GUARANTEE ACT IN THE LEGAL SYSTEM OF THE REPUBLIC OF SERBIA

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Abstract
The guarantee deed represents a legal institution that is applied in the legal system of the Republic of Serbia to protect the rights and interests of participants in a legal relationship, and at the same time represents one of the administrative matters provided for by the Law on General Administrative Procedure. The administrative act, as a legal institute belonging to administrative law, is introduced into the administrative legal system of the Republic of Serbia by the adoption of the Law on General Administrative Procedure ("Official Gazette of the RS", No. No. 18/2016 and 2/2023 - Decision of the RS RS. See: Authentic interpretation - 95/2018), and in accordance with the tendency of harmonizing our legislation with the legal system of the European Union. The said law (Articles 18-21) basically regulates this institute through four articles, given that it is adopted when it is prescribed by a separate law. Its introduction into the administrative legal system shows the seriousness of the work of the public administration, and therefore enables a safer and more favorable position of the parties in terms of legal transactions, bearing in mind that it conditionally recognizes the parties, that is, guarantees a future right. Bearing in mind that the guarantee deed represents a novelty in administrative proceedings, the effects of its application in practice will be subject to consideration and further improvement of the normative framework for its practical application.
Keywords: *guarantee act, Law on General Administrative Procedure, term, definition, purpose, administrative act, appeal, comparative legal system, European Union.*

Introduction

The guarantee deed represents a type of administrative procedure that, on the one hand, increases the objectivity of the work of the public administration, and on the other hand, the party has a sense of greater legal security in administrative and legal affairs. The guarantee deed is introduced as a separate institute in the administrative legal

system of the Republic of Serbia by the adoption of the Law on General Administrative Procedure (hereinafter: ZUP), which was published in the Official Gazette of the Republic of Serbia No. 8/2016 of 01.03.2016. year, which entered into force on 09.03.2016. year, and applies from 01.07.2016. year, with the exception of the provisions of art. 9, 103 and 207 of this law, which began to be applied after 90 days from the date of entry into force of this law [1].

However, in addition to the fact that this institute is a novelty from the ZUP, it is not a complete novelty in the legal system of the Republic of Serbia, bearing in mind that it is mentioned under that or a similar name in special procedures regulated by special laws [2].

The guarantee deed is governed by the provisions of the ZUP (Art. 18-21), and the legal provisions themselves begin with its definition and the reference norm which stipulates that the guarantee deed is issued when it is prescribed by a special law.

The guarantee deed is an important instrument in administrative law that aims to ensure the protection of the rights and interests of the parties in administrative proceedings. In administrative law, the purpose of the guarantee act is to ensure the protection of the rights and interests of citizens or entities involved in administrative procedures or relations with administrative bodies. The guarantee deed aims to provide security and legal protection to parties in proceedings before administrative authorities and to ensure that their rights are respected. The guarantee act is of great importance in the balance between the efficiency of administrative authorities and the rights of individuals.

A guarantee deed is also used in other legal systems, but it can differ depending on the composition of the legal system and legal norms. In Serbia, the guarantee is one of the most commonly used instruments in legal transactions and the use of guarantee documents is regulated by the Law on Obligations.

Term and Definition of Guarantee Act

The guarantee deed, as one of the novelties introduced by the ZUP, represents the subject of administrative proceedings, in the context of a wider prescription of the term

administrative matter, which is separated by the legal text into a special type of administrative activities [3].

The guarantee deed, as an institution, is prescribed by the ZUP "(1) The guarantee deed is a written deed by which the authority obligates itself to pass an administrative deed of a certain content, at the appropriate request of the party. (2) The guarantee deed is adopted when it is determined by a special law" [4].

ZUP defined the term "organ" in the article of the law defining administrative procedure "Administrative procedure is a set of rules that state bodies and organizations, bodies and organizations of provincial autonomy and bodies and organizations of local self-government units, institutions, public enterprises, special bodies through which regulatory function and legal and natural persons entrusted with public powers (hereinafter referred to as authorities) apply when acting in administrative matters" [5].

It follows from the very definition of this institute in our legal system that the subjects of the conclusion of the administrative contract are, on the one hand, the authority, while on the other hand, they can be legal or natural persons who meet the conditions prescribed by law in order to perform a certain work in the public interest.

Looking at the normative regulations of this institute, it can be concluded that the parties cannot request the issuance of a guarantee deed in any administrative area, but only in those areas or administrative matters in which it is prescribed by a special law. In its form, the guarantee deed is a written deed by which the authority is obliged to pass an administrative act of a certain content at the request of the party, by which the administration is obliged to pass an administrative act in that matter within a certain period, under certain conditions (if they are met). All of the above is based on the assumption that no material regulations have changed in the meantime, and that the adoption of the same is not against the public interest or the legal interest of third parties [6].

The guarantee deed is not declaratively introduced into the legal system by the adoption of the ZUP, but its existence is related to the way it is regulated in special regulations. The guarantee act, under the same or a different name, exists in the Law on Citizenship of the Republic of Serbia, the Customs Law, the Law on Nationality and

Registration of Vessels, the Law on Inspection Supervision, the Law on Tax Procedure and Tax Administration [7].

A guarantee deed is not an administrative deed by its nature and function, but like an administrative deed, in accordance with legal conditions, it provides the party with certain promises that it can count on in terms of certain rights, considering a certain factual and legal construction. The legal content of the guarantee deed represents a binding opinion of the authorities on the application of regulations to a specific legal situation, and at the same time it must not be against the public interest or the legal interest of third parties.

Purpose of the Guarantee Act

The purpose of the guarantee deed is in the right of the party, which gives the right to subsequently, when it submits a request for the adoption of an administrative deed, receive an administrative deed with the promised content, that is, an administrative deed that is in agreement with the previously issued guarantee deed. The party has the right to protect this right by filing an appeal against an administrative act that was not issued in accordance with the guarantee act [8].

The implementation of the guarantee deed in the administrative procedure in the formal legal sense through the provisions of the ZUP has a certain importance in order to achieve more effective legal certainty and thereby raise a certain level of predictability in business processes. The ZUP unequivocally stipulates that the rules of administrative procedure prescribed by that law are directly applied to the guarantee deed, which primarily relate to the protection of the public interest and the conditions for passing or not passing an administrative act in accordance with the guarantee deed. In addition to the application of the provisions of the ZUP related to the administrative act, special regulations are allowed to independently prescribe the adoption of a guarantee act in certain areas that they regulate.

Looking at the provisions of Article 18, paragraph 1 and Article 19, paragraph 1 of the ZUP, we come to the conclusion that the authority has the obligation to issue an administrative act in accordance with the guarantee act, and the party has the right to choose whether to request the issuance of an administrative act. act in agreement with

the guarantee act, i.e. whether when submitting a request for the issuance of a certain administrative act, the issued guarantee act will be referred to at all [9].

Guarantee Deed in Special Regulations

A comprehensive picture of the concept and institution of a guarantee deed cannot be obtained unless special laws are taken into account, bearing in mind that according to the ZUP, the existence of a guarantee deed depends on special regulations. In the front part, the regulations are listed in which you can find institutes that are considered a guarantee deed, and in this part we will specifically mention some of them, so that its essence and application can be seen on an example [10].

In Article 19, paragraph 1 and 2 of the once valid Customs Law ("Official Gazette of the RS", no. 18/10, 111/12, 29/15, 108/16 and 113/17), it was prescribed: "(1) Upon written request of an interested person, the Customs Administration issues a binding notification on the classification of goods (hereinafter: OOS) according to the Customs Tariff and a binding notification on the origin of goods (hereinafter: OOP). The request for issuing a binding notification will be rejected by the Customs Administration if it does not relate to the intended use of OOS, i.e. OOP in the customs procedure. (2) OOS, i.e. OOP obligates the customs authority only in connection with the tariff classification of goods, i.e. determining the origin of goods. These notices bind the customs authority in relation to the person to whom they were issued only in relation to the goods on which customs formalities were completed after the notices were issued. Notifications bind the person to whom they were issued in relation to the customs authority only from the day they were delivered to him or are deemed to have been delivered to him." [11].

In the current Customs Law ("Official Gazette of the RS", no. 95/18, 91/19, 114/20, 118/21 and 138/22), in Article 23, paragraph 1, it is prescribed: "At the written request of an interested person the customs authority makes decisions related to binding notifications on the classification of goods (hereinafter: OOS) or decisions related to binding notifications on the origin of goods (hereinafter: OOP)" [12].

In both mentioned legal texts, the guarantee act is not explicitly mentioned, but binding notices on the classification of goods according to the Customs Tariff and binding notices on the origin of goods are mentioned.

The Law on Citizenship of the Republic of Serbia ("Official Gazette of RS", no. 135/04, 90/07 and 24/18) recognizes the possibility of issuing a guarantee deed, but in the form of a confirmation, not a decision, namely, Article 15, paragraph 1. the aforementioned law stipulates: "A foreigner who has submitted a request for admission to the citizenship of the Republic of Serbia and does not have a release from foreign citizenship or proof that he will receive a release if he is admitted to the citizenship of the Republic of Serbia can, at his request, be issued a certificate that he will be admitted to citizenship of the Republic of Serbia if it meets the other requirements from Article 14, paragraph 1 of this law." [13].

In the Law on State Belonging and Registration of Vessels ("Official Gazette of the RS", no. 10/13, 18/15 and 83/18), we come across the term guarantee deed, as Article 83, paragraph 3 stipulates: "When the harbor master's office in whose register an inland navigation ship is registered receives a proposal to transfer the registration of an inland navigation ship to the register of inland navigation ships of another port master's office, will issue a decision conditionally recognizing the right of a foreign party to transfer the registration of an inland navigation ship to the register of inland navigation ships maintained by another port master's office (guarantee deed) and the same, with an extract from the register of ships and the documents from paragraph 2 of this article, sent to the harbor master in whose register of inland navigation ships the entry is transferred." (Law on Nationality and Registration of Vessels 2018: Art. 83). In this situation, the guarantee deed is characterized by a decision by which one harbor master's office conditionally recognizes the right of a foreigner to transfer an inland navigation ship to the register of ships maintained by another harbor master's office [14].

In addition to the examples mentioned in practice, binding opinions prescribed by the Law on tax procedure and tax administration and the Law on inspection supervision are also mentioned as examples of a guarantee act, which refer to acts on the application of regulations issued by the competent minister and which are binding for action (explanations, instructions, opinions, instructions and the like) [15].

Failure to Enact Administrative Act according to the Guarantee Act

The authority is not always obliged to pass an administrative act in accordance with the guarantee act, in which context the ZUP decisively provided for four exceptions and therefore left the possibility for a separate law to determine other reasons for not passing an administrative act in accordance with the guarantee act, i.e. "when there are other reasons determined by special by law". Situations in which the authority is not obliged to pass an administrative act in accordance with the guarantee act are normatively regulated by Article 19, paragraph 3, point. 1) – 4). ZUP.

The first case when the authority is not obliged to issue an administrative act in accordance with the guarantee act is "if the request for the adoption of an administrative act is not submitted within one year from the date of issuance of the guarantee act or another deadline determined by a special law". This exception refers to the term in which the party, on the one hand, has the right to request, and the authority, on the other hand, has the duty to pass an administrative act in accordance with the guarantee act. The aforementioned has its own goal, the essence of which is the time limit for the regulation of the administrative legal relationship in the manner established by the guarantee act, and therefore the provision of a guarantee regarding the deadline for the adoption of the administrative act by the authorities, because the opposite action could be to the detriment of the party. It is important to note that the deadline of one year, which is prescribed by the ZUP for submitting a request for the adoption of an administrative act in accordance with the guarantee act, is of a subsidiary nature, taking into account the provision indicating that if no other deadline is specified by a special law (e.g. the Law on citizenship is set for a period of two years, and according to the Customs Law a period of three years from the date of issuance of the guarantee act) [16].

Another case when the authority is not obliged to pass an administrative act in accordance with the guarantee act is "if the factual situation on which the request for the adoption of the administrative act is based is significantly different from the one described in the request for the adoption of the guarantee act". This provision is quite clear and nonsensical, because in this case the authorities' guarantees refer to a precisely determined factual and legal situation, because the application of the same legal norm to significantly changed (different facts) cannot lead to the same result, i.e. to the adoption

of an administrative act of the same factual situation. and legal content. For these reasons, there is no obligation of the authority to pass an administrative act in accordance with the guarantee act if the factual situation on which the request for the adoption of the administrative act is based is significantly different from the one described by the applicant in the request for the adoption of the guarantee act. Special regulations specify the application of the above [17].

The third case when the authority is not obliged to pass an administrative act in accordance with the guarantee act is "if the legal basis on the basis of which the guarantee act was adopted has been changed by the new regulation providing for the annulment, repeal or amendment of administrative acts passed on the basis of earlier regulations". In this way, a balance is established between the legitimate interests of the party confirmed by the guarantee deed, on the one hand, and the protection of the public interest and acquired rights of other persons, on the other hand. This is about the retroactive application of new regulations, because it would not be fair for a party that has only conditionally received a guarantee that a certain administrative act will be issued to it, has more rights and a more secure legal position than a party whose rights and obligations were determined in the previous period by an administrative act. act. In a situation where the amendment of regulations is more favorable for the party, it is left to the party to evaluate what is more favorable for it in terms of choosing whether to request the adoption of an administrative act in accordance with the guarantee act or to request the adoption of an administrative act without referring to the guarantee act. The above is a conclusion from the legal regulation itself, according to which the authority is not obliged to make a decision in accordance with the guarantee deed if the party does not request it, but can issue the requested administrative deed to the party on the basis of a regulation that is more favorable to it, i.e. on the basis of a new regulation, as if the guarantee the act was not issued [18].

The fourth case when the authority is not obliged to issue an administrative act in accordance with the guarantee act is "when there are reasons determined by a special regulation". The reason for implementing this provision in the ZUP has its basis in the provision of Article 3 of this law, which does not allow reducing the quality and intensity of protection of rights and legal parties guaranteed by the ZUP [19].

Complaint due to failure to provide a Guarantee Deed

The legal remedy provided for in Article 19, paragraph 2 of the ZUP, in the event that the administrative act was not adopted in accordance with the guarantee act, is the right of the party to challenge such a decision of the authority with an appeal. Article 158, paragraph 1, item 8 of the ZUP stipulates that the decision - administrative act can be contested because it was not adopted in accordance with the guarantee act. Therefore, in this case, the appeal is submitted by the party at whose request the guarantee deed was issued and who, referring to it, demanded the authority to issue an administrative act in accordance with that guarantee deed.

Considering the right to appeal set up in this way, the person at whose request the guarantee deed was issued would not be allowed to challenge it with an appeal, because he had the right to choose not to demand the adoption of an administrative act in accordance with the guarantee deed.

However, there is also the right to appeal against the guarantee act, taking into account the norm that refers to the corresponding receipt of ZUP related to the administrative act. To the question related to the extent of the binding of the authorities adopted by the guarantee deed, the answer remains that administrative and administrative judicial practice [20].

An appeal against a guarantee deed precedes an administrative deed. An appeal against a guarantee act, on the one hand, has the meaning of not allowing the adoption of an administrative act in accordance with the guarantee act, since the party believes that this would violate its rights or legal interest, and on the other hand, the party has the right to appeal against the administrative act and because the administrative act was not adopted in accordance with the guarantee act. By their nature, the guarantee deed and the administrative deed must form a harmonious whole, complementing each other [21].

The influence of comparative legal systems on the institute of the Guarantee Act

German, Croatian and Montenegrin law had the greatest influence on the normative regulation of the guarantee deed in administrative proceedings in the legal system of the Republic of Serbia. Considering the effect in the way of regulation, German

law had an indirect effect, and the Laws on General Administrative Procedure, which were adopted in the Republic of Croatia and the Republic of Montenegro, had a direct impact. The guarantee deed as a model was first introduced in Croatia, and then in Montenegro and Serbia [22].

The term "guarantee act" is not used in the German Administrative Procedure Act, because the literal translation from the German language for the term "Zusisherung" would be a promise, guarantee, assurance. By making a promise, the authority undertakes to adopt or not adopt, in a certain period, the corresponding administrative act. A promise is made, that is, given in writing, in order to have its legal validity [23].

The Law on General Administrative Procedure of the Republic of Croatia, which was adopted on March 27, 2009. year, this institute is regulated through Article 103, which introduces a guarantee for the acquisition of rights. In accordance with this provision, a public legal body can guarantee the acquisition of a certain right to a party when it is determined by law, which is decided by a resolution and which must not be against the public interest or the interest of third parties [24].

The Law on General Administrative Procedure of Montenegro ("Official Gazette of Montenegro" No. 56/2014, 20/2015, 40/2016 and 37/2017), Article 20, regulates the institution of the guarantee deed. According to this norm, a public law authority can, at the request of a party, issue a decision guaranteeing the party the acquisition of a right, under the condition prescribed by a special law (guarantee deed), which must be issued in writing. As can be seen, the term "guarantee deed" is taken from Montenegrin law.

Common to all legal systems is that the guarantee act, through administrative activities, is normatively bound to the adoption of an administrative act, which also prescribes the situation that in the event of a change in the legal basis, the authority is no longer bound by the issued guarantee act.

The corresponding application of the provisions on administrative acts to guarantee acts leads to the conclusion that they are also applied in the case of "silence of the administration", i.e. failure to pass a guarantee act within the legally prescribed deadlines. The legal consequences of the "silence of the administration" lead to the fact that the party acquires the right to file an appeal with the second-instance authority, and

then with the Administrative Court, if the appeal is excluded, after the deadline set for the adoption of the administrative or guarantee act has expired.

The decision of the second-instance authority, which was made on appeal, can be challenged by a lawsuit in an administrative dispute. The lawsuit is submitted to the Administrative Court within 30 days from the date of delivery of the second-instance decision.

Guarantee Act in European Legislation

A guarantee deed in European law refers to an instrument that ensures the fulfillment of certain obligations or rights of the parties within the European legal system. This term is most often used in the context of the European integrated financial market and investor protection.

A guarantee deed can be in the form of a written statement or a contract guaranteeing the performance of certain obligations. For example, in the context of the financial market, a guarantee deed can be a contract whereby a financial institution undertakes to ensure the return of funds to investors in the event of insolvency or default.

European law provides a framework for the use of warranty deeds to ensure the protection of parties to transactions and provide security in doing business at the European level. These acts are often subject to regulations and supervision by relevant European institutions to ensure their proper functioning.

It is important to note that this is only a general concept of a warranty deed in European law and that it can be applied in different contexts and sectors within the European legal system. The details and specifics of warranty deeds may differ depending on the specific area of law that is applied.

Bearing in mind that only the adoption of European Union regulations cannot guarantee their effective implementation, the EU Commission insists on building administrative potential that will enable easier entry into the "European Administrative Area". The conformity of administrative law and the acceptance of common European values and standards thus become extremely important for all countries in transition that intend to integrate into the European legal system in the near future. Article 6 of the Treaty on European Union stipulates that the EU recognizes the rights, freedoms and principles

from the Charter of Fundamental Rights of the European Union, which has the same legal force as the founding treaties. Bearing in mind the content of the Charter of Fundamental Rights of the European Union, where, among other rights, the "right to good administration" is guaranteed (Article 41 of the Charter), it can be concluded that the practice of the Court of Justice of the European Union regarding the protection of human rights affects the development of principles administrative law [25].

Conclusion

Analyzing the normative arrangement of the guarantee act, which represents a special legal institute, but also other norms that relate to and apply to this term (concurrent application), we come to the conclusion that it cannot be completely separated from the administrative act, even though the institutes are in question which have different legal nature. Also, the guarantee deed and the administrative deed do not have the same legal effect, because in the case of the administrative deed, the legal effect is aimed at the party and the resolution of the administrative matter. The legal effect of the guarantee deed is different and can be said to be inverse, because in this case the authority binds itself without deciding on the rights and obligations of the party. The guarantee deed does not have an authoritative character, but by its character has the characteristics of a unilateral legal transaction. By issuing a guarantee deed, the party is promised the acquisition of a right, which means that the party did not immediately acquire it, because in that case the administrative deed, at the party's request, would not be issued later. In the very application of the guarantee deed in practice, questions are raised about its sufficient normative arrangement in terms of specifying what is considered a guarantee deed, and especially due to the reference to special regulations, which can deepen the dilemma, if there are no more precise legal provisions in the ZUP itself. Answers to disputed questions are expected from practice, both in the administrative procedure and in the administrative dispute, which will represent further guidelines for the legislator regarding the determinants for a better normative organization of this administrative and legal institute.

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