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DEREGULATION OF APPEAL PROCEDURE IN ADMINISTRATIVE PROCEEDINGS

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Abstract. The article contains an analysis and assessment of normative changes in Polish administrative proceedings made by the legislator as part of deregulatory measures. These measures covered, in particular, the area of appeal proceedings, where the standard of procedural protection is determined by the principle of two-instance proceedings. Legislative interference in the procedural system of legal protection requires particular caution to ensure that, under the guise of improving the procedural situation, the legal guarantees of individuals are not restricted. The amendment to the Code of Administrative Proceedings affects the scope of the adjudicative powers of the authorities of instance course, in particular the cassation competence of appeal authority, and is yet another legislative intervention in recent years in the construction of cassation decision of the second instance authority. The legislator's efforts focused on strengthening the impact of the factual and legal assessment made by the appeal authority in a decision repealing the contested decision and referring the case back to the first instance authority for reconsideration. The explicit articulation of the binding force of the instructions and guidelines of the appeal authority fulfils the idea of jurisdictional integrity in the course of administrative instances, but it is also another manifestation of the legislator's re-evaluation and new perspective on the principle of two-instance administrative proceedings.

Keywords: administrative proceedings; appeal procedure; cassation decision; deregulation.

INTRODUCTION

One of the areas that the Polish legislator has covered with deregulation efforts is administrative procedural law. The Act of 21 May 2025,[1] amending, among others, the Code of Administrative Proceedings,[2] introduces simplifications relating to business activity at the stages of starting and developing

[1] Act of 14 June 1960, the Code of Administrative Proceedings, Journal of Laws of 2024, item 572 as amended [hereinafter: the Code].

[2] Act of 21 May 2025 on amending certain acts in order to deregulate economic and administrative law and to improve the principles of economic law drafting, Journal of Laws of 2025, item 769 [hereinafter: the Deregulation Act].

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such activity by an entrepreneur. The aim of the solutions proposed by the legislator is to "reduce the number of unnecessary and excessive regulatory requirements, which will consequently contribute to reducing costs for entrepreneurs. The result will be faster and more efficient administrative procedures, which will also be reflected in the efficiency of public administration. It is expected that the measures taken will provide a positive stimulus for entrepreneurs, significantly improving the conditions for starting and running a business."[3] However, it should be noted that the provisions of administrative procedural law are not only addressed to participants in economic activity. Administrative jurisdiction proceedings are a tool for enforcing broadly understood rights and obligations of individuals in the sphere of public law regulation. The provisions governing these proceedings establish a legal model for relations between individuals and public administration in the area of concretisation of administrative law norms by way of administrative acts. Procedural law also serves a protective function, both in relation to the interests of individuals and the public interest. It constitutes a coherent system of procedural guarantees reflecting the procedural values approved by the legislator. One such value is undoubtedly efficiency, but this must be considered in relation to the purpose of the proceedings, which is to properly determine the rights and obligations of individuals.

Deregulation measures in the area of administrative proceedings have also affected appeal procedure. In this case, the legislator interferes with the provisions creating the standard of procedural protection established by the principle of two-instance administrative proceedings. The amendment affects the scope of the adjudicative powers of the authorities of instance course, in particular the structure and effects of the cassation decision of the appeal authority. It is therefore worth analysing the content and significance of the changes made in this area under the banner of deregulation of administrative procedures. This will allow us to answer the question of whether the new solutions fulfil the legislator's assumptions and whether the possible simplification of proceedings will not violate the procedural guarantees of individuals in the area of the right to have a decision of a public administration authority reviewed in the course of instances.

[3] See Explanatory statement for the draft Act on amending certain acts in order to deregulate economic and administrative law and to improve the principles of economic law drafting, Sejm of the Republic of Poland, 10th Term, Sejm Paper No. 1108 of 14 March 2025, p. 1 [hereinafter: Explanatory statement 2025].

1. THE TWO-INSTANCE ADMINISTRATIVE PROCEEDINGS AS A PROCEDURAL PRINCIPLE

In formal aspect, the instance review is based on the assumption that a party to administrative proceedings may appeal against a decision issued by a first instance authority to a higher authority that is separate in terms of structure and competence. The essence of the appeal is expressed in the right to request that the case be examined and a decision issued by that authority, in accordance with the scope of its competence. This understanding of procedural instancy is considered a "natural" rule of lawful procedure before state authorities [Janowicz 1999, 94]. Article 78 of the Constitution of the Republic of Poland guarantees the parties the right to appeal against judgments and decisions issued in the first instance, leaving the matter of exceptions to this rule and the procedure for appealing to be regulated by a law. The subjective right resulting from the above provision covers all legal proceedings conducted in cases where an individual ruling is issued in the form of an act of applying the law by an entity exercising public authority, including jurisdictional administrative proceedings [Wyrzykowski and Ziółkowski 2012, 282-83]. "The constitutional standard in this area is exhausted by the possibility of reviewing only a previously uncontrolled decision in a case that has already been initiated."[4] The constitutional provision corresponds to Article 15 of the Code of Administrative Proceedings, which establishes the general principle of two-instance administrative proceedings. The current code formula for this principle was established by the 2017 amendment,[5] which added a clause stating that administrative proceedings are two-instance proceedings, "unless a specific provision provides otherwise".

The principle of two-instance administrative proceedings is defined in two aspects – substantive and formal. The substantive aspect of two-instance proceedings treats it as a procedural guarantee for a party to administrative proceedings, expressed in the possibility of requesting a re-examination of an individual case settled by a decision of the first instance authority [Borkowski 2003, 37]. The party of the proceedings therefore has the right to have the case under consideration examined twice on its merits by referring to its substance on the basis of complete evidence by the authorities of two instances. The formal aspect of the two-instance nature of the proceedings is expressed in the structure of the course of proceedings, which consists in the joint action of two administrative instances activated in succession and, in dynamic terms, assumes the transfer

[4] See judgment of the Constitutional Tribunal of 12 January 2010, ref. no. SK 2/09, in: Judgments of the Constitutional Tribunal 2010, series A, No. 1, item 1.

[5] Act of 7 April 2017 amending the Act the Code of Administrative Proceedings and some other acts, Journal of Laws item 935.

of powers to re-adjudicate the case to the second (higher) instance authority [Zimmermann 1986, 12]. The two-instance nature of administrative proceedings is a procedural rather than a structural principle, hence its fundamental meaning is expressed in its guarantee aspect, meaning the legally protected possibility that the same case will be settled twice [Dawidowicz 1989, 45]. From the point of view of compliance with the principle, it is therefore of secondary importance whether the decision will be reviewed by a higher authority or by the same authority that issued the contested decision, as is the case with a request for reconsideration referred to in Article 127(3) of the Code. "The two-instance nature of administrative proceedings protects the interests of the administration itself, allowing for the correction of errors made by lower-level authorities and facilitating the uniformity of the administrative apparatus. Above all, however, the two-instance nature of proceedings guarantees the rights and interests of the parties and other participants in the proceedings. Violation of the principle of two-instance administrative proceedings consequently undermines not only a specific organisational concept of the functioning of the state apparatus, but also the sphere of citizens' rights. Such a violation therefore has particularly serious consequences in the sphere of the rule of law."[6]

The two-instance nature of proceedings requires that decisions of administrative authorities be preceded by proceedings conducted by each authority that issued a decision, enabling the objectives for which the proceedings are conducted to be achieved. At the same time, however, it should be noted that appeal proceedings do not have to be concluded with a decision resolving the case on its merits. "In certain situations, the objectives of the proceedings are achieved by issuing a decision repealing the contested decision and referring the case back to the first instance authority for reconsideration" [Kmieciak 2011, 26].

The provision contained in Article 15 of the Code, according to which administrative proceedings are two-instance proceedings, unless a specific provision indicates otherwise, reflects a new approach to two-instance proceedings by the legislator, who recognised the existing structure of this principle as one of the causes of the dysfunction of administrative procedures. In order to meet the need to improve the administrative procedure, it was decided that the two-instance nature of proceedings should be understood as the right of a party to request that its case be examined twice on its merits, which cannot be done against its will, and that the legislator's obligation, pursuant to Article 78 of the Constitution, is only to guarantee the party the possibility of exercising this right as a constitutional subjective right of the individual.[7]

[6] See judgment of the Supreme Administrative Court of 12 November 1992, ref. no. V SA 721/92, in: Judgments of the Supreme Administrative Court 1992, No. 3, item 95.

[7] See Explanatory statement for the draft Act on amending the Code of Administrative

This assumption has resulted in new detailed regulations concerning appeal proceedings, which allow for a restriction of the principle of two-instance proceedings in its substantive aspect. These include: 1) he right of a party to request that the appeal authority conduct an evidentiary hearing to the extent necessary to resolve the case, pursuant to Articles 136(2-4) and 138(2b) of the Code, resulting in a restriction on the issuance of a cassation decision, as provided for in Article 138(2) of the Code; 2) the right to apply to an administrative court against a decision issued in the first instance by a minister or a municipal appeals collegium without the need to exhaust the remedy of requesting a reconsideration of the case, pursuant to Article 52(3) of the Law on proceedings before administrative courts;[8] 3) the right to waive the right to appeal against a non-final decision pursuant to Article 127a of the Code.

2. CASSATION DECISION OF THE APPEAL AUTHORITY

The new model of authority competence in appeal proceedings, introduced by the legislator in 2017, is conditioned – in accordance with the assumptions of the amendment to the Code – by a shortening of the duration of administrative procedures. One of the tools for achieving this goal was to eliminate the procedural dysfunction which, in the opinion of the legislator, was the abuse of cassation decisions by appeal authorities. A decision whereby the appeal authority repeals the contested decision of the first instance authority in its entirety and refers the case back to that authority for reconsideration should be an exception and should only occur in a situation where issuing a decision on the merits would violate the principle of two-instance proceedings, while assuming that the two-instance principle should be understood as the right of a party to request that its case be examined twice on its merits, which cannot be exercised against its will.[9] The essence of the principle of two-instance proceedings is therefore focused on its guarantee dimension in relation to the party to the proceedings. In this sense, the two-instance principle means the procedural right of a legitimate entity (party to the proceedings) to request an examination of the correctness of the first-instance decision, rather than to request a re-examination of a case previously decided by a first-instance authority [Chróścielewski 2015, 11].

The above assumptions formed the basis for the remodelling of the appeal procedure in terms of the explanatory and adjudicative competences

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Proceedings and some other acts, Sejm of the Republic of Poland, 8th Term, Sejm Paper No. 1183 of 28 December 2016, p. 20 and 59 [hereinafter: Explanatory statement 2017].

[8] Act of 30 August 2002, the Law on proceedings before administrative courts, Journal of Laws of 2024, item 935 as amended.

[9] See Explanatory statement 2017, p. 56-57.

of the second instance authority. The course and effects of the explanatory proceedings conducted by the appeal authority are determined by two factors: firstly, the scope of evidentiary activities in the appeal proceedings is determined by quality, i.e. the completeness and manner of gathering the evidence that formed the basis for the decision in the first instance, and secondly, the party to the proceedings has influenced the scope of the evidence-gathering proceedings in the second instance and, consequently, also the type of decision ending those proceedings.

The course of the explanatory proceedings before the appeal authority depends on the quality of the fact-finding proceedings conducted at first instance. In the course of the appeal proceedings, the appeal authority assesses the extent to which the evidence in the case was collected and examined in the proceedings before the first instance authority. If the evidence has been collected exhaustively by the first instance authority, the appeal authority limits itself to reassessing it. An appeal authority which finds that an administrative decision subject to review was issued in violation of procedural rules and, at the same time, determines that the evidence gathered by the first instance authority is incomplete, necessitating clarification of the case to an extent that has a significant impact on its resolution, may not use the possibility of supplementing the evidence on its own under Article 136(1) of the Code. In such circumstances, the appeal proceedings should be concluded with a cassation decision pursuant to Article 138(2) of the Code, unless the party has submitted a request in the appeal for an explanatory proceedings to be conducted to the extent necessary to resolve the case. This request allows the appeal authority to remedy significant procedural irregularities committed by the first instance authority and, as a consequence, leads to the issuance of a decision resolving the case on its merits, pursuant to Article 138(1) or 138(4) of the Code, unless there are grounds for the proceedings to be deemed irrelevant. Failure by a party to submit the application referred to in Article 136(2) of the Code means that it expresses its willingness to exercise the right, resulting from the principle of two-instance proceedings, to have the case examined twice on its merits and settled by two authorities of two different instances. The issuance of a substantive decision by the appeal authority in a situation where no explanatory proceedings were conducted in the first instance, or where they were not conducted in a significant part, or where they were conducted with a significant violation of procedural law, would lead to a violation of the principle of two-instance proceedings.

The current wording of Article 138(2) of the Code entitles the appeal authority to exercise its power to issue a cassation decision if two conditions are met cumulatively: firstly, in the opinion of the appeal authority, the decision of the first instance authority was issued in violation of the rules of procedure, and secondly, the scope of the case that needs to be clarified has

a significant impact on its resolution. A cassation decision should therefore be the result of a significant procedural defect, usually resulting from a violation of the rules of explanatory proceedings, although the occurrence of this defect in another area of procedural regulation cannot be ruled out [Sawuła 2011, 16]. There is no doubt that the issuance of a cassation decision should be preceded by a thorough analysis of the evidence gathered by the first instance authority in terms of its completeness. Only on this basis can the appeal authority determine which circumstances of the case have not been proven and, consequently, to what extent the evidence should be completed.[10]

The grounds for the cassation decision set out the consequences of the appeal authority's assessment of the scope and effects of the violation of procedural law in the first instance. The appeal authority, finding that the contested decision cannot become final in its current form, repeals it in its entirety and refers the case back to the first instance authority for reconsideration. At the same time, the appeal authority was required to indicate the circumstances to be taken into account when the case is reconsidered by the lower instance. The 2017 amendment to the Code additionally obliged the appeal authority to formulate guidelines on the interpretation of provisions that were misinterpreted by the first instance authority when issuing the contested decision, provided that these provisions are applicable to the case (Article 138(2a) of the Code). The legal nature of the instructions and guidelines formulated in the cassation decision by the appeal authority has been the subject of extensive analysis in doctrine and case law, and the practice of the authorities in this area has prompted the legislator to intervene legislatively as part of the process of deregulating legal procedures.

3. APPEAL PROCEDURE AS AN AREA OF DEREGULATION OF ADMINISTRATIVE PROCEDURAL LAW

The "deregulation" of administrative proceedings in the area of appeal procedures was carried out with regard to the instructions and guidelines of the appeal authority formulated in the cassation decision against the first instance authority. Under the new provision of Article 139a of the Code, the first instance authority was obliged to take into account the circumstances indicated by the appeal authority and bound by the guidelines of that authority set out in the decision repealing the contested decision in its entirety and referring the case for reconsideration, unless, upon reconsideration of the case, the legal provisions on the basis of which the first instance authority decided the case have changed. According to the explanations

[10] See judgment of the Supreme Administrative Court of 2 November 2000, ref. no. V SA 856/00, Legalis no. 60606.

provided by the drafters of the act amending the Code, the new legal solution is a response to the phenomenon of first instance authorities failing to comply with the guidelines of the appeal authority and introduces "an instrument that will lead to a firm obligation on the part of the first instance authority to comply with the content of the appeal authority's decision."[11]

A cassation decision is issued in the event of a violation of procedural law resulting in significant deficiencies in the determination of the circumstances that are to constitute the factual basis for the decision. The formulation of guidelines in this regard by the appeal authority in relation to the first instance authority guides the manner in which that authority acts when reconsidering the case. However, the legal nature of these guidelines must take into account the directives resulting from the principle of two-instance proceedings. The first instance authority, after the case has been referred back to it for reconsideration, therefore takes into account the guidelines of the appeal authority directing the explanatory and evidentiary activities, but independently determines the scope of the explanatory proceedings. This means that it cannot simplify the re-examination of the case by reducing it to the implementation of the instructions of the appeal authority. In this sense, the first-instance authority maintains the necessary independence when reconsidering and resolving the case. This applies primarily to the re-evaluation of the supplemented evidence and the established facts. The appeal authority cannot prejudge the outcome of the case by ordering that it be settled positively or negatively for the appealing party. The content of the decision in this type of case is determined exclusively by the first instance authority [Adamiak 2024, 16].

The guidelines for interpreting legal provisions, formulated in the cassation decision pursuant to Article 138(2a) of the Code, refer to cases of incorrect interpretation by the first instance authority of provisions which, in the opinion of the appeal authority, may be applicable in the case. The formulation of relevant guidelines in this regard is intended to reduce the risk of repeating interpretative errors when the case is re-examined after the facts have been correctly established by the first instance authority.[12] It is unclear whether the subject of interpretation should be limited to procedural law provisions that were incorrectly interpreted in proceedings before the first instance authority, or whether it should also include substantive provisions that constitute the legal basis for the decision resolving the case on its merits. On the one hand, it is assumed that the competence of the appeal authority "undoubtedly includes indicating the factors that must be taken into account when interpreting inexplicit concepts or defining the relationships between the substantive law provisions relevant to the case" [Kmieciak 2023,

[11] See Explanatory statement 2025, p. 10.

[12] See Explanatory statement 2017, p. 61.

812]. Nevertheless, it is accurate to note that "in a situation where the premise for issuing a cassation decision is a finding that the first instance decision was issued in violation of procedural rules, there should be no doubt that the scope of the guidelines indicated is limited to those and only those procedural rules whose violation has been found. The formulation by the appeal authority of guidelines on substantive law, which were misinterpreted in the grounds for the contested decision, is clearly premature, as they refer to facts that have not yet been established and it is not certain that these rules will be applied when the case is re-examined by the first instance authority" [Wróbel 2020, 728]. "Guidelines that constitute a type of legal assessment are an explanation of the essential content of legal provisions and how they apply in the case under consideration. This concept encompasses both criticism of how a legal norm was applied in the contested act and an explanation of why the application of that norm by the authority that issued the act was considered incorrect. Guidelines on interpretation must relate to a concrete provision in relation to a strictly defined decision taken in a specific case; moreover, they must be logically related to the content of the cassation decision in which they were formulated."[13]

In the legal situation preceding the amendment of the Code in 2025, the binding nature of the appeal authority's guidelines on the interpretation of the law was approved, recognising them as a measure aimed at restoring a lawful state of affairs, rather than a tool determining the outcome of a case. The interpretation of administrative law provisions is only one stage of its application, i.e. the process of determining the binding consequences of a legal norm. Thus, it does not yet determine what decision will be made in a specific case, and therefore the first instance authority retains its autonomy in this field [Chmielewski 2022, 39]. In the current practice of administrative courts, it has also been accepted that the appeal authority may impose a binding interpretation of a legal provision on the first instance authority, with the condition that the first instance authority is not absolutely bound by the guidelines of the appeal authority. This binding effect ceases to apply if, as a result of a re-examination of the case, the first instance authority determines that the provisions indicated by the appeal authority are not applicable as the legal basis for a new decision, or if the legal situation changes during the examination of the case between the instances.[14]

The Deregulation act *expressis verbis* states the binding nature of the instructions and guidelines. The drafter of the act explains that the new provision is intended to discipline first-instance authorities to follow the

[13] See judgment of the Supreme Administrative Court of 20 November 2020, ref. no. V SA 856/00, in: Central Database of Administrative Court Decisions [hereinafter: CDACD].

[14] See judgment of the Voivodship Administrative Court in Cracow of 19 October 2022, ref. no. I GSK 595/18, in: CDACD.

"recommendations" of the second-instance authority, which is to contribute to "not prolonging administrative proceedings."[15] The proposed new legal solution is therefore dictated by economic considerations and the speed of proceedings. The obligation of the first instance authority to comply with the instructions and guidelines set out in the cassation decision is secured by a specific procedural sanction. If a party to the proceedings challenges the new decision of the first instance authority issued after reconsideration of the case, the review will also cover the implementation of the instructions and guidelines. A breach of the obligation of the first instance authority will consist in deviating from the circumstances indicated by the appeal authority or specific guidelines on the interpretation of legal provisions. In the latter case, however, the first instance authority may depart from the guidelines if the legal provisions on the basis of which it settled the case have changed.

As a consequence of finding a breach of the obligation to take into account instructions and guidelines, the appeal authority may order the first instance authority to explain the reasons for the breach of this obligation and, if necessary, to take measures to prevent such a breach in the future. As explained by the drafters of the provision, "the appeal authority's order to determine the reasons for the breach of the obligation under Article 138(2) or 138(2a) of the Code will be conducted alongside (independently of) the appeal proceedings – the matter will be clarified exclusively between the first and second instance authorities."[16] It should be noted that an internal investigation and control procedure, conducted within the framework of authorities designated by the rules governing instance jurisdiction, has now been incorporated into the system of regulations on administrative jurisdictional proceedings. The internal nature of this procedure excludes the party to the administrative proceedings from it, even if it requested the appeal authority to initiate control activities in relation to the first instance authority. The ordering of explanatory measures referred to in Article 139a(2) of the Code cannot be done by an administrative act, but the systemic positioning of the new procedure raises questions about the scope of application of other provisions of the Code in this case, e.g. those establishing time limits for handling cases. While the procedure for investigating the causes may be limited to an exchange of letters between authorities, taking preventive measures may require legally authorised actions, such as holding an employee of the authority accountable for improper performance of legal duties.

To supplement the considerations on the scope of deregulation of appeal proceedings, it should be added that the self-regulatory powers of the first instance authority in terms of its adjudicative competences have also been made

[15] See Explanatory statement 2025, p. 11.
[16] Ibid.

more precise. Pursuant to the new wording of Article 132(1) of the Code, "if all parties have lodged an appeal and the public administration authority that issued the decision considers that the appeal should be upheld in its entirety, it may issue a new decision in which it repeals the contested decision in whole or in part and, to that extent, rules on the merits of the case, or repeals that decision and discontinues the proceedings in whole or in part". The amendment to the provision is, in fact, a clarifying one and is intended, in particular, to enable the first instance authority to repeal the contested decision in part, where the appeal is wholly justified but concerns only part of the decision.

CONCLUSIONS

The amendment to the Code of Administrative Procedure concerning appeal proceedings, introduced by the Deregulation act, is yet another legislative intervention in recent years in the structure of cassation decisions of second instance authorities. This time, the legislator's actions focused on strengthening the impact of the factual and legal assessment made by the appeal authority in a decision repealing the contested decision and referring the case back to the first instance authority for reconsideration. The unequivocal articulation of the binding force of the instructions and guidelines of the appeal authority fulfils the assumption of jurisdictional consistency in the course of administrative instances, but is also another manifestation of the revaluation of the principle of two-instance proceedings. According to the legislator, who places procedural efficiency first, the appeal proceedings are to consist in reviewing the correctness of the contested decision, rather than re-examining the entire case previously decided by the first instance authority.

A compromise between the legal force of the guidelines of the appeal authority contained in the cassation decision and the assumptions of a two-instance procedure has already been worked out in the case law of administrative courts, and the normative solutions proposed by the legislator in the Deregulation act are an expression of its acceptance. However, it is difficult to unequivocally assess the proposed construction of a sanction forcing the first instance authority to comply with the instructions and guidelines given to it. On the one hand, establishing an obligation to take into account the position of the appeal authority should be accompanied by sanctions for non-compliance. Nevertheless, the question may be raised as to whether the creation of an additional explanatory and control procedure, conducted in parallel with administrative proceedings, fulfils the underlying postulate of deregulation, which is to simplify regulations. Instead of "deregulation" what is taking place is rather "overregulation" in the form of creating a new institution of unclear nature and placing it within the system of jurisdictional administrative proceedings. It is also worth noting that, paradoxically,

it is the appeal authority that formulated the instructions regarding the circumstances of the case and the guidelines for interpreting the provisions that is bound by them. The sanction procedure, initiated pursuant to Article 139a(2) of the Code, appears to be aimed at confirming the accuracy of these instructions and guidelines.

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