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Towards good administration: from vision to action

REPORT PRESENTED BY

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Towards good administration: from vision to action

Assuming that we were able to define the substance of the right to good administration, on the basis of examples from other countries presented yesterday during the second session, it is worth considering what could be done, particularly in Poland, for the vision of good administration decoded from Recommendation (2007)7 to transform from the "law-in-books" (as "soft-law-in-books" at that) into "law in action." Warsaw is a good place for debates on good administration (re: 2003 conference, 2005 meeting), but is it a good place to put good administration in action?

Unfortunately, professor Janusz Trzciński could not join us today. Professor Trzciński is President of the High Administrative Court and member of the European Convention working on the project for the European Constitution, within which—even more importantly—he was dealing with the Charter of Fundamental Rights. I will, therefore, acting as professor Trzciński's *negotiorum gestor*, deliver statistical data related to the legality of individual administrative decisions in Poland in the current two instance system of administrative jurisdiction.

In the year 2006, 62,436 complaints were filed with the Regional Administrative Courts against decisions and other individual acts passed after administrative procedures had been exhausted and complaints related to administrative negligence. It is not possible to clearly indicate to what percentage of the second instance administrative decisions these complaints pertain, but one may assume that they constitute a substantial percentage of the decisions against the given party. Together with the complaints from earlier years, the courts had 106,216 complaints to investigate. 76,660 complaints were investigated, which also means that the number of complaints left for the following year is 37% lower—a sign of improvement in the efficiency of those courts.

What's more important, 33% of all investigated complaints were granted, that is, considered warranted. What is more, this order of magnitude of unlawful decisions persists since 1980, when administrative jurisdiction was re-introduced in Poland. One may, on the one hand, interpret that fact as proof of functionality of judicial review of public administration, but on the other hand, this data suggests the lack of sufficient capacity of public administration to implement the standards of the state ruled by law.

Removal from legal transactions through abatement or notice of extinction was the case in 41% of complaints related to expropriation or restoration of real estate, in 36% of complaints related to building matters, in 36% of complaints related to housing (mainly pertaining to housing subsidies), in 32% of complaints related to taxes, etc. With respect to organs whose action or inaction was the subject of the complaint, legal defectiveness was established in relation to 37% decisions of the Ministers and central organs of government administration, among those as many as 53% of the decisions of the Minister of Health, 51% of the decisions of the President of ZUS (Social Insurance Institution), 49% of the decisions of the Minister of Agriculture and Rural Development, 47% of the decisions of the Minister of Infrastructure, 42% of the decisions of the Minister of Culture, etc. Defectiveness was determined also in relation to almost 32% of the decisions of the Local Government Appellate Boards, the fundamental organs of appeal from units of territorial self-government.

Cassation complaints filed with the High Administrative Court were related to 13% of the decisions of the Regional Administrative Courts. In 2006, the High Administrative Court received 10,354 cassation complaints, which, together with the complaints received earlier, added up to 16,610 complaints to investigate. The High Administrative Court investigated 8,715 cassation complaints, which means that the number of awaiting cases increased. Only 17% of cassation complaints, however, were granted which may suggest, even if we take into account the limited capacity for legal control by the High Administrative Court, that the ruling of the Regional Administrative Courts keeps up high standards.[1]

Just as the proverbial optimist sees the bottle half-full and the pessimist sees it half empty, we could say that as much as 2/3 of contested decisions were lawful or that as much as 1/3 were (regularly) unlawful.

One needs to remember, however, that lawfulness is a necessary but not a sufficient condition for good administration. That is why assurances, common in Polish studies on the subject, that the Polish Code of Administrative Procedure guarantees everything contained in the Recommendation or in the European Code of Good Administrative Behaviour, are not merely enough. Good administration means also the absence of maladministration (just as WHO defines health as the state of total physical, mental and social well-being, while using such terms as "homeostasis" and "wellness" and not merely absence of illness).

Seeking positives and not merely double negatives (or absence of evil) in public administration and returning to what I emphasized yesterday—that one needs to take into account also the most recent developments in thinking about public management, such as New Public Management and Public Governance—one needs to figure out what needs to be done in order for the right to good administration to become accomplished, to the extent that it is possible.

As I understand, this issue will be addressed by the panelists. On my part, I would like to pose one question: what can be done so that the principle of proportionality (which, as a matter of fact, is defined differently by the Recommendation and by the European Code of Good Administrative Behaviour) would find application in Poland not only in legislative acts (the decisions of the Constitutional Tribunal make that very clear), but also in the application of the law by authorities of public administration. It is worth pointing out that in Polish domestic "written" law this rule applies to discretionary administrative decisions only in the sphere of telecommunication law, where it has found its way due to the mechanical transposition of a an EU directive.

We should not, then, be too happy about the state of our law for law in action is an entirely different story.

[1] The President of the High Administrative Court, Janusz Trzciński's speech delivered during the General Assembly of the High Administrative Court Judges on April 23, 2007 and attachments in the form of statistical data in: *Informacja o działaniu sądów administracyjnych w 2006 roku*, Warsaw, 2007.