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The prohibition of placing a sole appellant in a worse position in the Polish proceeding before an administrative court – evolution of institution

SUMMARY

The prohibition on the worsening of the legal situation of the appellant is an expression of the individual's rights protection and a requirement of the rule of law. If it did not exist in Polish legal system the position of an entity taking part in court proceedings would be much worse than it is. The prohibition on the worsening of the legal situation guarantees respect for acquired rights and their constancy.

KEYWORDS

the prohibition of placing a sole appellant in a worse position, an administrative courts

Prohibition of *reformatio in peius* in the court-administrative procedure has operated for dozens of years. Similar arguments speak for the introduction of the institution to proceedings before administrative courts as in the event of application of prohibition of *reformatio in peius* in the civil and criminal procedures. It is a very important element of procedural guarantees for the party, it is primarily a collateral for the sole appellant that following the hearing of the case by the administrative court his position will not change into a disadvantageous one. An excerpt from the Supreme Court's judgement of 24 June 1993 may be cited here, which relates to the prohibition of placing a sole appellant in a worse position in administrative proceedings, but this claim is considered as more general, too. The Supreme Court finds in it that „respect for the prohibition of *reformatio in peius* in the appeal proceedings is to be considered one of the fundamental principles of procedural law in a democratic state of law.”¹ The decision follows that the legislator does not agree to creating a procedural law, which does not guarantee the party to maintain the status quo, in the event of taking legal action in order to protect their personal rights. Supreme Court raises the prohibition of *reformatio in peius* to the rank of a fundamental principle of procedural

1 Supreme Court judgement of 93.06.24. IIIARN 33/93, „Państwo i Prawo” 1994, nr 9, p. 111.

law. It is especially important in the judicial procedures, where the verification procedure may only take place at the request of an eligible subject. It follows that the party which does not contest the decision should not expect the support from the court, in the sense of improving their situation, if the party does not assert that themselves.² And in this case of the entity has to have the comfort that they will not be penalized for a manifestation of proceeding activity.

If you trace the evolution of the legal regulation of the prohibition of *reformatio in peius* one can firmly state that it has not had a particularly long tradition in the provisions of court-administrative procedure.

Acts of law regulating the proceedings before the Supreme Administrative Tribunal did not introduce the prohibition of *reformatio in peius* institution. The legislator of that period was consistent in this regard because the regulation on administrative procedure (hereinafter invoked as an r.p.a.) did not know this institution either.³ "Indeed, according to the Article 93 of r.p.a appeal authority, by issuing a decision in the case, was not bound by the scope of the claims in the appeal, so it could execute both *reformatio in melius* and *reformatio in peius*."⁴ The Supreme Administrative Tribunal adopted the following thesis in this area: „In deciding the appeal, the appeal authority is also entitled to such a change of the first resort's decision, which worsens the position of the appealing party."⁵ Even during the Second Polish Republic, scholars were trying to develop rules restricting the freedom of the appeal authority on the basis of administrative procedure. „It was namely postulated to introduce an admissible *reformatio in peius* in the extent to which the law or the public interest requires it."⁶ These demands, however, did not affect the proceedings before the administrative court, as revealed in the forthcoming bill on the administrative judiciary in 1957, which provided an overall regulation of court-administrative procedure and it did not forward it to the supporting application of other procedures, but there was not any provision on the prohibition of placing a sole appellant in a worse legal position.

For the first time the prohibition of *reformatio in peius* began its legal existence on the grounds of court-administrative procedure along with revival of the administrative judiciary in 1980. However, neither chapter VI of the Code of Administrative Procedure, or the Act of 31 January 1980 about the Supreme Administrative Court and the change of the Act – the Code of Administrative Procedure⁷ did not contain an explicit normalization of the prohibition of *reformatio in peius*. The only indication that such the prohibition operates in the proceeding before the Supreme Administrative Court was the former Article 211 of the Code of Administrative Procedure required the court to the appropriate application of the

2 M. Wierzbowski, *Glosa do wyroku SN z 93.06.24. III ARN 33/93*, „Państwo i Prawo” 1994, nr 9, p. 114.

3 Regulation of President of the Republic of Poland of 22.03.1928 on administrative procedure (Journal of Laws nr 36, pos. 341 with later alterations).

4 B. Adamiak, *Zakaz reformationis in peius w postępowaniu administracyjnym*, „Acta Universitatis Wratislaviensis. Prawo” 1992, nr 189, p. 210.

5 The Supreme Administrative Tribunal judgement of 16.10.1934, 1.rej.2275/29, The case law of Supreme Courts in Tax and Administrative Matters 1935, nr 5–6, p. 537. After B. Adamiak, *op. cit.*, p. 210.

6 B. Adamiak, *op. cit.*, p. 210.

7 Journal of Laws 1980, nr 4, pos. 8.

Code of Civil Procedure regulations in cases not covered in the section VI of the Code of Administrative Procedure. This „borrowing” of the institution of prohibition of *reformatio in peius* from civil procedure has caused many interpretative problems.

Representatives of science debated at various levels. Firstly, the question of whether the prohibition of *reformatio in peius* should at all apply in proceedings before the administrative court. Secondly, if the prohibition should be drawn from the civil or administrative procedure.

For many authors, the enforcement of the prohibition of *reformatio in peius* was obvious. M. Wyrzykowski emphasized the role of the jurisdiction as an institution which guarantees the protection of individual rights, but he also believed it justified to apply the prohibition of placing the sole appellant in a worse legal position in the shape shown in the Code of Civil Procedure. Because „there may also occur situations in the proceedings before the administrative court in which a party in the final result will be in a worse position than it was before the court’s decision.”⁸ S. Dalka felt that the enforcement of the prohibition of *reformatio in peius* in the proceedings before the administrative court will contribute to strengthening the rule of law and to the increase of public trust in justice.⁹ B. Adamiak presented an approbative attitude too, since the introduction of the prohibition is argued for by „all the reasons which justify the prohibition of the introduction of *reformatio in peius* into administrative proceedings, into civil and criminal proceedings, namely to allow the freedom to pursue the rights granted by the legislator to make remedies at law.”¹⁰ Jurisdiction, both the Supreme Court and the the Supreme Administrative Court declared similar views.¹¹

In the course of the discussion, voices opposing the introduction of the institution to court-administrative proceedings arose. Such a notion was expressed by A. Jaroszyński arguing that the right of the administrative court to worsening the legal situation “is fully understandable.” Since its task is to review the legality of administrative decisions, as a universal value, then it cannot be restricted in any way due to personal interest.”¹² Z. Matynia also spoke against the binding force of the prohibition of *reformatio in peius*. In his opinion, “the fundamental function of the Supreme Administrative Court consisting in the control and eradication of legal decisions against the law may only be properly exercised when the prohibition of *reformatio in peius* does not apply. It is thus difficult to consider appropriate a solution, according to which the decision flagrantly violating the law (e.g., issued without legal basis) could become final (the court dismissed the complaint) and continue

8 M. Wyrzykowski, *Sądownictwo administracyjne w PRL*, Wydawnictwo Prawnicze, Warszawa 1983, p. 140.

9 S. Dalka, *Możliwości stosowania zakazu reformationis in peius przed Naczelnym Sądem Administracyjnym*, „Państwo i Prawo” 1985, nr 11/12, p. 107–108.

10 B. Adamiak, *op. cit.*, p. 212.

11 a) The judgement of the Supreme Administrative Court of 15.09.1982. II S.A. 909/82, „Państwo i Prawo” 1983, nr 9, p. 149. “The application to the Article 382 of the Code of Civil Procedure, which on the basis of the Article 211 of the Code of Administrative Procedure should be appropriately applied in the proceedings before the Supreme Administrative Court, the court cannot annul the contested decision, to the detriment of the complainant, if the opposing party has not challenged this decision.” b) The judgement of the Supreme Court of 25.01.1984. III ARN 23/83, OS-PiKA 1985, nr 10, pos. 196. In the proceeding before the Supreme Administrative Court the prohibition of *reformatio in peius* is not excluded.

12 A. Jaroszyński, *Reformatio in peius w postępowaniu administracyjnym*, „Organizacja, Metody, Technika” 1981, nr 11, p. 23.

to function in the legal system, because its elimination could worsen the position of sole appellant.”¹³

W. Siedlecki presents the evolution of views. Speaking for the first time on this topic he expressed a negative opinion.¹⁴ Because the administrative court is not the court of the reformation, it cannot directly worsen the position of a sole appellant, but the author acknowledges that this may occur indirectly, due to adopting a new administrative decision substantially less favorable, but in accordance with the law in light of the Supreme Administrative Court decision. Two years later in his voice to the Supreme Administrative Court’s judgement of 15 September 1983. W. Siedlecki partially changed his position, recognizing that in the proceedings before the administrative court “the general application of the prohibition of *reformatio in peius* should not be precluded, especially when cases will come in question, where an appellant is interested in setting the administrative decision aside only in so far as it is unfavorable, without incurring the risk that the decision issued by the Supreme Administrative Court did not worsen his legal situation, related to the administrative decision.”¹⁵

The second area of the dispute is the source of regulation of the prohibition of *reformatio in peius*. The jurisdiction of the Supreme Court and The Supreme Administrative Court and majority of the representatives of science concluded that, under the repealed Article 211 the Code of Administrative Procedure which provided that in matters not dealt with in section VI of the Code of Administrative Procedure provisions of the Code of Civil Procedure were applicable. It was concluded on this basis that since the section did not contain provisions concerning the prohibition of *reformatio in peius* in the proceedings before the Supreme Administrative Court it becomes obvious to appropriately apply the provisions of the Code of Civil Procedure including the former Article 382.

A. Wroblewski presented a different opinion. He believed that the subsidiary application of the Code of Civil Procedure regulations before the Supreme Administrative Court does not apply to all procedural issues, despite the direct references in the Code of Administrative Procedure. According to him, the judgement exercised by the administrative court remained beyond the reach of the Code of Civil Procedure, therefore the author argues that the regulations relating to the prohibition of *reformatio in peius* were not applicable to the legal-administrative proceedings and the application of such had Article 139 of the Code of Administrative Procedure, as it has been established for the purpose of administrative law.¹⁶

The lively discussion on the dispute about the prohibition of *reformatio in peius* forced the legislator to conclude the relevant provisions in the new regulation. This time, the Supreme Administrative Court Act of 1995¹⁷ related directly to the compliance by the admin-

13 Z. Matynia, *W sprawie możliwości stosowania zakazu reformationis in peius przed Naczelnym Sądem Administracyjnym*, „Państwo i Prawo” 1987, nr 1, p. 95. Confront: idem, *Glosa do wyroku SN z 25.01.84. III ARN 23/83*, OSPiKA 1985, nr 10, pos. 196.

14 W. Siedlecki, *Stosowanie przepisów k.p.c. w postępowaniu przed Naczelnym Sądem Administracyjnym*, „Państwo i Prawo” 1981, nr 2, p. 60.

15 W. Siedlecki, *Glosa do wyroku NSA z 15.09.82. II S.A. 909/82*, „Państwo i Prawo” 1983, nr 9, p. 151.

16 A. Wróblewski, *Glosa do wyroku SN z 06.12.82., III CZP 51/82*, OSPiKA 1982, nr 12, pos. 256.

17 The Act of 11.05.1995 on the Supreme Administrative Court, *Journal of Laws* nr 74, pos. 368.

istrative court to the prohibition of placing a sole appellant in a worse position. However the provisions of Article 51 *in fine* of the Act on the Supreme Administrative Court did not eliminate all the doubts which had already existed. Also this time, voices were raised that the „prohibition of *reformatio in peius* in court-administrative procedure remained in collision with the basic structural assumptions and function of the court-administrative procedure and the mechanism for the Supreme Administrative Court's decisions. First of all, this prohibition constitutes a restriction of the principle of the administrative court not being bound by the boundaries of the complaint. (...) In addition, it limits the basic function of the court-administrative procedure, which is the control of the legality of public administration by an independent court. This function involves the elimination of illegal acts and activities of these authorities from the conduct of legal transactions.”¹⁸ Therefore, according to T. Woś adopting the above prohibition means that at the time of its validity the administrative court can not fulfill this function.¹⁹ And finally, „this prohibition limits the predicative capacity of the administrative court referred to in Article 22–27 Act on the Supreme Administrative Court. In light of these provisions, and therefore according to the principle of not being bound by the boundaries of the complaint, the administrative court, declaring the occurrence of certain defects of challenged action or inaction specified therein, should always apply the manner and form of action specified in Article 22–26 Act on the Supreme Administrative Court *ex officio*, and without any restrictions. The prohibition of *reformatio in peius* means that within the scope of its validity the administrative court cannot accept the complaint and issue a sentence referred to in those provisions despite the occurrence of defects that warrant such a sentence.”²⁰

The current law regulating the proceedings before the administrative courts in the Article 134 § 2 (here in after invoked as an u.p.s.a.) also includes a reference to the institution of the prohibition of *reformatio in peius*.²¹ The regulation indicated in the Act of 2002 differs from the one described in Article 51 of the Act of 1995. In the current legislative provision governing the procedural activities for dealing with the court-administrative of Article 134 § 2 it is stated that „the court cannot issue a ruling against the complainant, unless it finds an infringement of law resulting in the annulment of the contested act or actions.” As it can be observed the regulation was expanded to include the term “activities”, so in that sense one can speak of broader application of the prohibition of *reformatio in peius* in relation to the previous regulation of 1995.

The provision of Article 134 § 2 of u.p.s.a. does not eliminate doubts as to possibilities of its application. Issues raised in the literature are largely a question of understanding of “disadvantages” in the context of the quoted provision. It is noted that the determination of the disadvantages in the administrative law is very difficult, because the relations in this

18 T. Woś, *Postępowanie sądownoadministracyjne*, Wydawnictwa Prawnicze PWN, Warszawa 1999, p. 240.

19 *Ibidem*, p. 240.

20 *Ibidem*, p. 240. See T. Woś, *Glosa do wyroku SN z 25.01.84. III ARN 23/83*, OSPiKA 1985, nr 10, pos. 196.

21 The Act of 30.08.2002 The law on the proceeding before administrative courts (Journal of Laws nr 153, pos. 12.70 with later alterations).

area of law are not fully measurable. In a particular case the determination of what is more and what is less beneficial may not be possible in relation to a particular subject.²²

The administrative court in the course of the proceeding primarily uses two types of conduct that either denies the validity of a complaint, or approves one. The validity of the prohibition of *reformatio in peius* in the first case poses no particular difficulty. The court considering the allegations as unfounded dismissed the complaint because no evidence was revealed to allow the County Administrative Court to change the decision. Doubts arise only when the court takes into account the complaint and considers the circumstances the complainant did not raise. In these circumstances there is a danger that after the re-consideration of the case by the administrative authority the decision issued as a result may be less favorable than the previous one.²³ This is complicated in as much as the aggravation of the appellant's position is not obvious at the time of the statement being issued by the court, but only in administrative proceedings, in which the administrative authority is bound by a legal assessment and indications for further proceedings before an administrative court (Article 153 of u.p.s.a.). Legal analysis is a binding critical comment of the administrative court on the manner of applying a specific rule of law by a public administration authority and to clarify the court's reasons leading to recognize a misuse of a particular rule of law. The indications for further action are the consequences of the legal assessment and articulate guidance to the authority which undertook the contested act or acts, of a binding nature in the course of re-hearing the case. Their purpose is to avoid mistakes and to guide the magistrates in the present proceedings²⁴ with such an objection that in case of the court's annulment of the decision of the second resort organ it will be bound by the prohibition of *reformatio in peius* during the re-hearing of the case, which is expressed in Article 139 of the Code of Administrative Procedure, unlike in the case of the elimination of the decision by the organ of first resort from the conduct of legal transactions, too. The binding of legal assessment and indications as to the further conduct as referred to in Article 153 of u.p.s.a. will be set on the grounds of judgment before an administrative court.

Introducing the prohibition of *reformatio in peius* the legislator had a choice between two extreme solutions, i.e. to establish an absolute ban on the deterioration of the party or to abolish it completely. Both solutions are not free from drawbacks, therefore, the u.p.s.a.

22 A. Kabat, in: B. Dauter, B. Gruszczyński, A. Kabat, M. Niezgódka-Medek, *Prawo o postępowaniu przed sądami administracyjnymi*. Komentarz, wyd. II, Kantor Wydawniczy Zakamycze. Wolters Kluwer Polska, Kraków 2006.

23 K. Gruszecki, *Obowiązywanie zakazu reformationis in peius w postępowaniu przed Naczelny Sąd Administracyjny*, „Państwo i Prawo” 1998, nr 6, p. 33.

24 Also see the Supreme Administrative Court judgement of 30.07.09 II FSK 451/08 LEX nr 526493 „There is a close relationship between legal assessment and indications as to how to proceed. Legal assessment concerns the current proceedings of the administrative authorities in the case, while indications determine their future conduct. Indications are therefore consequences of legal assessment, especially assessment of the proceeding conduct before the administrative authorities and the results of this procedure in the form of material collected in the case. Indications of the administrative court as to how to proceed are to plan a further course of action of the authority in the event of re-recognition of the case.” The County Administrative Court in Gdansk judgement of 07.05.2009. I SA/Gd 909/08 LEX nr 507195 „The legal assessment is commonly understood as the explanation of the essential content of the laws and the manner of their application in the case, while the implications for the further proceeding are usually consequences of legal assessment. They concern the mode of action in the course of re-hearing the case and seek to avoid the already committed mistakes and an indication of direction in which future proceeding should aim to avoid defects such as gaps in evidence or other procedural errors.”

adopted an intermediate solution, i.e., that the prohibition of *reformatio in peius* exists, but with exceptions as to its validity. However, this model was not safe from critical assessments, either, but everything should be assessed positive. The main objection is that the administrative court can rule against the applicant only when it finds an infringement of the law resulting in the annulment of the contested measure, which in the proceedings before the court does not allow to eliminate decisions with defects listed in Article 145 of the Code of Administrative Procedure.

It follows that keeping the prohibition of *reformatio in peius* in every legal procedure is a legitimate claim of the right to protect rights of an individual and a requirement of a modern state of law. The objective of the legislator is the demarcation of the prohibition, to determine the boundaries „strictly without introducing the concepts in this area which are not direct and leaving much freedom to the organ considering the appeal.”²⁵

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25 B. Adamiak, *op. cit.*, p. 209.

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Zakaz pogarszania sytuacji skarżącego w polskim postępowaniu przed sądem administracyjnym – ewolucja instytucji

STRESZCZENIE

Instytucja zakazu pogarszania sytuacji prawnej podmiotu odwołującego się jest przejawem ochrony praw jednostki i wymogiem państwa prawnego. Bez jej istnienia w systemie prawa polskiego pozycja jednostki występującej w procesie sądowym w celu ochrony swojego indywidualnego interesu byłaby znacznie gorsza. Instytucja zakazu pogarszania sytuacji prawnej strony jest gwarancją poszanowania praw nabytych i ich niezmienności.

SŁOWA KLUCZOWE

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