

Civil Control over the Administration through Suggestions and Signals

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Abstract

The article covers the legal institution of suggestions, signals, and complaints, as an out-of-court mechanism for civil rights defense, and as means for influence and control over the acts and actions of the administration. The institution of suggestions and signals becomes an effective instrument for influence of citizens over the process of public decision making, for providing institutionalized defense of various social interests in the modern, democratic, legal and social state.

Keywords: recommendations, alert report, civil control, protection of citizens' rights and interests.

Introduction

Civil control over the state administration is an important factor for the building and development of the Bulgarian society as European. In the last years, Bulgaria has made a significant step towards creating a democratic institution, towards affirming a lawful state and an active civil society. The new democratic state requires new realities to facilitate the development of a system of guarantees, necessary for the objectives and tasks of social change. This process, however, does not automatically guarantee sufficiently effective protection of the rights of individual citizens as well. The practice in countries with solid democracy shows that the role and the significance of out-of-court means for protection of human rights are growing.

Control in the state sphere is one of the important regulators of administrative activities, called to secure lawfulness, effectiveness, and alignment with important public goals [4, p.161]. Through the envisioned by the law means for control of the administration, the individual citizen is protected from the dominating authority of the state administration. It leads to abuse, illegal and improper actions that affect the legitimate interests and rights of citizens. The exercise of control by citizens over the administration complies with specific procedures provided for in individual acts as a guarantee for lawful, proper and effective performance of the control activity [5, p.313-314]. Citizens' right to control the public administration is regulated by the Constitution and some separate laws. The Administrative Code takes an important place among the guarantees for lawfulness in the acts and actions of the administration [1].

Due to its content and the relationships that it governs, it is an important legal remedy for protection of the rights and interests of citizens and organizations. The development of a civil society in this country is closely related to the expansion of the ability of citizens to participate in the governance of the state and the social processes. In this respect, an important role is attributed to the right of citizens to file complaints, suggestions, and signals that they send to government bodies, to various organizations, and to others. Proposals and signals are a tool for social control over the activities of the administration. They are a manifestation of citizens' participation in governance [6, p. 9-13]. This right may be used to trigger all control mechanisms to ensure legitimate and properly functioning administration [5, p. 317].

The institute of suggestions, signals, and complaints is a specific out-of-court form that establishes civilian control over the activities of state bodies and protects the rights of citizens from illegal, unlawful acts of the administration. The institute of proposals and signals can be viewed as a unique form of dialogue between the state and the citizens.

By exercising their right to submit proposals and signals, citizens, on the one hand, signaling for the shortcomings in the work of state bodies, organizations and public officials, get involved in resolving social problems, while at the same time they serve their own interests and rights. That is why the examination of every proposal or signal does not have only individual character, but also national importance. This is a kind of indicator that allows drawing conclusions about the situation in the country. They are a source of information that is useful in addressing issues related to the state, economic, social and cultural development. One of the main functions of constitutional law for filing complaints, suggestions, and warnings, is to serve as means of protecting the rights and legitimate interests of citizens. The institute of suggestions, signals, and complaints, however, does not have only a protective function. By submitting their applications, citizens aim at protecting their rights and interests. Realizing that individual right, citizens through their actions contribute to the elimination of such violations in the future, which generally has the effect of strengthening the rule of law. Thus, the actions of the individual citizen taken for protection of their personal rights simultaneously satisfy both their personal and public interests. Proposals and signals help increase the level of protection of the rights of individuals by creating an alternative to judicial review. At the same time they help the democratization of the governance process by creating a direct dialogue between citizens and administrative authorities.

Under the APC and with regard to the principles of accessibility, openness and transparency [1, art. 12], these means retain their place among other methods of control [7, p. 244]. The right to proposals and signals is a real guarantee for the realization of the legitimate rights of citizens. It provides the ability to protect the interests and restore their violated rights with the help of the state authorities. In developed democracies, the institute of proposals and signals is an important part of the legal status of citizens and at the same time inherently affects the activities of state authorities. This right is based on art. 45 of the Constitution, according to which "Citizens have the right to lodge complaints, proposals and petitions to the authorities." Through its exercise, citizens are granted the opportunity to participate in the work of government. The right to proposals and signals belongs to every citizen and exercise of this right is not time-limited. This right is also granted to the Ombudsman.

It is derived from his power to receive and investigate complaints and reports of violated rights and freedoms by state or municipal authorities [8]. The Ombudsman may take advantage of this right in cases where they find that the necessary conditions to protect the rights and freedoms of citizens are not created. It may be exercised as when personal interests of the applicant have been affected by the actions of public officials and organizations. This right may be exercised upon detection of flaws in the work of various officials and organizations without the interests of the applicant being directly affected. Pursuant to Art. 15, par. 2 of the APC in the exercise of this right, it is not necessary to prove a direct and personal interest. This is so because these tools are aimed at improving the work of the administration. The right to submit proposals and signals can also be connected to the protection of some public interest. The main function of these tools is to improve the functioning of the administration. They must be submitted to the administrative authorities and other bodies carrying out public legal functions [1, art. 107, par. 1].

The right to proposals and reports is unlimited in the sense that it can be exercised at all instances [2, p.106]. The object of this control is the whole state administration. Specific objects are all administrative bodies, public officials and administration employees. This control is comprehensive and makes no exceptions. It has unlimited possibilities for control actions. Its scope includes the overall activities of the state administration. This provides a real opportunity to penetrate everywhere in the public administration and ensure lawfulness in its behavior [3, pp. 602-603]. Legal analysis reveals substantial differences between proposals and signals. Proposals are more general in nature. They are designed to improve the organization and activities of bodies performing public functions or to solve other issues that are within their competence.

Signals are more specific in nature as they are filed in certain cases of abuse of power and corruption, mismanagement of state or municipal property, or other illegal or inappropriate actions or omissions of the administrative bodies and public officials. As a result, state or public interests are affected, as well as rights and lawful interests of other persons [7, p. 246]. Proposals are submitted to authorities that are competent to resolve the issues in them. The legislator has regulated in a general way the authorities to which proposals can be addressed. Therefore, determining the authority is done in each case, depending on the nature of the proposal and the competence of the authority. Assessment of this is done by the authority to which the proposal was submitted and is responsible for forwarding it within 7 days to the competent authority. The authority competent to consider the proposal may be from the same administration, it may be superior or be in another administration.

From the time of submission of the proposal, the obligation arises for the authority that has received it, to institute the proceedings. The authority that is competent to consider the proposal must issue a decision within two months after its receipt and forward it to the sender within seven days. The whole organization of the processing of proposals and signals is defined in the statutes of bodies performing public functions. Responsibility for the work on proposals and signals lies with the competent authority. It may assign to individual officials functions for the organization of this job. Proposals and signals may be submitted in written or oral form. The only conditions that have been placed are that they are not anonymous and do not apply to infringement committed more than two years ago.

Proposals and signals must be registered. Proposals must be submitted in person or through an authorized representative. Representation is done in writing with notarized signature [1, art. 18, par. 2]. Improving the work of administrative authorities benefits everyone. This is why for the exercise of the right to make proposals and signals it is not necessary that a direct and personal connection exists between the sender and the relations which are brought up. Competent authority to which the signals are submitted is predetermined by the nature of the signal as a control tool. These are bodies in whose mandate there is placed the direct management and control of the authorities and officials whose illegal and inappropriate actions or omissions are reported. To initiate proceedings on the signal, it is necessary that certain requirements are met. The signal is submitted to the competent authority in the prescribed way, not anonymously, not regarding a violation that has been committed more than two years prior, and not regarding an issue that has already been resolved. If the signal is not submitted to the competent authority, the recipient is obligated to forward it within seven days.

Unlike proposals, signals indicate violations of competent public officials. The competent authority, after clarification of the case, issues a motivated decision. The authority must consider the facts and circumstances relevant to the case. The decision is made after considering the explanations and objections of the interested parties. Interested parties are the submitter of the proposal or the signal, and the administration, respectively, the public official to whom they are directed. The competent authority may use any type of evidence not prohibited by law. The collected evidence may not be used in administrative or judicial proceedings. In the event that a violation is established, new proceedings begin which will determine whether there is an infringement or not. Measures for implementing the decision are taken by the authority that has issued it. It will also determine the manner and time for completion. The manner of implementation and the measures are different, but they achieve administrative efficiency and prevent or stop illegal or inappropriate exercise of power. In considering the signal, the authority takes immediate action to remedy the wrongful act or inexpediency. The decision is issued in writing and the legal and factual issues that support it are included in it.

The decision is made within two months of receipt of the signal and is communicated within seven days of its issuance. The decision is implemented within one month of its adoption [1, art. 125, par. 1]. The purpose of the enforcement of the decision is to eliminate the harmful effects that are caused by illegal or inappropriate actions. That is how pecuniary and non-pecuniary damages are remedied. A signal that has already been ruled upon is not subject to retrial. Implementation of the decision ends the proceedings on the signal. It causes the targeted by the decision change as a means of civic control. The decision is not subject to appeal. Proposals and signals are becoming an important tool for improvement and democratization of social management and public control over the work of state authorities. They facilitate strengthening the rule of law, enhancing public participation in social management and protecting their rights and legitimate interests. The institute of suggestions, signals, and complaints is not only a tool for protecting the rights and interests of citizens, but it is also a kind of means of public control over the administration and a method for optimizing its activities.

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