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THE IMPACT OF COMPUTERIZATION IN ADMINISTRATIVE PROCEEDINGS ON THE RECTIFICATION OF ADMINISTRATIVE DECISIONS FROM THE PERSPECTIVE OF LEGAL SECURITY OF THE PARTIES

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Abstract. The article aims to verify the impact of computerization in administrative proceedings on the rectification of administrative decisions from the perspective of legal security of the parties. The author proves that computerization is an opportunity to popularize and, above all, to demand rectification by the parties to administrative proceedings. As a result, computerization positively affects the improvement of legal security of the parties. Attention is also drawn to the risks arising from computerization by proposing a number of legal and organizational solutions. The author uses the legal-dogmatic research method, analysing the content and the relationships between the provisions of the Code of Administrative Procedure and other acts affecting the computerization of the discussed procedures, with particular emphasis put on the rectification of administrative decisions. The conducted research and conclusions also include the practice of applying the provisions on the computerization of administrative proceedings and the impact of computerization on the legal security of the parties.

Keywords: rectification; computerization; administrative proceedings; legal security; decision.

INTRODUCTION

The 21st century is a time of significant dynamics and change. This is largely due to the progressive computerization and electronization of many life activities and processes in which we participate or which simply concern us. This also applies to administrative proceedings and the powers of the parties to these proceedings. Electronization is important not only for the available forms of exercising the rights and obligations of the parties, but also for the effectiveness, efficiency and correctness of legal mechanisms. It directly affects the legal security of the parties. Meanwhile, the doctrine as well as the practice of applying the law pay insufficient attention to the impact of implemented ICT solutions on particular legal solutions provided for in the applicable legal

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acts. There is also no precise reflection on the legal security of the participants in electronic legal events and acts that takes into account not only external threats, but also those coming from the structures of administrative bodies.

The purpose of this text is to examine the impact of computerization of administrative proceedings on the rectification of administrative decisions in the context of legal security of the parties. It should be argued that computerization is an opportunity to popularize and, above all, to demand rectification by the parties to administrative proceedings, which positively affects the improvement of legal security of the parties. At the same time, computerization becomes a threat to the aforementioned legal security of the same parties by downplaying the applicable standards by bodies processing data and issuing decisions by means of ICT tools and systems. Therefore, it seems necessary to use a legal-dogmatic research method to analyze the content and examine the relationship between the provisions of the Code of Administrative Procedure[1] and acts introducing or affecting the computerization of the discussed procedures, with particular emphasis on the rectification of administrative decisions. In order to fully verify the thesis, and then to propose legal and organizational solutions, an analysis of available literature, jurisprudence and results of the inspection regarding proper functioning of state bodies will be made. Data analysis of research based on access to public information and empirical analysis of the provisions of the Polish legal system will allow to demonstrate the way of applying the provisions on rectification in practice and to propose an approach to the computerization of rectification that implements key postulates of legal security.

1. PERCEPTION OF THE LEGAL SECURITY OF THE PARTIES TO ADMINISTRATIVE PROCEEDINGS

First of all, it is crucial to define the concept of security. The term is associated with the Latin expression *sine cura*, which means without fear or anxiety, and can be defined as "a state of non-threat" [Doroszewski 2000]. The doctrine also emphasizes the close relationship of the term with the word *securitas*, by which stability and peace of mind are understood. Etymological definitions describe security as a condition that lacks threat or does not require care [Rosicki 2010, 23-32].

In the context of this article, it is important to notice the difference between the actual state of security and the subjective sense thereof [Filipkowski 2024, 158]. From the position of a party to administrative proceedings and due to the nature of the administrative and legal relation, it is necessary to ensure security

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

in both areas. Security also has a direct impact on the perception of legal security, on which a separate paper could be written due to its unusual capacity for meaning. Nevertheless, it should be noted that legal security is an extension of the term security, and adds to the definition a normative guarantee, i.e. reliance on the provisions of statutory law. It is emphasized, however, that although the understanding of normative order(s) is of key importance here, legal security would not exist in defiance of the natural order or even customs and morality [Kość 2005, 111]. In normative terms, legal security should be verified with regard to the coherence and stability of the legal system and understood as the overall security of the participants in the legal system and in terms of the certainty of the law [Potrzeszcz 2013, 186-92]. Therefore, analyses and conclusions related to both of these aspects will be presented later in this paper.

Regardless of the definition of legal security and its perception, the need to ensure it seems to be indisputable both in the context of political and social discourse, and even more so in the scientific debate in the field of legal sciences. Nevertheless, it should be emphasized that the need to ensure such security also results from the values perceived in the doctrine as arising from the provisions of the Code of Administrative Procedure. Public administration should take care of the individuals and their affairs in the matter of which a decision is made, at the same time being guided by the concern for the common good and respect for the provisions of law, the specification and subsumption of which is its key task [Kostecki 2023, 245].

2. RECTIFICATION OF ADMINISTRATIVE DECISIONS

In order to verify the proper functioning of the administrative law system within the scope set out in the title of this paper, it is necessary to explain the concept of rectification and to indicate the legal grounds for taking specific measures within it. The term comes from the Latin word *rectificatio*, which means "straightening". In law, the concept was first used in 1933 in the context of civil proceedings as a collective name for forms of repairing the so-called insignificant defects of the decision [Litauer 1933, 1]. Then, it moved to other areas of law, taking root in the doctrine of administrative proceedings.

Pursuant to the provisions of Article 111 and 113 CAP, administrative decision may be rectified by correcting, supplementing or clarifying its content. These measures are used, as was the case with the original assumption in the civil proceedings, to remedy defects that not only do not invalidate the decision that contains them, but also do not affect significantly the manner of settling the case.[2] This type of defects includes, in particular, obvious

[2] Judgment of the Regional Administrative Court in Poznań of 4 April 2019, ref. no. IV SA/Po 1241/18, Lex no. 2695464.

clerical or accounting errors, and minor deficiencies or ambiguities in the content of the decision. Such errors do not result in the exclusion of a given decision from legal transactions [Gabryel 2019, 100]. This does not mean, however, that the defects are irrelevant. On the contrary, they repeatedly affect the legal and factual situation of the parties to administrative proceedings [Adamiak 1998, 8-10].

As far as the importance for legal security is concerned, it should be noted that rectification can be carried out both at the request of a party to the administrative proceedings and at the authority's initiative. In addition, the interest of the party might warrant correcting, supplementing or clarifying the content of the decision (in practice it is the most common factor). Nevertheless, concern for quality – the flawlessness of the authorities' decisions, as well as equity, or care for the broadly understood social good – should be an equally important motivator for correcting errors. Not only the accuracy of the final administrative decision, but also its quality is a sign of the administrative bodies' effectiveness and a confirmation of their highest democratic standards. In this respect, the attitude of staff acting on behalf of the authorities is very important. Guided by equity, they should show concern for the correctness of the issued decisions in every possible aspect [Gabryel 2020, 144-46]. Moreover, the authorities' care for the quality of the decision and the elimination of errors referred to as insignificant in the doctrine should be perceived as an obligation resulting from the rule of law. Therefore, a strong connection can be observed between proper rectification and the relevance of applying the presumption of correctness of the decision in the legal system and, in the long run, its purposefulness.

Bearing in mind the importance of the rectification of administrative decisions, the reasons for its occurrence, and the need to popularize the possibility of using correction, supplementation or clarification of the content among the parties to administrative proceedings, one should look hopefully at the computerization of administrative proceedings, which may enhance the legal security of the parties.

3. ELECTRONIZATION OF ADMINISTRATIVE PROCEEDINGS

By making 5 October 2021 the date the changes in administrative proceedings became effective, the legislator initiated a kind of ICT revolution. On that day the provisions in the wording provided for in the Act of November 18, 2020 on Electronic Deliveries[3] came into force. Although the amended provisions of the Code of Administrative Procedure do not

[3] Journal of Laws of 2023, item 285 as amended by the Act of 28 April 2022 amending certain acts in connection with the development of public ICT systems, Journal of Laws, item 1002.

provide for new trends in computer science, their purpose is to create legal space for computerization and even automation of certain processes in the course of administrative proceedings. There has been a change in the perception of the written form rule in the proceedings, granting a power of attorney, serving notices and summons, and the course of time limits or the moment of initiating the proceedings.

The above-mentioned changes do not amount to a complete implementation of the aforementioned acts, because the computerization of proceedings under the Code of Administrative Procedure has been divided into stages, the last of which is set for 1 October 2029. Nevertheless, the binding content of the amended Article 14 CAP needs to be studied thoroughly. There has undoubtedly been a desirable simplification in the scope of the written form principle. Previously, cases could be conducted in writing or in the form of an electronic document delivered by means of electronic communication.[4] Currently, the written form rule of administrative proceedings is understood as the consideration of cases in paper or electronic form.

It is worth paying special attention to the content of section 1b of the aforementioned article, where the possibility of considering cases "using automatically generated letters with a qualified electronic seal of the relevant public administration body [...]" is introduced. The doctrine draws attention to the literal meaning of this provision and the need to distinguish it from the phrase "by means of an automatically generated letter". Such an approach proves the adoption of the object theory to the automatic system, i.e. subjecting it to human control and care, leaving no autonomy to the system [Sibiga and Maciejewski 2015, 73; Sibiga and Wiewiórowski 2010, 231], which in the context of imperfect technical solutions and problems with proper machine learning should be considered as fully justified.

In addition, Article 14(1) CAP introduces the possibility to perform activities, in particular to communicate with the parties to the proceedings, by means of online services. This gives the opportunity to provide somewhat obvious services, such as submitting an application for the initiation of administrative proceedings or downloading a decision or certificate in an electronic form [Wilbrandt-Gotowicz 2023, 145-46].

It should also be noted that Article 14 CAP does not contain an unambiguous instruction that could undoubtedly allow for the application of this provision not only to the decisions in the standard form stipulated in the Code of Administrative Procedure, but also in a simplified one or, finally, for issuing certificates and other documents. Of course, by using a broad interpretation of the concept of "administrative matter", it is assumed that the legislator's intention is to computerize all forms of administrative activity

[4] Act of 17 February 2005 on the ICT development of bodies performing public tasks.

within jurisdictional administrative proceedings [ibid., 152]. Nevertheless, as part of subsequent amendments to the Code of Administrative Procedure, it would be useful to regulate this process.

Although it may be somewhat contrary to the postulate of the simplicity of law, specifying further aspects of computerization and automation seems necessary in view of the need to ensure legal security for all entities involved in administrative proceedings. It is worth emphasizing that already today electronic form is the desired form of service, and in the perspective of the coming years it will become, in principle, a mandatory one. All public administration, all central offices, local government units and representatives of public trust professions (including legal advisers and lawyers) are obliged to use e-delivery from 1 October 2024. This requirement will also apply to entrepreneurs who register their activities after the aforementioned date in the National Court Register [*Krajowy Rejestr Sądowy*],[5] and in the case of entrepreneurs registering new business activities in the Central Register and Information on *Economic Activity* [*Centralna Ewidencja i Informacja o Działalności Gospodarczej]*,[6] this obligation will automatically apply from 1 January 2025. The latter date will also be binding for all enterprises registered in the KRS before the entry into force of the discussed provisions. In the case of activities registered in CEIDG prior to the new regulations, the date of mandatory use of e-delivery is scheduled for 30 September 2026.

It should be emphasized that despite the wide popularization of computerization, the Code of Administrative Procedure provides for a form of proceedings that allows to avoid digital exclusion. If the electronic form cannot be used, the so-called public hybrid service provided for in Article 2(1)(3) of the Act of 23 November 2012 Postal Law,[7] i.e. delivery of documents through a designated postal operator obliged to provide universal service, should be used. This delivery is possible upon prior automated transformation of an electronic document produced by a public body and sent from an electronic service address into a traditional letter to be delivered to the addressee [Kmiecik and Kotulska-Kmiecik 2024, 310].

The legislator's understanding of the need to maintain the possibility of conducting administrative proceedings based on the traditional form of correspondence also supports the view that it would not be allowed to resolve cases based on the current wording of the Code of Administrative Procedure by means of fully automated decision generation. It should be noted here that the participation of an authority employee in this process is a procedural guarantee and is intended to protect against the violation of the rights of

[5] Hereinafter: KRS.
[6] Hereinafter: CEIDG.
[7] Journal of Laws of 2023, item 1640.

the parties, which algorithm would not be able to perceive, and thus would go beyond the limits of the principle of legality. Of course, it cannot be ruled out that over time ICT solutions will appear that will replace the authority employee in a specific type of proceedings in a sufficiently competent manner. However, one should agree with the view that if such a solution is allowed in the Code of Administrative Procedure, a special procedure with an efficient appeal procedure and judicial control should be provided for [Wilbrandt-Gotowicz 2023, 156-57]. It will then be necessary to redefine the obligations of the authority in the area of personal data protection based on national regulations and the GDPR.[8]

Leaving aside the considerations concerning the hypothetical development of the computerization in administrative proceedings, it is necessary to address the changes planned in the Code of Administrative Procedure on the basis of the draft act of 13 April 2023 amending certain acts in order to improve the legal and institutional environment of entrepreneurs prepared by the Minister of Development and Technology and in the draft act of 22 September 2022 amending the Code of Administrative Procedure in relation to the government draft act amending certain acts regarding the development of e-Government. These amendments are to add sections 5 and 6 to Article 33 CAP so as to enable the use of another tool facilitating the implementation of public administration tasks in an electronic form, namely the Register of Electronic Powers of Attorneys. In addition, the content of Article 39(1) CAP will be changed, so that electronic deliveries can also be carried out when a public administration body does not use the e-Delivery platform [*e-Doręczenia*], but its own ICT systems.

4. OPPORTUNITIES AND REQUIREMENTS FOR ICT INFRASTRUCTURE

In the context of the above considerations, it should be stated that the digitalization of administrative proceedings is undoubtedly a fact and a huge step in the development of public administration. With the right approach, both the implemented changes and those pending entry into force (see the drafts of legislative changes mentioned above) have a chance to facilitate and accelerate the conduct of administrative proceedings.

Therefore, the computerization of administrative proceedings should be followed by the improvement of the ICT system, which would also be

[8] Regulation 2016/679 of the European Parliament and of the (EU) Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, Journal of Laws of the EU.L 2016 No. 119, p. 1.

conducive to the parties to the proceedings in terms of making them aware of their rights and facilitating use thereof. In the case of e-delivery, it would be desirable to add the functionality of selecting, in a graphically attractive and clear form, the options of correction, supplementing or clarifying the content of the decision. It seems all the more possible because solutions such as, for instance, the system of submitting reports to the National Court Register which – depending on the user's needs – suggests the next step, already function in an analogous way. The mere awareness of the parties to the proceedings, who often do not read the instructions in the decisions served to them, is a chance to increase the citizens' general awareness about the possibility of rectifying administrative decisions and, consequently, of enhancing legal security.

It should be noted that the opportunity to reduce the number of errors requiring rectification of data concerning the parties will arise from the development of the register of contact details of natural persons provided for in Article 20h-20o of Act of 17 February 2005 on computerization of the activities of entities performing public tasks,[9] which is also to remain unchanged after 2029. As far as the computerization of administrative proceedings is concerned, this register may soon be filled with correct data of the parties, allowing for easy use by the authorities for the purposes of issuing decisions. This, in turn, will allow to avoid errors that often arise in designating the addressee of the decision issued by the authority. Pursuant to Article 20j(1) of the Act on computerization of the activities of entities performing public tasks, the register in question contains identifying data, such as name and surname, PESEL number, e-mail address or mobile phone number.

Regardless of the hopes related to computerization in the context of the legality of proceedings and legal security of the parties, it is worth paying attention to the obligations that should be fulfilled by public administration bodies in their use of ICT systems, which are crucial for these considerations. According to the wording of Article 13(1) of Act on computerization of the activities of entities performing public tasks, ICT systems may be used by public entities if they meet "[...] minimum requirements for ICT systems and systems ensuring interoperability on conditions set out in the National Interoperability Framework." This requirement does not apply only to the use of ICT systems for scientific and didactic purposes. What is more, ICT solutions provided for the purposes of contacting entities that are not government administration bodies must be used with respect to the requirement of equal treatment of ICT solutions, in accordance with the wording of Article 13(2) of Act on computerization of the activities of entities performing public tasks.

[9] Journal of Laws 2024, item 307.

When discussing the requirements towards public administration bodies, it is impossible to ignore the requirements related to the principles of keeping a register of contact details. Pursuant to Article 20i(1) of Act on computerization of the activities of entities performing public tasks, protection should be provided, among other things, against unauthorized access to the register or damage to the ICT system in which the register is kept. Accountability for activities carried out on data, as well as strictly defined security rules for the data processed therein are also stipulated there. In addition, in Article 21 of Act on computerization of the activities of entities performing public tasks, the obligation to verify the interoperability and correctness of the implementation of the applied ICT solutions is provided for, and Article 25 of Act on computerization of the activities of entities performing public tasks specifies the need and entities authorized to control the correctness of ICT projects, the operation of ICT systems and public registers, and the correctness of spending funds allocated by public administration bodies for these purposes in terms of legality, economy, purposefulness and reliability of spending public funds.

5. PRACTICAL PROBLEMS RELATED TO THE COMPUTERIZATION OF THE AUTHORITIES' ACTIVITIES

The above-mentioned examples of regulations in the area of electronization seem to guarantee legal security in the discussed field. However, apart from reflection based strictly on the content of legal provisions, the analysis of their application in practice has to be included. Despite the quite extensive and precise regulation of issues related to the computerization and electronization of the activities of administrative bodies, in practice a human being – usually an employee or head of an administrative body – remains the key element in the process of applying the law.

According to the report published by the Supreme Audit Office [*Najwyższa Izba Kontroli*],[10] on 29 April 2024 which summarizes the first inspection as to the state of ICT software used by public administration,[11] the state of implementation of the applicable regulations and guidelines in practice is at least worrying. NIK pointed out, for example, that most of the public administration bodies used unauthorized software. The software was repeatedly used outside the scope of supervision (on unauthorized devices) or without the tools available to monitor the installed software. As many as 59% of the inspected bodies lacked full knowledge of the software at their disposal. In many cases (47%), the condition of the software was connected

[10] Hereinafter: NIK.

[11] See https://www.nik.gov.pl/plik/id,29153,vp,31988.pdf [accessed: 22.05.2023], p. 10-17.

with serious danger. Moreover, the use of illegal software was not an isolated case (41%).

It is also worth mentioning the findings of this report regarding the spending of public funds. Indeed, as many as 43% of the bodies inspected by the NIK acted improperly in this respect, acquiring public funds in a manner inconsistent with the provisions of the Act of 11 September 2019 Public Procurement Law[12] or financing unused software modules. In addition, there was a lack of optimization in the acquisition and implementation of software, and the purchases of ICT solutions repeatedly included integrated software that required long-term dependence on a private licensor.

CONCLUSIONS

The computerization of administrative proceedings is connected with many opportunities as well as threats in terms of legal security, affecting the availability of the rectification of administrative decisions. The presented analyses also lead to the following conclusions.

First of all, computerization carried out in a correct and lawful manner, and aimed at facilitating the party's participation in the proceedings, is desirable and even necessary in administrative proceedings. As far as the rectification of administrative decisions is concerned, it may even lead to a full, or at least partial, automation that gives a chance to avoid at least part of the errors that need to be corrected or supplemented, which also facilitates the rectification process itself.

Secondly, public administration bodies, and more so their employees and heads, are largely not ready for computerization. This, in turn, creates a sense of the need to further regulate the mechanisms of functioning and controlling all processes taking place within administrative proceedings, especially those connected with computerization, and the related need to protect the processed data, especially the data of persons participating in administrative proceedings.

Thirdly, this further regulation, although it may be necessary to maintain the legal security of the parties from the perspective of computerization itself, becomes a reason for violating the very security in the area of simplicity and legal certainty as well as the principle of citizens' trust in the state and the law.

However, I believe that the development of ICT systems is possible without further extensive regulation. It is necessary to emphasize the responsible and conscious actions of public administration bodies, whose employees should be particularly sensitive to the need to ensure broadly understood legal security.

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[12] Journal of Laws of 2023, item 1605.

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