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NOVELTIES IN THE LAW ON ADMINISTRATIVE INSPECTION IN REPUBLIC OF SERBIA

Abstract: The paper focuses on current issues regarding the content of the new Law on Administrative Inspection of Republic of Serbia. These issues are primarily related to major questions of organization, operations and procedures of administrative inspection.

The inspection is among the competences of the state administration. So far, it has not been regulated by special law. Thus, it is important that the inspection, realized through the administrative inspection as a form of internal control, forms a part of the system governed by the Law on Administrative Inspection. Therefore, we expect the implementation of this law to be effective.

Key Words: control, monitoring, inspection, administration.

Introduction

In the scholarly discourse, the terms administrative control and supervision are often considered to be synonymous, so that distinction is not made between them. However, there are other opinions, although we must admit that they are encountered only rarely.¹

Regardless of different opinions, as a rule, supervision is a relationship between two subjects in which one systematically and permanently monitors and evaluates the work of the other entity with the aim to ensure that "work being done is transformed into the work that has to be done."² Therefore, supervision in any event represents a systematic and continuous activity of an organ that consists of the observation and evaluation of another entity. There are different types of supervision with regard to the criteria upon which the classification is based. These criteria include: goals, agents, means, objects of supervision, procedures, etc.³

Thus, the legal supervision is a type of supervision arranged by legal norms, ranging from those who perform it, with respect to whom it is performed, according to what procedure and based on what powers in terms of control and legal sanctions, which is determined by its legal regime. A special form of legal supervision is administrative supervision. Within the Serbian legal system, both the scholars of administrative law and the existing legislation have focused on specifying the concept and essence of administrative control. In theory, administrative control can be observed both from the formal and material aspect.

The administrative control observed from the formal aspect is the control exercised by administrative bodies. What matters here is who is in charge. It does not matter what the subject of supervision is (administrative or any other activity) and what is the legal nature of the supervisory powers available to the controller (administrative or another).

When defining the concept and essence of administrative control from the material point of view, the starting point is the subject of supervision and the legal nature of the supervisory authority. So, the administrative control in terms of the material supervision is the supervision made by an administrative authority over the unauthorized activities of the entity whose work is supervised. In this way the legal theory makes a substantive distinction between administrative supervision and administrative control of the administration. Both the administrative supervision and administrative control of the administration are forms of legal control that are achieved by using

¹ For a detailed account, see: Kostić, L: *Administrativno pravo Kraljevine Jugoslavije*, III, Nadziranje uprave, Beograd, 1930, p. 3; Popović, S, Marković, B, Petrović, M: *Upravno pravo*, Beograd, 1995, p. 572; Milkov, D: *Upravno pravo*, II, Upravna delatnost, Novi Sad, 1997, p. 287; Tomić, Z: *Upravno pravo*, Beograd, 1998, p. 48-51; Vasiljević, D: *Upravno pravo*, Beograd, KPA, 2011, p. 227-249. For instance, Kostić L. and Popović S. consider the terms control and supervision to be synonymous, whereas, according to Tomić Z, supervision is a broader and a longer process which, as a rule, involves control.

² For a detailed account, see: Dimitrijević, P: *Elementi upravnog prava*, Beograd, 1980, p. 126.

³ Vasiljević D, Milovanović D: Important novelties in the Law on administrative disputes of Republic of Serbia, SS. Cyril and Methodius University in Skopje, Iustinianus Primus Faculty of law, Зборник на Правниот Факултет „Јустинијан Први“ во Скопје, Proceedings in honour of professor Naum Grizo, Skopje, 2011, p. 111-121.

administrative powers. However, the administrative supervision makes use of the administrative powers to control unauthorized activities, whereas administrative control of the administration controls the administrative (authoritative) activities of the subjects under control. Most of our prominent scholars in this field embrace the concept of substantive administrative supervision. They believe that the administrative supervision in all of its legal forms can be treated only as inspection.⁴

If we keep in mind the theoretical assumptions regarding the formal and material notions of administrative control and the positive legal solutions concerning this legal institute of administrative law, there are several observations that can be made.

The existing Law on State Administration (LSA) passed in 2005 is an act where the law-maker defines the concept of the state administration in functional and organizational terms. Thus, the state administration forms a part of the executive authority in Republic of Serbia, performing administrative duties within the scope of the jurisdiction of the Republic of Serbia. The legislature has specified that the term "central government administration" (*poslovi državne uprave*) is to be used in order to denote these duties. Public administration in Republic of Serbia consists of ministries, administrative bodies within ministries and special organizations. The law-maker has used the term "state administration organs" to denote the concept of state administration defined in this way.⁵ The structure of these administrative duties includes inspection. That ensures that the state authorities investigate the implementation of laws and other regulations through a direct insight into the activities and actions of both physical and legal persons. Depending on the results, they may impose measures to which they are entitled and which are provided for in a special law.

With regard to the supervision of the organs of state administration, Law on State Administration introduces a new concept – internal control (Articles 45-50). This supervision is defined as supervision by the state administration organs performed over other state authorities and holders of public authority which are empowered to exercise delegated tasks of state administration. It includes supervision of the work, inspection performed through administrative inspection and other forms of monitoring provided for by special laws.

The most important solutions in Law on administrative inspection of Republic of Serbia

The existing Law on State Administration, along with the Law on Civil Servants and some other system laws in the field of public administration, effectively marks the beginning of transformation and adjustment of public administration of the public sector in Republic of Serbia to the new developments and needs for harmonization with the European legislation. In order to raise the level of integrity in the performance of public administration duties, providing supervision of the public administration bodies and holders of public powers, while

⁴ For a detailed account, see: Bačanić, N: *Upravni nadzor u pravnom sistemu Republike Srbije*, Pravni život, no. 11/2009, vol. III, pp. 91-94.

⁵ Article 1, The 2005 Act on Public Administration, *Zakon o državnoj upravi*, *Službeni glasnik Republike Srbije* no. 79/2005, 101/07.

protecting and guaranteeing their position in the performance of duties, particularly in terms of the principles of independence and responsibility, and enforcing the demand for the said bodies to perform their duties lawfully, timely, and efficiently for the benefit of and according to the needs of citizens and other legal entities, the Law on State Administration envisages, in Article 45, paragraph 3, that administrative control is to be arranged by a special law.

However, the adoption of a special law on administrative inspection is not subject only to the above mentioned article of the Law on State Administration. Namely, the changes and harmonization of the overall legal system with the Constitution and new social needs and demands, as well as adjustment to modern, particularly European experiences and solutions, have brought about an expansion of jurisdiction of the administrative inspection in several new social fields. Thus, the supervision performed by the administrative inspection has been defined by a number of special laws and its scope comprises new contents and objects. All of this, particularly the increase of volume and types of jobs, changes in their performance, a sudden increase in the number of supervised entities, a lack of regulations regarding certain issues of particular importance for the administrative inspection, etc. requires extensive and fundamental changes in the regulation of administrative inspection. These could only be achieved by passing a systemic and special Law on Administrative Inspection. In this sense, the focus of the further analysis in this paper will be on the issues specified in this act.

General provisions (Articles 1-8). The general provisions of the Law provide for the issues concerning the contents of the law, the concept of administrative inspection, its scope, the relationship between this Law and the special laws pertaining to the activities of the administrative inspection. In particular, they specify the purpose of the inspection procedures and guarantee the active position of controlled subjects in the supervision procedures.

As far as the concept of administrative inspection is concerned, the Law, in Article 2, specifies that it is a form of supervision of the implementation of laws and other regulations. Equally, it is a form of supervision of the conduct of public administration organs, courts, public prosecutors, the Office of the Republic Public Attorney, parliamentary offices, the President of the Republic, government, Constitutional court, and services whose members are appointed by Parliament, as well as bodies of territorial autonomy and units of local self-administration in their exercise of delegated tasks of state administration and other holders of public powers specified by the Law on Administrative Inspection and special laws.

The scope of administrative inspection is specified in a general manner in Article 3. It concerns the inspection of the implementation of the laws and other regulations governing: the state administration; employment in the state bodies and local self-governance; general administrative procedure and specific administrative procedures; appearance and use of the coat of arms, flag and the national anthem of the Republic of Serbia; the official language and alphabet; the seals of state and other organs; electoral registers and records; political parties and free access to information of public interest. The administrative inspection shall also provide control acts in other fields in which its special duty is

determined by special laws. The administrative inspection also performs supervision in other areas in which the special law has established its authority.

In carrying out its supervisory duties, particularly with regard to the removing the illegalities and irregularities, administrative inspectors will act in a manner prescribed by this and the special law (Article 4). The law specifically guarantees the independence of the work of administrative inspection in the sense that the administrative inspectors are independent in their work within the limits of authority determined by law and they are personally responsible for their work (Article 6). The law has also sought to ensure the position of the supervised entities in the inspection process that would, on one side, enable them to protect effectively their interests and rights and, on the other side, to contribute actively to attaining the objectives of inspection (Article 7). Finally, the basic provisions of Article 8 provide for the appropriate cooperation between administrative inspection and other bodies and citizens.

Organization (Articles 9-14). The provisions relating to the organization provide for the organizational form of conduct for the administrative inspection, the conditions of operation and restrictions imposed on the inspectors in carrying out other activities, as well as the issues of entrusting the duty of the administrative inspection.

Compared with the previous solution, the Law introduced significant changes in terms of organization. Namely, instead of performing these tasks in the sector, as a basic organizational unit of the Ministry of state administration, the Law provides that they are carried out under the Administrative Inspectorate - a body within the Ministry which is responsible for the public administration. The establishment of the Administrative Inspectorate, as a body within the Ministry, will, no doubt, lead towards a high level of staff specialization, both with regard to the method of performing tasks in technological terms and with regard to the specific area of knowledge related to the administrative area in which the inspection is performed. This organization will produce an increased level of independence in performing inspection, as it arises from a different, more autonomous status of the body within the Ministry in relation to the sector as the primary internal organizational unit of the Ministry. In any event, it is in the general interest that the inspection duties, due to their nature and importance, are performed as independently as possible.

Article 13 of the Law imposes special restrictions on inspectors in performing other activities and services, in accordance with the nature and importance of the position, duties and responsibilities of inspectors. It also takes into account the potential for abuse of such a position and, in particular, the need to protect the public interest. The inspector may not perform commercial or other activities and jobs, either for himself or for another employer, in the area in which he is in charge of inspection; he may not participate in the work of expert working groups or bodies of controlled entities, nor may he perform other services, activities and actions that are contrary to the status and role of the inspector and hamper his independence in performing the duty. The prohibition, of course, does not apply to the professional, academic and educational work of inspectors which are not considered contrary to the provisions of the regulations governing the status of civil servants.

With regard to delegating tasks (Article 14), the Law stipulates that the administrative inspection of the City of Belgrade authorities, the authorities of the metropolitan municipalities, and the institutions established by the City of Belgrade is entrusted with the administrative inspection of the City authorities of Belgrade. The supervision of the work of the City Administration in the performance of public administration delegated under this act is a responsibility of an administrative inspectorate. In this way, the Law ensures that the legal accountability of the government and ministries within which the inspectorate operates remains in place even after the delegation of the duties of administrative inspection (Article 51, paragraph 2, the Law on State Administration).

Duties (Articles 15-20). The provisions on duties of the administrative inspection define the content and objectives of the inspection.

Article 15 provides for the inspection performed: a) by taking administrative actions to establish the status of implementation of laws and regulations of the inspected body, i.e. the authorities required to abide by the regulations in performing their duties and work, which is subject to the administrative inspection; b) by ordering administrative measures in order to prevent and eliminate illegal practices in carrying out these regulations; c) by taking such other actions and administrative measures set forth by law.

It also provides for the obligation of the administrative inspector, when he orders an administrative measure against the supervised entity, to apply always the measure that is less severe, if the measure achieves the purpose for which it is determined and in accordance to the principle of proportionality.

The object of administrative inspection should be determined individually for a specific area of administrative regulation which the administrative inspection supervises. Thus, the objectives of administrative inspection defined in Articles 16-20 of the Law include: a) monitoring the implementation of regulations on public administration; b) monitoring the implementation of regulations on civil servants; c) monitoring the implementation of regulations on administrative procedure; d) monitoring the implementation of regulations in the bodies of local self-government and e) monitoring the implementation of other regulations.

In legal and technical sense, the object is defined as a jurisdiction, or as a right and duty of the administrative inspection to act immediately whenever there are grounds and legal prerequisites for acting independently and responsibly.

When specifying the object of activity, that is, the scope of jurisdiction, the lawmaker has sought to accurately determine this question, with an aspiration to use the system of enumeration wherever possible, assuming that such a determination should serve as a direct legal basis for immediate actions of the administrative inspection in the regulation of specific administrative matters in an authoritative manner and by means of administrative acts and actions.

The way in which the administrative inspection works is specified by Articles 21-37. This section of the Act is the most extensive. It pays special attention to the integral, timely and accurate conduct of the inspection. This is important, as the complete arrangement of the

inspection procedure and working methods is a basic prerequisite for reaching the objective of the inspection in which all participants will have accurately determined and legally regulated rights and responsibilities at each stage of the proceedings, which in turn will be performed in the appropriate, efficient and legally guaranteed way.⁶

In this context, it should be noted that with regard to the procedure, the Law has regulated the following issues: work planning, initiating an inspection procedure, types of supervision, monitoring forms, notices on supervision, participation of the supervised bodies; preventive measures; powers of inspectors in conducting inspection; a record on the conducted supervision; objections to the record; solutions; appeals against the decision, the implementation of the measure; initiatives for actions of other organs; actions in cases of departure from the general act; handling complaints and records.

We will not provide a detailed analysis of the procedural rules of administrative inspection here, as it exceeds the goal and the character of this paper.

Accountability of the administrative inspector (Article 38). An administrative inspector is primarily accountable, just like any other public official, in the manner and under the conditions established by the Law on Civil Servants. However, given the nature and importance of tasks performed by the administrative inspector, as well as the possible consequences of his work and actions for the position of the controlled entities, the Act on Administrative Inspection provides for some special responsibilities, specific for the administrative inspector. Thus, the administrative inspector is liable if during the inspection he: a) does not take, recommend or specify measures or actions for which he is authorized; b) does not initiate proceedings subject to the provisions of the Law on Administrative Inspection or c) exceeds the limits of his powers.

Also, each of these behaviors on the part of the administrative inspector constitutes a gross violation of duty, subject to disciplinary responsibility, based on and in accordance with the Law on Civil Servants.

Offences (Articles 39-40). This Law defines as violations all instances of conduct and actions of the responsible persons in a controlled entity that would greatly hinder and prevent the exercise of inspection and thus prevent it from achieving its goal which is to enforce the law appropriately: e.g. if the said person fails to implement or does not provide for the implementation of the decision of the administrative inspector; if one prevents or hampers the work of the administrative inspector; if one seriously disrupts or damages the integrity of the administrative inspector in carrying out the inspection; if one fails to notify the administrative inspector on the implementation of ordered measures within the time limit specified in the decision; if one fails to

⁶ Vasiljević D, Milovanović D, Toward new legal solutions in administrative procedure in Republic of Serbia, SS. Cyril and Methodius University in Skopje, Iustinianus Primus Faculty of Law, Зборник на Правниот Факултет „Јустинијан Први“ во Скопје, Published papers from the International Academic Conference „Contemporary Administrative Law: Trends, Innovations, Reforms“ 24-26 June 2011, Ohrid, Skopje 2011, p. 69-80.

submit the required information within the specified deadline or submits incomplete or inaccurate data and the like.

CONCLUSION

As a form of administrative supervision within the legal system of Serbia, the administrative inspection represents a set of inspection activities of public administration organs by which they examine the implementation of laws and regulations and, depending on the results, order measures that they are authorized to order. It is arranged by a special law and presents a form of legal control exerted by the administrative authority of the state administration over the non-authoritative activities of controlled entities.

As regards supervision within the system of state administration, the Act on Public Administration introduces a new concept – the internal audit, which is defined as supervision by state authorities exercised over other state authorities and holders of public powers in the exercise of delegated tasks of state administration. It includes supervision of work, administrative inspection and other forms of supervision that are regulated by a special law.

Based on the fact that the inspection which is one of the tasks of the state administration organs (Article 18 of the LSA) is still not regulated by a separate system law, it is important that the inspection which is done through the administrative inspection as a form of internal control (Article 45 of the LSA) is regulated by the Law on Administrative Inspection.⁷

It is too early to discuss and evaluate its results, because it was adopted only a few months ago. Still, it is certain that the quality of its solution consists of the following:

- It provides for the jurisdiction, position and powers of the administrative inspection in a comprehensive and systematic way;
- The duties of administrative inspection have been specified and defined with respect to contents and objectives of supervision in the specified social and legal area which will certainly eliminate the doubts and problems in the work of inspection;
- It has specified and guaranteed active participation and protection of the entities supervised in the process of administrative inspection, so that they should not be reduced to a passive role, but rather contribute, as active participants, to the objective of inspection – achieving the principle of legality;
- Its solutions have adjusted the organizational form of executing administrative inspection to a significantly expanded scope of jurisdiction, both in scale and type of work, as well as the number and width of the area of administration where the same tasks are performed, in order to achieve effective independence and special organization of work;
- Considering the possible consequences of inspection in relation to controlled entities and, therefore, the public authorities, it has, precisely and for the purpose of direct implementation, modified the special powers and responsibilities of administrative inspectors;

⁷ For a detailed account, see: Milovanović D, *Reforma sistema inspekcijskog nadzora*, Pravni život, no. 11/2009, vol. III, Beograd, p. 5-25.

- It has envisaged a detailed procedure that will ensure the quality of work, for example, providing for accurate and complete determination of all relevant facts and circumstances, efficiency and timeliness of action and effectively achieving the goal of the inspection in a particular area of administration, etc.

Practice and time will certainly show whether these goals will be achieved.

