PRINCIPLES OF CONSTRUCTING THE SYSTEM OF ADMINISTRATIVE LEGAL REMEDIES IN POLISH ADMINISTRATIVE PROCEEDINGS

SUMMARY

Legal proceedings in the administration are verified constantly when it comes to protecting the interests of an individual or the public. Adequate protection can be provided by appropriate legal remedies in particular. The purpose of this paper is to systemize basic principles which create the system of legal remedies in administrative proceedings. The following basic principles have been discussed: two-tier principle, complaining, legitimacy, non-competitive and restricted formalism. They guarantee that legal remedies are designed and exploited in an appropriate way. It can therefore be assumed that they fully implement the idea of a democratic state of law.

ZASADY BUDOWY SYSTEMU ADMINISTRACYJNYCH ŚRODKÓW PRAWNYCH W POSTĘPOWANIU ADMINISTRACYJNYM

STRESZCZENIE


Słowa kluczowe: procedura administracyjna, środki prawne, regulacje prawne, dwuinstancyjność, skargi, legalizm, niekonkurencyjny i ograniczony legalizm

Key words: administrative proceedings, legal means/measures, regulations/treatment/rules, two-instancy, complaints, legalism, non-competitive and limited formalism

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Verification of legal proceedings in the administration is the act which constantly appears when it comes to protecting the interests of an individual or the public. Proper protection can be provided especially by appropriate remedies. The purpose of this paper is to organize the basic principles, on which the construction of the system legal remedies in administrative proceedings is based on. In any democratic state of law the basic standard is the existence of the opportunity to examine the activities directed to citizens by the public administration, by any other authority than that which issued the act or applied the action. In administrative proceedings equally important is to protect the interests of individual and social life. Guarantee for the protection of the public interest and the individual is the opportunity to review administrative decisions. This verification can be made either ex officio or at the request. In the theory of the administrative proceedings, the problems of verification of administrative decisions are considered primarily from the point of view of legal remedies [J. Jendońska, 1985a, p. 113].

The Regulations of the Code of Administrative Procedure [Dz.U. z 2013, pos. 267] and the specific procedures offer certain subjects the possibility to challenge the settlement of the court of the first and the second instance. Due to the existence of administrative instances the unit has the possibility to challenge, with the use of public procedural means, the decisions of the court of the first instance. People who are not satisfied with the decision of the government have the right to call the second instance (usually this is a higher authority), in other words, run the course of instance [T. Nowicki, 1937, p.40; Z. Kmieciak, 2009a, p. 50].

This possibility is realized by providing legal remedies.

2. The concept of the legal remedy

The point of legal remedies is to get review of the decision to determine whether it is lawful and if the interests of individuals or the public were not exposed to risk. Building a decision verification system through administration, the legislature decides to introduce a variety of procedural institutions of a different nature. Such a model of solution has also been chosen by the Polish legislator [G. Łaszczyca, Zakamycze 2000, p.19].

Legal measures developed in the course of the development of the administrative proceedings on the patterns of judicial proceedings, particularly of Civil Procedure [J. Jendońska, 1977b, p. 45]. However, both the administrative proceedings and the civil ones did not shape single terminology in this field.

Basically, the term "legal remedies" (also known as means of appeal, means of recourse remedies or means of legal defense) usually means the opportunity to challenge the administrative settlement by a party or by a participant of the proceedings, acting with rights of the party to cause a review of the decision by the second instance [M. Zimmermann, 1949, p. 125].

3. The concept of the system

The main thing that opens up the possibility for further consideration is determining if it is legitimate to claim that the legal remedies in administrative proceedings are a kind of system, or are so independent that it is difficult to find common schematic solutions. In an attempt to answer this question it would be necessary to determine what the term "the system" means. According to the
dictionary definition, it is a collection of units forming a kind of integrity for one purpose [S. Skorupka, 1969, p. 793]. System can also be a part of such an arrangement that facilitates its functioning as a whole. Set and structure can be regarded as equivalent terms [S. Ehrlich, 1971, p. 131].

System is an ordered set of elements of a single nature related to each other by rules. Both the selection of elements in the system, as well as the relationship created between them are not random. The individual components of the system must be arranged according to some logical laws which filter out its function. The system can be structured vertically or horizontally. The vertical structure is associated with the hierarchical subordination of the individual elements. However, horizontal layout will show the equivalence of the elements, and the alternative options of completing their functions.

Speaking about the parts of system, you cannot imagine them in the ordinary mechanical combination. By the fact that they are the parts of some whole, they lose their independence to some extent, they are linked together in a certain way, and are united by more or less sustainable relations which rely on the interaction. And these ties give them new traits, which would not be possible if it were not included in the total [S. Ehrlich, 1971, p. 131].

The system, therefore, will include all the components making up a stand-alone entity, but at the same time that whole may be a part of a wider whole. One should consider the links that connect the various elements together. For example, the system of the environmental authorities is a closed section, but at the same time it is also a part of the public administration apparatus.

It should also be noted that the various components of the system are characterized by a certain stability of the internal relations. The system can only create a set of elements whose relation is based on sustainable, predictable basis. This does not preclude, however, making changes among individuals, so-called links in the system, as well as the modification of the mutual relations between them. The change may concern something that has at least relative stability. If there is no consistency, there can be no change. The concept of "change" should not refer to a process, which organizes its own foundations. Therefore, the elements of the system should have a permanent place guaranteed in the particular system before the change.

Legal Science knows many types of systems. Depending on what is a key component of the system we speak about the legal system, the system of public administration, the tax system, economic system, etc. Other sciences distinguish political system, party, election, operational, decimal, ICT, etc. Basic design of each system is characterized by clear common rules which form a special bond that distinguishes one system from another. It may also be noted that the elements not corresponding to this policy will not enter the system, or must be eliminated from there, if they are found there by chance.

4. Construction principles of the system

The law of two instances

As pointed out by B. Adamiak, decision verification system in administrative structure is composed of a non-uniform nature. Apart from the means of appeal, it also consists of means of surveillance and revocability of decision [B. Adamiak, 2010 p. 270-271]. The remedy is built on a few basic principles whose catalog introduces a formalism, order and predictability. Two-instance belongs to those rules that cover with their control different legal systems. It is a constitutional principle derived from the March Constitution14 also currently regulated in the Constitution of Republic of
Poland15 (Article 78) and Art. 15 Code of Administrative Procedure. The right of the parties to appeal against judgments and decisions made in the first instance is undoubtedly an important guarantee and means of protecting the rights and freedom [W. Skrzędlo, 2002, p. 45]. The manner of presenting this law shows that it should be widely applicable, that there is no reason to introduce it only to legal proceedings. Either party may, therefore, appeal to a higher instance court decision and the administrative decision as well [W. Skrzędlo, 2002, s. 45]. In the literature, the principle of two instances is classified in the category of rules of applying the law [B. Adamiak, 2010 p. 270-271]. Its essence lies in the possibility of a party or other participant in the proceedings to appeal to a higher court or authority exceptionally to that one which issued the challenged judgement in order to verify the actions taken by the lower or equal institution [Z. Kmieciak, 2009a, p.176].

Withdrawal from the principle of two-instance administrative proceedings, the limitation or exclusion or introduction of any other means of legal protection can only be made by law, and as an exception to the rule it must be clear and unambiguous. Any doubts about such an exception should be explained for the implementation of the principle, not the extension of the exception. It is in these situations one of the fundamental rules of interpreting of the regulations in the middle of the applying the law, presented widely in doctrine and case law [M. Jaśkowska, 2000, p. 424 ].

The principle of complaint

According to this principle, the legitimacy to bring on a means of appeal, and thus begin the initiation of the ordinary, administrative mode of hearing proceedings belongs to the person whose the legal interest has been violated. On appeal, it will be a party to whom the administrative act is addressed, in complaint proceedings it may also be another member such as a witness, expert, etc., who is also a recipient of the act. An ordinary appeal procedure is carried out on the principle of complaint, however, it does not have the inquisitorial nature, this means it is not possible to initiate proceedings ex officio.

Implementation of appeal by the party does not subject to restrictions neither formal nor material. The Code does not make it upon participating in the proceedings (formal limitation). The right of appeal is not only obtained by the party who took part in the proceedings leading to the decision, but also a person who did not take part in it, but it is a party within the meaning of Art. 28 Code of Administrative Procedure. There are a lot of possibilities of implementing complaints and the legislator does not have to create situations which are exceptions to this rule. Operation ex officio is provided in art. 28 par. 2 of the Act of 21 November 1961. It is about a common duty to defend the Polish Republic [Dz.U. z 2004r., Nr 241, pos. 2416]. However, this regulation foresees the possibility of operation of the organ ex officio only in a situation where it was issued in violation of the law.

The principle of legality

In any state of law the principle of legality occupies a leading position. Legalism is a distinctive feature of the state which respects the law and citizens. Each level of the state’s functions is based on the principle of legality. In the literature, this principle is sometimes referred to as the rule of law and is considered as public authorities acting under and within the law. This content is mainly formed on the basis of Art. 7 of the Constitution. In the doctrine of administrative law it is included to so-called original principles of applying the law [B. Adamiak, 2010, p. 32]. In formal terms, the state of law is the state that in its action is based on: the law, the principle of separation of powers, binding the state institutions with legal rules, judicial review of acts of the administrative authority, exclusive
regulation of individual rights. Within the material meaning, the state of law in particular is based on values such as justice, freedom, equality and democracy [B. Banaszak, 2010, p. 172-173].

Legalism is also a fundamental principle of administrative procedure set out in Article. 6 Code of Administrative Procedure and the construction of the security system in this proceeding. It is a guarantee of a fair and equitable functioning of each level of administrative decisions. It gives a sense of social justice and a sense of certainty. The message, according to which the public authorities act on the basis and within the law, gives the belief that the audit process is carried out in a predictable way, according to the rules of well-known and the corresponding standards of the democratic state of law.

The principle of legality as defined in the literature [B. Adamiak, 2010, p. 33] is also present in the case law of administrative courts. As it has been recognised by College Administration in Gorzow Wielkopolski on 11 May 2010 [II SA Go 109/10] action under the law encompasses two core elements, namely settlement of the legal capacity to conduct the proceedings in the case and applying substantive law and procedural law in recognising and resolving a matter by a public authority. However, a double recognition means a duty to carry out a procedure twice, consistently, the appeal is formed, whose matter is not to verify decisions but an administrative retrial. The essence of two instances amounts to a double identification and resolving identical, in terms of subjective and objective, administrative case. Violation of the principle of two instances is violation of the law. In the same judgment the Court further finds that the second instance, which operates within the limits and under the law as a result of an appeal, has a duty to recognise the administrative case essentially. The appeal authority is obliged to ensure that the authority take into account actual and legal changes that have taken place in the period between the adoption of the contested decision in the first instance, and the adjudicating on the second instance.

The content of this rule is essential for action before I and II instance. The authority conducting the proceedings must take care of it, so that only legal means are used to resolve, in conformity with the legal procedural rights and obligations of all the parties [B. Adamiak, 2010, p. 33-34].

In a study for the protection of individual interests a triad of concepts has been developed: a legal claim, the legally protected interest and the ordinary interest (Bernatzik triad). According to this theory, a legal claim gives to the individual the right to request from administrative authorities issuance of decisions, with the content determined in advance by law (for example, pension claims), a legitimate interest gives claims to carry out the proposed treatment along with the law. The content of the settlement is defined by the authority itself. The ordinary interest does not give the individual any procedural and legal claims [J. Jendrońska, 2007c, p. 48].

Concluding, it can be stated that the principle of legality is itself an instrument to protect the interests of the individual in the administrative proceedings. It is recognised as a European standard of good governance and determinant of a democratic state of law which influences positively on the behavior of public administrations and the attitude of the citizens reaching their rights.

**The principle of non-competitive**

The essence of the principle of non-competitive (exclusive) is to limit the choice of legal means guarding the interest of the individual. This means that to a specific legal situation can only be applied only one means of appeal. Here the party has no right to choose the means of appeal. It can only express its determination as for the application of specific, prescribed by a right of appeal, complaint, request of a retrial or another. The system does not provide any solutions which would allow to use free alternative modes of appeal. Such a situation is possible only on the basis of the use
of extraordinary remedies. Rules of applying these measures have been developed both in the doctrine of administrative law [B. Adamiak, 2010, p. 345], as well as case law. Currently, it is assumed that in the case of overlapping of evidence from various institutions there is just one selected whose effects are far-reaching. This means that the consequence is essential, because it has arisen from the use of the appropriate remedy, and its effect on the individual. In the case law prevailed initially a view represented by the NSA which gives institutions priority to reopen the proceedings before the annulment [I A 636/87]. The verification system has several modes that are based on the principle of non-competitive, which means that "the individual extraordinary procedures are designed to remove only certain types of defective decision and cannot be used interchangeably. The breach of the exclusivity of using a specific mode of extraordinary decision verification constitutes a flagrant violation of the law, which are the basis for annulment [B. Adamiak, 2010, p.309].

The principle of non-competitive introduces into a system of legal means a category of legal order. It helps undoubtedly the administrative bodies to proceed and favors the economics of the process. The lack of alternative possibilities of legal action in the ordinary review of decisions should be considered as an added value. In the legislation, on the first stage of the application of the regulations governing the protection of the individual, it could be proven that the difficulty in assessing the most equitable way to challenge, prevent the use of these means at all.

The principle of a limited formalism

The development of administrative law favors the introduction of standards for communication between the administration and the citizen adhering to the forms which are clear, understandable, simple and effective. The principle of limited formalism relates primarily to the three levels of communication: content, form and procedure of bringing on a case. To a large contains the Code of Administrative Procedure contains the implementation of recommendations concerning the content.

Out-of-Code regulations poorly develop exceptions to this rule. The Code in accordance with the regulations of art. 128 Code of Administrative Procedure states that "the appeal does not require a detailed justification. It is enough when the appeal shows that the party is not satisfied with a decision. "The legislator explicitly forms the rule, according to which the primary means of challenging a decision can be made in any form, and content may only be limited to the expression of dissatisfaction with the decision made in the proceedings without specifying why the party expresses dissatisfaction and what it is based on. The Code allows for the existence of different regulations in specific provisions, but the legislature has exercised that power rarely.

The second level, next to the transparency and simplicity of the language, is also depicted as an uncomplicated form. It is well known because of the Supreme Court opinion that "Unless specific provision says on the contrary, the letter of the administrative proceedings brought before the appellate body within the statutory time limit for an appeal, expressing dissatisfaction with the non-final decision, shall be considered as an appeal against the decision" The matter of the form is regulated by the provision of art. 63 Code of Administrative Procedure referring to the writings as a collective name for all types of appeals, complaints, etc. The principle of limited formalism is also the mode to bring on a means of appeal. There is a regulation to this issue in Art. 63 § 1 Code of Administrative Procedure according to which application may be made in writing, by telegram, by fax, or orally for the record, as well as by other means of electronic communication via e-mail inbox of public administration.
5. Conclusions

Principles of constructing the system of legal means form a kind of compact structure, which allows to determine the standards that are determinants of modern public administration. In particular, they affect the predictability and certainty of behavior both in the operation of public administration, as well as in determining the attitudes of those involved in administrative proceedings. These principles have their source in the Code of Administrative Procedure. But they are not explicitly defined in the specific standards. It is possible to infer about each of them from the rules governing individual institutions process. This does not mean, however, that legal measures have no solid foundation of its construction. Rules are responsible for proper design and use of their own capabilities fully implementing the idea of a democratic state of law.

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