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CONFLICT OF NORMS IN POLISH ADMINISTRATIVE LAW: INTRODUCTORY REMARKS

The variety of situations that the administration deals with results in a collision of norms. By the collision of norms, we mean a situation in which the subject of competence may choose (or be forced to use) two parallelly available tools or ways to achieve the same goal. Both norms are valid in the system and the effects of their application may turn out to be contradictory (irreconcilable)[1]. This phenomenon applies not only to substantive law (e.g., directive on the imposition of administrative fiscal penalties) but above all to procedural law. That is why in the literature the mechanics of procedural construction by the public administration apparatus is discussed[2]. Building procedures, however, take place on general principles with the use of classical collision rules, e.g. *lex specialis derogat legi generali*.

Introducing "special" provisions determining the functioning of the administration next to general provisions is not a negative phenomenon, provided that this process will not lead to a reduction in the protection of individual rights[3]. Unfortunately, a special regulation, by establishing an exception to the general rule, often turns out to be controversial in the terms of the human rights system. By the way of example, the closed sessions were used on a very large scale in administrative courts until April 15, 2023, despite the lack of the axiological and scientific basis (here: the epidemiological threat caused by COVID-19).

The conflict of norms aiming at the same goal also occurs in the system of control (verification) of administrative decisions issued in administrative proceedings of jurisdictional character[4]. In Polish literature, this phenomenon is called two-way (the duality of roads) of control and was introduced to the academy by the eminent Cracovian professor Tadeusz Woś[5]. The analogy to the – at least two – roads precisely illustrates the state in which the same behavior of a public administration body can be verified at the same time by different authorities and in different modes. This is because the control system consists not only of judicial protection measures, but also of various administrative measures. The mere fact that the system consists of many competences of verification is not *per se* a negative phenomenon. The rule of law requires that the system of control must be equipped with guarantees ensuring the restitution of legality even though decision was issued a significant time ago. Betting on one card will not always be profitable. The lawmaker have correctly assumed that, despite access to a court, other control measures are also required.

In the discussed case, we are dealing with a conflict of competence norms[6]. This collision may be manifested in a variety of situations; it may concern a temporary coincidence of, e.g., the behavior of a private entity and a public administration body or two private entities. Apparently the multiplicity of means of

control in the Polish legal system constitutes an exception from the principle of one-track protection of rights[7].

The state of multiplicity of the measures aiming at verification (review) of public administration is dangerous in two dimensions. Firstly, it creates a risk that two authorities (public administration body and court) will conduct different proceedings at the same time which in turn may result in drastically different solutions to the same problem (here: the assessment of the legality). Secondly, it poses a threat to judicial authority. It cannot be ruled out that, despite the dismissal of the complaint by the administrative court, the same decision would be controlled in a different way i.e., on the administrative route. The paradox would be that the controlled body is to indirectly review the ruling on the legality of the same decision.

An instrument that will not only serve as remedy to these drawbacks but also will secure the coherence of the control system is norm managing conflict (collision rules). By collisions rules we mean the obligation to apply one provision before others in given circumstances[8].

Against this background, it is important to pose a question: from whom the collision rules in the administrative law system are to come, and in what situations they should be introduced?

The lawmaker seems to be the best choice possible to establish collision rules. When choosing the priority of one competence over another the lawmaker should weigh the various values of the legal system. In Polish law, we find examples of situations where the potential conflict of competencies in the control system was managed by rules explicitly prescribed in the wording of statutes, e.g. Article 54a § 1[9] and Article 56[10] of the Act of 30 August 2002 Law on proceedings before administrative courts[11]. In the substantive administrative law, the function of the collision rule is performed by Art. 189a § 2[12] of the Act of 14 June 1960, Code of Administrative Procedure[13].

Much more often, however, the collision rule is a product of the operation of a network composed of administrative law academies and courts. As many as two resolutions of the Supreme Administrative Court regulate: a) the priority of the court proceedings from the date of lodging the admissible complaint[14] and b) the admissibility of reviewing a final decision after the court proceedings (impact of the final ruling on the admissibility of verification on the administrative route)[15].

Moving on to the analysis of the point of time when one should think about introducing conflict rules to the system, I propose to distinguish two situations.

On the one hand, when we are planning a major modification of the control system; in particular, when the legislator wants to limit the number of available means of control or "shorten" the way to administrative court. As a side note, it is worth noting that since 2017 formal work has been underway on a new shape of the principle of two-instance administrative proceedings. Importantly, in Poland, to trigger proceedings before the administrative court, an administrative appeal must be filed in advance (exhaustion principle). The legislator formulates new proposals, either to remove the right to appeal on administrative route but limited to certain category of cases or to remove the administrative appeal in cases where the party's request has been fully complied. Making the administrative appeal optional[16] seems to be a reasonable compromise. It would be up to the party to decide whether to

launch an administrative or judicial route. What does this have to do with our analysis? Well, in a situation where there is more than one party to the proceedings, the issue of the conflict of private competences is actual. The lawmaker must consider which road to give priority to. I believe that priority should always be given to the judicial route; exactly the opposite of Art. 54a LPAC.

On the other hand, collision rules are needed when the control system is expanded with new control competences. That is, in a situation where we are not renovating the building, which is the control system, but only want to add a new floor. Then the legislator should think about the effects of the multiplication of competences. There was no such reflection in Poland with two amendments, namely the creation of the Commission for the reprivatization of Warsaw real estate, which have a power to *inter alia* declare invalidity of reprivatization decisions issued after October 26, 1945, and the introduction, pursuant to Art. 156 § 3 of the CAP time limits for initiating proceedings aiming at annulment of a decision that was issued or announced 30 years ago[17].

Polish experience teaches that the mere multitude of measures in the control system is not a bad thing, yet it may become dangerous when the clear hierarchy of competences and their priority is missing.

There are a few things to keep in mind when building a control system. Most of all the mandatory element of the system, which is judicial verification must be considered. Access to court is guaranteed not only by the Constitution of the Republic of Poland, but above all by the so-called European law. At this point, however, one cannot refrain from a digression. The wording of the Ukrainian Code of Administrative Court Procedure[18] illustrates the attachment of the Ukrainian nation to European values. Particular attention should be paid to the content of Art. 6 (2) introducing an obligation to consider the jurisprudence of the European Court of Human Rights by the court when dealing with case (*2. Суд застосовує принцип верховенства права з урахуванням судової практики Європейського суду з прав людини*.). This provision is of affirmative function. Moreover, a beautiful example of the formalization of indirect review can be found in Article 7 (3) and (5) by decreeing the priority of applying hierarchically higher law by the court, including supranational law (*3.У разі невідповідності правового акта Конституції України, закону України, міжнародному договору, згода на обов'язковість якого надана Верховною Радою України, або іншому правовому акту суд застосовує правовий акт, який має вищу юридичну силу, або положення відповідного міжнародного договору України; 5. Якщо міжнародним договором, згода на обов'язковість якого надана Верховною Радою України, встановлені інші правила, ніж ті, що встановлені законом, то застосовуються правила міжнародного договору України.*).

Since the court is an obligatory element in the system, the legislator must remember that the conflict rules - which preferably he should establish himself - consider the role of the judiciary and the effects of judgments issued by administrative courts. We must never allow a situation in which the executive branch of government, even unintentionally, encroaches on the jurisdiction of the court by its decision. Unfortunately, the lack of good collision rules can lead to such a situation.

This article is a small step on way to the concept of the public administration control system, including the tools and institutions that secure its operability. I assume that in the common European space we can work out the pattern solutions (model) regarding how administration control should look like. Of course, we will differ as to the details, e.g., the content of the judgment or the scope of the evidence proceedings, but the foundation must be common.

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2. Kmieciak Z. *Zarys teorii postępowania administracyjnego*, Warszawa 2014, p. 74.
3. G. Łaszczyca, *Modele regulacji prawa administracyjnego procesowego* in: *System Prawa Administracyjnego Procesowego. Tom I. Zagadnienia ogólne*, red. G. Łaszczyca, A. Matan, Warszawa 2017, p. 98.
4. In the case of other public activities controlled by administrative courts, the collision will not occur. A complaint is the only effective measure provided by the system. For example, I can challenge an act of local law to the administrative court or file a petition. The latter mode guarantees me only that the authority will under the obligation to prepare a formal response, but it will certainly not control the legality of the local law.
5. T. Woś, *Związki postępowania administracyjnego i sądowo-administracyjnego*, Warszawa-Kraków 1989.
6. Lindahl L. and Reidhav D., Conflict of Legal Norms: Definition and Varieties [in:] Logic in the Theory and Practice of Lawmaking, eds. M. Araszkiewicz, K. Płeszka, Springer International Publishing Switzerland 2015, p. 50. Authors distinguish three categories of conflicts of legal norms, namely: deontic (i.e., in terms of duties and permissions), in terms of competence, and mixed between the two preceding categories.
7. Recently, this principle has been applied by the Supreme Administrative Court to limit the scope of institutions protecting the standard of impartiality of administrative court proceedings (Resolution of the Supreme Administrative Court of April 3, 2023, I FPS 3/22). As a side note, I would like to mention that I do not agree with the position of the Court, and this is due to the omission of the important situations and therefore lowering the protection of individual rights.
8. K. Ziemski, *Rola i miejsce reguł kolizyjnych w procesie dekodowania tekstu prawnego,* RPEiS 1978/2, s. 3.
9. If, prior to submitting a complaint to the court, another party to the proceedings applied to the authority for reconsideration of the case, the provisions of Art. 54 § 2-4 shall not apply. The authority recognizes this complaint as an application for reconsideration of the case, of which it immediately notifies the party lodging the complaint.
10. If a complaint is lodged to the court after the initiation of administrative proceedings in order to amend, repeal, annul the act or resume proceedings, the court proceedings shall be suspended.

11. Hereafter referred to as: LPAC.
12. In the case of regulating in separate provisions: 1) the conditions for the assessment of the administrative fine [...] - the provisions of this section shall not apply in this regard.
13. Hereafter referred to as: CAP.
14. Resolution of the Supreme Administrative Court of June 5, 2017, II GPS 1/17.
15. Resolution of the Supreme Administrative Court of December 7, 2009, I OPS 6/09.
16. Z. Kmieciak, *Odwołania w postępowaniu administracyjnym,* Warszawa 2011, pp. 32-38, which discusses the French system of the so-called optional legal protection.
17. This issue is analyzed by A. Cebera, J.G. Firlus, *Upływ czasu jako negatywna przesłanka wszczęcia i kontynuowania postępowania w sprawie stwierdzenia nieważności decyzji administracyjnej a możliwość dochodzenia roszczeń odszkodowawczych z art. 417[1] § 2 k.c.* in: red. M. Araszkiewicz, M. Krok, M. Sala-Szczypiński, *Nauka prawa a praktyka prawnicza: księga jubileuszowa z okazji czterdziestolecia Okręgowej Izby Radców Prawnych w Krakowie*, Kraków 2022, pp. 47-76.
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Значення узуфрукта для інституційного розвитку цивільного права в Україні

Поняття узуфрукта як правового інструмента, за допомогою якого забезпечується можливість довгострокового користування чужою річчю й вилучення з неї плодів і доходів відоме ще з часів римського права. Нині зазначений інструмент активно використовується в юридичних системах багатьох країн (Франція, Німеччина, Молдова, Італія, Австрія тощо) і знаходить своє відображення в різноманітних аспектах сучасного речового права.

Узуфрукт є складною правовою конструкцією, яка може бути використана суб'єктами для різних, пов'язаних з економічним інтересом цілей, що досягаються за рахунок відмінних (залежить від об'єкта узуфрукта) за своєю правовою природою ресурсів, які можна здобути з чужого майна. Об'єктом узуфрукта можуть бути як речі (рухомі і нерухомі), так і майнові права (корпоративні паї, частка у праві спільної власності).

Таким чином, основними аспектами узуфрукта є право особи користуватися чужим майном і вилучати корисні властивості цього майна, в тому числі природні ресурси, плоди, дивіденди та ін. Узуфрукт зазвичай надається на певний строк або за певних умов. З метою забезпечення можливості користувачем вилучати корисні можливості отриманої речі, на