

The Walls Closing in the Anechoic Chamber: Abuse of Protection against Administrative Silence in Serbia

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Abstract: An anechoic chamber is a room designed to stop echoes (an-echoic, without echoes), i.e., sounds. It is used here as a metaphor for the situation in which the parties in administrative procedure find themselves when the administration is illegally inactive, impairing their right to have their case resolved within the legally prescribed deadlines.

The closing walls allegory depicts two obstacles that parties are facing in their struggle against administrative silence in Serbia.

On the one hand, earlier research (Radjenović, 1988; Cucić, 2020), though scarce and modest in scope, portray a grim picture when it comes to frequency of usage of available legal recourses against administrative silence. Less than 1% of all parties that encountered administrative silence submitted administrative appeal against it.

On the other hand, the number of judicial appeals against administrative silence skyrocketed. In 10 years, it increased 26 times (Cucić, 2021). The reason is, however, not a sudden improvement of the parties understanding of and willingness to use protection mechanisms, but abuse. It appears that all these judicial appeals were submitted by a few law firms that seem to do it in order to gain profit. The abuse machinery functions in the following manner. Administrative authorities are overwhelmed with thousands of irrational requests. Due to this overload, they fail to decide within the legally prescribed deadlines. Then the law firms submit thousands of administrative appeals against administrative silence, thus swamping appellate authorities. Appellate authorities, as a rule, accept the appeals and order the first-instance authorities to decide upon submitted requests. However, they do not award appellate costs, given that the Serbian General Administrative Procedure Act prescribes that the costs of legal representation in administrative procedure are awarded only if they were necessary and justified, which is not the case in such a legally simple matter. Nonetheless, the Administrative Court took the opposite view – that the costs should be awarded. As a consequence, the Administrative Court is clogged with thousands of judicial appeals, state budget is drained and the parties that are truly experiencing detriments of administrative silence are even further away from their cases being decided upon timely. The paper shall rely on previous empirical research and interviews with the staff of the Administrative Court to establish the reasons for this abuse. Afterwards, the focus shall shift to the legal analysis of the Administrative Court's interpretation on the relevant provisions on costs in administrative procedure. This shall encompass linguistic, teleological, systemic and historical interpretation thereof. Finally, the paper shall examine possible solutions of the problem.