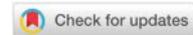


POWERS OF ADMINISTRATIVE INSPECTION BODIES IN SANCTIONING ECONOMIC MISDEMEANORS IN SERBIAN LAW

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Abstract: In the paper, the author analyzes the connection between administrative inspection bodies (“inspekcije”) and sanctioning economic misdemeanors in Serbian law. The purpose of the paper is to answer several questions. Why do administrative inspection bodies have specific powers in sanctioning economic misdemeanors and what gives them an opportunity to detect economic misdemeanors? What are the powers given to the administrative inspection bodies after detecting an economic misdemeanor and what is the legal nature of these powers? Classical legal methods are being used: dogmatic and normative. In answering to these questions, the author shows the general connection between administrative inspection (“inspekcijski nadzor”) and detection of misdemeanors, using economic misdemeanors as a paradigm. After that, the author explains what powers administrative inspection bodies have after detection of economic misdemeanors, in imposing misdemeanor sanctions. Finally, the author analyzes the legal nature of these powers – whether they are only procedural or meritorious as well. The results show that administrative inspection bodies have two basic powers, depending on the specific economic misdemeanor: to initiate a misdemeanor court procedure by submitting the formal request or to issue a misdemeanor fine order (“prekršajni nalog”). The power to initiate a misdemeanor court procedure has a clear, procedural nature. Legal nature of the inspector’s power to issue a misdemeanor fine order, however, is not clear, because it depends on the legal nature of the misdemeanor fine order itself, which is also ambiguous. A misdemeanor fine order has been regulated in an unclear and illogical manner. It has been qualified both as a decision to impose a misdemeanor sanction and a request to initiate a misdemeanor court procedure at the same time. It has been given an ambivalent character, which a legal institution could not normally have. After a detailed analysis of the legal nature of a misdemeanor fine order, the author concludes, proving the main hypothesis, that it is a decision made to impose a misdemeanor sanction. This means that the powers of inspectors, when issuing a misdemeanor fine order, are the powers of essentially meritorious nature. The author recommends that the court’s adjudication should be actually understood as a judicial protection which has been given to the offender. This is the way the legislation should also change, so that the various legislative contradictions could be removed and so that the powers of administrative inspection bodies could have a clear legislative grounds.

Keywords: administrative inspection, administrative inspection bodies, economic misdemeanors, request to initiate a misdemeanor procedure, misdemeanor fine order.

Field: Social sciences

1. INTRODUCTION

In Serbian law, until recently, administrative bodies were authorized to decide on misdemeanor cases. However, after the latest misdemeanor regulations, they have lost this authority. Misdemeanor cases are only tried by the misdemeanor courts, which means that the role of administrative bodies, including those competent for administrative inspection (used as a general Serbian term “inspekcijski nadzor”, and not as a literal translation of the term “upravna inspekcija”), particularly important in this context, has also changed.

The administrative inspection bodies (“inspekcije”) have also lost their essential meritorious powers in fighting misdemeanor offenses by losing their former jurisdiction in a misdemeanor procedure. Today, they are mostly left with procedural powers: their main role is prosecuting the offender before the court. Nevertheless, it seems that the meritorious powers of administrative inspection bodies are not completely lost. They can still be found in the form of a misdemeanor fine order (“prekršajni nalog”), although in a quite specific and unusual way.

Specific powers in fighting misdemeanor offenses are generally given to all inspection bodies, but their true value can be primarily seen in the field of economy. It should be clear, therefore, that economic misdemeanors (misdemeanors connected by the same object they should protect – the economy) have not been selected by accident. They are used as a paradigm to show that inspection bodies have an essential role in this field, solving some of the main problems of economic misdemeanors, as crimes hard to detect and known for their dark figure. Administrative inspection creates an opportunity to get first

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indications of the committed economic misdemeanor offense and collect the evidence, which is usually hidden in the reviewed documents.

The research should explain this relationship between administrative inspection bodies and fighting economic misdemeanors. The aim is to answer several questions. First, why do administrative inspection bodies have any powers in fighting economic misdemeanors? Second, what powers do they exactly have after detecting an economic misdemeanor? Finally, what is the legal nature of these powers and are they truly only procedural, or meritorious as well?

By answering these questions, we will try to prove the main hypothesis of the paper. When they prosecute the offender for an economic misdemeanor before the court and initiate a misdemeanor court procedure, administrative inspection bodies have clear powers of procedural nature. When issuing a misdemeanor fine order, however, their powers are ambiguous due to the contradictory legal nature of the misdemeanor fine order itself. If we want to discover the true legal nature of these powers, first we have to examine the true legal nature of the misdemeanor fine order. This examination should show us that, despite legislative contradictions, a misdemeanor fine order is a decision on imposing a misdemeanor sanction. Therefore, the powers of administrative inspection bodies, when issuing a misdemeanor fine order for an economic misdemeanor, essentially still have a meritorious nature.

2. MATERIALS AND METHODS

Achieving the aforementioned goals requires the use of the classical legal methods – dogmatic and normative. The dogmatic method, or the method of legal interpretation, is used to determine the exact or true meaning of the specific legal rules regulating the powers of administrative inspection bodies in fighting economic misdemeanors. The normative method and observing these regulations as a whole, as a system, should give us a closer explanation of these powers and their legal nature.

3. RESULTS AND DISCUSSIONS

Administrative bodies and fighting misdemeanors have been traditionally connected. A long time ago, during the police state period, misdemeanors were also described as police offenses, i.e., offenses punishable by the police. Since the authority that applied misdemeanor sanctions was administrative, misdemeanor offenses were also conceived as a part of administrative law (Milkov, 2020). This relationship between administrative and misdemeanor law was solid in German countries (historically speaking), and in Austrian law, it remains so even today (Milkov, 1986; Wieser, 2009).

Traditional connections between administrative bodies and misdemeanors can also be found in Serbian law. For a long time, administrative bodies were authorized to impose sanctions in misdemeanor proceedings. However, this connection has been weakened with the establishment of misdemeanor courts, as courts of competent jurisdiction. After the establishment of misdemeanor courts, administrative bodies were actually still empowered to carry out the misdemeanor procedure, but only at the beginning and only in the first instance (ZoUS, Art. 27; ZP2005, Art. 91). Very soon, after the enacting of the latest Misdemeanor Act, they completely lost this competence. Today, therefore, under the Misdemeanor Act, only misdemeanor courts have jurisdiction in cases of this kind (ZP, Art. 100).

Transforming the misdemeanor procedure into a court procedure has definitely changed and weakened the role of administrative bodies in dealing with misdemeanor offenders, but their powers are not completely gone. By taking administrative actions, they still have the opportunity to detect misdemeanors. This, of course, applies not solely to the police but also to various administrative inspection bodies.

The primary function of the inspection bodies is the administrative inspection. To carry out an inspection means determining whether the economic and other activities of natural and legal persons comply with the applicable laws and regulations. It implies direct insight into these operations, followed by imposing prescribed measures depending on the results (ZDU, Art. 18, Para. 1). These measures are of an administrative nature, which means that the main purpose of the inspection is not to detect misdemeanors and apply misdemeanor sanctions. Detecting misdemeanors can only be a side effect of the administrative action – a side but a rather logical effect. Although detecting misdemeanors is not a primary role of inspection bodies, it is a logical result of their administrative powers. These powers, including observation, taking statements, reviewing documents and records, sampling, photographing, etc., give the inspection bodies an opportunity to discover committed misdemeanors and collect the evidence (Milovanović & Vasiljević, 2014; Rapajić, 2019; Martinović, 2018).

The relationship between administrative inspection and the detection of misdemeanors is essential in the field of economy. It is important not only because of the frequency of administrative inspection in

this field and the fact that it is carried out by numerous bodies but also because of the specific features of economic misdemeanors. To mention only the tax administration and its role in fighting shadow economy (Rapajić et al., 2021; Milić, 2023). Economic crimes, in general, are hard to detect and are characterized by their dark figure (Škulić, 2015). The issue of economic crimes, including economic misdemeanors, refers primarily to their detection and evidence collection. At the source of the problem, therefore, the role of the administrative inspection bodies seems to be the most significant. Qualified and competent officers and their administrative powers are the crucial prerequisites for detecting economic misdemeanors, the traces of which are usually hidden in the business documents.

Using economic activities as a paradigm, it should be clear that the relationship between administrative inspection and misdemeanors is necessary and rather natural. Just because they no longer have the power to carry out a misdemeanor procedure does not mean that administrative bodies have nothing to do with detected misdemeanors. On the contrary, they still have an essential role to play in applying misdemeanor sanctions.

After discovering that an economic misdemeanor offense has been committed, inspectors of administrative inspection bodies have the authority to take two actions: first, they are authorized to initiate a misdemeanor court procedure by submitting the formal request; second, they are authorized to issue a misdemeanor fine order (ZIN, Art. 42, Para. 1). Cases in which these powers can be used are expressly regulated and do not depend upon the inspector's discretion.

A misdemeanor fine order shall be issued for economic misdemeanors punishable only by a fine, determined by law in a fixed amount. In other cases, inspectors shall address the court and initiate the misdemeanor procedure, i.e., request the misdemeanor court procedure to be instituted (ZP, Art. 168, Para. 1-2). After the start of the misdemeanor process, the inspector that made the request shall have the position of a party. Its function is to prosecute the offender while the court is authorized to adjudicate the case. On the other hand, by issuing a misdemeanor fine order, the inspector imposes the punishment as an exception to the rule according to which misdemeanor sanctions shall be imposed only by the misdemeanor courts (ZP, Art. 87).

These powers, however, shall not be used every time. There are some exceptions to these duties – to prosecute the offender or issue a misdemeanor fine order. First, it shall not happen when the violation is not only an economic misdemeanor offense but also an administrative law violation at the same time, and the offender has acted in compliance with the imposed administrative measures. Additionally, it is important that the fine does not exceed the specific amount, that no misdemeanor law measures are prescribed, and that no damage or harm is inflicted – if so, then it should be compensated. Secondly, the offender shall not be prosecuted or punished if he reports the violation himself before the commencement of the inspection procedure or before the notification of the upcoming inspection. Again, inflicted damage or harm should be compensated, i.e., all available means should be used to compensate for the inflicted damage or harm (ZIN, Art. 42, Para. 3).

One of the main principles of a misdemeanor procedure is the accusatory principle. According to this principle, a misdemeanor procedure shall be carried out on the grounds of request, submitted to the court by a competent authority (ZP, Art. 88). The legal theory describes this request as an indictment (Ristivojević & Milić, 2023). Its legal nature seems to be quite clear. Therefore, administrative inspection bodies' role as authorities competent to submit the request seems equally clear. By submitting the request, an inspector charges the offender with a misdemeanor offense. In other words, the inspector's function is to prosecute the offender before the court. As a prosecutor in the misdemeanor procedure, the inspector has the position of a party, which means the inspector has a wide range of procedural rights and duties. In short, all the powers of inspectors in performing this prosecuting function are the powers of a procedural nature.

Unlike with the above request, the legal nature of a misdemeanor fine order is not so clear. Quite the opposite: it is very ambiguous. Therefore, the powers of inspectors when issuing this order are of a similar nature: vague and disputable. To begin with, it could be said that these powers have a mixed and combined character – procedural and meritorious at the same time.

A misdemeanor fine order is said to actually have a double legal nature. It is considered a decision and an indictment at the same time. As a decision, it is made to impose a misdemeanor sanction. As an indictment, it leads to charges against the misdemeanor offender. To be precise, it is a decision made to impose a fine on the offender, but also a latent indictment, similar to the already explained request to initiate and institute a misdemeanor court procedure (Jeličić, 2018). Unlike the request, this "indictment" is submitted to the court by the offender himself (Milić, 2022).

The complex legal nature of a misdemeanor fine order derives from legal regulations. It should be remembered that a fixed fine is being imposed on the offender by issuing a misdemeanor fine order.

Actually, it could be said that a fine is being applied, but only conditionally, because it depends on whether the offender accepts the misdemeanor liability.

The misdemeanor liability can be accepted by paying half the fine within eight days of receiving the order. This way, the offender is released from the duty of paying the other half. If the fine is not paid, it will mean that the offender accepts the liability due to omission if he does not address the court to decide the case within the same time limit. It shall mean that the misdemeanor fine order has become final and enforceable (ZP, Art. 173, Para. 1-2).

If the offender does not accept the liability, he shall bring the case before the court by submitting the misdemeanor fine order and turning it into a request for a court decision. From that moment on, the offender becomes the accused or the defendant, although the misdemeanor procedure has not yet actually commenced. It will formally commence only if the court decides so (ZP, Art. 174, Para. 1-2, Art. 177, Para. 1). After the court has decided that the misdemeanor procedure has formally commenced, the offender is no longer fined, i.e. it is legally presumed that the fine has not been imposed (ZP, Art. 174, Para. 6). If that is the case, the body that issued the misdemeanor fine order once again has to use its procedural powers to prosecute the defendant.

These unusual legal rules regarding a misdemeanor fine order are difficult to explain logically as they combine something that should not be combined. Only the consequences, which have led to numerous contradictions, seem logical. A misdemeanor fine order should be used to impose a misdemeanor sanction and, at the same time, initiate a misdemeanor procedure in which the sanction should be imposed! In a given legal framework such as this one, many things could be argued: e.g., the legal nature of the procedure in which a misdemeanor fine order should be issued, the legal position of the offender, and particularly the fact that a misdemeanor fine order, as a decision made to impose a fine, becomes capable of transforming into a request submitted to the court to decide on the case.

The procedure for issuing a misdemeanor fine order is not regulated as a misdemeanor procedure. A misdemeanor procedure is only regulated as a court procedure and formally commences only when the court decides so. Before that, the misdemeanor procedure does not exist, regardless of the fact that a misdemeanor fine order has been issued. In fact, if the offender does not address the court, there will be no misdemeanor procedure at all. But if this procedure is not a misdemeanor procedure, what kind of procedure is it? What is its legal nature? In what proceedings should misdemeanor sanctions be applied if not in a misdemeanor one? Even though a misdemeanor fine order is issued by an administrative body, the procedure itself is not administrative.

The person to whom a misdemeanor fine order has been issued becomes the defendant only when the request for a court decision is made. And that request is made by the defendant himself, as already explained. But what is the position of the offender before that moment? Legal theory tells us that before the commencement of the court procedure, the offender is actually only a suspect (Ristivojević & Milić, 2023). This "suspect," however, has also been fined because a misdemeanor fine order has been issued! How is it possible for the same person to be punished for a misdemeanor offense and suspected of committing it at the same time? Following the legislative logic, we come to the conclusion that the offender has been punished first, only to be accused later!

The legislative "logic" is actually the following: the person to whom a misdemeanor fine order has been issued has been punished and has not been punished at the same time! At the same time, a misdemeanor sanction has been imposed and has not been imposed! It has not been imposed as it depends on the offender and whether he accepts the liability or not. If the offender does not address the court, he will remain punished. However, if he addresses the court, he will become the defendant. If the court commences the misdemeanor procedure, it will mean that there was no fine at all, that the fine was only apparent.

Legal rules give the impression that the request for a court decision is not a separate submission. The request is the misdemeanor fine order itself, submitted to the court. Hence, the previous observation that a misdemeanor fine order mysteriously changes its legal nature and transforms itself from a decision made to impose a fine into a request for a court decision. Of course, this unusual transformation could not be made logically and consistently. A misdemeanor fine order has suddenly become a submission, but it is not entirely clear which one.

As a request for the court to decide on the case, the offender presents a misdemeanor fine order. This way, however, the offender becomes the defendant, which does not seem logical because it implies he has accused himself. If the offender addressed the court by submitting the "indictment," something very unusual would happen: the offender would prosecute himself.

As a submission of the offender, the request will not be further considered by the court if it is unsigned or presented after the given time limit. If that is the case, the misdemeanor fine order shall become final

and enforceable. Suddenly, however, in the same context of meeting the formal requirements for further proceedings, the request seems to be submitted by the inspector that issued the misdemeanor fine order. At the same time, again. If the misdemeanor fine order does not meet all the formal requirements for further proceedings, especially if the violation has not been precisely and clearly described and determined, the court shall ask the inspector to correct it. Otherwise, the misdemeanor fine order shall be dismissed on formal grounds (ZP, Art. 174, 182). At the climax of these legislative exhibitions, we can see that an illegal decision can turn into an incomplete submission and be dismissed. But what it really means and what is actually being dismissed is not specified! If there is only one and the same submission to the court, then the legal consequences should also be the same, although absurd: the misdemeanor fine order becomes the request for a court decision submitted by the offender, which is being dismissed for not being corrected by the inspector, becoming at the same time final and enforceable!

All these contradictions result from misunderstanding the true legal nature of a misdemeanor fine order. The legislator has misunderstood the fact that a legal institution cannot have a double legal nature and cannot cover two legal institutions of different legal natures at the same time, nor can it change its legal nature, becoming something else. If a misdemeanor fine order imposes a fine, becoming final and enforceable, then it has to be a legal act – a decision – and not a mere submission to the court!

If a misdemeanor fine order were truly an indictment, it could not be a decision made to impose a misdemeanor sanction. If a misdemeanor fine order is a decision, it will not become an indictment as it cannot change its legal nature. Submitting the order to the court cannot be explained as indicting, especially keeping in mind the fact that it shall be submitted by the offender. The request made to the court could be logically explained only as the request for judicial review of the misdemeanor fine order. Adjudicating the case means giving the offender judicial protection against a misdemeanor fine order as the previous decision on the misdemeanor sanction. The entire misdemeanor procedure, as a judicial proceeding, resembles a “legal remedy” against a misdemeanor fine order – to use the analogy with the judicial review of administrative actions.

The legal nature of a misdemeanor fine order cannot be influenced by whether the offender accepts the liability. For the legal concept of a misdemeanor fine order, it changes nothing. Otherwise, the essence of every decision could be influenced by whether the party accepts it or not. If accepting the decision, the party will implement it – if not, the party will challenge it. It sounds very logical. Why should a misdemeanor fine order be any different in that respect? Perhaps because the legislator is determined to show that administrative bodies have no jurisdiction in these cases, only courts do. Administrative bodies are not authorized to decide on a misdemeanor procedure case but to apply a misdemeanor sanction?! Once again, we have to ask ourselves the same question: in what procedure should a misdemeanor fine order be issued? In what procedure should a misdemeanor sanction be applied? In a misdemeanor procedure, of course, no matter who makes the decision and how summary the procedure really is!

The constitutional right to a fair trial could be a potential reason for this legislative approach. If so, it must be noted that the reason is not justified. In the spirit of the right to a fair trial, administrative bodies could also decide on misdemeanor cases in a misdemeanor procedure. Their decision, however, would have to be subject to judicial review of full scope and jurisdiction. The right to judicial protection against the decision, and not exclusive judicial decision-making, would be quite sufficient for the right to a fair trial. Concealing the true nature of a misdemeanor fine order has only led to problems and legislative contradictions. Regardless of the legislative intentions and this legislative Gordian knot, the powers of administrative inspection bodies, when issuing a misdemeanor fine order for an economic misdemeanor, essentially remain powers of a meritorious nature.

4. CONCLUSIONS

The main role of the administrative inspection bodies is not to detect misdemeanor offenses. As the name suggests, the main function of an administrative inspection body is to perform an administrative inspection using administrative powers. Detecting misdemeanor offenses is only a side effect of performing an administrative inspection, though a very logical one, because of the way an administrative search is carried out. That is why administrative powers are logically followed by the powers delegated to these bodies by the misdemeanor law.

Inspector's powers granted by the misdemeanor law are not explicitly designed to fight economic misdemeanors but can show their full value and importance regarding this type of offense. Economic misdemeanors, the same as economic crimes in general, are mostly hidden and hard to detect. Powers immanent in administrative inspection and qualified officers as experts in the specific field of economy seem to be of crucial importance for detecting economic misdemeanors and collecting the evidence.

Inspectors are given two central powers upon detecting an economic misdemeanor. Depending on the offense and the prescribed sanctions, they are authorized to request a misdemeanor court procedure or issue a misdemeanor fine order.

The inspector actually prosecutes the offender by initiating a misdemeanor procedure before the court. As the initiator of the misdemeanor procedure, the inspector has the position of a party, i.e., has numerous procedural rights and duties. In other words, the inspector's function is purely procedural, without any meritorious powers to decide on the case.

On the other hand, by issuing a misdemeanor fine order, the inspectors themselves impose a misdemeanor sanction. It should mean that the inspector's powers are meritorious and that the inspectors themselves have decided on the case. It is true, but only if the offender accepts the liability. If not, the offender shall address the court, and the misdemeanor fine order shall become a request for the court to decide on the case. This way, the procedural powers of the inspectors in prosecuting the offender are reactivated.

It appears that a misdemeanor fine order has been given an ambivalent legal nature. It is a decision on the misdemeanor sanction and a request submitted to the court to initiate the misdemeanor procedure. When this legislation was made, the legislator seems to have forgotten that a legal institution cannot represent two legal institutions at the same time, nor can it mysteriously change its legal nature and become something essentially different. If the misdemeanor fine order is a decision made to impose a misdemeanor sanction, it cannot simultaneously be a request for a decision, nor can it become one! If the misdemeanor fine order were a request, an indictment, or a mere submission, it could not be a decision at the same time, nor could it ever have been!

Legislation combining something that should not be combined has led to numerous contradictions. Apparently, the procedure of issuing a misdemeanor fine order is not a misdemeanor procedure! Apparently, the offender who has been fined has not even been accused yet! Apparently, a misdemeanor fine order can become final and enforceable, but it can also be dismissed as an incomplete submission because the inspector has not corrected it, although it has not been submitted to the court by the inspector! To take the legislative absurdity to the limits, a misdemeanor fine order, as an "indictment," shall be submitted to the court by the offender so that he could accuse and prosecute himself!

All these legislative contradictions seem to result from misunderstanding the true legal nature of a misdemeanor fine order. If it serves to impose a fine, it has to be a decision and a legal act. By issuing a misdemeanor fine order, misdemeanor liability is decided on, and misdemeanor sanction is applied. That is why a misdemeanor fine order can become final and enforceable. The offender's standpoint could not change that, nor could it transform an order into a mere submission to the court.

Submitting a misdemeanor fine order to the court could only be logically explained as requesting judicial protection. Before the court, the offender requests a judicial review and challenges the misdemeanor fine order. A misdemeanor fine order and a request for a court decision should not be seen as one and the same thing, regardless of the form in which the request is submitted. As a decision without some essential formal elements, a misdemeanor fine order should not be dismissed as an incomplete submission. It is illegal, and it should be annulled. In the end, understanding the true legal nature of a misdemeanor fine order suggests that the powers of administrative inspection bodies, when issuing this order for an economic misdemeanor, are essentially meritorious. The inspector decides on the case and imposes a fine in a procedure that could not be unknown and unspecified – it could only be a misdemeanor procedure!

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