
Principle of Truth and Free Evaluation of Evidence in Administrative Procedure – Between Normative Formulation and Actual Application

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Abstract

Administrative procedure is the primary instrument for the exercise and protection of the rights and obligations of parties in relation to public authorities, while the proper establishment of facts directly affects the legality and fairness of decision-making. The paper analyzes the principle of truth and the free evaluation of evidence, with particular emphasis on the relationship between the normative requirement of fully establishing the facts and the limitations encountered in practice. Special attention is devoted to the role of administrative authorities in obtaining and evaluating evidence, the rights of the parties, proportionality, and judicial review. The aim of the paper is to identify the key problems in the application of these principles and the possibilities for improving administrative practice.

Keywords: administrative procedure, principle of truth, free evaluation of evidence, rights of the parties, Administrative Procedure Act.

Introduction

Administrative procedure is the basic mechanism for the exercise and protection of the rights and obligations of individuals in relation to public administration authorities. The legality and fairness of administrative decision-making directly depend on the proper establishment of the facts, which is why the Law on General Administrative Procedure (hereinafter: LGAP) specifically regulates the principle of truth and the free evaluation of evidence (National Assembly, 2023).

According to Article 10 of the LGAP, the authority is obliged to correctly, truthfully, and completely establish all facts and circumstances relevant to lawful and proper action, while the authorized official decides, according to his or her conviction, which facts are considered proven on the basis of a conscientious and careful evaluation of each item of evidence separately, all evidence taken together, and the results of the entire procedure. Although the statute does not expressly use the term “principle of material truth”, administrative-law theory traditionally connects that concept with this normative framework.

The aim of the paper is to examine, on the basis of the applicable legal framework, the relationship between the normative ideal and the practical application of the principles of truth and the free evaluation of evidence. Particular attention is devoted to the role of administrative authorities in establishing facts, the limits of the free evaluation of evidence, problems that arise in practice, and the role of judicial review in remedying deficiencies, with the aim of identifying possibilities for improving administrative practice in the Republic of Serbia.

The Principle of Truth and Free Evaluation of Evidence: Normative Framework under the LGAP

For the principles of truth and free evaluation of evidence to perform their function in administrative procedure, a general legal norm must be concretized and applied to a specific factual situation (Kelsen, 2010, p. 222). In both administrative and judicial proceedings, individual legal acts apply a general legal norm to a specific situation (Lilić, 2023, pp. 243–245). The concepts of an administrative act and

administrative procedure may be understood as transferring the concepts of a judicial decision and judicial procedure to the sphere of administrative power so that, in a state governed by the rule of law, administration is brought under the law in the same way as the judiciary (Marković, 2002, p. 48). In logical terms, the application of law is a form of deductive reasoning, and the familiar judicial syllogism may therefore also be described as an administrative syllogism (Martinović, 2004, p. 92). The major premise, as a legal norm, must be valid, properly selected, and interpreted, while the facts that constitute the minor premise must be properly established, evaluated, and legally qualified (Hasanbegović, 1996, p. 168). Proper establishment and evaluation of facts therefore constitute the basis for the correct application of law, and the principles of truth and free evaluation of evidence acquire their full significance in the process of concretizing legal norms.

Relationship with Other Principles of the LGAP

The principle of truth and free evaluation of evidence requires the authority to correctly, truthfully, and completely establish all facts and circumstances relevant to decision-making, while the authorized official assesses the evidentiary value of individual items of evidence on the basis of a conscientious and careful evaluation of each item separately and all evidence taken together. This requires a detailed analysis of the available evidence and information so that the decision is based on the most accurate and complete information available at the time (Lilić, 2017, p. 52).

Although the statute does not use the expression “principle of material truth,” administrative-law theory connects its content precisely with the obligation of the authority to establish the actual state of affairs rather than merely relying on the parties’ formal assertions. It is connected with the other basic principles of administrative procedure established by the LGAP:

- Principle of legality and predictability – the authority acts on the basis of laws, other regulations, and general acts and, when deciding on the basis of discretionary powers, within the limits of the authority granted and in accordance with its purpose. In doing so, it also takes into account previous decisions in the same or similar administrative matters (National Assembly, 2023, Art. 5).
- Principle of proportionality – a party’s right or legal interest may be restricted only to the extent necessary to achieve the purpose of a regulation and only when that purpose cannot be achieved by a less restrictive measure. When imposing an obligation, preference is given to the measure that is more favorable to the party if the same purpose can be achieved (National Assembly, 2023, Art. 6).
- Principle of protection of the rights of parties and the public interest – the authority is obliged to enable parties to exercise and protect their rights and legal interests as easily as possible, without prejudicing the rights of third parties or the public interest (National Assembly, 2023, Art. 7).
- Principle of assistance to parties – the official must ensure that a party’s lack of legal knowledge or misunderstanding does not operate to the detriment of that party’s rights and must draw attention to circumstances that may provide a basis for exercising a right or legal interest. This contributes to a more complete and accurate establishment of the facts (National Assembly, 2023, Art. 8).
- Principle of efficiency and economy of procedure – the procedure is conducted without unnecessary delay and expense, while ensuring that all evidence necessary for the correct and

complete establishment of the facts is obtained. The official is obliged to obtain data from official records, while the party may be required to submit only necessary data and evidence concerning facts for which no official records are kept (National Assembly, 2023, Art. 9).

- Right of the party to be heard – the party must be given an opportunity to state its position on facts relevant to decision-making, except where the law expressly permits a decision to be made without the party's prior statement (National Assembly, 2023, Art. 11).
- Principle of independence – the authority acts independently within the scope of its powers, while the authorized official independently establishes the facts and applies the law on that basis, including through the free evaluation of evidence (National Assembly, 2023, Art. 12).
- Right to appeal and objection – a party has the right to appeal against a first-instance decision and in cases of administrative silence, unless otherwise prescribed by law, as well as the right to object in cases specified by the LGAP (National Assembly, 2023, Art. 13).
- Principle of finality of decisions – a final and binding decision by which a party has acquired certain rights or has been subjected to certain obligations may be annulled, revoked, or amended only in cases prescribed by law (National Assembly, 2023, Art. 14).
- Principle of access to information and data protection – the authority is obliged to provide access to information of public importance while simultaneously protecting classified information and personal data in accordance with the law (National Assembly, 2023, Art. 15).

Viewed systematically, the principle of truth connects these principles, because without a properly established factual basis it is impossible to ensure lawful decision-making, effective protection of the rights of parties, or the attainment of the public interest. Contemporary administrative procedure does not seek absolute truth as a philosophical ideal, but rather a sufficiently reliable establishment of facts that enables lawful and fair decision-making.

Development of the Principle

Historically, this model of action developed from the inquisitorial model of continental European law, in which the state authority had a dominant role in establishing the facts. In contemporary democratic legal systems, this model has been moderated by the obligation to respect the rights of parties, but the principle of truth remains a guarantee that decisions will not be arbitrary but will instead be based on the actual state of affairs. The basic principles provide guidance for the proper understanding of the provisions governing administrative procedure (Milkov, 2017, p. 84).

For decision-making in administrative procedure, the collection of procedural material is of crucial importance, because without a factual basis even the application of law to a specific case is impossible. The legal syllogism is complete only when, in addition to the major premise, which is assumed to be known to the administrative authority in the form of a general legal norm, the minor premise has been established in the form of a factual situation (Milkov & Radošević, 2024, p. 518). The authority conducting the procedure has a duty to investigate the state of affairs and is therefore responsible for the factual basis of the decision (Knežević, 2016, pp. 1–2). The administrative authority is not a passive arbitrator but an active participant in establishing the facts and, when necessary, obtaining evidence *ex officio*. The

principles of truth and free evaluation of evidence therefore constitute one of the key conditions for lawful, proper, and fair administrative decision-making.

The Ideal of Truth in Theory and Law

The principle of truth and the free evaluation of evidence is one of the fundamental postulates of contemporary administrative procedure. In the theoretical model, the principle of truth guarantees fair, lawful, and legitimate administrative decision-making because it requires the authority independently and ex officio to establish all relevant facts. The authority is viewed as a neutral and expert holder of the procedure that actively examines the factual basis rather than merely accepting the parties' assertions. Such a model presupposes adequate knowledge, time, and institutional capacity, as well as the cooperation of the parties in fully establishing the facts.

However, the question arises whether it is possible to speak of complete truth in administrative proceedings at all. The facts established by the authority are usually the result of reconstructing events on the basis of available evidence rather than direct knowledge of reality. Absolute truth therefore cannot be treated as the realistic goal of the procedure; instead, the aim is to make a decision on the basis of a sufficient degree of certainty (Rajko, 2013, p. 495). In this sense, the principle of truth has primarily a procedural rather than an absolutely cognitive function.

The principle of material truth is intertwined with all other principles of the LGAP, which reflects the legislative intention to integrate the principle of truth into every stage of the procedure, from its initiation to the adoption of a final decision. Despite its theoretical importance and normative force, however, practical limitations frequently prevent the full realization of this principle. Theory remains committed to its ideal, while practice raises numerous questions.

Practical Application of the Principle of Truth

A state that has no law governing its administration is not a state governed by the rule of law (Mayer, 1895, p. 66). The rule of law cannot be conceived without subjecting administration to law and requiring administrative action to be based on and conducted within the law (Radošević, 2015, p. 1971). One of the central problems of contemporary administration is the tension between the demand for efficiency and the demand for a complete determination of the facts. While parties reasonably expect a prompt decision, the law simultaneously requires the authority to take all necessary steps to establish the relevant facts. The more complex the procedure, the greater the risk that one of these objectives will be partially compromised. Although the principles of truth and free evaluation of evidence are regulated at a high normative level and constitute key postulates of the LGAP, their practical application often departs from the normative model. Instead of an active role for the authority in obtaining and evaluating evidence, administrative practice may reveal limited resources, formalism, and administrative routine. Case law has also addressed the procedural limits of fact-finding and oral hearings. The Supreme Court held that the absence of an oral public hearing did not in itself amount to a violation where the circumstances and nature of the dispute justified decision-making without one (Supreme Court, Uzp. 193/23, 2024). Similarly, the Constitutional Court found that the fairness of the procedure was not undermined where the applicant had been given an opportunity to participate in obtaining an expert report, challenge it, propose evidence, and state facts relevant to the decision (Constitutional Court, UŽ-7840/19, 2022).

One of the greatest challenges is insufficient activity by administrative authorities in obtaining evidence *ex officio*, which may cause the outcome of the procedure to depend primarily on the initiative and abilities of the party. In practice, officials sometimes shift the burden of proof to parties even though the law requires the administrative authority, *ex officio*, to obtain and establish facts relevant to decision-making. This can result in inequality in the procedure, because parties with greater legal knowledge or financial resources have a practical advantage. Administrative inactivity also increases the number of administrative disputes arising from administrative silence, thereby burdening the Administrative Court and reducing its capacity to decide promptly in disputes in which a concrete right of a party should be realized (Rajko, 2013, p. 495).

Furthermore, the free evaluation of evidence may sometimes turn into arbitrariness when it is not clear why an official accepted one item of evidence and rejected another. Instead of a conscientious and careful analysis, authorities may automatically rely on reports, minutes, or other official documents without further examining their content or the circumstances in which they were prepared. The free evaluation of evidence does not permit arbitrary decision-making. The reasoning of a decision must dispel doubt as to arbitrariness and enable both the party and the court to examine the reasons on which the decision is based (Constitutional Court, UŽ-8814/16, 2017).

Insufficient training and excessive workloads among officials often lead to routine handling of procedures and inadequate analysis of the specific case. An additional problem arises when performance is evaluated by the number of resolved cases, which may encourage rapid decision-making, superficial evaluation of evidence, and the weakening of procedural guarantees for the parties.

A party has the right to a reasoned decision. The Constitutional Court has emphasized that, where a second-instance administrative authority merely states that evidence submitted with an appeal is not valid and the Administrative Court accepts such reasoning without addressing relevant allegations and evidence, the right to a reasoned judicial decision, as an element of the right to a fair trial, may be violated (Constitutional Court, UŽ-3109/16, 2017).

The influence of political and administrative hierarchies in certain sensitive procedures should also not be disregarded, particularly where individual decisions are made according to unclear criteria rather than on the basis of objectively and completely established facts. Such practices seriously undermine the principle of truth and call into question citizens' confidence in the fairness of public administration.

Taken together, these issues reveal a gap between the normative framework and actual practice. Instead of functioning as an instrument for establishing the real state of affairs and reaching a fair solution, administrative procedure may become an administrative formality whose primary objective is to close a case rather than determine the truth.

The Principle of Truth and Free Evaluation of Evidence: Problems in Implementation

The principle of truth and the free evaluation of evidence is one of the basic principles of administrative procedure and aims to ensure lawful and correct decisions based on a complete and accurate establishment of the facts. Under this principle, the authority is obliged to establish all facts relevant to resolving an administrative matter and to evaluate evidence conscientiously, carefully, and in accordance with the rules of logic and experience (National Assembly, 2023, Art. 10). As Lilić points out,

the principle of material truth guarantees the legality of administrative decision-making because the correct application of substantive law is possible only when the relevant facts have been fully and accurately established (Lilić, 2023, p. 243).

Legal theory emphasizes that the principle of truth and the free evaluation of evidence combines two requirements: the authority's duty to establish material truth and the authorized official's power to evaluate evidence independently. According to Lilić, such evaluation does not imply arbitrariness; rather, it requires the authority to explain, on the basis of a logical and critical assessment of all available evidence, why a particular fact is considered proven or unproven. The quality of the reasoning in an administrative act is therefore one of the key indicators of the proper application of these principles. If the reasoning does not clearly show how the authority reached its conclusion on decisive facts, there is a risk of violating the rights of the parties and the principle of legality.

In practice, however, numerous problems make the implementation of these principles more difficult. One of the most common is an incompletely established factual situation. Although the authority is obliged *ex officio* to obtain data from official records and undertake all actions necessary to establish the facts, decisions are sometimes made on the basis of incomplete evidentiary proceedings. Such deficiencies often lead to the annulment of administrative acts in second-instance proceedings or in an administrative dispute. The Administrative Court has repeatedly indicated that a decision is unlawful if the authority has not fully established the facts or has failed to evaluate all evidence relevant to decision-making (Administrative Court, UŽ-16744/19, 2021).

A second problem concerns the reasoning supporting the free evaluation of evidence. Although the law leaves the authority discretion to assess the evidentiary value of particular items of evidence, that assessment must not be arbitrary. The reasons for accepting some evidence and rejecting other evidence must be stated in the reasoning of the decision. An insufficiently reasoned evaluation of evidence constitutes a significant procedural deficiency because it prevents both the party and the court from reviewing the legality of the decision. According to case law, reasoning that does not contain clear and specific grounds for evaluating the evidence does not satisfy legal standards and may constitute grounds for annulling an administrative act (Administrative Court, UŽ-13012/20, 2022).

The digitalization of public administration accelerates procedures but simultaneously raises questions concerning the reliability of electronic evidence and the right of parties to comment on facts obtained electronically. The principle of material truth must therefore adapt to technological change without reducing the procedural guarantees afforded to parties.

The case law of the European Court of Human Rights is particularly important. In the context of the right to a fair trial, the Court emphasizes that decisions of state authorities must be based on sufficiently established facts and adequately reasoned. In *Suominen v. Finland*, the Court held that the duty to give reasons is an integral element of a fair procedure because the party must be able to understand the grounds on which the decision was made (*Suominen v. Finland*, 2003, paras. 36–38). Although that position concerned judicial proceedings, its significance is also evident in the field of administrative decision-making.

The principal difficulties in applying the principles of truth and free evaluation of evidence are an incompletely established factual situation, a formalistic evaluation of evidence, and insufficiently reasoned

administrative acts. Their consistent application requires administrative practice that, while respecting the law protects the rights of parties and ensures lawful administrative decision-making.

The Principle of Truth and the Rights of Parties: Toward a Balanced Approach

The principle of material truth and the principle of free evaluation of evidence aim to ensure the complete and objective establishment of the facts, while remaining consistent with the procedural rights of the parties. Incompletely established facts, unevaluated evidence, and violations of the party's right to be heard may constitute grounds for annulling an administrative act. Judicial review does not replace the authority's evaluation, but examines whether that evaluation is complete, logical, and lawful.

Even where the authority has an active role in establishing facts, it must not disregard the party's right to be heard. The investigative function of the authority must not be exercised in a manner that diminishes the importance of the party's participation in the proceedings, including the right to be informed, to propose evidence, and to state an opinion on relevant facts. A truth established without the participation of the party cannot be regarded as legally valid, either formally or substantively.

The principle of assistance to parties, which complements the principle of truth, must also be respected. The authority has a duty to assist parties in protecting their rights, particularly when dealing with persons who lack legal knowledge. In the context of the principle of truth, this means that the authority should not remain passive when it recognizes that a party is unable to prove facts in its favor that can be established by other means.

A particularly sensitive point of interaction between the principle of truth and the rights of parties is the principle of proportionality. Truth must not be pursued at any cost. In its investigative activity, the authority is obliged to act lawfully and must not resort to measures that would disproportionately restrict a party's rights, especially where the same objective can be achieved by less intrusive means (Ljubanović, 2019, p. 659).

Administrative procedure is not exclusively an instrument serving the state and its apparatus; it is also a mechanism for balancing the public interest and individual rights. The facts established by the authority must be the result of a fair process in which all procedural rights of the parties are respected. Only then can they provide a basis for a lawful and legitimate resolution of an administrative matter. As in criminal procedure, administrative procedure recognizes the prohibition of *reformatio in peius*. The statutory prohibition against placing a party in a less favorable legal position in second-instance proceedings prevents the second-instance authority from amending the first-instance decision to the detriment of the party who initiated the review, except in the cases prescribed by the LGAP (Administrative Court, 9-U-16494/19, 2019).

The Supreme Court of Cassation held in judgment Uzp. 94/2021 of 26 May 2021 that, by deciding on the merits of an unlawful request for reopening, the party had been granted more rights than provided by law, but that the challenged decision did not violate procedural or substantive law (Supreme Court of Cassation, Uzp. 94/2021, 2021). A possible violation of the right to a trial within a reasonable time in reopened administrative proceedings is assessed in relation to the duration of the proceedings from the first procedural action taken in the reopened procedure (Supreme Court of Cassation, RŽ1up. 27/2020, 2020). In other words, the principle of truth must not become an excuse for disregarding the party; on the

contrary, it must operate in synergy with the party's rights so that the procedure is not only formally correct but also substantively fair.

Contemporary developments in administrative law indicate that the principle of truth can no longer be viewed exclusively as an instrument for protecting the public interest. It is increasingly becoming a means of protecting the procedural position of the party. The more transparent the procedure and the clearer the reasons given for a decision, the greater the confidence of citizens in the lawfulness of administrative action. This is the contemporary significance of the principle of truth: its purpose is not only to establish facts but also to strengthen the legitimacy of administrative decision-making.

Conclusion

The principles of truth and free evaluation of evidence, as key principles of administrative procedure, constitute a central pillar of fair and lawful action by authorities in administrative matters. Their implementation in practice, however, is not without challenges. As shown in this paper, the normative requirement of complete fact-finding may conflict with the actual conditions and resources available to public administration.

Regardless of theoretical ideals, administrative authorities are often exposed to significant workloads that make a detailed and comprehensive establishment of the facts difficult. Insufficient activity by authorities in obtaining evidence, together with the possibility of arbitrary evaluation of evidence, represents a significant problem affecting the rights of parties and the fairness of the procedure. At the same time, the principle of truth must be coordinated with the rights of the parties, which implies an active role for parties in the proceedings and respect for their right to protection and to be heard on relevant facts.

A successful application of the principle of truth therefore requires a balanced approach that encompasses not only the principles of legality and truth but also the rights of parties and the capacities of administrative authorities. It is necessary to improve procedural efficiency and strengthen the training of administrative authorities for the proper and comprehensive application of these principles. Only then can administrative procedure be fair, efficient, and accountable to all participants.

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Načelo istine i slobodne ocene dokaza u upravnom postupku – između normativne formulacije i stvarne primene

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Sažetak

Upravni postupak predstavlja osnovni instrument za ostvarivanje i zaštitu prava i obaveza stranaka u odnosu prema organima javne vlasti, dok pravilno utvrđivanje činjenica neposredno utiče na zakonitost i pravičnost odlučivanja. Rad analizira načelo istine i slobodne ocene dokaza, sa posebnim osvrtom na odnos između normativnog zahteva za potpunim utvrđivanjem činjenica i ograničenja koja se javljaju u praksi. Posebna pažnja posvećena je ulozi organa uprave u pribavljanju i oceni dokaza, pravima stranaka, srazmernosti i sudskoj kontroli. Cilj rada je da ukaže na ključne probleme u primeni ovih načela i mogućnosti unapređenja upravne prakse.

Ključne reči: upravni postupak, načelo istine, slobodna ocena dokaza, prava stranaka, Zakon o opštem upravnom postupku.