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ABOUT THE NEED TO CHANGE THE SCOPE
OF THE EVIDENCE PROCEEDINGS
IN ADMINISTRATIVE COURT CASES

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Summary. The aim of the article is to present arguments in favor of changing the current scope of evidence proceedings in administrative court cases. The taking of evidence in these cases is not independent in nature. The factual basis for adjudication by administrative courts are the administrative files of the case, which the administrative body transfers to the court together with the complaint and the response to the complaint. On the other hand, the evidentiary proceedings before the administrative court serve only to verify the completeness of the evidence collected in these files and the correctness of the findings of the authority in terms of the facts based on them. However, the current legal status is insufficient to achieve this goal. The article proposes directions for changes in this area. The need to separate a chapter devoted to the evidentiary proceedings was noticed. It was also postulated to extend the scope of these proceedings, and to allow the possibility of taking supplementary evidence from the document also outside the trial.

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O potrzebie zmiany zakresu postępowania dowodowego w sprawach sądowo-administracyjnych. Celem artykułu jest wskazanie argumentów przemawiających za zmianą obecnego zakresu postępowania dowodowego w sprawach sądowoadministracyjnych. Postępowanie dowodowe przeprowadzane w tych sprawach nie ma charakteru samoistnego. Podstawę faktyczną orzekania przez sądy administracyjne stanowią bowiem akta administracyjne sprawy, które organ administracji przekazuje sądowi wraz ze skargą i odpowiedzią na skargę. Natomiast postępowanie dowodowe przed sądem administracyjnym służy jedynie weryfikacji kompletności materiału dowodowego zgromadzonego w tych aktach oraz prawidłowości opartych na nich ustaleń organu w zakresie stanu faktycznego. Aktualny stan prawny jest jednak niewystarczający do osiągnięcia tego celu. W artykule zaproponowano kierunki zmian w tym zakresie. Dostrzeżono potrzebę wyodrębnienia rozdziału poświęconego postępowaniu dowodowemu. Postulowano także poszerzenie zakresu tego postępowania, a ponadto dopuszczenie możliwości przeprowadzenia dowodu uzupełniającego z dokumentu także poza rozprawą.

Słowa kluczowe: sprawa sądowoadministracyjna, akta administracyjne sprawy, postępowanie dowodowe, dowód uzupełniający z dokumentu.

1. INTRODUCTION

In accordance with Art. 1 and 2 of the Act of August 30, 2002, Law on Proceedings Before Administrative Courts (consolidated text: Journal of Laws of 2019, item 2325, as amended; later in the article as: “p.b.a.c”), administrative court cases are cases related to the control of public administration activities and other cases which, under special laws, are heard in proceedings before administrative courts. In the light of Art. 1 § 2 of the Act of July 25, 2002, Law on the System of Administrative Courts (consolidated text: Journal of Laws of 2021, item 137, as amended), control in administrative court cases is performed in terms of compliance with the law, unless the laws provide otherwise. The adoption by the legislator of such a control criterion determines the application of the principle of *tempus regit actum* in proceedings before administrative courts, which is one of the rules of intertemporal law. The correct application of the law requires the appropriate choice of a legal provision relevant in a given case, its proper interpretation and application. Intertemporal law is about the proper application of a provision in force at a specific time, so that this provision is adequate to a legal event from the point of view of the time of the event and the

assessment of its effects (Skonieczny, Okoń, 2013, p. 40). However, in order to be able to assess the legality of the challenged action of an administrative authority, the administrative court must also know the facts of the case under examination.

2. THE PRINCIPLE OF ADJUDICATION ON THE BASIS OF COMPLETE ADMINISTRATIVE FILES OF THE CASE

The legality of the challenged activity of an administrative authority is generally verified on the basis of the files of an administrative case (Art. 133 § 1 of the p.b.a.c.). The authority submits these files to the court together with the complaint and the reply to the complaint within thirty days from the date of obtaining of the complaint (Art. 54 § 2 of the p.b.a.c.). The factual basis for adjudication by the administrative court is therefore the evidence gathered by the authority in the course of administrative proceedings and included in the administrative files of the case. Deficiencies in these files, on the other hand, may be classified by the administrative court as a breach of procedural provisions, which, in the event of a significant impact on the result of the case, leads to the complaint being upheld (Resolution of the Supreme Administrative Court of February 15, 2010, II FPS 8/09). Before such a ruling is issued, the literature on the subject emphasizes the importance of actions taken after the complaint has been transferred to the court, together with the administrative files of the case, aimed at the proper completion of these files.

It is argued that these steps should be taken so that the court of first instance would not be charged with violating Art. 133 § 1 sentence 1 of the p.b.a.c. and the principle of adjudication on the basis of complete case files expressed therein. It is noted that the activities aimed at completing the administrative files of the case necessary for its examination should, as a rule, always be undertaken by the main administrator of these files. It should be noted that in the preliminary phase of administrative court proceedings, the administrator of these files is the chairman of the division or a designated judge, and in the phase of examination of the case – the rapporteur judge or the chairman of the adjudicating panel (Bińczyk, Kopacz, 2013, p. 134).

The proper performance by the administrators of administrative files of the case incumbent on them is also raised in the context of the principle of the speed of administrative court proceedings. According to Art. 7 of the p.b.a.c., “the administrative court should take steps to resolve the matter quickly and endeavor to resolve it at the first session”. The implementation of this principle therefore depends primarily on the correct completion of the procedural

material, which should take place even before the date of the hearing in the case is scheduled. Proper performance of this obligation creates a real chance of settling the case at the first session of the court (Kopacz, Krzykowski, 2014, p. 86).

For the sake of order, it should be added that the obligation of the administration authority to hand over to the court complete and orderly administrative files of the case arises directly from Art. 54 § 2 of the p.b.a.c. and breach of this obligation, according to Art. 55 § 1 of the p.b.a.c., may result in imposing a fine on the authority. On the other hand, the provisions obliging the above-mentioned administrators of administrative files of a case to take steps to complete them are included both in the provisions of the p.b.a.c. (Art. 62 (1)), the Regulation of the President of the Republic of Poland of 5 August 2015. Rules of the internal operation of voivodeship administrative courts (§ 37 section 1 point 1, § 41 points 3 and 4) (Journal of Laws, item 1177), as well as in the order No. 14 of the President of the Supreme Court Administrative Court of 6 August 2015 on establishing the rules of bureaucracy in administrative courts (§ 22).

3. SCOPE OF EVIDENTIARY PROCEEDINGS BEFORE THE ADMINISTRATIVE COURT – CURRENT STATUS

Expressed in art. 133 § 1 of the p.b.a.c. the principle of adjudicating on the basis of complete administrative files of a case does not, however, deprive the administrative court of the possibility of conducting any of its own settlements in the administrative court case. In the light of Art. 91 § 3 of the p.b.a.c., “the court may order the parties or one of them to appear in person or through an attorney in order to clarify the case in more detail”. According to Art. 106 § 3 of the p.b.a.c. “The court may, on its own motion or at the request of the parties, take supplementary documentary evidence, if it is necessary to clarify substantial doubts and will not extend the proceedings in the case excessively”. The provision of art. 106 § 4 of the p.b.a.c., on the other hand, obliges the administrative court to take into account the facts that are commonly known even without relying on them by the parties. The evidence collected by the court, however, is not used to establish the factual state of the case under control, but to verify the completeness of the evidence collected in the administrative files of the case and the correctness of the authority’s findings in terms of the facts based on them (Bińczyk, Kopacz, 2013, p. 125–126). Thus, the evidentiary proceedings conducted by the administrative court aims to obtain such information about

the administrative case concluded with the challenged action, which will allow to assess its legality (Radzikowski, 2009, p. 55; Bartisz-Burdiak, 2015, p. 43; Hanusz, 2009, p. 51–53). However, in the current legal state, the above-mentioned provisions seem insufficient to achieve this goal.

4. ARGUMENTS FOR CHANGING THE SCOPE OF THE EVIDENTIARY PROCEEDINGS IN ADMINISTRATIVE COURT CASES

Laws of the p.b.a.c. have been amended many times over the years. This resulted, *inter alia*, in extending the judicial competences of administrative courts. Currently, these courts, apart from issuing cassation decisions, are also entitled to discontinue administrative proceedings at the same time (Article 145 § 3 of the p.b.a.c.), or to indicate to the administrative authority the way how to settle the case (Article 145a § 1 of the p.b.a.c.).

Invariably, they may also in cases of complaints against the act or activity referred to in Art. 3 § 2 point 4, recognize the right or obligation resulting from the provisions of law (Article 146 § 2 of the p.b.a.c.). The reformatory powers of the Supreme Administrative Court have also been extended, obliging the Court, in the event of granting a cassation appeal and revoking the judgment under appeal, to consider the appeal if it deems that the essence of the case has been sufficiently clarified (Art. 188 of the p.b.a.c.)¹ of the More and more often voices are raised about the need to further expand, under certain conditions, the judicial competences of administrative courts, and this seems to be the public's expectations (Rojek-Socha, 2021).

It should also be remembered that administrative courts control actions taken by administrative bodies in cases where there are often no formal provisions regarding the obligation to create administrative files in a case. This, in turn, means that the files submitted to the court by the authority with the complaint do not contain documentation sufficient for the court to assess the correctness of the findings of facts based on them. In such cases, however, it is impossible to accuse effectively the authority of the incompleteness of the administrative files of the case. Often, deficiencies in this respect cannot be removed by the parties' statements contained in the pleadings or their expla-

¹ The amendment to the above-mentioned provisions was made pursuant to the Act of April 9, 2015 amending the Act – Law on proceedings before administrative courts (Journal of Laws, item 658) and entered into force on August 15, 2015.

nations submitted at the court session at which the court ordered the parties to appear in person.

Moreover, it should be noted that under Art. 135 of the p.b.a.c., “the court shall apply the measures provided for by the act to remedy the violation of the law in relation to acts or actions issued or taken in all proceedings conducted within the boundaries of the case to which the complaint relates, if it is necessary for its final settlement”. The principle of not binding the court with the limits of the complaint expressed in this provision obliges the court to assess the legality of not only the decisions ending the proceedings in a given instance, but also those issued in the course of the proceedings, which could not be the subject of a separate appeal. By way of example, there are cases in which the legislator has provided for the cooperation of organs in the issuing decisions while allowing the form of tacit agreement.² In such cases, gathering the evidence enabling the assessment of compliance with the separate provisions for which cooperation is provided for, will rest entirely with the authority conducting the main proceedings. Such an obligation of this body is stipulated in Art. 7 and Art. 77 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (consolidated text: Journal Of Laws of 2021, item 735, as amended), pursuant to which the authorities are obliged to take all steps necessary to clarify thoroughly the facts of the case, which is associated with the obligation of these authorities to collect comprehensively and consider all evidence (Judgment of the Provincial Administrative Court in Olsztyn of November 29, 2016, II SA/Ol 1159/16). However, the assessment of the proper fulfillment of this obligation by the authority conducting the main proceedings requires specialist knowledge which is neither available to that authority nor to the administrative courts. The essence of cooperation is to guarantee the participation of specialized bodies in the proceedings, which assess the legality of the intentions, from the point of view of certain specific acts (Niewiadomski, 2004, p. 428).

We are dealing with an expert factor not only in cases in which the legislator provided for the cooperation of authorities when issuing administrative decisions. The administrative court also controls cases in which the provisions provide explicitly for the obligation to establish certain elements of the facts with the participation of an expert. The value of an expert opinion has, for example, an appraisal report prepared by a property appraiser in matters related to real

² See: Article 53 of the Act of 27 March 2003 on spatial planning and development, consolidated text: Journal Of Laws of 2021, item 741, as amended.

estate management.³ This type of evidence is also a medical certificate issued in the procedure for establishing an occupational disease.⁴

The participation of an expert factor in the decision-making process of an administrative body is a consequence of the application of the principle of objective truth in administrative proceedings. This principle implies the obligation of a comprehensive and exhaustive body to establish the facts of the case. More than once the implementation of this obligation will require the use of special knowledge of an entity other than the authority conducting the main proceedings. Regardless of whether the participation of such entities in the proceedings is governed by the provisions of law, or whether the authority has exercised its discretion in this respect, the obligation to prove the relevant circumstances of the case always rests with the authority conducting the proceedings. This authority should also assess the entire evidence gathered in the case (including that containing special messages), taking into account only lawful evidence.⁵ However, the administrative body is not authorized to challenge independently the conclusions formulated in the expert's opinion. On the other hand, the law allows the administration authority to call an expert to provide additional explanations. Sometimes they also provide for the possibility of an administrative body requesting professional self-government bodies to verify the correctness of an expert opinion. However, administrative courts that control administrative decisions issued in this type of cases do not have such powers.

The conclusion that there is a need to change the scope of the evidentiary proceedings in administrative court cases is also supported by the current legal status of the lack of the possibility to conduct it in closed session. The provision of Art. 106 § 3 of the p.b.a.c. for it constitutes a supplementary evidentiary procedure as a stage of the hearing. This, in turn, means that a party requesting the taking of supplementary evidence from a document, for the application to be effective, must request of the hearing. Such action seems, however, disproportionate to achieving the intended aim. It also deprives a party of the possibility to hear its case in a simplified procedure, in which the court hears cases

³ See: Articles 77 and 130 of the Act of August 21, 1997 on real estate management, consolidated text: Journal Of Laws of 2021, item 1899, as amended.

⁴ See: § 6 and § 8 of the Regulation of the Council of Ministers of 30 June 2009 on occupational diseases, consolidated text: Journal Of Laws of 2013, item 1367, as amended.

⁵ See: judgment of the Supreme Administrative Court of May 19, 2021, I OSK 3286/19; judgment of the Supreme Administrative Court of December 13, 2017, I OSK 1346/17 and judgment of the Provincial Administrative Court in Warsaw of August 4, 2020, I SA/Wa 2213/19 – Central Database of Administrative Court Rulings.

in closed session by a bench of three judges (Article 119 (2) of the p.b.a.c.). As it seems, the submission of an application for evidence by a party also excludes the ex officio referral of the case for examination under a simplified procedure in the situations described in Art. 119 point 1, 3–5 of the p.b.a.c. On the other hand, the use by the court hearing the case under the simplified procedure of the possibility of taking supplementary evidence from the document (ex officio) will require the case to be examined at the hearing. The above-described limitation on the possibility of conducting supplementary evidentiary proceedings also seems to be inconsistent with the current pandemic situation. Under these conditions, most administrative court cases are heard in closed session. There is a noticeable increase in the parties' interest in the possibility of hearing a case in a simplified procedure. The order to hold a closed session instead of a hearing or a public hearing also provides for Art. 15zsz4 paragraph. 3 of the Act of March 2, 2020 on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and the emergencies caused by tchem (consolidated text: Journal Of Laws of 2021, item 2095, as amended). According to this provision, "the chairman may order a closed session if he deems the examination of the case necessary, and it cannot be carried out remotely with the simultaneous direct transmission of image and sound. At a closed session in these cases, the court adjudicates in a panel of three judges". It also requires noting that during the period of the epidemic threat or epidemic state announced due to COVID-19 and within one year of the last appeal in proceedings before administrative courts, it is only possible to conduct a remote hearing (Article 15zsz4 (2) of the cited act). Undoubtedly, such a method of conducting a hearing makes it difficult to recognize properly an evidence application from a document.

5. SUMMARY

The arguments presented in this study prove the need to change the scope of the evidentiary proceedings in administrative court cases. The current regulation of Art. 106 § 3 and 5 of the p.b.a.c. insufficiently provides administrative courts with the possibility of verifying the completeness of the evidence collected in the administrative files of the case and the correctness of the body's findings in terms of the facts based on them. Therefore, it should be postulated to separate in the p.b.a.c. the chapter devoted to the taking of evidence, which de lege ferenda could replace Art. 106 § 3–5 of the p.b.a.c. and Art. 133 § 1 of the p.b.a.c. insofar as this provision provides for issuing a judgment on the basis

of the case file. In this chapter you should first articulate the principle of adjudication in administrative court cases on the basis of complete administrative files of the case. Then, admit the possibility of conducting supplementary evidence proceedings, leaving it to the court's discretion whether it is necessary to resolve significant doubts and will not result in excessive prolongation of the proceedings in the case. The scope of this procedure should also be extended to include the possibility for the court to oblige specialized entities participating in administrative proceedings (e.g. experts, cooperating bodies) to provide additional explanations in the case. Moreover, it should be allowed to take supplementary evidence from the document also outside the trial.

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