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INTERPRETATION OF ADMINISTRATIVE LEGAL NORMS DEMONSTRATING STRONG RELATIONS WITH CIVIL LAW WHICH AIM ENVIRONMENTAL PROTECTION

Abstract. The penetration process of structures traditionally assigned to civil law into administrative law, especially administrative law aiming environmental protection, has been more noticeable through recent years. This process resulted in deepening the absence of a clear separation of private law norms from public law norms. It led to the existence of so-called *quasi* civil solutions, which can be found for example in the *Act on prevention from damages in environment and its repair*. Their specificity consists in the fact that they cannot be regarded as civil law structures due to the differences between them and the civil law structures. This legal status sets new challenges for legal theorists as well as practitioners. They concentrate on interpretation of administrative law provisions which were penetrated by civil law structures, taking into account differences between interpretation of administrative and civil law provisions. We should not reject specific character of the civil law provisions' interpretation and interpret these provisions only by taking into account specificity of administrative law interpretation. Civil law institutions are characterized by a larger field for action, which is left for parties or performers, in comparison to the institutions of administrative law. This specificity of civil law structures should be considered as its advantage that should not be removed in the activities of public authorities.

Introductory remarks

The penetration process of structures traditionally assigned to civil law into administrative law is getting more noticeable throughout recent years. This process is also more noticeable in scope of administrative law, which is the base of protection of environmental components. This legal status sets new challenges for legal theorists as well as practitioners. It concentrates on

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interpretation of administrative law provisions which were penetrated by civil law structures, taking into account differences between interpretation of administrative and civil law provisions. In our opinion, it would be far too risky to reject specific character of the civil law provisions interpretation and interpret these provisions only by taking into account specificity of administrative law interpretation. It should not be assumed that civil law structure, through its transfer into the administrative law area, loses its links with the nature of the civil law. The achievements of the legal theory and science regarding civil law provisions shall be taken into account in this situation. Only this approach to this issue may guarantee accurate interpretation of administrative law provisions in which civil structures were transferred.

Detailed considerations regarding this problem in scope of administrative law provisions on base which the environment is protected, shall be proceeded by some introductory remarks of law interpretation.

1. Interpretation of the law – basic issues

Interpretation of the law, that is its interpretation, is the process of determining the meaning of legal provisions or product (result) of this activity. (Chauvin, Stawecki, Winczorek, 2012, p. 221). This is not a mechanical process, which in any case takes place in a similar manner. Facts of the case that are the subject of legal analysis raise so much doubts that the process of interpretation requires not only to delve into the text of a normative act, but also into other sources. In the Polish legal theory there were two basic positions regarding the purpose and scope of the necessary interpretation of the law. The first, so-called interpretation of the concept of clarification assumes that the interpretation is made only so far as it is necessary to remove perceived ambiguities in the text during the reading, according to the Latin legal maxim: *non sunt interpretanda clara* (what is clear shall not be interpreted) and *interpretatio cessat in claris* (interpretation ends when you reach the brightness). (Chauvin, Stawecki, Winczorek, 2012, p. 221). On the other hand, other authors argue that interpretation shall be made in each case, when the content of the current legal provision has to be determined, which will clearly indicate who, in what circumstances and how shall behave (the interpretation of the concept of derivation). (Chauvin, Stawecki, Winczorek, 2012, p. 222–223). Proponents of this theory do not negate the need to interpret ambiguous expressions, but such actions they consider insufficient. They argue that

interpretation of the law provisions is always necessary, even if the text seems clear, according to the Latin legal maxim: *interpretanda sunt omnia* (everything is the subject of interpretation). (Chauvin, Stawecki, Winczorek, 2012, p. 223).

Interpretation of law can be characterized by identifying specific types or kinds of interpretation. Due to the entity who interprets, interpretation can be divided into: authentic (carried out by an entity established by a legal provision), legal (carried out by specially authorized by law an authority of the state), operative (carried out by the authorities which apply the law), private and doctrinal. It should be also indicated the division of interpretation due to its scope. Here we can point out: the literal interpretation (in the strict sense) (taking into account the use of semantic and structural rules of language), extensive interpretation (adopting a broader interpretation of the provision) and restrictive interpretation (adopting a narrow interpretation of the provision). When analysing interpretation due to the way it was made, we can point out: linguistic interpretation (involving the use of semantic and structural rules of law and natural language), systematic interpretation (taking into account a location of the normative act in the law system), functional and teleological interpretation (based on taking into account conditions in which this norm has to be operated). It should be also noted that in addition to the various methods of interpretation, two additional types of argumentation are used: inference rules and legal topics. (Chauvin, Stawecki, Winczorek, 2012, p. 222–245).

2. The specificity of the interpretation of civil law

Analysing the issue of civil law interpretation at the outset attention should be drawn to the fact that private law regulates social relations between individual entities. Entities participating in these relations act as autonomous entities who regulate the content of those relations with a view to their own interests – within the limits determined by common good or moral rules. (Safjan, 2012, p. 481). In contrast to this, in public relations, at least on one side appears public authority established by the law, not to pursue individual interests, but common interest of particular community (public interest). Entities' autonomy in private law, however, is not synonymous with equality of their situation. Also in cases specified by law, public authorities may have in mutual relations an equivalent position by concluding agreements (administrative agreements). (Safjan, 2012, p. 481).

Different character of civil law provisions may to some extent condition specific interpretation activities.

On the basis of civil law, interpretation includes obviously activities which consist in reconstruction of legal norms from legal provisions (interpretation of the strict sense). But that interpretation in the area of civil law does not stop there. Practical difficulties caused by errors such as legislative errors, force to accept a situation when the scope of the interpretation also includes activities with the inferential nature, which consist in filling gaps, especially constructional gaps, by analogy *legis* (*sensu largo* interpretation). (Safjan, 2012, p. 492–493). In Polish science of civil law the applicability of the inference from analogy is not controversial. Incompleteness and openness of the civil law provisions are consequences of the basic feature of civil law – that is the autonomy of will understood as a general competence of the civil law entities to form civil relations between them. The *legis* analogy is applicable i.e. in the principle of freedom of contract (Article 353^1 of the kodeks cywilny (Dz. U. z 1964 Nr 16, poz. 93 z późn. zm.)) which justifies so-called existence of unnamed contracts. They are not regulated by law, but in the scope of the contract which is not regulated by the parties, analogy applies. The *legis* analogy applies not only in the provisions regulating relations of obligations, but also in the provisions regulating property rights. Fixed view of jurisprudence and legal science show the similarity between perpetual usufruct right and ownership right, which justifies the analogous application of the provisions of the ownership right to the perpetual usufruct right in scope which is not regulated by the law. It is also widely recognised that the provisions of the declaration of will may be applicable by analogy to other declarations. (Wolter, Ignatowicz, Stefaniuk, 2001, p. 106). The position of the Supreme Court confirms the widespread use of the *legis* analogy, which is reflected also in the use of the term "legal loophole". (III CZP 11/98; III CZP 3/98; III CZP 19/96).

In accordance with the general guidelines for interpretation primarily linguistic rules should be used, what was clearly pointed out by the Supreme Court, which stated that "the interpretation of the legal norm requires the interpretation primarily based on application of linguistic rules, which assign such a sense to a legal norm that is the result of the correct application of the linguistic rules, which, in principle, are considered to be known to all members of a particular linguistic group." (III CZP 29/02). The process of linguistic interpretation consists in the first place of a rule of law expressed in legal definitions. It should be also taken into account the context of the word, general rules of the Polish language and the linguistic context. According to the doctrine of civil law basic rules of the language are fundamental,

but not the only rules of interpretation. An important role is played also by the systematic and functional rules that are used in a successive way. This view was confirmed by the Supreme Court, which stated that "the literal wording of the provision cannot only determine its meaning. In the translation of the provision also systematic interpretation should be taken into account." (III CZP 35/01). The Constitutional Court also positively referred to the use of systematic rules in the interpretation of law as it was exemplified by the statement that: "the use right and the perpetual usufruct right are the institutions of civil law. Moving these institutions to other areas requires acting with the full respect of the principles that shaped the civil law." (P 2/88).

3. The specificity of the interpretation of the administrative law

Interpretation of administrative law because of the diversity and breadth of the subject of regulation (including environmental law, medical law or energy law) is characterized by several distinguishing characteristics from the interpretation of i.e. civil law. Administrative law is distinguished by the following characteristics: a specific function (different from functions carrying out by i.e. criminal law or civil law), the specificity of relations between an administered and an administer, catalogue and the nature of the protected goods, liquidity, size and casuistry of provisions, the use of specific phrases acquired from different areas of life, relatively (compared to other fields of law) little legal experience, lack of general provisions (general principles relating to the substantive administrative law), use of the very widely understood administrative discretion, use of undefined phrases, use of so-called 'an open structure' (use of the phrases "for example", "and others"). (Duniewska, 2000, pp. 172–173). The activity of the state intervention specific for administrative law is also often stressed, although covering a specific area of social relations by an administrative regulation cannot be considered only as a sign of the intervention activity. (Duniewska, 2000, p. 173).

The question of interpretation of the provisions of administrative law should be considered especially when taking into account rule of law, rule of legality and rule of competence. In the literature of administrative law it is emphasized that the rule of legality requires that every public administration act of interference into the legal sphere of citizen has to be based on a specific legal provision. The rule of legality should be the main criterion in the process of interpretation made by the state authorities. (Jaki-

mowicz, 2006, p. 67–68). Universal significance should be attributed to the view, expressed by J. Zimmerman on the basis of the administrative procedure that the fundamental rule of general administrative proceedings in the state of law is the rule of legality. Other general rules have undeniable importance for the state of law which has to be extracted and protected. However, if the facts of the case would set any of these rules in opposition to the rule of legality, this last rule should always have priority. (Zimmerman, 1993, p. 116).

In administrative law as well as in civil law, strict sense interpretation is used. However, in contrast to the doctrine of private law, use of *legis* analogy raises a lot of controversy, and authors present different opinions. According to the first view, the use of analogy in administrative law is unacceptable. It is submitted that, in accordance with the constitutional principle – rule of law, administrative authorities are obliged, when making decisions, i.e. issuing licenses for broadcasting radio and television, to apply the law strictly, that is, according to well-established doctrinal views as well as judicature, shall be understood as a ban on the use of analogy. (Krasuski, 2001, p. 19). It is emphasized that in the process of law enforcement administration decisions may be made only on the basis of the legal provisions which directly justify a competence of the public administration to a particular form of action. On the other hand, proponents of the use of analogy, say that it is acceptable to use by analogy administrative discretion in some cases and never for individual's disadvantage. (Smoktunowicz, 1970, p. 142–143).

Similarly to the rules applicable to the interpretation of civil law provisions also in administrative law, linguistic rules are applied primarily. Administrative law orientation on the legal text, the dominance of terminology and no conceptual analysis of the normative text, make interpretation of administrative law for the most part based solely on linguistic rules. Such actions cause that in practice, the difficulties of interpretation related with i.e. the ambiguity of words (polysemic and homonymic) are often encountered. The homonymous ambiguity does not cause serious problems of interpretation, but the polysemic ambiguity does. (Jakimowicz, 2006, p. 67–68). It is worth noting, however, that in addition to the dominant linguistic interpretation of administrative law, particular importance should have functional and teleological interpretation. The activity of public administration focuses on the public interest realisation. So, if it is assumed that the legislative activity is a purposeful activity, in other words seeks to carry out specific purposes, a legislator referring to the category of *ratio legis*, is obliged to take these aims into account. The legislator cannot accept

meaning of the provision which has any *rationis legis*. (Jakimowicz, 2006, p. 182). This view was confirmed by the Supreme Administrative Court, which stated that "it is clear both in the judicature and in the doctrine that linguistic interpretation dominates over functional and teleological interpretation. In case the result of linguistic interpretation is not acceptable due to the systematic consequences, functional and teleological interpretation should be used." (I OSK 1499/08).

It should be also noted that the organisational function of state and corresponding to its regulatory function of administrative law clearly connect social action of this law with the effectiveness. Using interpretation which respects functions of law and through them functions of state in the process of administrative application of law provisions, contributes in achieving this aim. The significance of this argument increases by special normative structures which are present in administrative law. The most important of them is structure of task norms. Its reconstruction is carried out by use of the argument of function as a basic argument from the initial stages of the interpretation. This also applies to the European Union law, under which administrative regulations combine the role of the functional argument resulting from the features of administrative law and the characteristics of the European Union law. Here appears the structure "effect utile" (useful effect), which is directly associated with the functional interpretation. (Leszczyński, Wojciechowski, Zirk-Sadowski, 2012, pp. 270–271).

4. The specificity of interpretation of administrative law provisions having strong links with the civil law whose aim is environmental protection

A representative of the pre-Second World War legal science indicated that it is not possible to carry out the boundary between the areas of public and private norms (postscript of the authors of this article). This is justified by the fact that the protection of individual rights brings benefits for an individual, and the rights granted for society also bring benefits to individuals. What is more, most of the legal norms have two sides. One of them is that of a public nature. The other side has a private dimension. Due to this fact, the division into public and private law is not about the individual feature, but the point of view from which they are judged. Thus, neither in legislation nor in the scientific presentation of norms of private law it is not possible to strictly separate private law norms from the public ones. (Zoll, 1931, see: Langrod, 1948, p. 42–43).

Penetration of civil law structures into sphere of administrative law norms resulted in deepening the absence of a clear separation of private law norms from public law norms. It led to the existence of so-called *quasi* civil solutions. Their specificity consists in the fact that they cannot be regarded as civil law structures due to the differences between them and the civil law structures. However, it is necessary to use in their scope output which was developed on the basis of civil law relations. This situation is usually determined by insufficient achievements of administrative legal science on one side, and the need to use these structures despite existing legal doubts. The similarity to the structures known to the civil law makes it possible to apply auxiliary solutions proposed by the judicature and doctrine within the civil law relations. This image of legal regulations significantly reflects in the regulations by which the legislator intended to protect the environmental elements. The reasons for this situation should be seen in a number of circumstances. It is the result, although not positively seen by legal scientists, of need to recognize that the institutions of administrative law based on the method of dominance no longer have sufficient capacity for administrative protective regulations. Secondly, the idea that has to be achieved by passing and applying norms protecting natural environment consists in perceiving by administrated entities protection of environmental elements not only as a common good but also as protection of their own interests. (Czech, 2012, pp. 181–182).

Relatively wide scope of norms that include *quasi* civil structures, can be found in the ustawa z dnia 13 kwietnia 2007 r. o zapobieganiu szkodom w środowisku i ich naprawie (hereinafter: the repair act). (Dz. U. 2007 Nr 75, poz. 493 z późn. zm.). Due to formulation of these norms in such way, they have strong links with the norms of civil law, but despite this fact they must be seen as administrative law norms. Examples of these regulations are provisions of article 2 of the repair act. It was indicated here that the provisions of this act shall apply to 1) any direct threat of damage to the environment or 2) damage in the environment caused by the activities posing the risk of damage to the environment if they are caused by an entity who benefits from environment, 3) caused by activities other than these which pose risk of damage to the environment if they are caused by an entity who benefits from the environment, if they regard protected species or protected natural habitats and occurred due to fault of the entity who benefits from the environment. Further, the legislator determines that the provisions of repair act shall apply to any direct threat of damage to the environment or damage to the environment caused by a diffused emission, coming from many sources, if it is possible to establish a causal link between the direct

threat of damage to the environment or damage to the environment and the activities of the entity who benefits from the environment.

Wording of this article indicates the intention of the legislator to determine the scope of the repair act. It contains also prerequisites of liability for environmental damage or direct threat of damage. This perception of the article 2 of the repair act provisions justifies other provisions of this regulation, including also art. 9. In this article, the legislator defines the duties of the entity who benefits from the environment if an environmental damage or an direct threat of such damage occurs. At the same time the legislator does not regulate in this act prerequisites of these duties fulfilment.

Legislator in art. 1 point 2 of the repair act introduces guilt as a prerequisite of the responsibility for specified category of environmental damages or the direct threat of damage to environment. The use in the provisions structure of fault which is unknown to the traditional administrative responsibility may indicate a distinction between this provision and other regulations with administrative origins. If we add to this the fact that repair act sets liability for damage or direct threat of damage, which is traditionally perceived as appropriate to civil law, the following conclusion should be made. It is necessary to recognize that the interpretation of these norms without specific character of interpretation of civil law, may lead to unsatisfactory results that may negatively affect their application.

Example of art. 2 of the repair act illustrates problems that may arise in the process of interpretation of the provisions contained therein. If we assume that the specific nature of the interpretation is affected by the character of protected interest in the application of civil law and respectively, administrative law, it is to highlight the need the following circumstance.

In scope of regulation, on the basis of which environment is protected, the main aim of administrative law loses its clarity (that is: protection of public interest) and in scope of civil law its main aim (that is: protection of individual interest). This is caused by the specificity of the legal interest, which is the environment, and hence the different essence of its protection.

Legal science indicates that the state of environmental risk threatens the public interest, but at the same time can also harm the interest of any entity that is in the range of harmful effects. Individual interest existing in relation to many or even all people in a particular comparable situation does not lose an individual reference, and thus does not melt in the higher category of general (public) interest. This reflects the specific feature of environmental risk – the threat of the public interest and at the same time the treat of the individual interest. (Radecki, 1979, p. 12–13).

Final conclusions

The use of *quasi* civil legal norms aiming at environment protection, which examples can be found in the repair act, in our opinion, justify the following conclusion. It is to consider the acceptance of the possibility of inclusion in the process of these provisions interpretation specificity of the civil law interpretation. Obviously this should be done taking into account the high degree of diligence in the use of these instruments.

At the same time, more flexibility of these provisions in relation to, let us name it – traditional solutions of administrative law. This requires more significance for teleological and functional interpretation beside linguistic interpretation. An important question may be also the appropriateness of allowing the use of analogy.

Being aware of the complexity of the issues and changes that are taking place in administrative law, the following course of action has to be indicated. By introducing civil law structures in the field of administrative law, we should not resign from the specificity of these structures. Civil law institutions are characterized by a larger scope of action, which is left for parties or performers, in comparison to the institutions of administrative law. This specificity of civil law structures should be considered as the advantage that should not be removed in the activities of public authorities.

The development of public administration, and consequently administrative law, clearly indicates the extension of the requirements for legal knowledge for public administration employees engaged in administrative law. This process in the coming years will certainly intensify further. It may also lead to the need to modify the views on the issue of the interpretation of administrative law. Administrative rules, on the base of which the environment is protected, at least in part, will require such modification.

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