

Illegal retroactive reworking of illegality

Behind the story of the whistleblower Milenko Jovanović, the head of the Air Control Department at the Environmental Protection Agency, who was fired when he opposed the decision to change the criteria for assessing air quality, and was later reinstated by a court decision, there is another successful story in the fight against brutal illegality.

After 17 years of work at the Agency, Jovanović was fired (December 2020), as he opposed the decision of the Agency's director to change the criteria for assessing air quality without the approval of the profession. That was at a time when Belgrade recorded records in air pollution. The agency published the decision on the dismissal on its website, stating that the employee was fired because "he did not ensure adequate maintenance of the majority of measuring stations, which are therefore unacceptably neglected."

After the dismissal, he did not give up the fight for justice and continued his case with the support of specialized whistleblower protection lawyers and the media organization "Pistaljka". He later established contact with Transparency Serbia, run by the Center for Advocacy and Legal Counseling (ALAC).

The High Court in Belgrade accepted the request for a temporary injunction. The Environmental Protection Agency was ordered to immediately reinstate former chief Milenko Jovanović until the dispute is resolved. However, he could not be returned to the same position because it was abolished in the meantime. At the beginning of September 2021, Milenko Jovanović also pointed to redundant purchases and corruption in connection with the purchase of measuring stations.

This whistle-blowing case is also connected with an illegal appointment in the public administration, considering that the Government, at the session held on April 15, 2021, appointed Filip Radović to the position of Acting Director of the Environmental Protection Agency for three months, but starting on October 9, 2020. In order to make it less noticeable, at the session held seven days later, Filip Radović was appointed again for three months, this time starting on January 10 2021. By the way, he was the director (not acting) of the Agency from February 22, 2013 to March 19, 2015. After that, Filip Radović was appointed acting director 20 more times, regularly for three months and once for 6 months. Among those postings were a few retroactive ones, which were less noticeable as they were delays of one to nine days. The illegal decision¹ on retroactive

¹ Law on Civil Servants ("Official Gazette of the RS", no. 79/2005, 81/2005 - corrected, 83/2005 - corrected, 64/2007, 67/2007 - corrected, 116/2008, 104/2009, 99/2014, 94/2017, 95/2018 and 157/2020) in its article 34 paragraph 1 stipulates that the Government appoints, among other things, the director of the administrative body within the ministry. Article 67a paragraph 1 of the Law allows that, until a civil servant is appointed to a position, one or more acting officials may be appointed, for a total period of up to six months, without an internal or public competition. Paragraphs 4 and 5 of the aforementioned article provide that, in the event that the internal, i.e., public competition does not end with the appointment to the position or if the public competition fails, the status of acting official can be extended for a maximum of three more months, that is, the acting official can be appointed to replace a civil servant in a position who is absent from work for more than 30 days, and at the latest

appointment for the period from October 9, 2020 has a special significance because it was during that period, November 2020, that Milenko Jovanović was fired from the position of head of air quality issues at the Environmental Protection Agency.

All of the above was the reason for the TS on April 22, 2021 to refer the Initiative to the Public Prosecutor's Office of the Republic and request that it file a lawsuit for annulment and initiate an administrative dispute to challenge the legality of that decision.

Republic Public Prosecutor's Office initiated an administrative dispute, that is, on June 22, 2021, it filed a lawsuit to annul the Government's decision.

Until the middle of 2023, there was no information available about the status of the case and possible activities of the Administrative Court following the lawsuit of the Republic Public Prosecutor's Office. On June 29, 2023, the TS sent a complaint to the President of the Administrative Court about the work of Judge Tamara Brešković - Stanišljević because the administrative dispute initiated by the Republic Public Prosecutor's Office is dragging on or there is a certain undue influence on its course and outcome. Namely, according to data from the Portal of the Serbian Judiciary, two days after the receipt of the lawsuit, more precisely on June 24, 2021, the case that was formed was assigned to the work of the aforementioned judge, and until the time of filing the complaint, she had undertaken only one activity - drafting letter BGUS-2021-71713, and that was two months after the case was filed.

After several additional requests to clarify the initial request, on October 30, 2023, the Administrative Court informed the TS that the administrative dispute for the annulment of the decision on retroactive appointment was concluded by issuing a verdict on September 29, 2023, at a closed session of the council, upholding the lawsuit and canceling the decision on retroactive appointment to the position of Acting Director of the Agency from April 15, 2021. By the same verdict, the case was returned to the Government of the Republic of Serbia for a new decision.

Acting on the request of the Court of Justice to provide information regarding the verdict, on January 24, 2024, the Government of Serbia informed the Court of Justice that on October 27, 2023, it received the judgment of the Administrative Court, and that at the session held on November 3, 2021, it dismissed Filip Radović as the acting director of the Environmental Protection Agency, and at the same session passed a decision on the appointment of Srđan Lalić as the acting director of the Environmental Protection Agency!

Considering that this information has nothing to do with the request, TS again requested information on the basis of which it can be seen whether and when the Government of the Republic of Serbia acted according to the judgment of the Administrative Court. TS is still waiting for the requested information to be submitted.

until his return to work. In addition, paragraph 6 of this article stipulates that the incumbent's duty ends at the end of the period for which the incumbent can be appointed and that the position remains unfilled until a civil servant is appointed to the position in the competitive process.

The special success achieved by the said initiative was used by the TS as an occasion to submit over 50 new initiatives to the Republic Public Prosecutor's Office to cancel the decision on the appointment of acting officials. In response to the submitted initiatives, the Republic Public Prosecutor's Office informed that it had initiated 25 administrative disputes, i.e. submitted 25 lawsuits for annulment of the decision of the Government of the Republic of Serbia.

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