Efficient court feelings citizen – Fact or Fiction

Efektywność postępowania sądowego w odczuciu obywateli – prawda czy fikcja

Summary
Effectiveness today means different things in different contexts. This article refers to the effectiveness of the proceedings before the administrative court and its impact on the feelings of the individual. Deeper analysis showed that washed instruments associated with the regional administrative courts and the Supreme Administrative Court can determine effectiveness. Judicial administrative organisational issues are briefly outlined.

Keywords: effectiveness, court-administrative proceedings, right to the court

Streszczenie

Słowa kluczowe: efektywność, postępowanie sądowoadministracyjne, prawo do sądu
Introduction

What is effectiveness? Is it possible to determine the effectiveness of court-administrative proceedings from the point of view of the individual participant? What changes took place over the last ten years with respect to the effectiveness of the judiciary? What was it like before during and after the act came into effect? What do we think of these changes? Is there a need for change and if so what change?

Many questions can be asked with respect to this subject. There are also many answers depending on a point of view, the interpretation of the situation, social conscience, understanding of the organisation, its speeds or efficiency of action. It is also possible to define the subject more thoroughly, including the approach towards the citizen, the attitude of the employees of the civil service and nature of the service of the enquirer.

In this article the instruments associated with the course of the authority will be subjected to deeper analysis to show that they can influence the effectiveness of judicial proceedings from the individual’s point of view.

I

The Law on proceedings before administrative tribunals is subject to a lot of regulation which impacts the effectiveness of proceedings before administrative tribunals. Included here are both rules of conduct before administrative tribunals, acts concerning rules of conduct, and provisions from the III department such as mediatory and simplified proceedings, proceedings in closed session and provisions concerning remedies from the IV The Law on proceedings before administrative tribunals act\(^1\). department. It is important to show the influence of the above institutions on the effectiveness of court administrative proceedings. It is essential that the legislator implemented the above regulations in order to guarantee basic rights for the citizen to the access to the court as well as in order to prevent the lengthy proceedings before the administrative court.

The general rules of proceedings before administrative tribunals are legal principles: that is norms of the established law or logical consequences of these norms. Legal principles can be formulated directly in individual provisions of the normative act, but it is often necessary to interpret them from many recipes\(^2\). One should also relate this assumption to the effectiveness of proceedings before administrative tribunals which consist of many other rules and regulations for the The Law on proceedings before administrative tribunals act, such as the principle of the

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speed of proceedings, the principle of openness, the principle of double instance, the institution of the signalling, judicial mediation, simplified proceedings and proceedings in closed session, the possibility of fining the public authority, and if the one won’t carry the court decision out.

II

With significant regulation, from non-existant act from the Supreme Administrative Court from 1995, concerning the effectiveness of proceedings, there is Art. 12, talking about the speed and the simplicity of proceedings before administrative tribunals. It is reflected in Art. 7 The Law on proceedings before administrative tribunals act which states that administrative tribunals should take acts aimed rapid settling of the matter and aspire to settling on the first trial. T. Woś is indicates the difference between administrative proceedings and proceedings before administrative tribunals, so proper application of principles of the Code of Administrative Procedure is making it impossible for court-administrative proceedings.

The law governing acting in court-administrative matters, normalizing procedural issues almost completely because it only contains a few links to provisions of other acts. An inspection of settling the matter administrative-legal, included in the challenged act or activities of the body of public authority are a being of court-administrative proceedings to administrative tribunals\(^3\). The principle of legal democratic state results in many assumptions which should be included in accepted legal answers. According to the Art. of the 77 Polish constitution, accepted solutions in judicial proceedings should consider fundamentals of the legal state which is the right of the court. The act cannot deny the freedom to the investigate violation of the law. One of the rights of the court should be to create double instances conditions to hear the case in a sensible time and requires the special administrative judiciary to pay attention. Tadeusz Woś aptly notices that without doubt that leading the court-administrative second instance must result in prolonging acting in the administrative, settled matter with the act or the activity of the body of public authority, challenged to administrative tribunals of the 1st instance and a time of the expectation of the citizens for ultimate settling the matter by the body of public authority will extend\(^4\). In the long term this will affect the effectiveness of judicial proceedings. However one should not equate the effectiveness with the speed of settling of court-administrative subject matter. It


is of course very important to the party to proceedings, however cannot stay at variance with the right to the reliable litigation and with the principle of procedural fairness, that is to hearing the case according to provisions of the law, i.e. possibility of being heard out by the side, of participating in the process, providing for the participant the predictability of the course of the process\(^5\).

The exercise of the right to the court much was hampered by administrative tribunals with state of the judicature on the day of enforcing the act- „Law on proceedings before administrative tribunals”. It is here particularly about a number of complaints waiting in Principal Administrative Tribunals for settling. A run time of proceedings before the administrative body also influences the speed of acting in the significant way before the issue of a decision which next became a subject of evaluation before administrative tribunals.

Mediatory proceedings and simplified proceedings which in the assumption they had are new institutions which turned up at court-administrative proceedings to contribute to a considerable degree to hasten the time of identifying the dispute, as well as to raise the awareness and the legal culture of the society. Possibility of using from those procedural institutions, perhaps to contribute to increase the effectiveness of proceedings court administrative, however this possibility isn’t regarding all court-administrative proceedings.

Acts from 25 July 2002 – the Law on the system of administrative tribunals and the act from 30 August 2002 – the Law on proceedings before administrative tribunals and the act from 30 August 2002 Provisions implementing the act the law on the system of administrative tribunals and the act entered the law on proceedings before administrative tribunals\(^6\) into the system of the Polish administrative judiciary principle double instances. Principle double instances is very essential for the effectiveness of proceedings before administrative tribunals, since enables the verification of given decisions, and removing from the legal trade flawed administrative resolutions.

In this way a straight structure providing recognizing remedies against statements of administrative tribunals was achieved in all matters before Principal Administrative Tribunals which will be a superior supervisory body exercised the first instance of the appeal against sentence and the complaint- judicial\(^7\). In the act an assumption that administrative tribunals of the first instance are hearing all court-administrative cases was made, with the exception cause reserved for Principal Administrative Tribunals. He is also a Principle, that administrative tribunals are adjudicating three judges in the first instance composed of, unless de-

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\(^5\) Compare the TK sentence from 16 January 2006, SK 30 / 05, OTK-A ZU 2006, No. 3, pos. 29.

\(^6\) The law on the system of administrative tribunals and the law on proceedings before administrative tribunals accessed acts into force with 1 January 2004.

Decisions are being taken on the closed-door session (Art. 16). Certainly they were trying to search procedural provisions for such solutions which could precipitate these proceedings, because in the case more early-first instances there were no proceedings-it is however possible. However in the structure double instances administrative judiciary, that kind of change they are manageable, because from a court decision of the first instance it is possible to bring the appeal against sentence in, which solution is going in two directions of mediatory proceedings and simplified proceedings. Robert Hauser thinks, that in administrative proceedings and court-administrative adding one appeal authority not has to conduct proceedings for extending.  

In Art. 7 acts Law on proceedings before administrative tribunals, legislator entered into principle of the speed of court-administrative proceedings in the wording: „administrative tribunals should take acts aimed at fast settling the matter and aspire to for its settling on the first sitting”. This article constitutes the equivalent Art. 6 Code of Civil Procedure. The Supreme Administrative court gave its opinion in this issue stating: „the principle of concentration of procedural material expressed in Art. 7 isn’t indicating The Law on proceedings before administrative tribunals act, that dynamics of proceedings are supposed to hide from view of the overarching objective of proceedings an edition is which of lawful decision. Article 6 is not only applying to the European Convention for the Protection of Human Rights and Fundamental Freedoms of fast proceedings, but also solid proceedings, of which the sensible completion date is one of shaping elements”. The aspiration to settling the matter on the first sitting includes both following acting on the part of very court the discipline, and opposing behaviours aiming at stalling these proceedings on the part of his participants, e.g. in the destination of the nonadmission to the termination of the proceeding. Provisions of this article don’t determine the date of settling the matter directly. One should however assume that the matter should end in the optimum time, if it isn’t leading the side for disturbing procedural entitlements. An adverse influence on the result of the case cannot and so lead the speed of proceedings to simplifications which it would have. What would still influence the effectiveness of given proceedings. The speed is one of core values of judicial applying the law, with one of conditions of the effectiveness of both activity of courts, and the effectiveness of the law at all. One should rank the speed among elements of the principle of efficiency. In the procedural plain the primary importance for guaranteeing has the right to

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8 There, p. 41.
9 Journal of Laws Number 43, position 296 as amended.
10 Deciding the Supreme Administrative court from 13 April 2010, and GSK 746 / 09, Lex No. 578348.
12 J. Wróblewski, Values but the court decision, Ossolineum 1973, 166-167 p. and 176-185.
a court order of hearing the case „without the unjustified delay” the sec. according to the Art. of 45 mouth of the 1 Polish constitution which stayed worded also in Art. 6 of 1 European Convention for the Protection of Human Rights and Fundamental Freedoms, as the requirement of conducting proceedings „in the sensible time”. These orders are aimed at backing the demand of the speed of judicial proceedings up. About the existence of the lengthiness of legal proceedings it is possible to tell the inactivity long-term, to say the least of few months, total of the court in the situation in proceedings formally being pending13.

So constitutional requirement of hearing the case „without the unjustified delay”, first is referred to very courts which should conduct acting quickly and efficiently. For the legislator such creating legal grounds and organizational administrative tribunals is a duty, in order to the ones possibilities of following the constitutional principle of efficient considering the cases had.

Sudden increase of filing complaints in final years by Polish citizens to the European Court of Human Rights, shows that the Polish judiciary isn’t fulfilling standards arising from the constitutional order of hearing the case „in the sensible time”. The tribunal in the considerable quantity of cases accused Polish courts of the infringement Art. of 6 Conventions, in particular of record of the proceedings concerning the lengthiness. In statements of the Tribunal the lengthiness constitutes proceedings of Polish courts most frequent reason for taking the complaint into account. At present Poland is at the disgraceful lead of states in which functioning of courts is arousing the most stipulations of the Tribunal from a point of view of the efficiency and the speed of their proceedings. They are in the majority these are however referring matters to the sluggishness of courts of general jurisdiction, administrative tribunals against this background come out surprisingly well.

Control system of administration, as well as the control effected by administrative tribunals, must this way be formed in order to a maximum to shorten the waiting time for prevailing in the subject matter. A maximum simplification of the procedure should become a centre which would support such proceedings, before administrative tribunals, as well as simplifying hearing cases of small change by these courts. From regulations of this type, included in the The Law on proceedings before administrative tribunals act, it is possible to exchange mediatory proceedings, simplified proceedings and proceedings in closed session.

In proceedings before administrative tribunals a principle of equality of rights which relies above all on the fact that every party to litigation has identical protection measures provided in the process and equal possibilities of using them, is

13 ETPCz statement from 21 and 2003, in the matter v Sobański. Poland and from 14 and 2003, on W.M. v. Poland, which Poland was recognised in responsible infringements of decisions of the Art. of 6 sec. of 1 Convention, sentences available on the website WWW.prawaczlowieka.edu.pl, they used 21.05.2010s.
shaping the legal situation of subjects through undertaking specific procedural activities. The reason cannot have greater entitlements than the defendant and on the contrary, although their procedural situation is different (so-called basis of equality of procedural means)\textsuperscript{14}. The principle of equality of rights in the significant way influences the effectiveness, since enables giving his opinion of both pages in the same scope before administrative tribunals. That is every side has the same right to its expression of turning over in the matter.

Simplified proceedings before administrative tribunals regulated are in outline in 119-122 art. The Law on proceedings before administrative tribunals act. A need of precipitating court-administrative proceedings was a crucial objective of leading him into the legal system. Simplified proceedings are only a variant of orchard proceedings\textsuperscript{15}.

Simplified proceedings consist in the possibility of recognizing on the closed-door session composed of cause one judge of three categories: 1) of complaints about decisions and decisions touched with the defect in the unimportance or the breach of the law giving the base to resuming proceedings (Art. 119 pt 1 The Law on proceedings before administrative tribunals act), 2) of complaints about acts and activities and the inactivity of organs, irrespective of it, what defect they are touched, if the side proposed the such request, and remaining sides didn’t demand conducting the trial (Art. 119 pt 2 The Law on proceedings before administrative tribunals act), 3) of complaints about acts and activities and the inactivity of organs, without the account to what defect they are touched, if the administrative body didn’t pass the complaint on to the court along with case records and the response to the complaint within 30 days of the day of for her carrying and didn’t make it in spite of fining him by the court (Art. 121 in relation to Art. 55 § 2 The Law on proceedings before administrative tribunals act)\textsuperscript{16}.

On account of the fact that unjustified dispatching a case to recognize under the simplified procedure can to make it difficult for her the unabridged and versatile diagnosis, and especially considering the fact that a case is being heard not through for three composition (guaranteeing the versatility and the complexity of examining the matter), only by one judge, it is fitting to agree with the opinion that at directing a case at the simplified mode he belongs with the great care to assess, whether recognizing under this procedure is guaranteeing the realization of the principle of the right to the court, that is open recognizing by the competent court composed of, which versatile conducting the control provides for the legali-

\textsuperscript{14} W. Siedlecki, \textit{Civil procedure in the outline}, Warsaw 1972, p. 77.
ty of the challenged act or the activity\textsuperscript{17}. This way so it is essential, whether applying the simplified mode will be affecting the effectiveness of court-administrative proceedings. The judge must take the realization of the function of the judiciary into consideration, in compliance with constitutional standards.

As regards the institution of mediation in at pondo- Law on proceedings before administrative tribunals (Art. 115-118 The Law on proceedings before administra-tive tribunals act), „an explanation and considering of circumstances factual and legal the matter and accepting by sides of arrangements, as for the way for her of settling within the limits of the law in force” are a purpose of mediatory proce-dings. Certainly the institution of mediation corresponds to the demand of precipitating proceedings before administrative tribunals, because lets eliminate the part of complaints which courts would have to consider by way of court-adminis-trative proceedings. Mediation differently than proceedings simplified, constitutes the alternative form of solving disputes. Enabling the organ of the own vetting is a purpose of mediation of knowledge about the matter, including regularities of the decision (activity) which entertained\textsuperscript{18}. However a number of doubts concerning mediatory proceedings which will be subjected to deeper analysis hereinafter exists of trial concerning court-administrative mediation.

One should ask questions or the reform of the administrative judiciary, exactly provisions and solutions accepted in the act- Law on acting before administrative tribunals, indeed did individuals influence the protection of rights in the sphere of the administrative law? And still, whether these provisions enable the realiza-tion of the principle of efficiency? Whether structure of the legal democratic state, it getting hooked on its beginning in the Polish constitution which provides such a judicial control for the civil service which considers standards of the protection of rights of the individual, and what is being combine-ed with it for her right to the court and settling the matter in the sensible time- was carried out in the new statute? An effectiveness is restoring the compliance with law- from submitting the matter for issuing a decision, by making it. It is essential so that this procedure is executed quickly, cheap and in compliance with procedural principles.

It seems that solutions which can contribute to the efficiency improvement of proceedings are included in provisions of analysed regulations in administrati-ve courts, to rank among them we can:

\begin{itemize}
  \item a. principle of concentration of procedural material,
  \item b. principle of openness of proceedings,
  \item c. possibility of verifying the given decision by the court of the double instance,
  \item d. mediatory proceedings
  \item e. simplified proceedings
\end{itemize}

\textsuperscript{17} R. Hauser, M. Wierzbowski (ed.), quoted work, p. 473.

\textsuperscript{18} Compare from. Kniecik, Proceedings mediatory and simplified before administrative tribunals, „You and the Law” 2003, Notebook 10, p. 25.
f. enforcing of the provision Art. 174 The Law on proceedings before administrative tribunals act, according to which the appeal against sentence can be based on violating the substantive law through incorrect interpretation, or the misuse, or the violation of regulations of proceedings, if it could have a significant influence on the result of the case. 

However Tadeusz Woś thinks that only three procedural terminations will contribute to simplify proceedings and to increase his effectiveness:

1. principle of adjudicating both authorities by administrative tribunals on the closed-door session composed of of one judge- Art. 16 § 2 and Art. 182 § 3 The Law on proceedings before administrative tribunals acts;

2. drafting by provincial administrative tribunals of the statement of reasons for the sentence putting the complaint off exclusively at the request of the side reported within 7 days of the date of the announcement the sentence or delivering the copy to the sentence of sentence- Art. 141 § 2 The Law on proceedings before administrative tribunals act, it is the statutory date which cannot be prolonged or shortened, can however be restored at the request of the side.

3. reinstatement indirect modes of carrying of the complaint into administrative tribunals Art. 54 § 1 The Law on proceedings before administrative tribunals act.

Restoring the principle of bringing the complaint in via the organ, of which action, the inactivity or chronic leading proceedings are a subject of the complaint, pursuant to Art. 54 § 2 The Law on proceedings before administrative tribunals act – he has his positive dimension, because this mode is precipitating judicial proceedings, eliminating the need of the preliminary correspondence between the court and the administrative body. Because the administrative body is obligated, with The Law on proceedings before administrative tribunals act provisions of the Act, for handing 30 days of the complaint over in time to administrative tribunals along with case records and the response to the complaint, as well as he has entitlements autorewizyjne (automatic_control) before transmitting the complaint to the court, in the connection what the complaint can be moved back, with or for her considering will become irrelevant (Art. 54 § 3 and Art. 161 § 1 The Law on proceedings before administrative tribunals act).

19 W. Chrościelewski, from. Kmieciak, J.P. Tarno, The Reform of the administrative judiciary, but standards of the protection of rights of the individual, „You and the Law” 2002, notebook 12, p. 34. Respecting the provision offers The Law on proceedings before administrative tribunals act, Art. 174 provision Art. 175 The Law on proceedings before administrative tribunals act, according to which complaint cassation an attorney-at-law or a skyrocket can draft legal or shown object in § 2 and 3 of it articles, as well as solutions accepted in court fees, according to which bringing the complaint in will be cassation suffered financial consequences of his action.

20 Compare the Principal Administrative Court, Decision from 18 April 2008, II Esker 338 / 08, Legalis.

21 T. Woś, Two Instances the administrative judiciary but the constitutional right to hear the case without of „unjustified delay”, „You and the Law” 2003, Notebook 8, p. 25.
Above procedural institutions led with act- Law for proceedings before administrative tribunals, are aimed at increasing the effectiveness of court-administrative proceedings. Paying attention to the fact is significant, that legacy of overdue matters from times before enforcing the act- Law on proceedings before administrative tribunals, caused that state, in which it will be possible to settle administrative matters „on the spot” is still as of today unattainable.

One should emphasize that the The Law on proceedings before administrative tribunals act act remains in the compliance with decisions for the Polish constitution from 1997, of international covenant of citizenship rights and Political, and peculiarities from his Art. 14, and the European Convention for the Protection of Human Rights and Fundamental Freedoms. So The Law on proceedings before administrative tribunals act, considers European standards of acting in court-administrative matters, judicial decision of international bodies and is ensuring the protection of human rights in wide of this word for meaning.

Summary

Legislator establishing individual provisions of the Act referred the Law on proceedings before administrative tribunals oneself with in order to protect laws guaranteed in the Polish constitution and provisions of the international law for the individual as high standards.

The law on proceedings before administrative tribunals is regulating acting in court-administrative matters in the comprehensive and full way. One should agree with this statement. Even though the effectiveness of acting as the right principle isn’t clearly indicated in provisions of the Act, however the legislator entered it into the act of the regulation which influence the effectiveness of proceedings being pending, both by indicating of principles in the chapter I of the act, as well as other institutions procedural, standing on guard effectiveenesses, as mediation, fining the organ or the institution of signalings.

In the course of conducted analysis a statement that in the course of the general court-administrative progression the principle of efficiency is performing the very significant role in all phases of these proceedings, peculiarly is justified taking into consideration feelings of the individual which is referring her matter for considering by administrative tribunals. Because a possibility of the orchard initiation of proceedings is a purpose of court-administrative proceedings. That is, he is embracing with one’s scope „matters sądowoadministracyjne”.

Correct course of proceedings sądowoadministracyjnego are supposed to guarantee functions of administrative tribunals in which as basic one should mention the protection of the liberty of the subject of the individual what results from

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22 M. Jaśkowska, M. Pasternak, E. Ochendowski, Court-administrative Proceedings, Warsaw 2004, p. 27.
guidelines of the functioning of the civil service. Discontinuing it is possible for nobody to close the legal action of seeking violated freedoms and laws and not perhaps to become known situation, in which matters which won't be embraced will be a jurisdiction of neither administrative tribunals nor courts of general jurisdiction. All these conditioning affects for due forming the court-administrative procedure which in turn is affecting the effectiveness of proceedings sądowo administracyjne.

To sum up, conclusions de lege the The Law on proceedings before administrative tribunals act very much a lot changed year-s in the face of the Polish administrative judiciary, meaning majority of these changes, both in the context of proceedings as well as the organizational structure these are very positive changes. Conclusions de lege ferenda- perhaps one should give some thought to mediation sądowoadministracyjną- and more to highlight meaning for her in the course of proceedings and more often to use it. And most important from points of view of the individual- to strive after perfection in the customer service. Since at present an applicant is a customer and expects the technical personnel the same at the court, like at the private institution.

Legal documents

European Convention for the Protection of Human Rights and Fundamental Freedoms, drafted in Rome 4 November 1950 – changed next with Protocols No. 3.5 and 8 and supplemented with the Protocol No. 2.
Act from 17 June 2004 about the complaint on breach of the law of the side for considering.

Judicial decision

Compare the Principial Administrative Court, Decision from 18 April 2008, II Esker 338 / 08, Legalis.
Compare the TK sentence from 16 January 2006, SK 30 / 05, OTK-A ZU 2006, No. 3, pos. 29.
Deciding the Supreme Administrative court from 13 April 2010, and GSK 746 / 09, Lex No. 578348.
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