Artur Lis

The Right to Good Administration – Outline

Prawo do dobrej administracji – zarys zagadnienia

The right to good administration is one of the fundamental citizen's rights. The principle of good administration is a general principle derived from the idea of a legal state, common to the tradition of constitutional EU Member States. However, one can notice that this principle is not a specific, procedural and homogeneous principle of legal effects, but a collection of particular rights of individuals and duties of the EU administration. The right to good administration itself is not the basis for the rights of an individual, but it acts through its elements which, in fact, are the general rules of the EU law. Among others, it includes the duty to review a case in reasonable time, the duty to justify decisions, the right to being heard and the right of access to case files.

In the extensive literature dealing with the right to good administration, there were answers considered to questions concerning the content and scope of the validity of this principle and which particular principles constitute this quite wide a definition. Is the content of this law to include efficient, procedurally correct settlement of an individual case or something more? Will the right to good administration be consumed if a citizen is served in the way determined by law, or until after the citizen receives, irrespective of the procedurally correct administrative performance, what he is guaranteed by the principles of material law and, moreover, by the clearly indicated body which excludes probable jurisdictional disputes? Should the right to good administration be considered in terms of procedural law, in particular, or equally in terms of material law or constitutional law?

Here, it is impossible to list all the important publications devoted to these problems, nevertheless, particularly relevant are research results collected in post-conference materials, such as *Prawo do dobrej administracji. Materiały ze Zjazdu Katedr Prawa i Postępowania Administracyjnego* [The Right to Good Administration. Materials from the Conference of Departments of Law and Administrative Proceedings] *(Warszawa-Dębe 23-25 IX 2002)*, edited by Zygmunt Niewiadomski and Zbigniew

Cieślak (Warszawa 2003, Uniwersytet Kardynała Stefana Wyszyńskiego, pp. 687)[1] and *W poszukiwaniu dobrej administracji. Materiały konferencyjne* [The Quest for Good Administration. Conference Materials] *(Warszawa, 29-30.11.2007)*, edited by Hubert Izdebski and Hanna Machińska (Warszawa 2007, Wydział Prawa i Administracji Uniwersytetu Warszawskiego, pp. 148)[2]. Further, it is important to mention the works of Zygmunt Niewiadomski[3], Eugeniusz Bojanowski[4], Irena Lipowicz[5], Andrzej Jackiewicz[6], and recently Dominik Tyrawa[7].

The concept of good administration is very wide and includes in itself various requirements addressed to modern public administration. These requirements have, first of all, a legal dimension which relates to the rule of law, as well as an economic dimension relating to effectiveness and efficiency. The position of the right is proven by its guarantee in the Charter of Fundamental Rights – a document whose aim is to protect fundamental human in the case of actions undertaken by the institutions of the European Union and by EU Member States under the EU treaties. It is necessary to observe that the Charter of Fundamental Rights of the EU collected in one text citizen's rights, political, economic and social rights. The inclusion of the right to good administration in the Charter of Fundamental Rights means its recognition as a fundamental right to which every EU citizen is entitled.

The acts of EU law are the documents of international and union law in which we find the problems of the right to good administration, and they include:

1 *Prawo do dobrej administracji. Materiały ze Zjazdu Katedr Prawa i Postępowania Administracyjnego. Warszawa-Dębe 23-25 IX 2002 r.*, eds. Z. Niewiadomski, Z. Cieślak, Warszawa 2003.

2 *W poszukiwaniu dobrej administracji. Materiały konferencyjne (Warszawa, 29-30.11.2007 r.)*, eds. H. Izdebski, H. Machińska, Warszawa 2007.

3 Z. Niewiadomski, *Kodeks Dobrej Administracji a polska procedura administracyjna*, in *Jakość administracji publicznej. Księga pamiątkowa ku czci Profesora Marcina Jełowickiego. Konferencja naukowa (Cedzyna, 24-26 IX 2004 r.)*, ed. J. Łukasiewicz, Rzeszów 2004, 294-301; Z. Niewiadomski, *Prawo do dobrej administracji - prawo podmiotowe czy deklaracja polityczna?* in *Samorządowe Kolegia Odwoławcze jako gwarant prawa do dobrej administracji. Materiały konferencyjne (Niepołomice, 2009.01.14-17.)*, ed. K. Sieniawska, Warszawa 2009, 173-177; Z. Niewiadomski, *Prawo obywatela do dobrej administracji*, in *Finis legis Christus. Księga pamiątkowa dedykowana Księdzu Profesorowi Wojciechowi Góralskiemu z okazji siedemdziesiątej rocznicy urodzin*, eds. J. Wroceński, J. Krajczyński, Vol. 2, Warszawa 2009, 1217-1223.

4 E. Bojanowski, *Prawo do dobrej administracji (kilka refleksji)*, „Gdańskie Studia Prawnicze" 13(2005), 161-169; E. Bojanowski, *Zasada dobrej administracji - prawo do dobrej administracji: odniesienia polskie (kilka uwag)*, in *Współczesne zagadnienia prawa i procedury administracyjnej. Księga jubileuszowa dedykowana Prof. zw. dr. hab. Jackowi M. Langowi*, eds. M. Wierzbowski, J. Jagielski, A. Wiktorowska, E. Stefańska, Warszawa 2009, 37-40; E. Bojanowski, *Zasada dobrej administracji (kilka refleksji)*, in *Studia z prawa administracyjnego i nauki o administracji. Księga jubileuszowa dedykowana prof. zw. dr. hab. Janowi Szreniawskiemu*, Przemyśl-Rzeszów 2011, 77-82.

5 I. Lipowicz, *Prawo obywatela do dobrej administracji*, in *Państwo w służbie obywateli. Księga jubileuszowa Jerzego Świątkiewicza*, Łódź 2005, 111-130.

6 A. Jackiewicz, *Prawo do dobrej administracji a art. 6 Europejskiej Konwencji Praw Człowieka*, in *Człowiek a tożsamość w procesie integracji Europy. III Międzynarodowa Konferencja Praw Człowieka (Olsztyn, 29-30 V 2003 r.)*, eds. B. Sitek i in., Olsztyn 2004, 561-567; A. Jackiewicz, *Prawo do dobrej administracji w orzecznictwie Trybunału Sprawiedliwości w latach 2004-2007*, in *Ustroje, doktryny, instytucje polityczne. Księga jubileuszowa Profesora zw. dra hab. Mariana Grzybowskiego*, ed. J. Czajowski, Kraków 2007, 115-126; A. Jackiewicz, *Prawo do dobrej administracji w świetle Karty Praw Podstawowych*, „Państwo i Prawo", 7(2003), 67-77.

7 D. Tyrawa, *Dobra administracja a jej kontrola*, in *Nadzór i kontrola w systemie wykonywania administracji publicznej*, eds. M. Czuryk, M. Karpiuk, Warszawa 2010, 44-69; D. Tyrawa, *E-administracja w kontekście prawa do dobrej administracji*, in *Wizja europejskiego społeczeństwa informacyjnego i jej realizacja w prawie polskim*, eds. J. Misztal-Konecka, G. Tylec, Lublin 2012, 201-221.

1) The Treaty on the functioning of the EU – initially the Treaty establishing the European Economic Community of 25 March 1957, known in Poland as the Treaty of Rome, modified by the Treaty on the European Union (Maastricht Treaty) of 7 February 1992, further amended during the conference in Amsterdam (Treaty of Amsterdam of 2 October 1997), in Nice (Treaty of Nice of 26 February 2001) and in Lisbon (Treaty of Lisbon of 13 December 2007);
2) The Treaty on the European Union of 7 February 1992, referred to as Maastricht Treaty, further amended by the Treaty of Amsterdam of 2 October 1997, the Treaty of Nice of 26 February 2001 and the Treaty of Lisbon of 13December 2007;
3) The Charter of Fundamental Rights of the EU proclaimed in Nice on 8 December 2000;
4) The European Code of Good Administrative Behaviour of 6 September 2001 and other legal acts legislated by the Council of Europe:
   A) The Convention for the Protection of Human Rights and Fundamental Freedoms drafted in Rome on 4 November 1950, ratified by the Republic of Poland in 1993;
   B) Recommendations of the Committee of Ministers of the Council of Europe adopted since 1977.

Let us characterize the fundamental regulation of the Charter included in the Treaty draft. Article II - 41 says under the headline "Right to Good Administration" (Official Journal of the European Communities of 14 December 2007):

1. "Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
   - the right of every person to be heard before any individual measure which would affect him or her adversely is taken;
   - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional or business secrecy;
   - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties in accordance with the general principles common to the laws of the member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language"[8].

As Irena Lipowicz rightly indicates, good administration - reliable, efficient and effective, acting in accordance with the applicable legal ground and in the forms provided by law, observing administrative procedures while, at the same time, flexible and streamlined, is a certain, imaginable for citizens ideal of this branch of the executive power. Whereas Zygmunt Niewiadomski assumes that adopting good administration as a legal concept causes

[8] Karta praw podstawowych Unii Europejskiej (Dz.U. UE C z dnia 14 grudnia 2007 r. Nr 303, poz.1).

a crucial qualitative change in terms of Polish law. In administrative law it means a transfer to protection by the administration and not against the administration, as well as an effective requirement from the state not only to construct and apply a legal norm but also to make the administration "good". One can pose a question whether it is possible to assume that the principle of good administration has already acquired the character of a public legal right. Since both the law and the Code of Good Administration (exactly: the Code of Good Administrative Behaviour), intended by its makers to specify the right to good administration, refers mainly to procedures and complies with the Polish principles of administrative proceedings. In the studies of administrative law, efficient, fast and clear proceeding rousing trust towards the state and its administration, assuring the possibility of appeal and court control, has been the aim formed years ago. Such narrow understanding of the right to good administration would not be a real breakthrough, would not require redefining the existing view on administration. However, if we accept the mixed character of this law, differentiating between the regulation of Article 41 of the Chart and the procedural "Code" as a code of good administrative behavior, we can talk about the breakthrough. It would mean imposing the obligation of being "active and effective" on administration, while for a citizen, the claim that the acts of law be effectively applied onto him or her by active administration. The right to good administration was placed in Chapter V of the Charter of Fundamental Rights under the title "Citizens' Rights". From this systematics one can make far-reaching conclusions: it must be the civil and political right going beyond procedural aspects. Placing it among civil rights is addressed to everybody[9].

In the Polish legal system regulations concerning the right to good administration can be found in the Constitution of the Republic of Poland of 2 April 1997. Such a right can be derived clearly from a number of its provisions which are the consequence and the development of the prime, constitutional principle of a democratic legal state (Article 2). It applies to every body of public authority, so to administrative bodies, as well. Let us consider the following regulations:

1) Protection of human dignity (Article 30), which is evidently violated every time public administration acts against the provisions of law;
2) Functioning on the basis of the law (Article 7) and, by creating a closed system of the sources of law (Article 87-94 and others), subjecting this activities not only to the direct application of the Constitution itself, which arises from Article 8, sec. 2 of the statute, but also to the international law;
3) Ensuring professional, diligent, impartial and politically neutral discharge of public obligations (indirectly derived from Article 153);
4) Internal normative acts shall not serve as the basis for decisions taken in respect of citizens, legal persons and other subjects, organizationally not subordinate to the organ which issues such act. (Article 93, sec. 2);

[9] I. Lipowicz, *Prawo do dobrej administracji*, text available on the website: http://bip.nik.gov.pl

5) Actions of administrative bodies under the instance control before its bodies (Article 78), as well as external control exercised by other organs, including administrative courts (Article 184) and the Commissioner for Citizens' Rights (Article 80, 208);
6) The right to compensation for any harm done by any action of administration (Article 77, sec. 1);
7) The right to demand information on the activities of public services (Article 61);
8) Prohibition of acquiring, collecting and making accessible information about citizens other than that which is necessary in a democratic state ruled by law (Article 51, sec. 2);
9) Everyone's right of access to official documents and data collections concerning himself or herself, limitation of which may be established only by an act of law, as well as the right to demand correction or deletion of untrue or incomplete information, or information acquired by means contrary to statute (Article 51, sec. 3 and 4)[10].

The elements of the right to good administration in administrative procedure were expressed in the Code of Administrative Procedure of 14 June 1960 in the form of general principles of administrative procedure: the principle of the rule of law, the principle of considering the interest of citizens ex officio, the principle of increasing citizens' trust to state institutions, citizens' awareness and legal culture, the principle of informing parties, the principle of ensuring a party active participation in proceedings, the principle of convincing a party to the validity of the solution made, the principle of speed and simplicity of procedure, the principle of persuading a party to reach agreement, the principle of actions of administration in writing, the principle of two instances in administrative procedure, the principle of firmness of final decisions and the principle of court control over administrative decisions, assisted also by other mechanisms[11].

Going further, in the subject literature there are several meanings of the concept of the right to good administration. It is indicated that the term discussed can be understood as:

1) citizen's power,
2) public legal right,
3) paralegal category,
4) extralegal category.

The right to good administration understood as the power can be studied as a legal design specified locally and individualised in the binding system of law, described by the content of the obligation correlated with it. In its next meaning this concept is a real or at least required legal institution whose distinguishing element is a legally effective claim against the public administrative bodies the realisation of which should be guaranteed by procedures and legal solutions of a law-abiding state. The right to

[10] A. Lis, *Prawo do dobrej administracji podstawą praworządności*, in *Praworządność w dobie kryzysu*, eds. J. Luty, R. Piestrak, Stalowa Wola 2013, 31-54; A. Lis, *Zasady postępowania administracyjnego a prawo do dobrej administracji*, in *Korzenie i ewolucja instytucji prawa sądowego*, ed. D. Gil, Lublin 2013, 357-369.

[11] Dauter-Kozłowska, *Prawo do dobrej administracji w Karcie Praw Podstawowych Unii Europejskiej i w świetle Europejskiego Kodeksu Dobrej Administracji*, in *Prawa podstawowe w prawie i praktyce Unii Europejskiej*, eds. C. Mik, K. Gałka, Toruń 2009, 337-365.

good administration as a paralegal category may mean a non-binding legal principle, a specific synthesis of detailed legal solutions in the area of public authorities versus a citizen. The right to good administration treated as an extralegal category is a multi-aspect social phenomenon manifested in political relations, in various social contexts, in psychological relations and in ethical evaluations[12].

In terms of timeliness in the right to good administration and in the Code of Good Administration compared to Polish regulations, the following elements are included:

1) In the Code of Administrative Procedure the time of handling the problems „promptly" includes one month, and in particularly complicated cases – two months, while in the Code of Good Administration the time principally means two months (except the issues handled instantly);
2) The unusually wide range of the Code of Good Administration causes that the requirement of timeliness extends to any contacts of administration with a citizen;
3) The element which significantly improves the citizen's sense of safety is the obligation to acknowledge the receipt of every letter within two weeks. The progress in computerisation makes this requirement real in our country. The obligation to acknowledge the receipt of letters is now realised upon the request of a party, however it is not a routine duty of an organ.

How will the right to good administration change the perception of public administration in the studies of administrative law? The hierarchy and the information advantage of administration is becoming more flexible, while its appreciation is decreasing. On the other hand, while saying "a citizen" or "an individual" we often mean, in fact, a more and more powerful business entity which is the addressee of a decision. The demand for good administration means the realization of the demand for ensuring safety against not only the abuse of authority but also "external" safety. It is an evolution in the approach to administration to some extent accompanying a citizen, while not being a strict supervisor and examiner remaining isolated and, in terms of a specific clerk, anonymous[13].

The right to good administration on the side of public administrative bodies raises a number of obligations correlated with the rights of individuals. To conclude, the individuals to whom the right to good administration is addressed may demand resolving their affairs in accordance with the content of the right to good administration, whereas the public administrative bodies are also obliged to resolve the problems of individuals in accordance with the right to good administration[14].

[12] Kawka, *Zasada dobrej administracji w prawie wspólnotowym*, in *Zasady ogólne prawa wspólnotowego. Materiały konferencyjne (Białobrzegi, 2006.10.19-20)*, ed. C. Mik, Toruń 2007, 189-224.

[13] H. Izdebski, *Zasada dobrej administracji i prawo do dobrej administracji w świetle standardów Rady Europy*, in *Sześćdziesiąt [60] lat Rady Europy. Tworzenie i stosowanie standardów prawnych*, ed. H. Machińska, Warszawa 2009, 321-334; J. Oniszczuk, *Prawo jednostki do dobrej administracji publicznej*, in *Administracja publiczna na progu XXI wieku. Wyzwania i oczekiwania*, ed. J. Osiński, Warszawa 2011, 129-147.

[14] M. Granat, *Prawo do dobrej administracji w Unii Europejskiej*, in *Jakość administracji publicznej. Księga pamiątkowa ku czci Profesora Marcina Jełowickiego. Konferencja naukowa (Cedzyna, 24-26 IX 2004 r.)*, ed. J. Łukasiewicz, Rzeszów 2004, 150-156.

The principle of good administration is a collection of specific rights of individuals and duties of EU administration. It is a general principle of the EU law including, among others, the duty to examine all the circumstance of the case diligently and impartially, the duty to consider the case in reasonable time, the duty to justify the decision, the right to be heard and the right of access to files[15].

Summarising, it can be observed that good administration is an unsatisfied longing of citizens, as well as respective ruling parties and the public administration itself. There is probably no state whose citizens would be fully satisfied with their government and self-government administration, and whose politicians and public administration officials would not see the need for improving administration. Good administration should be an issue in political programs and reform projects of consecutive ruling parties. The concept of good administration is wide and includes varied requirements oriented at modern public administration. From the point of view of the evolution of administrative law, the concept described is connected with the demand for protecting a citizen treated as a subject of administration. The right to good administration is a determinant of public administration behaviour in Poland[16].

SŁOWA KLUCZOWE

prawo administracyjne, dobra administracja, państwo prawa

STRESZCZENIE

Standardem europejskim jest zasada dobrej administracji wywodzącą się z idei państwa prawnego, wspólną dla tradycji konstytucyjnych państw członkowskich Unii Europejskiej. Obejmuje ona miedzy innymi obowiązek starannego i bezstronnego zbadania relewantnych okoliczności sprawy, obowiązek rozpatrzenia sprawy w rozsądnym terminie, obowiązek uzasadnienia decyzji, prawo do bycia wysłuchanym i dostępu do akt.

KEYWORDS

administration law, good administration, rule of law

SUMMARY

European standard is the principle of good administration derived from the idea of the rule of law, the constitutional traditions common to the Member States of the European Union. It includes, inter alia, the obligation to examine carefully and impartially of relevant circumstances of the case, the obligation to hear the case within a reasonable time, the obligation to give reasons for decisions, the right to be heard and access to the file.

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[16] K. Milecka, *Dobra administracja - prawo, zasada, standard*, in *Europeizacja prawa administracyjnego*, ed. I. Rzucidło, Lublin 2011, 47-61; K. Milecka, *Zasada dobrej administracji w orzecznictwie sądów unijnych*. Vol. 1-2. „Europejski Przegląd Sądowy" 2(2012), 33-38 and 3(2012) 28-32.

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