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PROCEEDINGS FOR SCIENTIFIC ADVANCEMENT AS A SPECIAL TYPE OF ADMINISTRATIVE PROCEDURE. ASSUMPTIONS AND EFFECTS OF THE ADMINISTRATIVE JURISDICTION MODEL

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Abstract. This article was presented under the same title at the 26th Congress of the Faculties of Law and Administrative Procedure, "Directions for the Development of Administrative Jurisdiction". It was held in Poznań on 18-20 September 2022. The authors reflect on the currently adopted solutions for the transfer of legal institutions relevant to general administrative proceedings into specific spheres of social relations. They use the example of human resources development in research area. In this context, the authors cover the genesis of the shaping of the models of these procedures, the essence and role of the reference clauses used to achieve the assumed effects, as well as challenges associated with it. As a consequence, an attempt was made to answer the question of whether the effects of the model of administrative jurisdiction adopted thereby corresponds to its assumptions, or whether it becomes necessary to look for other solutions in this regard.

Keywords: scientific promotion proceedings; development of scientific staff; administrative jurisdiction; proper application of the law

INTRODUCTION

At the outset, it is justified to quote a general statement that it is characteristic for the present times to impose more and more tasks on public administration. It is rightly argued in the scientific discourse that the growing scope of duties of the broadly understood administration is becoming a specific feature of the modern state [Dańczak 2021, 826]. This situation may raise the question of the legitimacy of extending the jurisdictional model of administration to some spheres of social life.

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The procedures for promoting research staff, it means – the issues regarding the awarding of doctorates, habilitated doctors, and the title of professor, which can be described as proceedings for scientific promotion may be an example of this type of phenomenon. Undoubtedly, this area, which has long been an integral part of the development of civilization, is of great value, especially due to its social and economic importance.

Shaping by the legislator the model of proceedings for scientific promotion, including those with which we are dealing now, currently regulated mainly by the provisions of the Act of 20th July 2018, the Law on Higher Education and Science, proceeded in a variety of ways. These proceedings were not always a codified process of implementing substantive administrative law. Undoubtedly, this is the result of adopting various assumptions regarding the creation of scientific staff, and thus influencing the development of this sphere of social life.

Currently, by applying the general clause in the Article 178(3) and the Article 228(9) of the mentioned act, concerning the proper application of the provisions of the act of 14th June 1960 – Code of Administrative Procedure in proceedings for scientific promotion, it means a legislative procedure which should bind specific legal institutions, these proceedings are considered to be a special type of administrative procedure of a non-autonomous nature.[1] At the same time, entities which have been granted competences to promote scientific staff, as well as the doctrine of law, indicate the lack of elaboration of a uniform definition of the adopted legal structure in this sphere of social relations [Dańczak 2021, 826]. As a consequence, this translates into numerous practical problems with the correct application of the law by authorized entities as part of their proceedings for scientific advancement, but also in a comprehensive doctrinal approach to this issue.

Considering the above-mentioned issues, a need arises to reflect on the currently adopted legal structure regulating the proceedings for scientific promotion. In this context, it becomes necessary to consider this issue both from the historical perspective, indicating the process of evolution which took place over the years in these proceedings, and dogmatic perspective in order to verify whether the currently adopted solutions can be considered optimal in such a special sphere of social relations.

On the basis of the concept outlined in this way, one can assume a hypothesis that an attempt to implement this type of special proceedings in the too broad framework of the existing regulations and general principles of administrative procedural law does not bring the effect intended by the legislator in all adopted assumptions, and even requires

[1] Between others: Izdebski and Zieliński 2013, 121-22; Wilczyńska and Wilczyński 2014, 587-88, or above all: Sieniuć 2019, 44-46.

the further research for the appropriate direction of administrative jurisdiction in the sphere of scientific promotion proceedings. Striving to transfer certain legal institutions, appropriate for the general model of administrative jurisdiction, to a specific type of social relations, the nature, the principles, and properties of which have been shaped over the years as a result of adopting certain assumptions by the legislator, going too far by misrepresenting the institution of the proper application of law may also raise doubts from the point of view of the constitutional principle of legal certainty.

1. THE EVOLUTION OF THE PROCEDURE FOR SCIENTIFIC PROMOTION AS A SPECIAL PROCEDURE

As indicated in the doctrine, the legal conditions which define the system of scientific advancement in Poland have come a long way before being shaped into the currently functioning system [Sieniuć 2019, 23]. As a side note, it is worth pointing out that it was no different in the cases of other countries, in which this process began to take shape much earlier[2]. These issues were also mentioned by the Constitutional Tribunal in the justification to the judgment of 12th April 2012.[3]

Despite the fact that for nearly three decades, proceedings for scientific promotion have been identified more or less with administrative proceedings, or at least with specialized administrative proceedings, however, they were not always of this nature.[4] The need to formalize the procedures leading to the next levels of scientific career appears only with the development of public administration, which took over the tasks related to granting these types of promotion [Sieniuć 2019, 25]. These regulations were originally taken from Prussian and Austrian legislation [Pruszyński 1983, 27].

The Act of 13th July 1920 on academic schools was the first act which regulated the procedure of academic advancement in Poland.[5] Over the next decades, until the entry into force of the Act of 12th September 1990 on the academic title and degrees,[6] the procedures for awarding

[2] More about this issue see: Gromkowska-Melosik 2020.

[3] Judgment of the Constitutional Tribunal of 12 April 2012, ref. no. SK 30/10, Journal of Laws, item 494.

[4] For more on the recognition of the process of awarding doctoral and postdoctoral degrees as administrative proceedings, see: Pruszyński 1983, 8ff.

[5] Journal of Laws No. 72, item 494.

[6] This act was preceded by the following acts: Act of 31 March 1965 on Academic Degrees and academic titles (Journal of Laws of 1985, No. 42, item 2020), the Act of 15 December 1951 on Higher Education and Research Workers (Journal of Laws of 1952, No. 6, item 38), the Act of 28 October 1947 on the organization of science and higher education (Journal of Laws No. 66, item 415), the Act of 15 March 1933 on Academic Schools (Journal of Laws No. 29, item

the degrees of doctor, habilitated doctor and the title of professor, regardless of the change in the nomenclature defining individual stages of the scientific career,[7] were subject to discretionary assessment scientific achievements and knowledge in the field of a particular science, performed by the scientific community as part of generally normatively defined procedures, which boil down to the determination of individual stages of the procedure and indication of the competence of individual entities to carry them out. It was, therefore, a qualification process related to a specific type of explanatory procedure, in which a person applying for a given scientific promotion was subject to expert assessment by a group of scientists, it means – collective bodies, whose scientific achievements in a given field of science had previously been confirmed by recognized achievements. The person who was to be promoted in the structure of the academic staff had to demonstrate certain personal qualifications [Borkowski 2007, 148]. Therefore, these proceedings were fully autonomous.

Noticeable changes in the procedures for scientific promotions, similar to the regulations resulting from administrative procedural law, were brought by the Act of 12th April 1973 on the change of the regulations on academic degrees and titles and the organization of research institutes.[8] This act established the Central Qualification Committee for Scientific Personnel, operating at the Prime Minister's office, and being the central body of state administration. It is also indicated that the members of this institution were to be outstanding scientists representing the main fields of science.[9] Thus, an expert body, similar to a higher-level body, was established, which was responsible for auditing the procedures for obtaining scientific promotions.

It is worth pointing out that it was on the basis of the Act of 12th April 1973 on the amendment of the provisions on academic degrees and titles and the organization of research institutes, probably for the first time, that the administrative court ruled on the application of the provisions of the Code of Administrative Procedure in proceedings related to scientific promotions. As indicated in the decision of the Supreme Administrative Court in Warsaw of 13th July 1983, the award of an academic degree is a decision in an individual case, granting a citizen specific rights in legal

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594), the Act of 13 July 1920 on academic schools (Journal of Laws No. 72, item 494).

7 On the basis of previously binding legal acts, individual scientific promotions were defined as a higher academic degree corresponding to the current doctoral degree; the title of associate professor, equivalent to the degree of habilitated doctor, and the title of full professor, which is currently referred to as the title of professor.

8 Journal of Laws No. 12, item 89.

9 More on the activities of the Central Qualification Committee for Research Personnel and the bodies preceding and following it, see: Izdebski 2020.

relations, issued by a competent scientific institution equipped with imperative powers. At the same time, it was recognized that the provisions of the Act 31st March 1965 on academic degrees and titles as well as the regulation of the Council of Ministers of 8th February 1966 on the conditions and procedure for conducting doctoral and postdoctoral theses,[10] issued on its basis, do not prevent the application of the provisions of the Code of Administrative Procedure.[11] This provision, due to its precedent nature, was widely commented on in the legal doctrine.[12]

As it is indicated in the literature, the continuity of solutions regarding the system of scientific promotions was ensured by the provisions of the Act of 12th September 1990 on the academic title of and academic degrees.[13] However, it was a breakthrough act for the procedures related to the development of scientific staff. The main *novum* introduced by the mentioned act was the determination that in proceedings for scientific promotion, in the scope not regulated in this act, the provisions of the Code of Administrative Procedure apply accordingly. The adoption of this legal structure by the legislator was especially important as with regard to the decisions taken within these proceedings in 1985, the possibility of applying the provisions of the Code of Administrative Procedure has been explicitly disabled.[14] Thus, the proceedings in individual cases of scientific promotions, which before the date of entry into force of this Act were of a fully special and largely discretionary nature, in connection with a significant element of essentially exclusively consultative powers, which took place in their course, became special proceedings within the system of administrative proceedings, and thus also within the system of controlling the compliance with the law of the effects of these proceedings [Izdebski 2020, 56].

This state of affairs has been maintained until now, however, it is worth emphasizing that with a noticeable intensification of the phenomenon of introducing legal institutions appropriate for general administrative proceedings, by establishing, in the provisions of the Act of 20th July 2018 – Law on Higher Education and the Science, the decisions made in matters of conferring the degrees of doctor, habilitated doctor and the title of professor directly as administrative decisions.

It should also be pointed out that perceiving the legitimacy of adopting a model of a specific type of administrative proceedings under scientific

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10 Journal of Laws of 1970, No. 1, item 6.

11 Decision of the Supreme Administrative Court in Warsaw of 13 July 1983, ref. no. II SA/Wa 983/83, Lex no. 9741.

12 See Gloss (annotation): Kucharski 1984, 149, as well as a gloss on the provision in question: Pruszyński 1984, 151-52.

13 Journal of Laws No. 65, item 386. See: Dańczak 2015, 24.

14 Journal of Laws No. 36, item 168.

promotion procedures is not favored by decentralization of legislative powers, consisting in assigning public tasks related to law-making to entities granting academic degrees. This statement is due to the fact that the main purpose of administrative proceedings is not only to establish binding consequences of the norms of substantive law in relation to a specifically designated addressee, in an individual case handled by a public administration body in the form of a decision, but above all to guarantee a uniform and predictable course of procedures in the proceedings application of the provisions of substantive law and ensuring respect for the rights and freedoms protected by the Constitution of the Republic of Poland [Wróbel 2022]. Granting the right to entities conducting scientific promotion proceedings to independently, internally regulate the detailed procedure of their conduct, and therefore *suis generis* of the provisions of internal law, but also affecting external entities, makes it necessary to express a far-reaching doubt whether the indicated axiology, relevant to administrative procedures, is maintained.

2. THE ROLE OF CORRECT APPLICATION OF THE LAW

The normative structure adopted and implemented by the legislator, which was aimed at embedding scientific promotion proceedings in the already established system of procedural administrative law, requires consideration of the role of applying this legislative procedure, and, consequently, how this may translate into a correct understanding of the essence of these proceedings.

In the theory of law, it is emphasized that the use of the legal construction of "appropriate application" in legal texts is dictated by considerations of legislative technique. It is about reducing the volume of normative acts. Instead of the completed regulation of each of the original, standardized legal area, a normative act contains a regulation stipulating that provisions regulating another legal area should be applied accordingly. These are linguistic phrases referring to the content which has been expressed in other parts of the legal text or in other normative acts in such a way that the correct interpretation of the passages containing these phrases is not possible without taking these content into account [Studnicki, Łachwa, Fall, et al. 1990, 15]. Consequently, this legal structure serves the purpose of achieving consistency between the regulated institutions in accordance with the general principle of formal justice [Błachut, Gromski, and Kaczor 2008, 61].

The application of this legislative technique is grounded in the paragraph 156 of the Regulation of the Prime Minister of 20th June 2002 on "Principles of legislative technique."[15] As emphasized in the literature, this pro-

[15] Journal of Laws of 2016, item 283.

vision applies both to external references, which are the provisions of another legal act, and the internal references within the same normative act, and these references should be clear, unambiguous, and exhausting [Wierczyński 2018]. It should be borne in mind that under the paragraph 156 of the "Principles of legislative technique", it is also possible to interpret the prohibition of imposing an order to apply other provisions to a given legal institution, where it is an unnecessary repetition [ibid.]. Such a situation can be considered when the obligation to apply certain provisions results from the general principles of the legal system and there are no indications that an individual, who is an addressee of these provisions, would have difficulty recognizing them properly. Therefore, it may be questioned whether it is sometimes justified to refer in a specific law to the application of code provisions within a given legal institution, when it is possible to say that their provisions should apply in a specific way due to the very role of these codes, as they play in a particular branch of law.

The doctrine indicates that the structure of the proper application of the law is not uniform. It may allow the applicable legal provisions to be applied unchanged or with modifications. Some of the relevant provisions of a given normative act cannot be applied, mainly because they are irrelevant or contradictory with the rules laid down for the initial relations [Nowacki 1964, 370]. The first situation takes usually place, when reference is made to a broader category of provisions or to the entire normative act [ibid., 370-71]. In the case of a generally worded reference, it is, in most cases, impossible to apply literally all the relevant provisions in the field of the output regulation. It can therefore be assumed that the proper application of the law "consists in the most normal application of certain provisions to the second scope of the reference, but that they do not apply entirely or that some of their content are changed by those which, due to the content of their provisions, are relations, to which they are to be applied, pointless or inconsistent with the provisions governing the given relations" [ibid., 372].

It should be emphasized that the existence of legal relations consisting in the application of provisions of another legal act to a given legal institution should result from specific relations, such as the will of the legislator, to regulate them in a similar way, and the actual possibility of regulating them using the same provisions.

At this point, it is worth referring to the meaning of the phrase "appropriateness". For this purpose, its dictionary meaning should be cited, according to which this expression should be understood as meeting the required conditions as well as adequacy or optimality.[16] Therefore, it can be

[16] See: https://sjp.pwn.pl/szukaj/odpowiednio [accessed: 01.08.2022].

assumed that, in this sense, the appropriate application of legal provisions is a legislative procedure which should be used only when it is necessary for the proper implementation of a given legal institution due to the compatibility of one legal content with another. It is also pointed out that when interpreting provisions containing a reference to the appropriate application of other provisions of law, first of all, functional and purposeful interpretation should be applied [Hauser 2005, 159]. The consequence of this position is the necessity to establish, first of all, the scope of the reference, it means the group of provisions which can actually be applied under a special act [ibid., 161]. The next step should be to examine whether the provisions to which reference is made, and which will apply can be implemented directly or require modification. This activity is attributed the most judgmental character [ibid.]. Bearing in mind that this stage gives the most possible interpretations, the literature points to the problem of the possibility of actually determining these modifications, in particular whether only the text layer of the provision may be subject to it, or whether it is also permissible to redefine the given concepts [Dańczak 2015, 56]. Considering this issue, it seems reasonable to conclude that any modifications to the provisions to which reference is made may not lead to the provisions being in force losing their basic character and significance.

The doctrine argues that the concept of appropriate application of legal provisions should be understood as an order to use an analogy from a normative act to which reference is made, as a way of applying the law in the cases indicated by the referring provision [Hauser 2003, 88-89]. Therefore, it can be concluded that modifications to the provisions to which reference is made should be made as little as possible, so that an analogy to a legal act, in particular to the institutions regulated by it, to which reference is made, can be drawn to the greatest possible extent.

The extensive jurisprudence of the Constitutional Tribunal also points to the issues related to the understanding and practical application of provisions that contain the phrase "shall apply accordingly."[17] On its basis, it is assumed that it is possible to link interpretation problems related to the legislative technique of applying the phrase "applies accordingly" to the constitutional principle of law, namely the principle of specificity of legal provisions, which can be derived from the Article 2 of the Constitution of the Republic of Poland. A manifestation of the implementation

[17] See between others: judgment of the Constitutional Tribunal of 13 March 2000, ref. no. K 1/99, Journal of Laws of 2000, No. 17, item 574; judgment of the Constitutional Tribunal of 7 September 2010, ref. no. P 94/08, Journal of Laws of 2010, No. 170, item 1149; judgment of the Constitutional Tribunal of 19 May 2011, ref. no. SK 9/08, Journal of Laws of 2011, No. 115, item 673; judgment of the Constitutional Tribunal of 18 October 2011, ref. no. SK 2/10, Journal of Laws of 2011, No. 240, item 1439.

of this principle is the formulation of legal provisions in a correct linguistic, logical, and precise manner, so that the intention of the legislator does not raise doubts as to the circumstances of the application of a given legal norm.[18]

When analyzing the role of the proper application of the law in the process of scientific promotions, particular attention should be paid to the factual definition of the subject of the Act. According to the paragraph 19(2) of the Regulation of the Prime Minister of 20th June 2002 on "Principles of legislative technique", the definition of the subject of the Act may be factual – starting with the words "Code", "Law", or "Ordinance", written with a capital letter, if the Act exhaustively regulates a wide area of affairs, or from the words "Introductory Provisions ...", if the Act is the Introductory Act. The literature on the subject indicates that for certain basic areas of law, it is desirable to function in legal area of extensive normative acts of a comprehensive nature. In this way, it is possible to achieve uniform general assumptions and guiding principles and, consequently, internal consistency in a given area of law [Gwiżdż 1997, 114]. It is assumed that the name "Law" is appropriate when a given act exhaustively regulates a wide area of matters, but it does so by means of provisions belonging to various areas of law [Wierczyński 2018].

Translating the cited opinions of the legal doctrine into the system of scientific advancement, it can be stated that the provisions of the Law on higher education and science[19] constitute the basic and most important regulatory matter in matters related to applying for the award of an academic degree or the title of professor. Consequently, the application of all other legal acts in the discussed procedure, it may not change the basic norms, principles, but also the features resulting from the provisions of the Law on higher education and science, but only supplement them or adapt to them accordingly.

3. PROBLEMS OF THE APPLICATION OF THE RULES OF THE CODE OF ADMINISTRATIVE PROCEDURE IN DECISIONS TAKEN IN THE SCOPE OF PROCEEDINGS FOR SCIENTIFIC PROMOTION

The legislative technique outlined, as already indicated, found its expression in the procedures for awarding academic degrees and the title of professor for the first time thanks to the Act of 12th September 1990 on academic titles and academic degrees. Understanding the essence of the proper

[18] See *Dobre praktyki legislacyjne, Odsyłanie do przepisu zawierającego upoważnienie ustawowe przez użycie sformułowania „przepisy stosuje się odpowiednio"*, https://www.rcl.gov.pl/sites/zalaczniki/artykul_23.pdf, p. 115 [accessed: 02.06.2018].

[19] Journal of Laws of 2022, item 574.

application of the provisions of the Code of Administrative Procedure in the proceedings for scientific promotion, it was constantly evolving, in particular due to the emerging jurisprudence of administrative courts, which, however, was not uniform in this matter, as well as the decisions of the Central Committee for Degrees and Titles. As indicated in the literature on the subject, the scientific community was not used to this type of understanding of procedures aimed at awarding academic degrees and the title of professor. Acquiring by the entities conducting these proceedings the necessity to follow the provisions of the Code of Administrative Procedure, taking into account the specificity of individual proceedings in the sphere of science, determining the scope of this inclusion created and still creates the greatest difficulties in the application of the general clause of appropriate application of the provisions of the Code of Administrative Procedure [Izdebski 2020, 57].

In this context, it should be indicated that each time when reference is made to the appropriate application of the provisions of the Code of Administrative Procedure in these proceedings, it has been and is taking place exclusively in the scope not regulated in the initial act. Two fundamental statements emerge from the normative structure adopted in this way. Firstly, in the event that the provisions of the initial act, which currently is the Law on higher education and science, do not regulate a given procedural institution, the appropriate application of the provisions of the Code of Administrative Procedure is obligatory. Secondly, if the basic law for scientific promotion procedures regulates certain procedural aspects of these procedures in a specific way, the application of the code regulations is not allowed, or requires their significant modification, or the application of only auxiliary ones. As a consequence, both on the theoretical and practical levels, the basic problem is to determine which institutions of procedural law are governed by the provisions of the basic laws exhaustive enough to be able to state that the given provisions of the Code of Administrative Procedure will not find an appropriate application that can be used with regard to their modification and to what extent, and finally, that can be used directly without any changes.

The issue of the proper application of the provisions of the Code of Administrative Procedure in proceedings for scientific promotion meets with increasing interest of representatives of legal sciences. The achievements of representatives of these sciences, as well as of the administrative judiciary, gave grounds for the formation of interpretations strengthening and emphasizing the specificity of proceedings for scientific promotion in relation to general administrative proceedings. On this basis, concepts such as the specific procedural position of a person applying for scientific promotion, manifested in a significant limitation of active participation

in the procedure, were developed; peculiar explanatory proceedings of an expert nature, however not equated with the role and position of experts within the meaning of the provisions of the Code of Administrative Procedure; closed or relatively limited catalog of evidence; limited devolutivity in the instance course of adjudication, consisting in the lack of competence of the second instance authority to make substantive decisions; or the special position and structure of decision-making bodies, taking decisions collectively and in a secret manner.

All these aspects, proving the specificity of proceedings for scientific promotion, may raise even greater doubts as to the provisions of the Law on higher education and science adopted by the legislator in the provisions of solutions concerning the legal nature of decisions taken in these proceedings. According to the Article 178(1) *in principio* and the Article 228(5) of the Law on higher education and science respectively, a decision on awarding or refusing to confer the degrees of doctor and habilitated doctor and on applying or refusing to apply to the President of the Republic of Poland for the title of professor is issued by way of an administrative decision.

The analysis of the decisions issued by the Scientific Excellence Council as part of the instance control procedure of the correctness of the proceedings for scientific promotion shows that the most common reason for revoking the decisions on refusing to award the degree of doctor or the degree of habilitated doctor is insufficient justification of the reasons for the decisions made by the bodies of first instance. Consequently, the body of the second instance, pointing to the theses emerging from the more recent jurisprudence of administrative courts, seems to place emphasis on the subsumption process typical of general administrative proceedings, aimed at establishing by way of an administrative decision, whether the established and thus proven facts correspond to the content of the norm of substantive law.

At this point, it should be pointed out that the provisions of the Act of 12th September 1990 on the academic title and academic degrees, as well as the Act of 14th March 2003 on academic degrees and the academic title as well as degrees and title in the field of art provided that decisions made in the proceedings for scientific promotion are made by way of resolutions adopted in secret ballot, with an absolute majority of votes. At the same time, these acts stipulated that the provisions on appealing against administrative decisions to an administrative court were applicable to appealing against them. As a consequence, the issued judgments were not directly administrative decisions within the meaning of the provisions of the Code of Administrative Procedure. The adoption of a different assumption would result in the recognition that the reference to the provisions of the Act

of 30th August 2002 – Law on proceedings before administrative courts with regard to complaints,[20] is unreasonable.

The current legal structure, assuming that the decisions taken by entities conducting scientific promotion proceedings are administrative decisions, raises doubts as to the possibility of proper preservation of all elements of these administrative acts, which are regulated by the Article 107(1) of the Code of Administrative Procedure. This issue concerns mainly the factual and legal justification of the decision issued in a given case. As it has already been indicated, the judgments issued in proceedings for scientific promotion are, as a rule, taken as a result of a secret ballot.[21] Thus, the manner of voting of individual members of collective bodies who adopt resolutions on academic degrees and the title of professor, including the motives for casting individual votes, are not known to the parties to the proceedings, but also remain secret to the members of these bodies themselves.

It has been noted in the literature on the subject that the issue of secrecy of voting is related with the inability to exhaustively justify the taken decisions [Tarno 2011, 22; Borkowski 2007, 164]. Already in the judgment of the Supreme Court of 26th April 1996, it was noticed that decisions taken by secret ballot could not be justified at all, because it was not possible to establish the actual intentions of the voters and to verify how particular persons voted.[22] The secrecy of voting, as indicated by representatives of legal sciences, is nothing more than a guarantee of the freedom to express a personal position, which implies that any external control, also performed by courts, must be limited to examining only the potential violation of the basic rules of conduct [Dyl 2020, 208].

CONCLUSIONS

To conclude, it should be stated that the phenomenon of the willingness to regulate by the state an increasing scope of social relations within

[20] Journal of Laws of 2022, item 329.

[21] According to the Article 20(1) of the Act of 14th March 2003 on academic degrees and academic title as well as degrees and title in the field of art, the resolutions referred to in the Article 14(2) and the Article 18a(11), are taken in a secret ballot and are passed by an absolute majority of the votes cast in the presence of at least half of the total number of people entitled to vote. Admittedly, the provisions of the Act of 20th July 2018 – Law on Higher Education and Science do not regulate the subject matter, however, the analysis of resolutions adopted by university senates and scientific councilors of institutes of the Polish Academy of Sciences, research institutes and international institutes on the basis of the authorization contained in the Article 192(2) and the Article 221(14) of this Act indicates the consolidation of the model of decisions taken for a long time.

[22] Ref. no. III ARN 86/95.

the established framework of legal institutions, including their adaptation to the provisions of administrative procedural law, may seem understandable. It results from the right assumption that individuals participating in these relations should be surrounded by the apparatus of public administration with certain procedural guarantees which implement the principles of procedural justice, equality before the law or the rule of law. By the definition, these individuals should be protected against arbitrariness and latitude of decisions taken, which shape their rights and obligations.

These factors probably determined the adoption of solutions, according to which internal activities related to the administration of scientific promotion proceedings became activities codified by appropriately applied provisions of procedural administrative law. In this context, it can be said that it was aimed at strengthening the position and procedural guarantees of people aspiring to obtain further scientific promotions, at the same time strengthening supervision over the correctness of awarding them, including in the field of compliance with ethical principles and good manners in science in connection with the public-law benefits which were associated with obtaining these promotions. At the same time, the tradition of submitting to a specific type of qualification procedure determined each time, also in the current legal state, the search for specific procedural solutions which would not result in the loss of specific features of these procedures.

In this context, far-reaching doubts should be expressed as to whether the legislator's assumptions outlined in this way have been achieved. The use of the general clause of the proper application of the provisions of the Code of Administrative Procedure in the procedures for the promotion of scientific staff, due to the specificity of these procedures, it has resulted in the development of practical mechanisms by entities applying the law, which to a large extent exclude or limit the guarantees which should be provided by the use of administrative procedural law. Proceedings for scientific promotion are not a typical process of applying the norms of substantive administrative law within the procedure appropriate for general administrative proceedings. It should be noted that assessing the highly vague prerequisites for obtaining a given scientific promotion, such as the originality of a solution to a scientific problem, a significant contribution to the development of a specific discipline, or outstanding achievements, does not submit to proving, and then to adjudication, actual corresponds to a given legal norm.

Transferring the legal institutions related to the conduct of explanatory proceedings, as well as those related to the stage of settling the case, which have been regulated in the provisions of the Code of Administrative Procedure, is not possible in their comprehensive dimension to the procedures for the promotion of scientific staff. Increasing one's scientific achievements, knowledge, and hence the development of science, is associated

with the need to use a qualification system, associated with expert evaluation, and expressing discretionary opinion, but supported by achievements and skills in a particular field by a group of recognized people.

As a result, the adoption by the legislator of solutions aimed at increasing the scope of application of institutions relevant to the Code of Administrative Procedure, such as making decisions on scientific advancement by way of an administrative decision, should be considered counter-effective from the point of view of the assumptions and role of the proper application of the law.

In the light of the presented issues of establishing scientific promotion proceedings as a special type of administrative proceedings, assumptions of the adopted model of legal shaping of the discussed social relations, and finally its effects, the position of the Central Commission for Scientific Title and Degrees, and therefore institutions in which the representatives of all scientific and artistic disciplines were included, as expressed in the report on the activities of this body for the years 1991-1993, in which the practical problems of applying the general clause of appropriate application of the provisions of the Code of Administrative Procedure were already noticed at that time. According to the opinion of this authority, "the amendment to the provisions subordinating the process of awarding degrees and the academic title to the provisions of administrative proceedings should be assessed as unfavorable. Due to the fact that the well-established, long-standing traditions of scientific criticism and the rules of conduct of collegial bodies operating in science differ from typical administrative procedures, the change in regulations in this area makes it difficult to conduct scientific research and, at the same time, lowers the importance of substantive assessment in favor of formal procedural requirements. […] By raising this problem, we do not want to deprive candidates for promotion from the possibility of defending their interests by means of a complaint – this is one of the foundations of democracy. However, there is a need for a separate, as regards scientific conducts, definition of the rules of conduct in the provisions concerning the awarding of academic degrees and titles; These provisions should not refer to the provisions of administrative procedure, but regulate the procedure accordingly, in line with the needs and tradition of these conductors. The administrative court dealing with complaints should control the observance of those provisions."

Finally, it should be stated that the attempt to include the procedures regulating special social relations, such as the proceedings for scientific promotion, into the too broad framework of the existing regulations and principles of general administrative procedural law does not bring the effect intended by the legislator in all the adopted assumptions, and even requires further search for the right direction of their regulation. Excessive transposition

of certain provisions of the Code of Administrative Procedure concerning the promotion of academic staff does not correspond to the role which should be played by the institution of the proper application of the law. In this context, the doubt as to the observance of the constitutional principle of legal certainty in the adopted model of public administration operation remains valid.

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