Biuletyn Stowarzyszenia Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego t. XV, 17 (1) 2020, s. 69-80
https://doi.org/10.32084/sawp.2020.15.1-4

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ADMINISTRATIVE COMPLAINT AS A MEASURE SAFEGUARDING INTERESTS OF INDIVIDUALS AGAINST PUBLIC ADMINISTRATION BODIES

Introduction

Public administration is defined as the satisfaction by the state – and implemented by its independent bodies and self-government units – of citizens' individual and collective needs resulting from the coexistence of people in communities [Boć 2010, 15-16]. It is the activity of the executive power carried out to the extent justified by public interest and within the framework of applicable law [Izdebski and Kulesza 2004, 20-21]. By interest, administrative law means the relationship between an objective, current or future condition and an assessment of this condition through benefits that it produces or may produce to an individual or social group. The criterion of benefits of that condition should be understood as participation in interests and values existing between people [Koniuszewska 2009, 48]. Art. 2 of the Constitution of the Republic of Poland frames the concept of the state ruled by law,[1] meaning, in substantive terms, the imperative of observing certain values. On the other hand, the formal aspect of the concept should be referred to the principle of legality and a directive for public authorities to act in line with and within the limits of the law. It should be stressed that in the applicable legal framework the idea of legality is linked to elements of a democratic state ruled by law. The relevant constitutional principle is worded in Art. 7 of the Constitution. It is a binding legal norm requiring state bodies to operate only within the existing legal framework [Skorupka 2013, 210]. The

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[1] The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 2009, No. 114, item 946.

article discusses administrative complaint as a measure that can protect the interest of an individual when confronted with public administration bodies.

1. Origin of complaint

The science of administrative law points out that the institution of complaint essentially tackles the so-called imperfect legal remedies. It was formerly known as a report, presentation, and the right of action, as set out in the Polish Constitution of 1921. Complaints were introduced into the post-WW2 reality by the Resolution of the Council of State and the Council of Ministers of 14 December 1950 on examination and handling of appeals, letters of dissatisfaction and complaints of the public and criticism of the press [Gulińska 2018, 51]. Complaint was also rested on the provisions of the 1952 Constitution of communist Poland [Chorąży, Taras, and Wróbel 2009, 185] which read, "Citizens shall have the right to express dissatisfaction and complain to all state bodies, and such complaints shall be examined and handled fairly and without delay. Civil servants who shall delay or exhibit a callous and bureaucratic attitude to citizens' complaints shall be held liable before the law."[2]

The institution of complain discussed herein is grounded in Art. 63 of the Polish Constitution, according to which everyone has the right to submit petitions, proposals and complaints in the public interest, in their own interest or in the interests of another person – with that person's consent – to public administration bodies as well as to organizations and social institutions in connection with the performance of their duties falling with the area of public administration. The procedure for examining and responding to petitions, proposals and complaints is set out by statute. In the current legal system, the pertinent statute is the Code of Administrative Procedure,[3] in particular its Division VIII governing the procedure of complaints and proposals [Knysiak-Sudyka 2019, 1359-367].

[2] Constitution of the People's Republic of Poland of 22 July 1952, Journal of Laws No. 33, item 232.

[3] Act of 14 June 1960, the Code of Administrative Procedure, Journal of Laws of 2018, item 2096 as amended [henceforth cited as: CAP].

2. The concept and substantive scope of complaint

Looking at the dictionary definition, complaint is a remedy available to parties and other participants in a procedure or proceedings before a specific body intended to alter or cancel a decision of that body [Doroszewski 2000]. In legal terms, the institution of complaint is a manifestation of democratization of public life and civic participation in exercising public authority by formulating and reporting critical opinions and assessments. It is a legal measure resembling *actio popularis* and a less formal measure of safeguarding various interests of the individual, however, offering no grounds for further instance proceedings in higher instances.

The subject matter of a complaint, pursuant to Art. 227 CAP, is, in particular, negligence or undue performance of duties by competent authorities or by their employees, the violation of legality or the interests of complaining persons, as well as the excessive lengthiness or bureaucratic handling of matters. The subject matter of a complaint is also any irregularity in the operation of the administration and manifestations of unlawful inactivity of competent authorities or members of administration since it is an unrestricted measure of control of all activities of the administrative apparatus [Miłosz 2011, 318-20]. Z. Janowicz is right to say that the purpose of the complaint procedure is to attract attention of the public authorities to non-performance or improper performance of specific duties by their lower bodies or employees (inaction, omission), thus, a complaint is intended to elicit a supervision response [Janowicz 1999, 521]. Considering the foregoing, the subject matter of a complaint may also be various manifestations of inactivity or omission of public administration bodies [Idem 2011, 318-20]. Filing a complaint is not a formally demanding procedure: what is needed is to state the subject matter, identify the author of the complaint and make sure that he or she appends their signature to it. If any of the above elements is missing, it can be supplemented later on [Chrościelewski and Kmieciak 2019, 1054] pursuant to the Regulation of the Council of Ministers of 8 January 2002 on the organization of receipt and handling of requests and complaints.[4] Its para. 8, sect. 2 says that if the subject matter of a complaint or request cannot be established based on its content, the author of the complaint or request will

[4] Journal of Laws No. 5, item 46.

be required, within 7 days from the date of receiving the relevant official note, to submit an explanation or supplement the filed document, otherwise the complaint or request will be disregarded. It should be noted that complaint is a legal measure initiating a procedure of an informal and subsidiary nature to the rules of jurisdiction and without the option of referring to further appeal instances and limited to handling the individual matter that is complained about [ibid.].

In its judgements, the Voivodeship Administrative Court found that complaint was a type of legal remedy from the domain of *actio popularis*[5] and an informal measure of safeguarding various interests of the individual, however, offering no grounds for further proceedings in higher instances.[6] A complaint procedure does no settle any specific administrative case. By extension, assessment of correctness of a complaint procedure is beyond the jurisdiction of administrative courts.[7]

The subject matter of a complaint, in accordance with the Code of Administrative Procedure, is, in particular, negligence or undue performance of duties by competent authorities or by their employees, the violation of legality or the interests of complaining persons, as well as the excessive lengthiness or bureaucratic handling of matters (Art. 227). The subject of a complaint may also be any irregularity in the operation of the administration and manifestations of unlawful inactivity of competent authorities or members of administration because it is an unrestricted measure of control of all activities of the administrative apparatus [Miłosz 2011, 318-20]. The purpose of the complaint procedure is to attract attention of the public authorities to nonperformance or improper performance of specific duties by their lower bodies or employees (inaction, omission), thus, a complaint is intended to elicit a supervision response [Janowicz 1999, 521]. Considering the foregoing, the subject matter of a general complaint may be various manifestations of inactivity or omission of public administration bodies [Miłosz 2011, 318-20].

[5] Judgement of the Voivodeship Administrative Court in Kraków of 20 June 2017, II SAB/Kr 92/17, Lex no. 2321084.

[6] Judgement of the Voivodeship Administrative Court in Gorzów Wielkopolski of 3 August 2017, II SA/Go 433/17, Lex no. 2345361.

[7] Decision of the Voivodeship Administrative Court in Warsaw of 18 April 2016, IV SA/Wa 309/16, Lex no. 2103505.

3. Bodies competent to handle complaints

The body competent to handle complaints is an upstream (higher level) authority in the organizational structure or a body supervising the body affected by the complaint [Przybysz 2019, 651-64]. In accordance with Art. 17 CAP, higher level authorities are: 1) in relation to the bodies of local government units – self-government appeal boards, unless specific acts provide otherwise; 2) in relation to governors – competent ministers; 3) in relation to public administration bodies other than those indicated above – relevant superior bodies or competent ministers, and in their absence – state authorities supervising their activities; 4) in relation to bodies of social organizations – relevant higher-level bodies of these organizations, or in their absence – a state authority overseeing their activities.

The rule is that when determining the competence of these bodies, with the exception of social organizations, priority is given to special provisions. These may only be statutory provisions, both regarding the scope of bodies' activities as well as specifying supervisory competences and official hierarchy, while regulations (prescriptive acts) may only indicate the procedure of handling complaints and requests or govern other similar matters [Jaśkowska and Wróbel 2018, 1307]. The municipal council, district council and regional assembly have a superior position to executive bodies within individual organizational units of local government, therefore they are competent to investigate complaints about the activities of such executive bodies and other local government organizational units but only within the boundaries of the so-called local government's own affairs. Within the scope of tasks delegated by the government administration, the competent authority for handling complaints is the regional governor or a higher-level authority. The heads of regional services, inspections and guards are higher-level bodies to the heads of district services, inspections and guards in matters delegated by the government administration [Przybysz 2019, 651-64].

The provision of Art. 229, point 3 and 4 CAP are debatable to the extent in which they authorize the decision-making bodies of the municipality and district to investigate complaints about the activities of heads of municipal and district organizational units. Although the municipal or district council establishes, transforms, dissolves and equips organizational units with assets,

neither the municipal nor district decision-making authority has any legal instruments to impose sanctions if a complaint is accepted and the reported irregularities in the performance of the municipality or district organizational unit are confirmed [Wójcicka 2016, 232-39].

In its supervisory decision, the Governor of Lubelskie found that resolutions adopted as a result of a complaint filed pursuant to Art. 227 CAP are the same activity informing about the procedure of handling complaints as the activities of other bodies listed in Art. 229 CAP that may not resort to resolutions as a legal form of action. When investigating complaints, local government bodies are obliged to adhere to the provisions of the CAP. However, the proper application of these provisions may not be arbitrary and may not disregard the basic principles of administrative procedures, in particular the principle of objective truth. The assessment of collected evidence and an exhaustive statement of the reasons behind the final decision should be fully reflected in the relevant justification.[8]

It is also worth noting that the municipal council, like all public administration bodies, is obliged to observe the constitutional rule of law which prohibits public authorities to act in accordance with the principle: everything which is not forbidden is allowed; quite the contrary, the activities of a local government cover matters authorized by the law [Moll 2016, 90-96].

In the event of handling a complaint regarding the duties and activities of a social organization, the competent authority to investigate the complaint is a higher-level body of that organization and then the Prime Minister or competent ministers supervising the activities of that organization.

4. Obligations of a body incompetent to handle complaints

If an authority which receives a complaint is not competent to handle it, then, within Art. 231 CAP, it is obliged to refer it to the competent authority and notify the person submitting the complaint thereof or, alternatively, indicate the competent authority where the complaint should be filed.[9] In addi-

[8] Supervisory Decision of the Governor of Lubelskie of 16 February 2009, NK.II.0911/49/09, Lex no. 2087153.

[9] Judgement of the Voivodeship Administrative Court in Kielce of 28 February 2008, I SA/Po 669/07, Lex no. 456739.

tion, subject to certain exceptions, the authority competent to handle a complaint may refer it to a lower level body for examination. In view of the above, when a body receiving a complaint is not competent to handle it, it is obliged to remedy this condition of incompetence. It should be emphasized that the incompetent authority is obliged to refer the matter immediately and not later than within 7 days as of receiving the complaint [Chrościelewski and Kmieciak 2019, 1062].

5. Complaint concerning an individual matter

As provided in Art. 233 CAP, a complaint concerning an individual matter which has not yet been the subject of administrative proceedings results in proceedings being initiated if the complaint has been submitted by a party. If the complaint has been submitted by another person, it may result in proceedings being instituted *ex officio*, unless the law requires that the procedure be initiated only upon application of a party. Interpretation of the first sentence of the cited provision may raise doubts relating to the filing of a complaint by a party, as a result of which the relevant procedure would be initiated. This will not be the case when the procedure can only be initiated *ex officio*. Even when the complaint is brought by an entity having a legal interest, and the law provides that the procedure may only be initiated *ex officio*, such a complaint does not result in initiating administrative procedures because the provision contained in sentence one of Art. 233 CAP can be interpreted only as a complaint of a party that will result in the initiation of the procedure which, in principle, is not instituted *ex officio* only. Since the provisions of Division VIII CAP are intended to constitute a compatible system aligned with the rules of jurisdiction, namely the provisions of Art. 61 CAP, under Division II CAP, the procedure cannot be initiated only *ex officio* in view of the relevant provision of substantive law that determines this way of initiating the procedure, and under Division VIII CAP, the procedure in the same case could be instituted *ex lege* upon application (as a result of a party's complaint) [Brzozowski 2010, 81-88].

6. Complaint and the final administrative decision

Art. 235 CAP supplements the provisions set out in Art. 233 and 234 CAP jointly determining the subsidiary nature of the complaint procedure. A complaint requiring the legislator to initiate an extraordinary procedure is to be treated by the receiving administrative body as a request to initiate such a procedure [Chrościelewski and Kmieciak 2019, 1071]. It should therefore be stressed that the body is supposed to apply the relevant extraordinary procedure corresponding to the content of the request, and only when there are doubts as to the party's request initiating the administrative procedure, the authority, by referring to Art. 9 CAP, should contact the requesting party with necessary explanations and guidelines.[10] Precise interpretation of the content of the party's request is extremely important as it determines the substantive grounds for the response of the body examining the complaint submitted pursuant to Art. 235 CAP. Only the party submitting the request and not the receiving public administration body has knowledge of its actual content. It is therefore unacceptable for the administrative body to clear doubts regarding the content of the party's request. If the complaint does not contain an explicit request, it is the duty of the receiving public administration body is to take *ex officio* steps to remedy this procedural act of the complaining party. Hence, this receiving body is obliged to request the complaining party to remove the aforesaid defect within 7 days from the date of receiving the official note under pain of disregarding it.[11] It should also be noted that the above legal provision contains a legal presumption, according to which a complaint in a case closed with a final decision is tantamount to a request to resume the case, to deem it invalid or to repeal or amend it.[12]

[10] Judgement of the Voivodeship Administrative Court in Gdańsk of 20 May 2008, II SA/Gd 757/07, Lex no. 477244.

[11] Judgement of the Voivodeship Administrative Court in Lublin of 18 June 2013, II SAB/Lu 14/13, Lex no. 1334941.

[12] Judgement of the Supreme Administrative Court of 15 March 2006, II OSK 653/05, Lex no. 297486.

7. Method and notification of handling a complaint

The body competent to handle complaints should examine it without undue delay and no later than within a month.[13] The method of handling the complainant is communicated to the complaining person.[14] The relevant notification is a material and technical activity.[15] It is not possible to appeal against the notification of the method of dealing with the issue.[16] Moreover, the complaining party may not file a complaint with an administrative court if the case is not handled as expected by the party or if the response to the complaint has been delayed [Przybysz 2019, 651-64].

A complaint filed under Art. 238, para. 1 CAP initiates a single-instance and simplified administrative procedure which closes with a factual act, i.e. notification about the method of handling the complaint or of disregarding it. This notification does not provide grounds for initiating an administrative procedure or court proceedings under administrative law.[17] Pursuant to this provision, notification of the method of handling a complaint should include: designation of the sending authority, explanation of how the complaint was handled and a full name, position and signature of the official authorized to handle the complaint or, if the notification was made in electronic form, it should have a qualified electronic signature appended. Notification of disregarding the case should also contain a factual and legal justification and as well as information on the provisions of Art. 239 CAP. The central component of the notification is information on how the complaint was processed, i.e. what action was taken in relation to the content of the complaint or what action is planned to be taken in the future. If the notification does not contain the above information, the complaining party may presume that the

[13] Judgement of the Supreme Administrative Court of 17 October 2012, II GSK 1481/11, Lex no. 1233993.

[14] Decision of the Supreme Administrative Court of 8 May 2009, II OSK 689/09, Lex no. 574240.

[15] Judgement of the Supreme Administrative Court of 1 December 1998, III SA 1636/97, Lex no. 37138.

[16] Decision of the Voivodeship Administrative Court in Gorzów Wielkopolski of 24 June 2009, II SA/Go 417/09, Lex no. 1934275.

[17] Decision of the Supreme Administrative Court of 9 June 2010, II FSK 497/10, Lex no. 643172.

case was not actually handled. Should this be the case, the party may resort to measures to oppose the authority's failure to act. The authority is not obliged to justify the content of notifications on how complaints are handled when it deems them groundless. Still, there is no obstacle for such justification to be provided [Chrościelewski and Kmieciak 2019, 1076-1077].

8. Re-filing of a groundless complaint

As a concept, the re-filing of a complaint occurs when the content of the newly submitted complaint is identical with the previous one. To recognize a complaint as re-filed, it must be made by the same person. A complaint cannot be considered to be re-filed if its content comes from a different author. It is also worth emphasizing that with the lapse of time a re-filed complaint may be assigned a different meaning and may be subject to a different assessment. A condition for accepting that the complaining party has filed a complaint covering the same subject matter as before is the prior dismissal of the complaint and the party's receipt of the relevant notification stating that the original complaint was groundless. The complaining party should be advised of the consequences of re-filing a complaint covering the same subject matter in the notification of dismissing the previous complaint. If the notification was not served, or it did not contain arguments demonstrating the groundless character of the complaint, or it did not include an instruction on the consequences of re-filing a complaint on the same subject matter, there are no grounds to consider the next complaint as re-filed. In such a situation, the complaint should be handled in accordance with the general terms [ibid., 1078].

Conclusion

Discussed above is the question of how administrative complaint is regulated under the Code of Administrative Procedure. It is worth stressing again that, in legal terms, the institution of complaint is a manifestation of democratization of public life and civic participation in exercising public authority by formulating and reporting critical opinions and requests. It should be noted that complaints mainly concern individuals because there is always a person or a group of people behind every irregularity in the operation of public

administration. Given that, complaint is an unrestricted measure employed to control activities of the administrative apparatus.

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Administrative Complaint as a Measure Safeguarding Interests of Individuals Against Public Administration Bodies

Summary

The articles discusses administrative complaint as a measure that can protect the interest of an individual when confronted with public administration bodies. It explains the origin of the institution of complaint as well as its concept and substance. Next, consideration is given to the bodies competent to handle complaints, the obligations of authorities in competent to process complaints as well as complaints in individual cases. Finally, administrative complaint was analysed against the backdrop of a final administrative decision, the method and notification of complaint handling and the re-filing of a groundless complaint.

Key words: complaint, administrative procedure, public administration body

Skarga administracyjna jako środek ochrony interesów jednostki względem organów administracji publicznej

Streszczenie

Przedstawiony artykuł podejmuje problematykę skargi administracyjnej jako środka ochrony interesów jednostki względem organów administracji publicznej. W artykule omówiono genezę instytucji skargi oraz pojęcie i istotę skargi. Następnie rozważaniom poddano właściwość do rozpatrywania skarg, obowiązki organu niewłaściwego do rozpatrywania skarg, jak również skargę w sprawie indywidualnej. W dalszych rozważaniach zanalizowano skargę a ostateczną decyzję administracyjną, sposób oraz zawiadomienie o załatwieniu skargi, a także ponowienie bezzasadnej skargi.

Słowa kluczowe: skarga, postępowanie administracyjne, organ administracji publicznej

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