

– SUMMARY –

Verification of correct decisions and decisions affected by unqualified defects in administrative proceedings

(Weryfikacja decyzji prawidłowych oraz dotkniętych wadami niekwalifikowanymi w postępowaniu administracyjnym)

The subject of the doctoral thesis is the verification of administrative decisions, both correct and defective, but affected by such defects that we do not classify as invalidity defects, or defects that cause the resumption of proceedings. Therefore, the author analyzes in detail the various modes of repealing, amending an administrative decision and the mode of its rectification – regulated in the Code of Administrative Procedure (hereinafter – k.p.a. or the Code) and the Tax Ordinance (hereinafter – o.p). This subject of research results the author's personal interests in these issues and the desire to better understand the structure of individual regulations.

It is impossible to analyze the subject outlined in this way without first presenting the issue of defective decisions, and in particular decisions affected by the most severe legal defects, referred to as "qualified defects". For this reason, these issues take up a relatively large amount of space in the doctoral thesis.

Chapter I entitled "Defectiveness of administrative decisions" is an introduction to the issues to be analyzed later in the dissertation. The starting point is to quote the definition of an administrative decision, which is an authoritative form of shaping the rights and obligations of natural persons, legal persons and other entities (point 1). Next, there are considerations regarding the mandatory elements of the decision (point 2). They constitute the background for the analysis contained primarily in Chapter IV, where considerations apply the rectification of the decision. Some of the shortcomings in decision can be eliminated in this mode. The presentation of the catalog of legal measures (appeal measures), and in the case of actions launched by the authority *ex officio* – supervision measures (point 3) is intended to show the set of institutions regulated in the Code of Administrative Procedure and the Tax Ordinance, used to verify decisions. The purpose of the considerations contained in this point is to appropriately place the modes analyzed in this work in the system of institutions used to control the correctness of decisions, regulated in the Code of Administrative Procedure and Tax Ordinance, and when it is not possible, as in the case of the decision rectification procedure – noticing certain features of appeals and supervision measures. Analysis of the

principle of stability of the final decision expressed in Art. 16 k.p.a. and 128 op (point 4) is important in the context of the considerations carried out in Chapter III, which refers to particular procedures for repealing (amending) a decision and the procedure for its expiry. All of them are initiated in relation to final decisions. It is therefore necessary to indicate a catalog of such decisions. The theory of gradation of administrative decision defects presented at the end of this chapter (point 5) is intended to relate the analyzed modes to the hierarchy of administrative decision defects adopted in the doctrine.

Chapter II: “The qualified defect and its impact on the legal existence of the decision” presents an outline of the legal nature of the procedures for removing the most serious defects of an administrative decision – “qualified defects”. The circumstances causing such defectiveness are listed here (point 1), which in practice cause resumption of proceedings (Article 145 § 1, 145a - 145b of the Code of Administrative Procedure) and the procedure for declaring the decision invalid (Article 156 § 1 items 1-7 of the Code of Administrative Procedure). It is pointed out that sometimes, despite serious violations of the law (such as issuing a decision by the wrong authority - Article 156 § 1 of the Code of Administrative Procedure), it will not be possible to eliminate it from legal circulation. In this context, the negative premises for repealing the decision under the above – mentioned extraordinary procedures are analyzed, i.e. the statute of limitations, the lack of impact of the qualified defect on the content of the decision and the fact that the act caused irreversible legal effects (point 2). The doctrine of administrative procedure has pointed out for years that the aforementioned extraordinary procedures require some modifications. In this context, appropriate proposals for their amendment are presented. Actions taken recently by the legislator in this regard are also indicated (point 3).

In Chapter III entitled “Repealing, amending and expiring an administrative decision as an extraordinary procedure for verifying the final administrative decision”, the procedures regulated in Art. 154, 155, 161, 162 and 163 k.p.a. It also shows the similarities and differences in the construction of the relevant procedures regulated in the Tax Ordinance. At first, the evolution of the code regulation in terms of the title modes is presented. The basic changes that have taken place in their shape over the years are shown. The starting point is the relevant regulation contained in the regulation of the President of the Republic of 1928, then the scope of changes introduced in 1980 is indicated, ending with the amendment of the Code of 2010 (point 1.1.). Further, the situation of collision of extraordinary procedures is analyzed, i.e. the case when the decision contains, for example, a qualified defect (listed in Art. 145 § 1, 145a–145b of the Code of Administrative Procedure or Art. 156 § 1 points 1-7), and on the

other hand there is also the basis for its verification due to the public interests or the interest of the party (based on Article 154 or 155 of the Code of Administrative Procedure). The further part of this chapter focuses on a detailed analysis of the premises for initiating a specific procedure used to verify the correct decision (point 2), the characteristics of the explanatory proceedings in these modes (point 3), as well as the types of decisions that end the given procedure (point 4). The cause for analyzing all these procedures collectively within the indicated method is, on the one hand, the nature of the premises under individual regulations (e.g. Art. 154 of the Code of Administrative Procedure – a final decision under which none of the parties acquired the right, Art. 154 – a final decision under which party acquired the right), as well as the possibility of indicating many common elements in these modes (such as the initiative to initiate proceedings, no time limit on the possibility of initiating them, the nature of the explanatory proceedings, the deadline for ending the case).

This chapter ends with a summary (point 5) in which the author formulate comments regarding the expected legislative shape of individual regulations.

The considerations in chapter IV entitled “Rectification as a procedure for removing insignificant defects of an administrative decision” are conducted in accordance with the convention in force in the previous chapter. The genesis of the use of the term “rectification” on scientific grounds is presented (point 1), as well as the most important changes in the regulations shaping this institution in administrative proceedings are indicated. Next, the scope of individual rectification procedures (point 2), the specificity of the explanatory proceedings (point 3) and the nature and effect of the decision ending the given proceeding are analysed (point 4).

This chapter also contains a summary (point 5), in which the author indicate the shortcomings and imperfections in the legal regulations creating the various procedures for rectification of decisions.

The analysis of individual regulations refers to the rich achievements of the doctrine of administrative proceedings, as well as the latest jurisprudence. Intention of the author was to show the legal nature of the discussed institutions, including, above all, the limits of admissibility of their initiation

The doctoral thesis takes into account the legal status as at March 31, 2023, taking into account, however, the amendment to the Code of Administrative Procedure, which entered into force on May 12, 2023.