articles containing normative analyses of the general regime of the administrative appeal (Cucić, 2011a) as prescribed in the General Administrative Proceeding Act¹ (GAPA) and administrative remedies in special policy domains (Cucić, 2011b). The purpose of this article is to provide empirical research on the efficiency of the administrative appeal and of the mentioned remedies in special administrative areas. Such a comprehensive approach, both normative and empirical, should provide the basis for a comparative, especially European, perspective on the topic of administrative appeals (Willemssen, Götze and Dragoş, 2010, p. 2). All three articles should be read in conjunction. A short overview of the research topic is provided in the next section.

2. Aims of the research

For the purpose of the research, administrative remedies shall be considered efficient if they reduce the workload of courts. The research has four aims. The primary goal is to establish whether the administrative appeal, *i.e.* the specific set of features it encompasses, is efficient in the said sense. The key characteristics of the administrative appeal are as follows: its use is mandatory prior to access to judicial review; it is, as a rule, allowed against all first instance administrative acts, it has a devolutionary effect; it has, as a rule, suspensory effect; it can be used to challenge all forms of illegality, as well as inopportunity (misuse of discretionary powers) of an administrative act, when submitted by a private party; it has *non reformatio in peius* effect; it can be used for challenging both the acts and the 'silence' of the administration, if it finds the appeal to be founded, appellate authority can annul or alter the challenged administrative act.

Further aim is to examine the efficiency of one particular trait of the administrative appeal by comparing it to a similar administrative recourse in the field of public procurement. Namely, the administrative appeal must be sent to the appellate authority via the first instance authority, the one that rendered the appealed act. This is prescribed because GAPA provides a self-control mechanism within appellate proceedings. Provided it finds the administrative appeal to be founded, the first instance authority has the right to replace the appealed act with a new one in order to meet the requests made in the appeal. Therefore, aside from having devolutionary effect (appellate, second instance authority decides on the appeal), the administrative appeal has a remonstrative effect (the first instance authority is given the chance to replace its own act). This makes the administrative appeal more comprehensive. Nevertheless, the first instance authority is not obliged to declare itself once again on the same matter, but only has a chance to do so. In other words, it has an opportunity, but not an obligation, to rectify its mistakes, even if it finds the appeal to be founded. On the other hand, there is a special administrative remedy in the public procurement domain, namely the request

1 Official Gazette of the Federal Republic of Yugoslavia, no. 33/1997 and no. 31/2001, Official Gazette of the Republic of Serbia, no. 30/2010, enacted on July 11, 1997.

for protection of the rights of bidders and of the public interest (for more detail, see Cucić, 2011b, pp. 68-70). One of its distinct features is that it is both remonstrative and devolutionary. The request has to be submitted to the first instance authority, procuring entity, and it has to render its decision upon it, *i.e.* it has to deliberate twice on the same matter, same case. Here lies the significant difference concerning the position of the first instance authority in the appellate proceeding, which has no obligation to act upon the appeal and of the procuring entity, as a first instance authority in public procurement proceedings, which must do so. If a person submitting the request is still not satisfied, it can proceed to the second instance authority, the Republic Commission for the Protection of the Rights in the Public Procurement Proceeding.

The idea is to compare how often first instance authorities use the opportunity to replace the appealed act with how often procuring entities rectify their mistakes when deciding on request. This would enable us to make conclusions as to possible change of the administrative appeal regime, which could enhance its efficiency.

The third objective is to study the efficiency of another administrative recourse – objection in the field of broadcasting (for more detail, see Cucić, 2011b, pp. 75-77). Broadcasting licenses are issued and revoked by an independent regulatory agency, the Republic Broadcasting Agency. Its decisions cannot be challenged by appeal to a higher authority, but by an objection, as a remonstrative administrative recourse. Thus, the Agency decides twice in the same case. A similar opportunity is given to all authorities that render non-appealable administrative acts (ones that can be challenged only before the Administrative Court), whether in the first instance proceeding or upon appeal. They have the chance to use a special extraordinary administrative legal remedy prescribed by GAPA – change and annulment of a resolution in relation to administrative dispute (for further detail, see Cucić, 2011c, pp. 78-79). This extraordinary remedy can be used once an administrative act is challenged before the Administrative Court. The authority that issued the challenged act has the chance to rectify its mistakes by changing or annulling its act in order to meet the requirements of the suit submitted to the Administrative Court.

The intention is to compare the efficiency of these two remedies – objection and change and annulment of the resolution in relation to an administrative dispute. Such comparison could provide an answer to the question whether similar remonstrative remedies should be introduced in other policy areas, especially in those areas in which independent regulatory agencies operate, such as competition, telecommunications, and securities markets.

The final aim was to research the activities of the Ombudsman and to check whether it managed to solve the complaints where the administrative appeal was previously unsuccessfully used. If this appears to be the case, the intent would be to examine what made the Ombudsman successful and whether, on the basis of those findings, the administrative appeal regime could be amended in order to enhance its efficiency.

In the following section the methodology of the research is explained.

3. Research methodology

It has been mentioned that efficiency is understood as the reduction of the workload of the Administrative Courts. The research proposal presented at EGPA conference in Toulouse in 2010 sets a quantitative criteria for the determination of efficiency. The administrative appeal shall be considered efficient if it diverts at least one half of the appellants from seeking judicial review of the administrative acts, *i.e.* from submitting suits [*tuzba*] to the Administrative Court (Willemsen, Götze and Dragoş, 2010, p. 7). It has been observed that such an approach could raise some issues. Notably, the appellant could renounce the judicial review due to a decision reached in the appellate proceedings (whether the appeal was successful or rejected; in this latter case this led to a subsequent understanding of the appellant that the first instance authority did resolve the case in the right way). However, this can be, as well, a consequence of lengthy judicial proceedings or of the expectation of the appellant that the court cannot help him (for instance, if the administrative act was appealed for misuse of discretionary powers, this can be appealed only before a second instance administrative authority, while only illegality of an act can be disputed before the Administrative Court). Anyhow, the reasons that led the appellant to not seek judicial control are subjective and thus cannot be quantified. Accordingly, in spite of stated deficiency, the research can be conducted only on the basis of the number of submitted administrative appeals and suits.

Efficiency of the administrative appeal in the research is determined on the basis of submitted administrative appeals before certain administrative authorities and the number of suits subsequently raised before the Administrative Court against decisions reached in the appeal. The necessary data were collected in two ways. A part of them is contained in publicly available reports on the activities of the observed administrative authorities. Where such data were used a note to that extent is given. The other part of data was gathered on the basis of questionnaires sent to administrative authorities, which failed to publish the data we needed. The questionnaire contained the following questions: (1) How many appeals to first instance administrative acts were submitted in a certain time period (most often the data requested and received pertain to 2010²); (2) How many appeals were dismissed (on formal grounds), rejected (on the merits) and accepted?; (3) How many suits were submitted to the Administrative Court against the decisions reached on appeal in the observed time period? Finally, a part of data, concerning the number of suits submitted against decisions on the appeal of certain administrative authorities, was obtained from the Administrative Court.

Some of the limitations concerning the gathered data are presented below. Firstly, the research did not include every authority deciding on the administrative appeal. Such an undertaking was not feasible, given that there are administrative authorities not possessing the required data, as well as taking into account the inability of authors to

2 The research was conducted for two years. Therefore, data gathered are from different years, but mainly from 2010.

perform a research of that scale with respect to time, territory and content. Nonetheless, collected data relate to those administrative domains, which are, in the words of the research proposal – ‘more susceptible to administrative litigation’, such as customs, taxes, real estate registers, social security, public access to information, public servants employment, eviction of illegal tenants, personal status record etc. Furthermore, appellate authorities can, in accordance with specific subject-matter, be at the level of state (republic authority), province or local government unit. Besides already mentioned authorities at the central, state level, we managed to gather data on all the appeals submitted to all provincial administrative authorities, as well as data on all the appeals submitted to the administrative authorities of the three largest cities in Serbia, Belgrade, Novi Sad and Nis, for the relevant time period. Despite the inexistence of information on the total number of appeals submitted to all administrative authorities at all levels of government, taking into account the number of authorities included and domains in which they operate, as well as the different subject-matters that were encompassed by the research, the gathered sample can be considered representative, and hence, it enables us to reach a sound conclusion on the efficiency of the administrative appeal in Serbia. Another argument to support this assumption is the total number of processed appeals – 57,103.

The second limitation of the research concerns the fact that some of the administrative authorities whose work was examined keep statistic data on annual level. This means that collected data on the administrative appeals and the suits for a certain year do not relate to identical cases. In concrete, suits submitted against decisions on appeals in one year, do not completely pertain to the decision on appeals submitted to the same authority in the same year, *i.e.* some of the suits are submitted against decisions on appeals rendered in the previous year, while upon certain appeal decisions will be made in the following year, and only then can a suit be submitted against them. Hence, the collected data do not provide a chance for an absolute accurate determination of the number of persons who submitted an administrative appeal in one year and later submitted a suit to the Administrative Court against the decisions reached on the appeal in the same cases. Notwithstanding this, having in mind that the majority of administrative authorities, especially those receiving a large number of appeals, get approximately the same number of appeals each year, the gathered data offer accurate results on the efficiency of the administrative appeal. Particularly, the suits raised against the decisions on appeals submitted in the year preceding the year for which the data were gathered, are compensated by the number of appeals that are yet to be decided upon and against which the suit to the Administrative Court can be submitted in the year following the year for which the data are gathered. Moreover, some of the authorities we contacted gave us the data on the appeals and suits submitted in identical cases.

The third and the last remark, data collected from different authorities are not from the same time period, *i.e.* same calendar year. This is due to the fact that this empirical research was conducted for two years. Still, for the reasons previously explained,

concerning the assumption of approximately the same number of the administrative appeals received each year, we find this not to diminish the representativeness of the administered sample.

In conclusion, we consider that the described limitations do not have such nature and magnitude as to jeopardize the overall results of the research and reached conclusions. We did, however, find it necessary to depict and elaborate upon them for academic reasons.

Aside from the efficiency of the administrative appeal, the research was extended to the collection and the processing of data relating to the efficiency of two mentioned administrative recourses in special administrative domains – request for the protection of the rights of bidders and public interest and objection in the field of broadcasting. The examination of the efficiency of the latter required the collection of data from the Administrative Court on the number of court cases that ended due to the fact that the administrative authority whose act is challenged satisfied the requirements of the suit. These data provide the opportunity to estimate the efficiency of certain treats of the administrative appeal and to propose amendments to the general regime set down in GAPA.

As a final point, aside from reports and questionnaires, the research included interviews with public servants from the respective administrative authorities, who clarified the causes of some of the research results. Additionally, an interview was the main source of information concerning the work of the Ombudsman.

4. Research results

The main part of research results includes data on the number of submitted administrative appeals and the number of suits submitted to the Administrative Court for a certain period of time. Where available, we provided data on the manner of deciding on the appeals (how many appeals were dismissed, rejected and accepted), so as to determine whether there are appellants who, despite the unsuccessful challenge of appealed acts, did not pursue judicial review. This information can give us the opportunity to make conclusions in relation to the quality of work of appellate authorities and the quality of judicial protection.

Besides the results on the efficiency of the administrative appeal, we displayed the results of the efficiency of pertinent special administrative remedies.

The Republic Fund for Pension and Disability Insurance, *i.e.* the social security fund, rendered 558,377 first instance administrative acts in 2010. In 2010, 30,580 appeals were submitted to the Fund, which managed to decide upon 24,387 of them. The Report of the Fund does not provide information on how the appeals were dealt with (dismissed, rejected, or accepted). Aside from the decision on appeals, in 2010, the Fund issued 343 decisions on annulment of the first instance administrative acts by applying the special extraordinary legal remedy prescribed in this domain, revision. These decisions could have been challenged before the Administrative Court as well, thus, making the total number of such decisions 24,730. In 2010, 2,398 suits were submitted to the

Administrative Court against the decisions of the Fund (Social Security Fund Report, 2007-2011). Consequently, 90.23% of appellants did not seek judicial protection. Only 9.97% of them pursued with submission of the suit to the Administrative Court.

The Tax Administration, as an appellate authority in tax proceedings, decided on 10,462 appeals in 2010. The Tax Administration dismissed 33, rejected 5,572 and accepted 4,854 appeals. 1,450 suits were submitted against its decisions to the Administrative Court. Accordingly, 86.14% of the appellants did not file a suit. Judicial review was sought by 13.86% thereof. Although there were 53.57% of unsuccessful appellants, only one in four initiated judicial proceedings against the decision on appeals.

The Appellate Commission of the Government decides on the appeals of public servants against administrative acts concerning their rights and duties. Between September 1, 2006 and September 1, 2007, this authority decided on 8,231 appeals. In 186 cases, appeals were dismissed, in 7,530 rejected and in 515 accepted. The Commission's acts were subject to suit before the Administrative Court in 293 cases (Appellate Commission Report, 2006-2007). So, the administrative appeal was efficient in 96.44% of cases. Merely 3.56% of appellants disputed decisions on appeals in judicial proceeding. Out of 93.74% of unsuccessful appellants, approximately every 26th addressed the Administrative Court.

The Customs Administration decided on 2,759 appeals on the first instance acts in this domain in 2010. We were not given the number of dismissed, rejected and accepted appeals, but we were informed that 990 suits were submitted against decisions on these appeals. Therefore, 64.12% appellants restrained themselves from pursuing judicial protection. In 35.88% of cases, the administrative appeal was not efficient.

The Ministry of Environment, Mining and Spatial Planning is the second instance authority in the area of registration of data in the Real Estate Register. In 2011, the Ministry received 5,681 appeals and decided on 2,034 of them. Appeals were dealt with in the following way: 61 dismissed, 631 rejected and 854 accepted, while in 488 cases the appellate proceeding was permanently suspended due to the withdrawal of the appeals by the appellants. 264 suits were filed against the Ministry's decisions in the same period. Hence, 87.02% of appellants did not go further, while 12.98% continued to challenge the administrative acts before the Administrative Court. Unsuccessful appellants did not initiate judicial control mechanism in 61.85% of cases, while this happened in the remaining 38.15% of cases.

The Data Protection Commissioner, in charge of public access to information, decided on 1,466 appeals against refusal to provide information or 'silence' of administration in 2010. It found 1,363 appeals to be founded and 103 to be unfounded. Where appeals were founded, in 576 cases the Commissioner ordered the competent authority to provide access to requested information, in 764 the proceeding was permanently suspended as a consequence of subsequent provision of requested information by the authority, while in 23 cases the Commissioner annulled the first instance administrative act and returned the case to the respective authority to resolve it differently. In the case of unfounded appeals, 62 of them were dismissed and 41 rejected. Only 18 suits to the Administrative

Court were filed against the Commissioner's decisions (Data Protection Commissioner Report, 2010, pp. 44-45). As a consequence, the appeal was efficient in 98.77% of cases. Not more than 1.23% of appellants addressed the judiciary subsequently. Out of 7.03% of unsuccessful appellants, only 17.48% or one in six went before the Administrative Court.

The Ministry of Human and Minority Rights, State Administration and Local Government, as an appellate authority in the process of registration of citizens' associations, received 31 appeals in 2010. The Agency for Commercial Registers, as the first instance authority in this matter, issued 6,133 acts in the same period of time. The Ministry decided upon twenty-six appeals by dismissing two, rejecting ten and accepting fourteen. Decisions on the Ministry were challenged before the Administrative Court in four instances. The administrative appeal thus prevented 96.15% of appellants from becoming applicants before the court. Only 3.85% of them did mount judicial challenge. Out of 46.15% of unsuccessful appellants, one in three addressed the Administrative Court.

At the level of the Autonomous Province of Vojvodina, all provincial authorities issued a total of 23,063 first instance administrative acts, in the areas of finance (12), industry, energy and mining (758), agriculture, forestry, fishery, hunting (418), traffic (224), urbanism and construction (937), employment (1457), health and social security (16,872), science, education and culture (1321), and other administrative domains (1084). In 2010, 5,991 appeals were submitted to all provincial authorities. They decided on 5,267. Data on the manner of deciding are not available. The number of suits filed to the Administrative Court was 140 (Autonomous Province Report, 2010, p. 10). The appeal was efficient in 97.34% of cases. Only 2.66% appellants remained unsatisfied and pursued judicial protection.

The City Council of the City of Belgrade decides on the administrative appeals in the following domains: taxi transport, inspection, urbanism and building permits, social security, and child protection. In the period between January 1, 2009 and December 9, 2011, it decided upon 1,918 appeals. We were not given the information regarding how many appeals were dismissed, rejected and accepted. In the same period, 616 suits were filed against the decisions on appeal. The administrative appeal prevented 67.88% appellants from addressing the Administrative Court. 32.12% of them have initiated court proceedings.

The Department for Municipal and Residence Affairs of the City of Belgrade is the appellate authority in the proceedings for the eviction of illegal tenants. In 2011, it decided on 194 appeals, out of which 8 were dismissed, 70 rejected and 116 accepted. At the same time, 88 such decisions were disputed before the Administrative Court. The appeal was efficient in 54.64% of cases, while 45.36% of appellants filed a suit. It has to be noted that this proceeding is a bipartisan proceeding, and thus, in each case one party is not satisfied with its outcome. Therefore, unsuccessful parties challenged decisions on appeals in 45.36% of cases, *i.e.* in almost half of all cases. Such low efficiency of the administrative appeal, still passing the bar we set in the research, could be explained by the fact that the resolution of this subject-matter has existential significance for the parties in the proceeding.

The City Council of Novi Sad decided on 960 appeals in the period between January 1, 2009 and December 31, 2011 (Novi Sad Report, 2012, p. 21). The Administrative Court supplied us with the information that there were 62 suits submitted to it against the decisions of the City Council of Novi Sad in 2010 and 2011. Data for 2009 could not be obtained from the Administrative Court, since it started to work as of January 1, 2010. Although lack of data for 2009 prevents us from accurately calculating the efficiency of the administrative appeal, it still allows us to conclude that it was efficient. Namely, in two out of the three years observed, in only 6.46% of cases the appeal was not efficient. Even if that percentage would increase seven times, it would still be below 50%. Consequently, even if there were six times more appeals in 2009 than in 2010 and 2011 together, which is virtually impossible, the administrative appeal would still pass the efficiency threshold.

The City Council of Nis decided on 16 appeals in 2011. It dismissed two, rejected eleven and accepted three appeals (Nis Report, 2012, p. 16). Suit was filed against three decisions. Hence, 81.25% of appellants restrained themselves from seeking judicial protection, while 23.08% were persistent in that direction.

Finally, when all the data are added, there were 57,103 decisions on administrative appeals. They were challenged before the Administrative Court in 6,264 cases. As a result, the administrative appeal displayed remarkable efficiency of 89.03%.

The results for special administrative legal remedies are as follows.

The procuring entities, as first instance authorities, received 806 requests for the protection of the rights of bidders and public interest in 2010. After procuring entities decided on request, or after their 'silence', 690 parties who submitted request opted for the continuance of the proceedings before the Republic Commission for Protection of the Rights in the Public Procurement Proceeding, as second instance authority. In the same period, 44 suits were submitted to the Administrative Court against the decisions of the Commission. Therefore, the request was efficient in preventing judicial proceedings from being initiated in 93.62% of cases. Only 6.38% of cases were subject to judicial scrutiny. Even more important information is that in 116 cases the proceeding ended before the procuring entity, never reaching the second instance. Hence, in 14.39% of cases, obliging the first instance authority, the procuring entity, to decide on challenge of its own act, had effect and saved not only the Administrative Court, but the Commission as well, from additional workload. On the other hand, data on how often the first instance authorities used the possibility to replace their own appealed acts in the appellate proceeding are disturbing. The first instance authorities in the municipalities of the City of Belgrade competent for eviction of illegal tenants did not even once use this opportunity in 2010, although their acts were appealed 263 times. Similarly, the Agency for Commercial Registers, as a first instance authority in the process of registration of citizens' associations, used this opportunity only three times in 2010, while its acts were appealed in 45 instances. Thus, the Agency used this opportunity in only 2.22% of cases. When we compare cited data, we can perceive an augmented efficiency of the work of the first instance authorities in the public procurement proceeding.

The Republic Broadcasting Agency received 276 objections to its first instance decisions on refusal of issuance or revocation of issued broadcasting permits in 2008, 2009 and 2010. The Agency decided upon them in the following way: 30 objections were dismissed, 231 rejected and 14 accepted. 149 suits were submitted to the Administrative Court against decisions on objections. It appears that the objection, despite being a remonstrative legal recourse, was efficient in 46.02% of cases. Moreover, the decision of the Agency managed to prevent 42.01% of unsuccessful parties to proceed before the Administrative Court. As already elaborated, the intention of the research concerning the efficiency of the objection is to compare such data with the efficiency of the extraordinary administrative legal remedy prescribed in GAPA, which has similar effects, the change and annulment of a resolution in relation to the administrative dispute (administrative-court proceeding). Data obtained from the Administrative Court show that, in 2011, the proceedings before the court were permanently suspended due to the fact that administrative authorities met the requests laid down in the suits in 44 instances. Here we have two types of situations occurring. The first, in which the authority subsequently stopped being 'silent', *i.e.* issued the requested administrative act. The second, in which the authority used the mentioned extraordinary legal remedy – the change and annulment of a resolution in relation to the administrative dispute, in order to perform self-control, analogous to the one conducted by the Republic Broadcasting Agency upon objection. At the same time, during 2011, more than 12,000 suits were submitted to the Administrative Court. Even if we were to presume that in all 44 cases the latter situation occurred, this represents less than 1% of all cases in which administrative authorities were able to use this remedy – approximately 0.37%. The comparison of the level of efficiency of the two, points toward high advantage of the objection (46.02% to 0.37%).

Table 1: Overview of the data on efficiency of the administrative appeal

Authority	Number of appeals	Number of suits	Efficiency
Social Security Fund	24,730 ¹	2.398	90.23%
Tax Administration	10,462	1.450	86.14%
Appellate Commission of the Government	8,231	293	96.44%
Customs Administration	2,759	990	64.12%
Ministry of Environment	2,034	264	87.02%
Data Protection Commissioner	1,466	18	98.77%
Ministry of Human Rights, State Administration and Local Government	26	4	96.15%
Autonomous Province of Vojvodina	5,267	140	97.34%
City Council of Belgrade	1,918	616	67.88%
Department of the City of Belgrade	194	88	54.64%
City Council of Nis	16	3	81.25%
TOTAL	57,103	6264	89.03%

Source: Authors' own calculations

5. The relation between the Ombudsman and the administrative appeal

The Ombudsman (the Protector of Citizens of the Republic of Serbia³) is an institution recently introduced into the Serbian legal system. The first Ombudsman was elected by the National Parliament in 2007 for a five-year term.

The Ombudsman is established as an independent body which protects the rights of citizens and controls the work of administration. The Ombudsman also ensures that human and minority freedoms and rights are protected and promoted (art. 1 of the Law on the Protector of Citizens – LPC). The Ombudsman has the power to control the legality and regularity of the work of administrative authorities (art. 17 LPC). In comparison to the administrative appeal, it exercises a wider scope of control that includes, but goes beyond the concept of legality. Perhaps better put, the principle of good administration requires from administration not just compliance with legal rules, 'but also to be service-minded and to ensure that members of the public are properly treated and enjoy their rights fully' (European Ombudsman Annual Report, 2010, p. 15). In addition to the legality and expediency of an act (which are the object of an appeal), the Ombudsman may deal with the issue of fairness. Furthermore, his control is not limited to the administrative acts, but can be spread to all the activities of the administrative authorities.

The Ombudsman initiates proceedings following the complaint of a citizen or on its own initiative (art. 24 LPC). Any person who considers that his/her rights have been violated by an act, action or failure to act of an administrative authority may file a complaint with the Ombudsman.

Prior to submitting a complaint, a citizen is required to seek to protect his/her rights in appropriate legal proceedings (before the higher administrative authority or before the Administrative Court). The Ombudsman shall not instigate investigation until all legal remedies have been exhausted. In practice, the Ombudsman considers this precondition to be met if only the administrative appeal is exhausted. Exceptionally, the Ombudsman may initiate proceedings even before all legal remedies have been exhausted if the complainant would sustain irreparable damage or if the complaint is related to the violation of the good administration principle, particularly incorrect attitude of the administrative authorities towards the complainant or other violations of the rules of ethical behaviors of public servants (art. 25 LPC).

In 2010, out of 2,545 complaints received, the Ombudsman decided on 1,929. In most cases (952) complaints were rejected due to lack of grounds for initiating the procedure, while in the remaining cases (977) the procedures were completed as follows: complaints are rejected in 574 cases, recommendations are made in 229 cases, administrative authority eliminated deficiency in its work in 134 cases, complainants withdrew their complaints in 39 cases (Ombudsman Report, 2010, p. 160).

3 Regulated by the Law on the Protector of Citizens, Official Gazette of the Republic of Serbia, no. 79/2005 and no. 54/2007.

Information on how many complainants exhausted the administrative appeal before applying to the Ombudsman is not provided in its annual report. Accordingly, we could not determine in how many cases a complainant was not successful on the administrative appeal, but was successful before the Ombudsman. In order to obtain these data, we conducted an interview in the office of the Ombudsman with the Secretary General of this institution. Due to the lack of pertinent statistics, we were not provided with the information on the number of cases in which complainants previously exhausted administrative appeal. We were, however, given an estimation that in cases in which complainants had previously exhausted the administrative appeal, there were not more than 1% of founded complaints.

The main reason for such an outcome is the fact that the Ombudsman is mostly dealing with issues of formal (not material) irregularities, because of the small number of people in the office, and a large number and complexity of substantive laws in the special administrative domains. The Ombudsman largely deals with issues that go beyond the concept of legality, and which cannot be dealt with by other institutions. Practically the only intersection between these two remedial paths comes in the area of formal irregularities and the silence of administration. Although in the case of silence of administration administrative appeal and later suit can be used, the Ombudsman took the stand that in these situations it will not insist on the rule of exhaustion of remedies. The reason for this lies in the fact that the reasonable time limit for taking the decision is an important part of good administrative principles which are the main focus of Ombudsman activities.

Based on the available facts and taking into consideration the relatively short period since the Ombudsman was established, we can conclude that the complaint to Ombudsman is a parallel means of control in relation to the appeal, due to the demands that the party must first exhaust the legal remedies, and the fact that the Ombudsman deals largely with issues that cannot be subject to the appeal. This approach is common and understandable for a relatively new institution that wants to build good relations with the administrative authorities. However, over time, with capacity building and with greater recognition in the society a more active role of the Ombudsman is to be expected, even in purely legal cases that had been subject of appeal.

6. Concluding remarks

The first conclusion to be reached is the fact that the administrative appeal, quantitatively speaking, appeared to be more than efficient. In each of the analyzed administrative domains and before each mentioned administrative authority, the administrative appeal managed to avert at least half of the appellants to proceed before the Administrative Court. Even when all the submitted appeals and suits are combined, the result remains the same. The efficiency of the administrative appeal varies in different policy areas, managing to reduce the potential number of judicial workload for at least 54.64%, and at most for 98.77%. Variations in the percentage of efficiency in diverse areas might be explained by several factors: the normative regulation of

an area, the existence or the absence of discretionary powers, the significance of the subject-matter for the appellants (*i.e.* eviction of illegal tenants), the level of authority deciding on the appeal (central, provincial, local), the unilateral or bipartisan nature of the administrative proceeding etc. During the interviews public servants mentioned the sort of parties in the proceeding as one of the elements in this equation. For instance, where Attorney General has standing in the proceedings for the protection of property rights of the state, province or local government units, public servants working in his office tend to submit appeals more often in order to fulfill set norms. This results in an increasing number of unfounded appeals, which in turn augments the overall efficiency of the administrative appeal. Moreover, the request for protection of the rights of bidders and public interest, as a legal remedy most similar to the administrative appeal, demonstrated an efficiency rate of 93.62%.

The research results further lead to a conclusion that the amendment to the general regime of the administrative appeal could be done with respect to the provisions regulating the work of the first instance authority in the appellate proceedings. Obliging first instance authorities to decide once again on the appeal, of course, without extending the time period of 15 days for doing so (art. 228 GAPPA), could reduce the workload of the appellate authorities⁴. The work of procuring entities upon the request for protection of the rights of bidders and public interest seem to indicate the likelihood of such result. There is a chance that the first instance authorities are not using the possibility to replace their appealed acts, even when that should be done, due to inertness. They find it easier to leave the case to be resolved by the second instance authority. If they were obliged to reconsider the case in the light of the arguments presented in the appeal, their accountability might increase. In the case of error, they would have to stand by the same decision twice.

The determined efficiency of the objection filed with the Republic Broadcasting Agency (46.02%), as well as the complete absence of the usage of the change and the annulment of the resolution in relation to administrative dispute (only in 0.37% of cases) by administrative authorities, leave an opportunity for the alteration of the regime of administrative legal protection. Namely, the failure of the objection to avert more than one half of those submitting it to initiate judicial control, makes this legal recourse less suitable for introduction in the areas where the appeal already exists, as a kind of additional legal remedy. That might lead to the extension of administrative proceedings and further delay of judicial protection, without serious chance for noticeable additional decrease of the workload of the Administrative Court. On the other hand, the

4 The Draft of the new General Administrative Proceeding Act presents a step in the good direction. In its article 127, it states that the first instance authority, when it finds the appeal to be completely founded, must replace appealed administrative act with a new one. This excludes the discretionary power of the first instance authority (art. 225 and 226 of existing GAPPA) in this matter. However, if the first instance authorities are not obliged to deliberate once again on the appeal, it is hard to believe that they will engage in the examination of whether the appeal is founded more than they currently do.

introduction of such a remonstrative legal remedy in special policy areas where appeal is excluded, specifically in those where independent regulatory agencies decide in the first and only instance, against whose decisions, due to their nature and position, appellate control cannot be prescribed, could lead to the reduction of the judicial workload.

In its practice, the Ombudsman sets itself on a parallel course with the administrative appeal. There is very little or no intersection between these two remedial paths. One mainly focuses on the rectification of substantive legal errors, while the other concentrates on the respect of the principles of good administration. Since the Ombudsman has solved problems of unsuccessful appellants in a negligible number of cases, we had no opportunity to make any conclusions or recommendation as to the improvement of the efficiency of the administrative appeal on this basis.

It is not easy to consider the reasons for which the administrative appeal is efficient, when the criteria for the determination of such efficiency are set quantitatively. Nevertheless, we could try to elucidate at least some of them. To begin with, the features of the administrative appeal, as prescribed in GAPA, must be one of the reasons, especially its mandatory use prior to the judicial review, devolutionary effect and possibility of challenging administrative acts for any form of illegality as well as inopportunity. Another reason might be the centralization of competence for deciding on administrative appeals. As a rule, central state authorities are competent for deciding in the second instance in the Serbian legal system. Non-central, either provincial or local administrative authorities, seldom appear as appellate authorities. This can be inferred from the number of administrative appeals submitted to the administrative authorities of the Autonomous Province of Vojvodina and three largest cities in Serbia, as well as from the Serbian legislation. Even then, we have large urban centers in which the decision is made. This increases the chance of the appellate authorities having adequate human and material resources to assure the quality of their work. Correspondingly, comparative research on this topic might indicate to such an inference. The research on efficiency of the administrative appeal in Romania revealed that the quality of decisions is lower in rural and smaller areas than in larger and urban areas (Dragoş, Neamţu and Velişcu, 2010, p. 9). Given that administrative authorities in urban centers mainly decide on the administrative appeal in Serbia, a higher quality of appellate work can be expected. After all, high quality of appellate decisions might be one of the explanations for the high percentage of unsuccessful appellants who did not subsequently file a suit with the Administrative Court. Furthermore, competence for deciding on appeals in certain domains in Serbia is given to a single second instance authority. This in turn enhances the chance for uniform and consistent practice in deciding. Uniform administrative practice can assure appellants with regard to the correctness of appellate decisions and discourage them from further disputing such administrative acts. Finally, another explanation for high percentage of unsuccessful appellants who did not subsequently file a suit, and therefore high efficiency of the administrative appeal, might lie in the fact that they do not expect judicial intervention to improve their legal situation. Despite the fact

that costs of judicial review proceeding are relatively low⁵, there are other reasons that could dissuade appellants from pursuing it. Namely, there is only one Administrative Court in Serbia with insufficient number of judges, which receives thousands of cases each year (more than 12,000 in 2011) in more than 30 different policy areas⁶. Aside from lacking staff, the Administrative Court lacks the necessary specialization for certain administrative domains. As a consequence, judicial review proceedings are lengthy. Another discouragement derives from the fact that, in spite of having such power, the Administrative Court almost never decides in full jurisdiction (*pleine juridiction*), i.e. on the merits of the case⁷. Hence, even if the appellant is successful before the court, the act will be annulled, but the case itself will still not be resolved, but only sent back for reconsideration to the authority that issued the annulled act. This additionally prolongs the process of legal protection. In addition, inopportunity of an administrative act, i.e. misuse of discretionary powers, cannot be challenged before the Administrative Court, but only the legality of such an act. Thus, those appellants who challenged opportunity of an act are now left with no further recourse and they have to stop their legal battle.

In conclusion, there is still space for additional research. One of the things that would supplement this research and put it in a wider perspective would be to find out how often the administrative appeal is used in general. Moreover, it would be interesting to check whether appellate authorities more frequently accept appeals submitted by authorized public authorities, such as Prosecutor General and Attorney General, than those submitted by private parties (Willemssen, Götze and Dragoş, 2010, p. 7). In spite of our efforts in this direction, we were not able to do such a research. The precondition for such an endeavor is systematic and orderly keeping of records of the number of rendered first instance administrative acts, received appeals and suits. The authors would like to finish with a remark to this end. Bringing order to the record-keeping in administration would enable better consideration of the pluses and the minuses of its work; would encourage research and projects directed toward finding solutions for practical problems and enhance the quality of the work of public administration.

5 Fees payable for submission of suit and decision of the court are less than 30 Euros.

6 In January 2010 the Administrative Court was established and started to operate. Currently, the number of judges in the Administrative Court is 34, including the Court President. Each judge has his/her assistant. This staffing level is an important improvement compared to the previous situation, where the administrative section of the Supreme Court had only 15 judges with a smaller number of assistants. Overall, the number of judges envisaged by the Court's Rulebook on Internal Organisation and Systematisation is 36 judges, including the Court President. The Court has taken over a large number of cases from the administrative section of the former Supreme Court and from administrative sections of former county courts, which totalled 18,000 cases. In the course of 2010 the inflow of cases was also very high, amounting to 16,048. The Court managed to resolve 13,843 cases in 2010 (SIGMA, 2011, p. 9).

7 We were informed in the Administrative Court that, since current Law on Administrative Disputes (Official Gazette of the Republic of Serbia, no. 111/2009) was enacted in the end of 2009, despite legislators' attempt to make deciding in full jurisdiction more frequent, there was not a single case of it.

References:

1. Cucić, V., 'Administrative Appeal in Serbian Law', 2011a, *Transylvanian Review of Administrative Sciences*, no. 32E, pp. 50-73.
2. Cucić, V., 'Appeals in Special Administrative Domains', 2011b, *Transylvanian Review of Administrative Sciences*, no. 34E, pp. 63-79.
3. Cucić, V., 'Extraordinary Administrative Legal Remedies in Serbian Law', in Bercea, L., Motica, R.I. and Pasca, V., (eds.), 8th Biennial International Conference, Bucharest: Universul Juridic, 2011c, pp. 74-84.
4. Dragoş, D., Neamţu, B. and Velişcu, R., 'Administrative Appeals – A Comparative Perspective and the Case of Romania', Paper presented at the 32nd EGPA Conference in Toulouse, 2010.
5. EuropeanOmbudsman, AnnualReport2010, [Online] available at <http://www.ombudsman.europa.eu/en/activities/annualreports.faces>, accessed on March 15, 2012.
6. General Administrative Proceeding Act, GAPAA, [Online] available at <http://www.drzavnauprava.gov.rs/pages/documents.php?id=16>, accessed on March 4, 2012.
7. 'Informator o radu Gradonačelnika grada Novog Sada i Gradskog veća grada Novog Sada' (Information on the Work of the Mayor of the City of Novi Sad and the City Council of the City of Novi Sad) – Novi Sad Report, [Online] available at <http://www.novisad.rs/informator-o-radu-gradonachelnika-grada-novog-sada-i-gradskog-ve-novog-sada-0>, accessed on January 15, 2012.
8. 'Informator o radu Republičkog fonda za penzijsko i invalidsko osiguranje (2007-2011)' (Information on the Work of the Republic Fund for Pension and Disability Insurance (2007-2011) – Social Security Fund Report, [Online] available at <http://www.pio.rs/lat/informator.html>, accessed on January 21, 2012.
9. 'Izveštaju o kretanju prvostepenih i drugostepenih upravnih predmeta u organima pokrajinske uprave za 2010 godinu' (Report on Movement of First Instance and Second Instance Administrative Cases within the Authorities of Provincial Administration for 2010) – Autonomous Province Report, [Online] available at http://www.puma.vojvodina.gov.rs/dokumenti/inform/Inf_2010/Izvestaj_kretanje_up_2010.pdf, accessed on January 21, 2012.
10. 'Izveštaj o radu Gradskog veća grada Niša za 2011. Godinu' (Report on the Work of the City Council of the City of Nis for 2011) – Nis Report, [Online] available at <http://www.ni.rs/uploads/doc/informatori/120112izvestaj-gv.pdf>, accessed on January 15, 2012.
11. 'Izveštaj o radu Žalbene komisije Vlade (za period od 1. septembra 2006. godine do 1. septembra 2007. godine)' (Report on the Work of the Appellate Commission of the Government (for period between 1 September 2006 and 1 September 2007) – Appellate Commission Report, [Online] available at http://www.suk.gov.rs/sr_latin/zalbena_komisija_vlade/iz_prakse.dot, accessed on January 21, 2012.
12. 'Izveštaj o sprovođenju Zakona o slobodnom pristupu informacijama od javnog značaja i Zakona o zaštiti podataka o ličnosti za 2010. Godinu' (Report on the Implementation of the Law on Free Access to Information of Public Significance and the Law on the Protection of Personal Data for 2010) – Data Protection Commissioner Report, [Online] available at <http://www.poverenik.rs/index.php/sr/doc/izvestaji.html>, accessed on January 21, 2012.

13. Milovanović, D., 'U susret novim rešenjima Zakona o postupku registracije u Agenciji za privredne registre' (Towards New Solutions of the Law on Registration Proceeding in the Agency for Commercial Registers), in Radović, V., (ed.), *Usklađivanje poslovnog prava Srbije sa pravom Evropske unije* (Harmonization of the Serbian Business Law with the Law of the European Union), Pravni fakultet Univerziteta u Beogradu, Beograd, 2011, pp. 67-90.
14. SIGMA, 'Assessment Serbia 2010', April 2011, [Online] available at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/dsee/dv/0331_07_/0331_07_en.pdf, accessed on March 15, 2012.
15. Willemsen, P., Götze, M. and Dragoş, D., Research proposal: 'Effective Adjudication in Administrative Proceedings', Group X 'Law and Public Administration', EGPA 2010 Toulouse, [Online] available at <http://vkc.library.uu.nl/vkc/montaigne/research/Documents/Effective%20adjudication%20in%20administrative%20proceedings.pdf>, accessed on March 15, 2012.
16. '2010 Regular Annual Report of the Protector of Citizens' (Ombudsman Report), [Online] available at <http://www.ombudsman.rs/images/dokumenta/Annual%20Report%202010.pdf>, accessed on March 15, 2012.