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ADMINISTRATIVE SILENCE AND GOOD ADMINISTRATION: THE PRINCIPLES OF EFFECTIVENESS AND EFFICIENCY AND THE ROLE OF THE OMBUDSMAN IN THE CONTEMPORARY LEGAL SYSTEM OF THE REPUBLIC OF SERBIA[1]

Abstract

Good administration within administrative procedures is based on the complete and consistent application of prescribed principles. This paper focuses on the impact of the principles of effectiveness and efficiency of administrative procedures as guiding ideas that underpin the realization of the principle of good administration. In the context of realizing the right to good administration, particularly in cases where the administration may exhibit certain shortcomings, such as administrative silence, the role and influence of the Ombudsman are reassessed. Since public administration grounds in the rule of law, this inherently implies the legality of administrative decisions and conduct in the function of good administration. In contrast to this model, legal theory recognizes a form of public administration referred to as unlawful, inefficient, unjust, or inequitable conduct. Such conduct may, taken together, be regarded as unlawful. The principles of administrative procedure are therefore established as guiding ideas aimed at ensuring the realization of the principle of good administration. This paper emphasizes the decisive role of the principles of effectiveness and efficiency of administrative procedures in achieving good administration. The study seeks to demonstrate that the efficiency of the state apparatus is essential for the existence of a modern legal state and for the sustainability of good administration. Particular attention is given to the analysis of administrative silence, as well as to the influence of the Ombudsman in providing protection against such shortcomings. In this regard, examples drawn from the Regular Annual Report of the Ombudsman are analyzed in order to illustrate the phenomenon of administrative silence and the mechanisms of protection available to individuals. With the aim of strengthening the principle of good administration, the paper concludes by assessing the application of the relevant procedural principles and evaluating the impact of the Ombudsman on the principles of effectiveness and efficiency of administrative procedures, as well as on the overall realization of the principle of good administration.

Key words: administrative procedure, good administration, administrative silence, Ombudsman

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1. INTRODUCTION

Administration, as the idea of an organized society to regulate the system within which it functions, has taken various forms, yet each of them is characterized by "a group of people governing that community" (Dragan Milkov, *Administrative Law I – Introductory and Organizational Issues* (Faculty of Law in Novi Sad 2016) 24).

When observed through its historical development, administration has evolved from a function of state authority, through the model of administration as a public service and a form of citizen-oriented service, to administration as a system for regulating social processes, and finally to the most recent concept that understands administration in terms of new public management (Nevenko D. Vranjes, Bojan Vlaski, "The Right to Good Administration in Bosnia and Herzegovina with Reference to Human Rights" [2022] 12 *Politeia* 24, 82). In the contemporary concept of legal relations, new public management is founded on the principles of good administration and finds its justification in the democratic nature of the legal system as a progressive legal practice of modern society.

Good administration and good governance as conceptual models examine the relationship between the administration and citizens, who *in natura* represent its most numerous users. At the very root of this conceptual construction, "good governance adds the word 'good' to governance, an adjective that distinguishes what is desirable from what is undesirable" (Mwayiwao Magombo, "The Role of the Ombudsman in Promoting Good Governance in Malawi: A View from Public Accountability" [2024] 8(1) *International Journal of Research and Innovation in Social Science* 52). Accordingly, administration as such may be linked to the concept of good administration, the foundations of which are rooted in natural law theory. Natural law theory emphasizes the rule of law and democratic, that is, genuine social pluralism as essential determinants of good administration. The principle of good administration has brought about certain qualitative advancements in the realization of citizens' rights, serving as an instrument for the implementation of the rule of law and the construction of a modern legal state. A legal state may be defined as a state founded on the principle of the rule of law, which by its nature must also encompass the legality of administrative decisions. In contrast to this model, there exists a form of public administration that legal theory describes as poor or bad administration, characterized by unlawful, inefficient, unjust, or inequitable conduct, which can collectively be described as illegal.

The service provided by good administration to citizens may be defined as any "activity or benefit that one party offers to another and that is essentially intangible and does not result in ownership of anything" (Branislav S. Radnovic, "Digitalization of the Citizen Service Process as Users of Public Services for the Purpose of Economic Development – A Situational Analysis of the Republic of Serbia" [2021] 54 *Bastina Pristina–Leposavic* 149). Good administration implies conduct that is strictly lawful, professional, and efficient, oriented toward the needs and requests of citizens, while respecting all constitutionally guaranteed rights.

The services that administration provides to citizens are realized through administrative procedures, and administrative law theory has over time defined the principles of administrative procedure "which contribute to the objectivization of that procedure in accordance with the democratic traditions of socio-political and legal systems worldwide and in our country" (Predrag Jovanovic, *Labour Law* (Faculty of Law

in Novi Sad 1998) 309). The principles of administrative procedure are established as guiding ideas for the realization of the principle of good administration.

For the purposes of this paper, the principle of effectiveness and efficiency of administrative procedure is of particular importance. This principle consists of two components, effectiveness and efficiency, which must be applied equally. The element of effectiveness within this principle influences successful and comprehensive procedural decision-making from the perspective of the full realization and protection of the rights and interests of the parties, while the element of efficiency is defined as "a measure of organizational values in administrative processes" (Tamara Ubibibogha Manfred Gunuboh, "Efficiency as a Central Concept in the Science of Administration, Fact and Value-Contexts in the Administrative Processes, and Democracy" [2023] 11 *Open Journal of Social Sciences* 110) and denotes the obligation of authorities to ensure successful and high-quality realization and protection of the rights and legal interests of natural persons, legal persons, and other parties. Through the application of both elements during administrative proceedings, good administration is achieved, enabling participants to exercise their rights more swiftly, with less formalism and in a more purposeful manner.

In cases where the administration fails to apply the principle of effectiveness and efficiency of administrative procedure, remains silent, and does not act upon parties' requests within the legally prescribed time limit, the Ombudsman plays a significant role in the realization of rights arising from administrative proceedings. This body, which became a constitutional category under the Constitution of the Republic of Serbia of 2006 (Art. 138, Constitution of the Republic of Serbia, *Official Gazette of the RS* No. 98/2006), and whose work is regulated by the Law on the Protector of Citizens (Art. 1, *Official Gazette of the RS* No. 105/21), operates independently and autonomously and possesses powers that enable it to keep the administration within the framework of the principle of good administration.

The Ombudsman, by examining the allegations contained in complaints or acting ex officio, monitors whether state administration bodies, the Republic Public Attorney's Office, and bodies and organizations exercising public authority over citizens act in accordance with the laws and other regulations of the Republic of Serbia or the principles of good administration. As a state body, the Ombudsman may also be viewed from the perspective of a control function within the mechanisms for overseeing the exercise of public authority. For the purpose of establishing good administration and ensuring the lawful and proper functioning of public administration bodies, the Ombudsman may act in several ways: by enabling citizens to submit complaints regarding administrative conduct that is unlawful or unjust; by initiating control proceedings over the work of public administration; by recommending amendments to laws, policies, or practices when unlawful administrative conduct is identified; and by informing the legislative authority and the public (Linda C. Reif, *The Ombudsman, Good Governance and the International Human Rights System* (Springer 2004)), as reflected in the regular annual reports. Notwithstanding the numerous and complex modes of action available to the Ombudsman, it is not an institution of "voluntary" law. Administrative bodies are legally obliged to cooperate with the Ombudsman whenever this is relevant to the proceedings conducted (Ombudsman of the Republic of Serbia, 'Role and Function', Ombudsman of the Republic of Serbia https://www.ombudsman.rs/index.php/o-nama/uloga-i-funkcija accessed 12 December 2025).

To reviewing the state of good administration in the Republic of Serbia, special attention will be devoted to the principle of effectiveness and efficiency of administrative procedure, particularly in the segment relating to administrative silence and failure to act upon parties' requests. In this context, the paper will examine the impact of the Ombudsman on the principle of effectiveness and efficiency of administrative procedure in the function of realizing the right to good administration, with specific reference to cases of administrative silence.

Special attention will be given to the analysis of the practice of the Ombudsman as presented in the Regular Annual Report of the Ombudsman, with a particular focus on cases involving violations of the principles of effectiveness and efficiency in administrative proceedings. These violations primarily manifest in the form of administrative silence and the failure of authorities to act upon applications submitted by parties. Based on the presented findings, conclusions will be drawn regarding the application of these principles and the impact of the Ombudsman on the enforcement of the principles of effectiveness and efficiency of proceedings, as well as the principle of good administration.

2. THE PRINCIPLE OF EFFECTIVENESS AND ECONOMY IN ADMINISTRATIVE PROCEEDINGS

A principle represents a fundamental idea and the most important norm of every legal procedure, intended to ensure stability and consistency in the process of applying the law (Zoran R. Tomic et al., *Practicum for the Application of the Law on General Administrative Procedure* (Ministry of Public Administration and Local Self-Government 2017) 24). The contemporary legal system of the Republic of Serbia, which strives toward good administration, is based on principles that permeate all of its institutions, give them meaning, and connect them into a coherent whole (Bogoljub Milosavljevic, *Administrative Law*, Third Revised and Enlarged Edition (Faculty of Law, Union University in Belgrade 2010) 67).

As the principle of effectiveness and efficiency in administrative proceedings is of particular importance for this paper, it should be emphasized that this principle was incorporated into the Law on General Administrative Procedure following the adoption of the 1974 Constitution, that is, through the amendments and supplements to this legal act adopted in 1977 (Dragan Milkov, *Administrative Law II – Administrative Activity* (Faculty of Law in Novi Sad 2017) 91).

Since statutory provisions concerning the application of the principles of effectiveness and efficiency direct administrative authorities to act until a decision is rendered in an administrative matter, the administration should ensure compliance with the prescribed legal provisions not only in the first-instance proceedings aimed at realizing the rights of the parties, but also in proceedings concerning legal remedies namely appeals and extraordinary legal remedies as well as in the enforcement phase of the decision.

Bearing in mind that "the efficiency of public administration is legitimate only if it implies justice and legality" (Mathew D. McCubbins et al., "Administrative Procedures as Instruments of Political Control," in Cary Coglianese and Robert A. Kagan (eds), *Regulation and Regulatory Processes* (All Faculty Scholarship 2007) 3), the administration is, in this sense, obliged to guide the official conducting the proceedings to always keep in mind the objective of the procedure and to undertake actions that are

appropriate and proportionate to that objective (Nikola S. Stjepanovic, *Administrative Law in the SFRY: General Part – Short Textbook for Law Students*, Book 2 (Privredni Pregled 1973) 85).

Within the principles of effectiveness and efficiency, the elements of effectiveness and efficiency may be observed separately, but they achieve their full potential when applied together. If we start from the premise that the principle of effectiveness focuses on the quality of work, while the principle of efficiency gives priority to the means of achieving the objective, then, in order for a party to safeguard its legal interests and achieve its legal goal in the procedure, the resolution of the legal matter must be timely, fair, and lawful.

If the principle of effectiveness is considered separately from the principle of efficiency, then, in that context, the principle of effectiveness does not have to be and is not limited solely to administrative procedure; rather, its definition is also found in various academic articles, legislative texts, law textbooks, and strategic documents. This principle guarantees that proceedings are conducted swiftly, without unnecessary delays, and within the prescribed time limits. In the legal system of the Republic of Serbia, the principle of effectiveness, in the sense of decision-making within a reasonable time, is guaranteed by the Constitution, as well as by laws regulating specific types of proceedings, such as administrative, criminal, civil, and enforcement proceedings.

In general terms, this principle guarantees fair treatment of the party in the proceedings, the hallmark of which is not merely the speed of decision-making, but the genuine protection of the party's interests. The party is also guaranteed the right to have its interests adequately safeguarded during the proceedings and to ensure the protection and respect of human rights throughout the course of the procedure, in accordance with other laws and legal regulations, whereby the speed of the proceedings must meet the needs of the party.

If the principle of efficiency is considered independently, separate from the principle of effectiveness, it may be understood as the resolution of a legal matter within the shortest possible time, that is, in a prompt and cost-effective manner.

A defining feature of this principle is the speed of the proceedings, whereby the matter at hand is resolved within a short and reasonable period, without unnecessary delays and without creating room for uncertainty on the part of the party that initiated the proceedings.

In this sense, the authorities deciding on the request in question, in accordance with this principle, should direct their resources toward work that involves an appropriate allocation of tasks so as to avoid unnecessary bureaucratic obstacles, that is, the imposition of additional procedures on parties that could further slowdown the proceedings (such as requiring the submission of documents that are already kept in official records), with the aim of maintaining a high quality of work that entails prompt, accurate, and efficient action.

By respecting the principles of effectiveness and efficiency of administrative proceedings, and starting from the standpoint that good governance is defined as a principle guiding the work of modern public administration aimed at providing citizens with greater legal certainty in their relations with the state and its administration (Centre for Free Elections and Democracy (CeSID), *Good Governance* (programme) (CESID.rs) https://www.cesid.rs/programi/dobra-uprava/ accessed 17 December 2025), a party entering into administrative relations may conclude that, by participating in an

administrative procedure characterized as public-service oriented (Zoran R. Tomic, *General Administrative Law* (14th revised edn, Faculty of Law, University of Belgrade 2021) 69–70), it has the opportunity to become acquainted with procedural actions that contain exclusively elements of good governance.

Guided by statutory provisions, a party to the proceedings may further conclude that the procedure will be conducted strictly in accordance with the law, that a decision will be rendered in a timely manner, and that all constitutionally guaranteed rights will be fulfilled and respected. Such a conclusion on the part of the party may be justified by the application of the principles of effectiveness and efficiency, with the observance of statutory time limits being of paramount importance for their realization. Serbian administrative law prescribes time limits for decision-making or for taking action in relation to various administrative acts and at all procedural levels (Vuk Cucic, 'The Privilege of Silence in Serbian Administrative Law', in *The Sound of Silence in European Administrative Law* (Palgrave Macmillan 2020) ch 12, 374).

When considering administrative silence as a form of non-compliance with the principles of effectiveness and efficiency, from the perspective of time limits, the most significant deadline is the one for issuing a decision. The issuance of a decision encompasses the process of adopting and delivering the decision, that is, notifying the party of the decision rendered (Dragan Milkov, *Administrative Law II– Administrative Activity* (Faculty of Law, University of Novi Sad 2017) 219).

The provisions of the Law on General Administrative Procedure stipulate that the authority is obliged to issue a decision no later than 30 days from the initiation of the proceedings where the proceedings have been initiated at the request of the party or ex officio, in the interest of the party, and where the administrative matter is decided in a procedure of immediate decision-making. Furthermore, the authority is obliged to issue a decision no later than 60 days from the initiation of the proceedings where the proceedings have been initiated at the request of the party or ex officio, in the interest of the party, and where the administrative matter is not decided in a procedure of immediate decision-making (Art 145, Law on General Administrative Procedure (Official Gazette of the Republic of Serbia, Nos 18/2016, 95/2018 (authentic interpretation), and 2/2023 (Constitutional Court decision))).

3. ADMINISTRATIVE SILENCE

At times, it happens in practice that compliance with the prescribed principles of good governance fails. In cases where the state apparatus falls short in applying the principles of effectiveness and efficiency in administrative proceedings, administrative silence arises. Administrative silence is understood as the failure of the competent authority to act within the statutory time limit with regard to adopting an administrative act upon a party's request.

When acting in an administrative matter with the aim of fulfilling their obligations, state authorities and holders of public powers, as well as non-state entities that decide in administrative matters and adopt administrative acts (Ratko S. Radosevic, *Administrative Dispute Due to Administrative Silence* [2015] 4 *Journal of the Faculty of Law in Novi Sad* 1979), should act within the shortest possible time and in a responsible manner.

Such a situation, "in which the competent authority has failed to adopt an administrative act upon a party's request within the statutory time limit" (Ratko S.

Radosevic, *Administrative Dispute Due to Administrative Silence* [2015] 4 *Journal of the Faculty of Law in Novi Sad* 1979), produces undesirable effects both on the exercise of the party's rights and on the contemporary legal system, from which speed and good governance are expected. Such improper conduct by the administration constitutes a theoretical definition of a situation regulated by the Law on General Administrative Procedure, relating to the party's right to lodge an appeal where the authority has failed to issue a decision (Stevan Lilic, *Administrative Law and Administrative Procedural Law* (Faculty of Law, University of Belgrade 2013) 533), since it is mandatory to provide the party in the proceedings with legal protection.

In a modern legal system, an individual, as a party to the proceedings, may encounter administrative silence in any type of procedure, whether the party itself has submitted a request for the resolution of an administrative matter or the authority has initiated the proceedings ex officio. An administrative procedure may be initiated upon a party's request, whereby the party seeks the realization of a specific right or other interest, with the moment of initiation of the proceedings being the moment when the authority receives the party's request (Arts 90–91, Law on General Administrative Procedure, *Official Gazette of the Republic of Serbia*, No. 18/2016, 95/2018 (authentic interpretation), and 2/2023 (Constitutional Court decision)).

From that moment, the statutory time limits begin to run, and if more than 30 days elapse from the initiation of the proceedings without the party receiving a response, administrative silence may be deemed to have occurred.

In cases where proceedings are conducted ex officio and not in the interest of the party, but where various obligations or other burdens may be imposed on the party, it is essential that the administration acts conscientiously, in a timely manner, effectively, and efficiently, in order to prevent situations in which the party's interests would be further jeopardized due to administrative silence. In this regard, the party must be duly informed of the initiation of the proceedings and of all relevant facts concerning the course of the procedure, to be able to take timely actions aimed at protecting its interests.

Although such conduct by the administration, which is not in accordance with the principles of good governance, should in the modern legal system of the Republic of Serbia become a relic of the past and an anomaly of the state apparatus, this is unfortunately not the case, as evidenced by the data contained in the Regular Annual Report of the Ombudsman.

Bearing in mind that the Ombudsman is an authority which, within the scope of its powers, possesses mechanisms for establishing the principles of good governance, this paper will analyze the presence of violations of the principles of effectiveness and efficiency of administrative proceedings and of the principles of good governance in the Regular Annual Report of the Ombudsman for 2024, as well as examine their impact on a contemporary legal system that strives toward good governance.

When examining the Regular Annual Reports of the Ombudsman, which are significant for providing an overview of the state of good governance in the Republic of Serbia at the end of a one-year reporting period, a considerable number of quantitative indicators can be identified.

Within the Regular Annual Report of the Ombudsman for 2024, it is recorded that a total of 12,333 citizens contacted the Ombudsman during 2024. Of this number, 6,888 contacts were made by telephone, and 1,470 citizens were received for in-person consultations. The report states that a total of 3,975 cases were registered, of which 3,917

were complaints and 58 were cases initiated ex officio. During the observed period, it is also noted that 1,039 complaints were recorded concerning violations of the right to good governance (Ombudsman, *Regular Annual Report of the Ombudsman for 2024* (Belgrade, Republic of Serbia 2025)).

Within the reporting period in question, citizens most frequently complained to the Ombudsman about administrative silence or the failure of inspection authorities to act upon submitted reports. Complaints were also directed at the Republic Pension and Disability Insurance Fund and related to inefficient conduct, the failure to issue decisions within statutory time limits, and administrative silence in response to citizens' submissions. Regarding the authorities of local self-government units, citizens pointed to inaction and inefficient conduct of inspection authorities in handling reports, as well as to the work of local public utility companies due to their untimely response to various communal issues. Inaction, or untimely action, was also recorded within the Labour Inspectorate, the Administrative Inspectorate, and the Education Inspectorate.

Furthermore, it was stated that during the observed period, throughout 2024, the Ombudsman issued a total of 827 recommendations to administrative authorities in both investigative and summary procedures (Ombudsman, *Regular Annual Report of the Ombudsman for 2024* (Belgrade, Republic of Serbia 2025)).

Within the Ombudsman's report, it was observed that citizens complain about the untimely and inefficient work of administrative authorities, as well as about administrative silence, in almost all areas. This is evident in the field of the rights of vulnerable groups, the rights of persons deprived of liberty, the area of civil and political rights, the field of economic and property rights, and the area of social and cultural rights.

Considering the data from the Regular Annual Report of the Ombudsman for 2024, it can be concluded that citizens continue to contact the Ombudsman regarding violations of the right to good administration. This data indicates that in the modern legal system there is still a need for a corrective mechanism of the Ombudsman and points to the fact that the work of the Ombudsman is effective and establishes the principles of effectiveness and efficiency and the principles of good administration.

Based on the presented practice, it can be assumed that anyone can encounter the silence of the administration in any area, but that in the modern legal system of the Republic of Serbia, the Ombudsman can act within his powers to bring the administration to a system of good governance.

4. PROTECTION IN CASES OF ADMINISTRATIVE SILENCE

If one proceeds from the premise that the concept of good governance, as presented in the Charter of Fundamental Rights of the EU, is based on the principles of legality and the rule of law (Klara Kanska, "Towards Administrative Human Rights in the EU: Impact of the Character of Fundamental Rights" [2004] 10 *European Law Journal* 299), and that the Law on General Administrative Procedure guarantees the principle of effectiveness and efficiency of administrative proceedings, it may be concluded that parties to the proceedings are afforded prescribed rights through which they may protect their interests.

The means of legal protection in the contemporary legal system of the Republic of Serbia, within the sphere of administrative procedure, are the administrative appeal and the administrative lawsuit.

When, in administrative practice, the functioning of the administration fails and proper action is absent, leaving the party without a response from the authority, it is considered that, directly by operation of law, the same administrative-law relationship is established as if the party's request had been rejected (Dragan Milkov, *Administrative Law I – Introductory and Organizational Issues* (Faculty of Law, University of Novi Sad 2013) 56). In such circumstances, in the service of the principles of effectiveness and efficiency of the proceedings, and with the aim of resolving the administrative matter and realizing its rights, the party may avail itself of one of the means of legal protection whose most significant characteristic is effectiveness. It may be said that the right to effective legal protection forms part of the core body of human rights (Dejan Vucetic, "Effectiveness of Procedural Decisions in First-Instance Administrative Proceedings" [2021] 91 *Journal of the Faculty of Law in Nis* 78).

Accordingly, a party to the proceedings may be afforded legal protection in cases of negligent conduct by the administration which, through inaction or silence and improper performance, violates the rights of parties prescribed by law, in the form of an administrative appeal and an administrative lawsuit.

If a party to an administrative procedure does not receive a decision within the statutory time limit, it has the right to lodge an appeal due to administrative silence (Stefan Andonovic, 'The Right to a Decision Within a Reasonable Time in Administrative Proceedings in the Republic of Serbia' [2015] *Foundation Centre for Public Law* 77). An appeal in administrative proceedings continues to represent the basic ordinary legal remedy of a devolutive nature (Zoran J. Loncar, "Legal Remedies in the New Law on General Administrative Procedure" [2017] 4 vol 51 *Journal of the Faculty of Law in Novi Sad* 1508).

A person who has initiated proceedings and encountered administrative silence is, prior to submitting an appeal on the grounds of "administrative silence," obliged to wait for the expiry of the 30- or 60-day period relating to the statutory obligation of the administrative authority to adopt a first-instance decision (Art 145, Law on General Administrative Procedure, *Official Gazette of the Republic of Serbia*, No. 18/2016, 95/2018 (authentic interpretation), and 2/2023 (Constitutional Court decision)). The Law on General Administrative Procedure further prescribes that an appeal due to administrative silence must be lodged no later than one year from the expiry of the time limit for deciding on the party's request (Art 153(2), Law on General Administrative Procedure, *Official Gazette of the Republic of Serbia*, No. 18/2016, 95/2018 (authentic interpretation), and 2/2023 (Constitutional Court decision)). This means that the party may seek protection in cases of administrative silence immediately after the expiry of the statutory deadline, but no later than within one year thereafter.

In first-instance administrative proceedings involving administrative silence, the party submits the appeal to the second-instance authority (Arts 161–162, Law on General Administrative Procedure, *Official Gazette of the Republic of Serbia,* No. 18/2016, 95/2018 (authentic interpretation), and 2/2023 (Constitutional Court decision)). In the event of silence by the second-instance authority, the party acquires the right to initiate an administrative dispute by filing an administrative lawsuit with the Administrative Court (Art 19, Law on Administrative Disputes, *Official Gazette of the Republic of Serbia*, No 111/2009).

In cases where a party that initiated the proceedings has failed to realize its rights due to "administrative silence" and has exhausted all available remedies within the

administrative procedure, the remaining option is to subject the administration to the law, which entails judicial review of administrative action (Ratko S. Radosevic, "Administrative Dispute Due to Administrative Silence" [2015] 4 *Journal of the Faculty of Law in Novi Sad* 1971). The party will seek further legal protection in an administrative dispute. Legal protection of parties in administrative disputes is ensured not only against a final administrative act, but also where an administrative act has not been adopted due to "administrative silence" (Ratko S. Radosevic, "Administrative Dispute Due to Administrative Silence" [2015] 4 *Journal of the Faculty of Law in Novi Sad* 1984).

With regard to administrative disputes, there are two recognized instances of "administrative silence": the failure to adopt a first-instance administrative act within the prescribed time limit upon a party's request (or ex officio, in the interest of the party) where an administrative appeal is not permissible, and the failure to adopt a second-instance act within the prescribed time limit upon an appeal against a first-instance act or against first-instance administrative silence (Zoran R. Tomic, *General Administrative Law* (14th revised edn, Faculty of Law, University of Belgrade 2021) 381–382). If, however, the proceedings are initiated ex officio, particularly where such proceedings do not establish the party's interests, the party enjoys the same rights as in proceedings initiated at the request of the party.

In terms of protecting the rights of parties in cases involving violations of the principles of good governance, at the beginning of 2019 the institution of the Ombudsman established the Department for Urgent Action, which handles cases requiring immediate response and which do not tolerate delays. Such cases include those in which the Ombudsman may initiate proceedings even before all legal remedies have been exhausted, where irreparable harm could be inflicted upon the complainant or where the complaint concerns a violation of the principles of good governance, in particular improper conduct by administrative authorities toward the complainant (Ombudsman, *Regular Annual Report of the Ombudsman for 2019* (Belgrade, Republic of Serbia 2020)).

5. THE ROLE OF THE OMBUDSMAN IN ESTABLISHING A SYSTEM OF GOOD GOVERNANCE IN CASES OF ADMINISTRATIVE SILENCE

In accordance with its prescribed powers, the Ombudsman may exercise oversight by examining the allegations contained in a complaint or by acting on its own initiative, in order to determine whether state administration bodies, as well as bodies and organizations exercising public powers toward citizens, act in compliance with the laws and other regulations of the Republic of Serbia or with the principles of good governance (Arts 1, 19, 27, Law on the Ombudsman, *Official Gazette of the Republic of Serbia*, No. 105/2021). However, the Constitution of the Republic of Serbia, through a system of positive enumeration, excludes the courts as state bodies over which the Ombudsman may exercise a supervisory function.

Therefore, parties in administrative proceedings who are confronted with "administrative silence" may, with the aim of realizing their rights, make use of certain mechanisms within the competence of the Ombudsman, including submitting a complaint to that institution. Within the scope of its powers and in procedures for reviewing the legality and propriety of administrative action, the Ombudsman will, if it determines that the allegations contained in the complaint are well founded, that is, that they relate to a violation of the principles of good governance and to untimely action or failure to act upon

a party's request, initiate appropriate proceedings (Arts 27–28, Law on the Ombudsman *Official Gazette of the Republic of Serbia*, No. 105/2021).

The procedure initiated and conducted by the Ombudsman resembles, in broad outline, an administrative procedure; however, in substance it is entirely different, as it is established and conducted on the basis of the Law on the Ombudsman.

Proceedings before the Ombudsman should be free from unnecessary procedural formalities, particularly bearing in mind that the Ombudsman adopts acts that are not legally binding and that the procedure before this institution is single-instance (Zoran Filipovic, "The Role of the Ombudsman in Administrative Control – A Comparative Analysis" [2015] *Journal of Doctoral Students' Papers* 37).

The Ombudsman is authorized, by way of exception, to decide to initiate a supervisory procedure even before the party to the proceedings has approached another specialized independent authority, if it assesses that one of the special circumstances prescribed by the Law on the Ombudsman exists (where irreparable harm would be inflicted upon the complainant, or where the complaint concerns a violation of the principles of good governance, in particular improper conduct by administrative authorities toward the complainant, untimely action, or other breaches of the rules of ethical conduct of employees in bodies and organizations exercising public authority). Parties to the proceedings also have the right to submit a complaint to the Ombudsman regarding other independent, specialized bodies for the protection of citizens' rights, if they consider that their rights have been violated by the unlawful or improper conduct of those bodies (Ombudsman, *Regular Annual Report of the Ombudsman for 2018* (Belgrade, Republic of Serbia 2019)).

As an independent state authority within the contemporary legal system of the Republic of Serbia, the Ombudsman "protects the rights of citizens and oversees the work of state administration bodies, the authority competent for the legal protection of the property rights and interests of the Republic of Serbia, as well as other bodies and organizations, enterprises, and institutions entrusted with public powers" (Dragana Petkovic and Vladimir Milosevic, "Different Understandings of the Position and Competences of the Ombudsman of the Republic of Serbia" [2018] 23 *NBP Journal of Criminology and Law* 16), with the aim of meeting the modern expectations of parties to the proceedings who seek speed and efficiency in decision-making.

In a situation where a complaint by a dissatisfied party is submitted to the Ombudsman, an investigative procedure for reviewing the legality and propriety of administrative conduct is initiated, which the Ombudsman commences within 15 days of receipt of the complaint (Art 31, Law on the Ombudsman, *Official Gazette of the Republic of Serbia*, No. 105/2021). The authority that has violated the principles of effectiveness and efficiency of administrative proceedings through administrative silence will be requested to submit its observations.

State authorities are legally obliged to cooperate with the Ombudsman whenever this is relevant to the proceedings being conducted. Accordingly, they are required to respond to the Ombudsman's inquiry regarding the case in question, to state the reasons why they failed to act upon the party's request in the proceedings, or to inform the Ombudsman that they have, in the meantime, acted upon the request. If, during the procedure before the Ombudsman, the allegations contained in the complaint are found to be true, the Ombudsman is authorized to issue a recommendation in the form of a legally non-binding instruction indicating how the identified shortcomings should be remedied

(Natasa Rajic, "Justification for Establishing the Competences of the Ombudsman Regarding Initiating Proceedings for Assessment of the Constitutionality of a Law" [2013] 2 *Journal of the Faculty of Law in Novi Sad* 483). However, if the authority considers that it should not act in accordance with the Ombudsman's recommendation, it must immediately inform the Ombudsman thereof, which does not have the legal nature of a decision (Zoran R. Tomic, *General Administrative Law* (14th revised edn, Faculty of Law, University of Belgrade 2021) 359).

In addition to the above, the Ombudsman is a personalized, *sui generis* state authority elected by the National Assembly, which, through a special procedure, oversees the work of administrative authorities and safeguards and promotes human and minority rights and freedoms. An institution conceived in this manner, which within the scope of its powers may issue recommendations in supervisory proceedings in cases of non-compliance with established principles, directly influences the principle of effectiveness and efficiency by issuing such recommendations, thereby guiding and proposing directions for the administration to act effectively and purposefully, and is therefore of significant importance for the establishment of the principles of good governance.

"These recommendations and directives aim to clarify legal provisions, codify practices, or amend procedures in order to ensure better compliance with fundamental principles" (Alberto Castro, *Principles of Good Governance and the Ombudsman: A Comparative Study on the Normative Functions of the Institution in a Modern Constitutional State with a Focus on Peru* (Intersentia 2019)).

Through its recommendations, the Ombudsman directs administrative authorities to act in a timely manner, to adopt decisions within the statutory time limits, to respect the party's right to have its case resolved within a reasonable time as prescribed by law, and to apply the relevant legal principles, all with the aim of ensuring the party's right to good governance. Unfortunately, if the effectiveness and efficiency of an authority are measured by the severity of the sanctions it may impose, it may also be interpreted that "the recommendations of the ombudsman have minimal impact on promoting accountability, if they have any at all, since they do not include sanctions" (Mwayiwao Magombo, "The Role of the Ombudsman in Promoting Good Governance in Malawi: A View from Public Accountability" [2024] 8(1) *International Journal of Research and Innovation in Social Science* 56).

During the observed reporting period, it was recorded that certain authorities acted in accordance with the Ombudsman's recommendations, thereby improving their performance and the realization of parties' rights in administrative proceedings, while there were also authorities that failed to comply with such recommendations. From this, it may be concluded that the recommendations of the Ombudsman, within the contemporary legal system of the Republic of Serbia, are nevertheless of exceptional importance for the realization of the principles of good governance. In this regard, the Ombudsman may also propose the adoption of new laws aimed at guaranteeing specific rights (Art 20, Law on the Ombudsman, *Official Gazette of the Republic of Serbia*, No. 105/2021).

The powers of the Ombudsman extend to recommending the dismissal of public officials or initiating disciplinary proceedings against employees within administrative bodies who have committed omissions and violated citizens' rights if they refuse to remedy the shortcomings identified in the Ombudsman's recommendations (Art 23, Law on the Ombudsman, *Official Gazette of the Republic of Serbia*, No 105/2021). Through

such action, the existence of the Ombudsman may also be defined as fulfilling the role of a provider of a third, indirect form of accountability, positioned "between responsibility and enforcement" (Linda C. Reif, *The Ombudsman, Good Governance and the International Human Rights System* (Springer 2004)).

Accordingly, it may be stated that through its activities the Ombudsman can influence a change in the attitude of administrative authorities toward their obligation to exercise entrusted powers effectively and efficiently, thereby encouraging them to apply the prescribed principles of administrative procedure and to respect the principles of good governance. Such conduct, whereby the administration respects and implements the recommendations of the Ombudsman despite their non-binding nature and the absence of sanctions, speaks positively of a contemporary legal system striving toward good governance, while positioning the Ombudsman as an actor that may assume an even more significant role in the future in reducing the number of contentious cases.

6. CONCLUSION

The realization of a party's rights in administrative proceedings constitutes the foundation of a modern state that respects the principles of good governance. Although, in the contemporary legal system of the Republic of Serbia, the data contained in the Regular Annual Report of the Ombudsman for 2024 indicate that there are shortcomings in the application of the principles of effectiveness and efficiency which, as guiding ideas, direct the work of administrative authorities toward the realization of the principles of good governance these challenges remain significant.

The failure of authorities to act, that is, administrative silence, represents a serious challenge to the application of these principles and to good governance. However, where the legally guaranteed remedies for the protection of a party's rights have been exhausted and the authority still fails to act, the role of the Ombudsman may become crucial.

Through its recommendations, the Ombudsman may act as an effective corrective and guiding mechanism for the work of administrative authorities, contributing to the application of the principles of effectiveness and efficiency and to the realization of the principles of good governance. In order for the contemporary legal system of the Republic of Serbia to be aligned with the principle of good governance, the state apparatus should incorporate into its practice the measures recommended by the Ombudsman, remedy identified shortcomings, and undertake steps to prevent their recurrence.

For the establishment of the principles of good governance, it is necessary that administrative authorities respect the principles of effectiveness and efficiency of proceedings and act within the prescribed time limits that is, that they be prompt and effective and resolve parties' requests in a timely manner. If the aim is to establish a system of good governance, decision-making authorities should eliminate the characteristics of poor administration from their work and contribute to preventing the creation of discomfort, inconvenience, and distrust among participants in administrative proceedings.

In order to preserve the principles of good governance within the contemporary legal system of the Republic of Serbia, it may, in the forthcoming period, be possible through normative initiatives to move toward introducing sanctions for failure to comply with the Ombudsman's recommendations within the scope of the Ombudsman's competences. At the same time, it should be set as an imperative to develop a practice in which all administrative authorities before which parties exercise their rights act

exclusively within the framework of the principles of good governance, with such conduct established as a standard below which it is not permissible to fall.

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