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Selected principles of a general administrative proceedings in the light of the Ordinance of the President of the Republic of Poland on Administrative Procedure of 22nd March 1928

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1. Historical background

The pre – WWII regulation of the Polish administrative proceeding had its roots in the Austrian legal system. It was related to the fact that during whole 19th century Poland was remaining partially under the influence of the Austrian legal system. After regaining the independence Poland decided to follow the Austrian legislative model and introduced legal solutions which allowed to verify administrative rulings issued at the 1st instance. Having the Austrian administrative Act of 1896 as a role model Polish parliament passed in 1923 the Act on Legal Remedies against Administrative Rulings[1] which specified provisions of Polish Constitution of 1921. The Act in question fulfilled the provisions of article 71 of Polish Constitution which introduced one – tier appeal proceedings[2].

The first Polish code of administrative proceedings was passed in 1928 on March 22nd when the President of the Republic of Poland enacted the Ordinance on Administrative Procedure[3] which came into force on 1st of July 1928[4]. The Ordinance was based on

[1] Journal of Laws No. 91, item 712.
[2] R. Kędziora, *General administrative proceedings*, Warsaw 2010, p. 4.
[3] Hereinafter as the Ordinace.
[4] J. L. No. 36, item 341.

the Austrian act on administrative procedure[5] and was one of the few and unique regulations of uniform rules governing administrative proceedings in Europe at that time[6]. The best proof of the quality of that regulations was the fact that after WWII the new communist government had not rescinded the Ordnance and it was still binding till 1960 when current Code of the Administrative Proceedings was passed[7].

2. The scope of the Ordinance and competences of the public administration bodies

According to the article 1 of the Ordinance it regulated the proceedings in all matters of the administrative law which were within the competences of the government and self – government administration bodies and offices unless the Ordinance stated otherwise[8]. For instance the exceptions were the disciplinary proceedings and foreign and military matters proceedings where different sets of rules were applicable. According to the Ordinance

[5] Austrian Act on administrative proceedings of 1925.

[6] D. Malec, J. Malec, *History of administration and administrative idea*, Cracow 2003, p. 174.

[7] Consolidated Text J. L. 2000, No. 98, item 1071; hereinafter referred to as the Code.

[8] The scope of the application of the current Code is regulated in article 1. Pursuant to it the Code governs the proceedings:

1) before public administration bodies in cases that are within the jurisdiction of such bodies and individually decided by way of administrative decision,

2) before other State bodies and other entities, where they are designated to deal with the cases referred to in paragraph 1 by operation of law or on the basis of agreements,

3) in disputes regarding jurisdiction between local government bodies and national government bodies,

4) in the matter of the issue of statements.

Article 3 lists the types of proceedings which the Code is not applicable to proceedings in penal – fiscal cases and cases regulated by the Tax Ordinance Act being among them. The Code is also not applicable to cases arising from organizational hierarchy in relations between State bodies and other State organizational units.

the public administration bodies were obliged to comply with their substantive and territorial jurisdiction *ex officio*. If the application was filed into an inappropriate body pursuant to article 2 of the Ordinance that body had to immediately forward this application to the competent one giving notice to the one who had filed it. The article 3 contained rules which referred to the scope of territorial jurisdiction in relation to the matters of e.g real estates or running an enterprise. If it was impossible to decide which authority is competent on the basis of abovementioned rules the body which had territorial jurisdiction was to be appointed by the body which had the substantive jurisdiction. Pursuant to the article 2 section 1 the substantive jurisdiction was determined on the basis of the provisions on the scope of an area of bodie's activity and subsequently on the basis of other provisions. Should it was impossible to specify substantive jurisdiction on the basis of the article 2 section 1 or if the substantive jurisdiction belonged to the body which did no longer exist the competent body of the 1st instance was the general district administrative body and the competent body of the 2nd instance was the general voivodship administrative body. In case of the jurisdictional disputes between the administrative authorities the authority competent to resolve them was the common authority of higher level, voivod, Minister of the Internal Affairs or the Council of Ministers[9]. If as a result of the conflict of competences delay which could cause a threat to the safety occurred the each of the bodies was obliged to undertake necessary actions within its scope of competences giving notice to the other bodies. The aim of this solution was to mitigate the possible risk of public authorities' inactivity when circumstances demanded rapid actions. Current Code contains similar regulations regarding territorial and substantive jurisdiction. Pursuant to article 19 of the Code public administration bodies shall respect their substantive and territorial jurisdiction *ex officio*. The

[9] It depended on the type of bodies involved in a dispute. The same course of proceedings was applicable to the dispute in which the competences of two or more bodies were justified (so – called positive jurisdictional dispute).

substantive jurisdiction of a public administration body is defined by the regulations in its area of activity. Article 22 regulates dealing with jurisdictional disputes – the Code specifies which bodies shall deal with the disputes depending on the bodies which are involved in a dispute. It should be stressed that pursuant to article 22 paragraph 2 disputes between government and self – government bodies shall be settled by an administrative court. This solution ensures that substantive jurisdiction of the self – government units is protected. The Ordinance also assure that body involved in the dispute can carry out measures requiring urgent action, having regard to the public interest and the legitimate interests of members of the public

3. Exclusion of the employee of a public administration body, notion of the party and the person concerned

The Ordinance introduced quite high objectivity and impartiality standards of rulings. Article 7 and 8 contained provisions on the exclusion of employee of the public administration body from proceedings in which his parents, spouse, relatives and in – laws were parties to. Employee was also obliged to exclude himself when he was taking part in the proceedings for the second time in the same case. Such situation happened when the employee who was taking part in an appeal proceedings had been also involved in the same case in the proceedings at the lower instance. The clerk was also excluded from the proceedings when disciplinary or penal – fiscal proceedings was pending against him. The Ordinance also allowed to exclude employee by his superior when the latter considered it to be necessary having regard to the public interest[10]. Excluding of the employee is also provided for by the Code. Moreover the Code gives also a possibility to exclude not only the employee but also the public administration body itself. Pursuant to article 25 a public administration body shall be ex-

[10] In such case the employee should be replaced by another one and until replacement could take only necessary actions.

cluded from dealing with a case that relates to the property interests of its chief officer or any of his/her relatives and person acting in an executive capacity in the higher body at the next level. This solution strengthens the level of an impartiality of the employee dealing with the case. Contemporary notion of a participant in the proceedings (but not the participant with the rights of the party) on the basis of the Ordinance was defined as a notion of person concerned[11]. Pursuant to article 9 of the Ordinance the person concerned was anyone who required intervention of the public authority, to whom the intervention of a public authority applied or whose interest was an object of the intervention of the public authority. Person concerned could be granted with the status of the party to the proceedings if was taking part in the proceedings on the basis of a legal claim or legally protected interest. As a result of the above mentioned provisions it was possible to have the status of the participant in the proceedings even if the one did not have legal claim or legal interest protected by law. Currently the notion of the party is defined in the article 28 pursuant to which a party to proceedings is any person whose legal interests or responsibilities are the object of the proceedings or who requires the intervention of a body in respect of its legal interests or responsibilities. Unless administrative law stated otherwise the possibility of acting in the proceedings was conditioned by the possession of the legal capacity and capacity for juridical acts which were determined in accordance with the civil law. The Ordinance gave wide possibility of appointing an attorney. Attorney could be appointed not only by the party to the proceedings but also by the person concerned. The Ordinance ensured not only the right to appoint an attorney by the parties' choice but also gave the possibility of appointing an attorney *ex officio*. Attorney could be appointed by the court *ex officio* on be-

[11] Notion of a person concerned does not exist in the current Code. Instead the Code allows social organizations to participate in the proceedings with the rights of the party if such participation is justified by organizations' statutes and where there would be a public benefit in allowing it.

half of any person who was absent or legally incapable upon application from the competent authority which was conducting the proceedings. The very similar solutions regarding acting by an attorney are contained in the current Code. The Ordinance was giving the person concerned right to be informed about the proceedings to have access to case's file and make copies and notes thereof. Obviously this right was not unlimited pursuant to art. 14 section 5 right of having access to file could be restricted by the reason of State secrecy.

4. Making of applications and minutes

The Ordinance departed in a modern way from the previous principle of commencing proceedings only by an application made in writing. Pursuant to article 15 it was possible to make applications i.e. requests, appeals, objections, and other types of applications in writing, by telegraphic means or orally recorded in the minutes. The aim of this solution was to adapt technical aspects of the proceedings to the abilities of the participants in the proceedings and changing social and economic reality. It is worth mentioning that the Code besides above mentioned ways of making applications allows to make an application by an e – mail or by means of a form located on a website of the relevant public administration body. Nevertheless the principle of conducting proceedings in writing was still prevailing in making minutes (partially because of technical constraints). Making minutes was obligatory[12] or optional depending on an act carried out in the proceedings. The minutes itself should be drawn up so that it was evident what acts where carried out, when and where they were carried out, by whom they were carried out, who was present at the time when acts were carried out, what was established as a result of the acts and what objections were made by those who were

[12] The Ordinance introduced a closed list of situations where minutes were obligatory i.e. making of an oral application, hearing of a person concerned, inspections, expert reports, oral announcement of a decision.

present. Minutes of any hearing should be read out and signed by the person giving evidence. It was also possible to conduct hearing of the person with the help of a translator. Other acts of the public administration body which have not been recorded in the minutes should be recorded in the file by means of memorandum.

5. Summons, service, deadlines

The Ordinance contained detailed regulation of summons and service. Pursuant to the article 22 public administration body was obliged to summon individuals from whom it needed explanations or whose participation in undertaken actions was necessary to give explanations either personally, in writing or by an attorney or to participate in actions undertaken by the public administration body. The summon had to fulfill several requirements. It had to contain name and surname of the person summoned, the name of the case in which person was summoned, details of whether or not the person summoned is required to attend personally, date when person summoned was required to appear etc. The summon had to also inform about legal consequences of failing to comply with it[13]. Moreover the Ordinance also regulated the way of servicing documents. It provided not only for the personal service but also for substituted service – the document could be left with an adult co – habitant, building caretaker or neighbour, if such person undertook to hand the document to the addressee. If it was impossible to serve the document in the above mentioned way it had to be retain for a certain period of time by the local authority at its offices or by the postal authority at the closest post office. The Ordinance also provided for the possibility to summon the person concerned to give explanations in writing or to attend personally before public administration body. The step forward was the possibility of issuing summons by telegraph, telephone or other most suitable to the circumstances way if it was particularly

[13] Very similar requirements for the summon are provided for in the article 54 of the current Code of Administrative Proceedings

difficult to issue summon by a traditional way. The same solution is present in the current Polish administrative proceedings. The Ordinance adopted traditional approach to the calculation of deadlines. Thus if the deadline was measured in days the calculation of deadline did not include the date on which an event or an act commencing the deadline occurred. The deadline was deemed to have expired at the end of the last of the number of days calculated. Deadlines set in weeks and months were deemed to have expired at the end of the day in the last week or month which corresponded to the first day in which an act or event commencing the deadline occurred. Reinstating of the deadline was regulated in a traditional manner – the interested party had to make a request to reinstate the deadline and simultaneously carry out the action for which the deadline was set. The request to reinstate the deadline for making an appeal was examined by the public administration body which had a jurisdiction for examining such an appeal[14]. Current Polish Code of Administrative Proceedings contains very similar solutions with regard to calculation and reinstating of deadlines.

6. Evidentiary proceedings and evidence

Before settling a case the public authority body was obliged to conduct evidentiary proceedings in which it had to specify evidences required for clarifying the case having regard to the principles of dealing with cases quickly, with the simplest possible methods and with the view to mitigate the costs of the proceedings. The Ordinance allowed to hold an oral hearing *ex officio* or at the request[15]. It is worth stressing that the employee of the public

[14] The decision on reinstating the deadline was final. It is worth stressing that currently public administrative body deals with reinstating a deadline by issuing a ruling. If the body refuse to reinstate the deadline an interlocutory objection can be filed.

[15] Most common reason for an oral hearing was to agree conflicting interest of the parties and also examination of the case with the presence of higher number persons concerned, witnesses or expert witnesses.

administration body who was conducting a hearing was not only obliged to thoroughly clarify the case and induce parties to settle their conflicting interests but also to bear in mind the public interest. The provision relating to the public interests can be considered as a the source of the principle of having regard to the public interest and legitimate interest of members of the public in current Polish administrative proceedings. The Ordinance provided for the very wide spectrum of evidences. Like nowadays everything which was not contrary to the law and was in assistance of clarifying the case could be admissible as an evidence. The principle of free appraisal of evidence was also introduced. However the most important evidence were documents, the evidence of witnesses, the opinions of experts and inspections. The Ordinance specified also several categories of individuals who were unable to be witnesses including clergyman who could refuse to testify so as to facts revealed to him in confession. There were also detailed provisions regarding testifying itself and refusing to testify, refusing to answer a question and reimbursement of expenses related to the appearance at the hearing.

7. The principle of conducting proceedings quickly and without unnecessary delay

Pursuant to the article 68 of the Ordinance the public administration body was obliged to deal with the cases quickly without unnecessary delay in a way which did not endanger the public interest and the justified interests of individuals. Cases which did not require collection of evidence should be dealt with without a delay, in an orally and direct way if it was possible. The case should be dealt with at any rate within 3 months and if the cooperation with another public administration body was necessary within 5 months[16]. Introducing of these deadlines and principles of dealing with cases quickly and without necessary delays aimed to counteract excessive duration of the proceedings which was

[16] For other cases the deadline was 6 months.

a major problem at that time. Currently the principle of conducting proceedings quickly is expressed in article 12 of the Code and is one of the principles of administrative proceedings. Pursuant to article 35 paragraph 3 of the Code if the case requires an evidentiary proceedings it should be dealt with within a month from the commencement of proceedings and in more complicated cases within two months from the commencement of proceedings. An appeal proceedings should be finished within one month of the appeal being received.

8. Decisions

Pursuant to the Ordinance decisions were defined as a rulings which were issued during proceedings by the public administration body if it was necessary. The Ordinances distinguished principal decisions which settled the case and incidental decisions which related to the other issues arising in the course of the proceedings[17]. If issuing of the decision was depending on a position taken by an another public administration body or a court the public administration body in question was obliged to issue an interim decision. Interim decision was conditioned by the subsequent position taken by relevant body or court. If it was impossible to issue an interim decision the public administration body which was conducting proceedings could settle a preliminary issue by itself. Pursuant to article 75 each decision had to contain a legal basis, a date of issue, a rulling, a signature of the person authorized to issue a decision and an advisory notice as to whether an appeal or a complaint might be brought. Moreover decisions which did not correspond to the demand of the party also had to contain a legal and factual justification. It should be pointed out that decision should settle the case in a possibly succinct and clear

[17] Current Code does not introduce the notion of an incidental decision. The Code defines the notion of ruling instead. Pursuant to article 123 paragraph 2 rulings relate to particular issues arising during a case but they do not determine the essence of the case. The equivalent of principal decision is a decision by which the case is settled (art. 104 of the Code).

manner and if the decision was issued in the presence of the party it should be communicated to the party orally[18]. Pursuant to article 75 if the issuing of the decision depended entirely on a free appraisal of the public administration body only legal basis was required[19]. There was also a possibility of correcting typographical, mathematical or other evident mistakes in decision *ex officio* by the body which issued that decision or at the instigation of a party. Current requirements for the decision are very similar. However factual and legal justification are mandatory for any kind of the decision. The only exception from this rule is when the decision fully reflects the demands of the party. This exception does not apply to cases where parties with conflicting interests are involved and to the decisions given on appeal.

9. Appeals and incidental complaints

As it has been already underlined the Ordinance gave the possibility of bringing an appeal against a decision issued at the first instance[20]. An appeal was admissible only from a decisions which settled the essence of the case and only to the directly higher body. An appeal had to be brought within 14 days of the party being served with the decision, and if the decision was communicated to the party orally, within 14 days of that date. An appeal against an incidental decision could be brought only together with an appeal brought against principal decision unless incidental decision was issued after principal decision. An appeal could be brought only by a party to the proceedings (not by a person con-

[18] At the instigation of a party the decision had to be served on in writing.

[19] The same rule was applicable to the justification of a decision in a case of important state interest.

[20] The Code regulates appeals and appeal proceedings too. Moreover pursuant to article 141 it introduces an interlocutory objection. An interlocutory objection is a mean of challenging rulings. Unlike an appeal making an interlocutory objection does not prevent challenged ruling from being enforced but the public administration body may suspend its enforceability if it considers it justified.

cerned) and it did not have to meet any particular requirements. It was sufficient that the party who was dissatisfied with the decision expressed it and asked for amending the decision. An appeal had a suspensory effect – decision was not enforceable until deadline for bringing an appeal has expired and in case of brining an appeal within the deadline enforcement of a decision was suspended[21]. The same solution is provided for in the Code but there are some exceptions from this rule like for example enforceability of the decision by law. It was also possible that the body which issued a decision could amend the decision by itself – an appeal should be brought to an appeal body via body which issued a decision. The Ordinance did not regulate what kind of a decision could issue an appeal body. The only regulation of that matters was contained in art. 94 pursuant to which an appeal body could issue a decision which upheld the challenged decision. Obviously it was an omission but because of that appeal bodies had wide range of possibilities in verifying challenged decisions. Current Code does not repeat this omission – pursuant to article 138 appeal body can issue a decision which upholds the challenged decision, revokes the challenged decision either totally or partially and rules on the essence of the case in this case, or revokes the decision and cancels the proceedings at first instance or cancels the appeal proceedings.

10. Subsequent verification of the decision

In a case in which there was no right of an appeal or any other legal remedy a reopening of the proceedings was possible if the requirements contained in article 95 were met. The requirements were for example new factual circumstances essential for the case or issuing a decision as a result of a criminal act. An application to

[21] There were exceptions from this principle such as: immediate enforcement by law, compliance with the requests of all parties concerned and resignation by the party from bringing an appeal, immediate enforcement of the decision because of the reasons of public interest or the exceptionally vital interest of a party.

reopen the proceedings should be brought to the public administration body which issued the decision at the first instance and the body which was relevant to decide on reopening was the body which issued the decision at the last instance. Decision by which no party acquired any right could be revoked or amended *ex offico* at any time by the public administration body which issued it or by the higher body. Protection of rights acquired by the parties as a result of the decision was introduced – to amend or revoke such decision the consent of the party who acquired right was necessary. There was also the possibility of revoking the decision because of its invalidity[22]. The final decision from which there was no right of an appeal could be also revoked or amended if there was no other way to avert a state of affairs that endangers human life or health or in order to avoid serious damage to the national economy.

11. Summary

It is worth pointing out that the Ordinance contained also provisions related to fees and costs in the proceedings, penal provision and provisions regarding enforcement of the decisions which aimed to secure the proper course of the proceedings. It should be stressed that major influence on the interpretation of the Ordinance had the Supreme Administrative Tribunal which was established by the Act on Supreme Administrative Tribunal passed on 3rd of August 1922[23]. The Tribunal was patterned on Austrian single – instance Administrative Tribunal. March Constitution of Pol-

[22] Code of Administrative Proceedings also provides for reopening of the proceedings. Article 145 lists the grounds for reopening the proceedings issuing the decision as a result of a criminal act being one of them. The proceedings can be also recommenced if the Constitutional Tribunal rules that the regulations on the basis of which the decision was issued are contrary to the Constitution, an international agreement or a law.

[23] J. L. No. 67, item 600.

and had categorized Tribunal as an executive power[24] but the later April Constitution of Poland placed the Tribunal as a part of the judiciary. Tribunal was the most supreme body appointed to rule on the legality of individual administrative acts of both government and self – government administration. However, despite constitutional declaration administrative courts remained one – tier. Nevertheless quoting R. Kędziorę it should be stressed that: "Some opinions issued by the Highest Administrative Tribunal which refers to the interpretation of administrative procedural law are still up-to-date and can be useful in the interpretation of the current procedural law. It is confirmed not only by the legal doctrine but also by the acceptance and development of the Tribunal's legacy in current judicial decisions of the Supreme Administrative Court[25]".

STRESZCZENIE

Wybrane zasady ogólnego postępowania administracyjnego w świetle Rozporządzenia Prezydenta Rzeczpospolitej Polskiej o postępowaniu administracyjnym z 22 marca 1928 r.

Artykuł ma na celu zanalizowanie wybranych kwestii procedury administracyjnej regulowanej Rozporządzeniem Prezydenta Rzeczpospolitej Polskiej o postępowaniu administracyjnym wydanym w dniu 22 marca 1928 r. Autorzy skupiają się na analizowaniu na przykład zakresu zastosowania Rozporządzenia, jurysdykcji materialnej i terytorialnej organów administracji publicznej, pojęcia strony i osoby zainteresowanej, sposobów wszczynania postępowania dowodowego i dowodów, wydawania decyzji i postępowania odwoławczego. Ocena prowadzona jest w świetle aktualnej regulacji Kodeksu Postępowania Administracyjnego. Autorzy podkreślają liczne podobieństwa między tym Rozporządzeniem i aktualnym Kodeksem. Podobieństwa te udowadniają jakość

[24] By placing the provision regarding Tribunal in a chapter which referred to executive power.

[25] R. Kędziora, *General…*, p. 5.

ustawodawczą regulacji sprzed II Wojny Światowej, szczególnie wysoką obiektywność i bezstronność standardów zarządzeń wprowadzonych tym Rozporządzeniem. Artykuł kończy się podkreśleniem roli ustawodawczej jaką odgrywa Najwyższy Sąd Administracyjny i jego wkładu w interpretację przepisów Rozporządzenia.