Ключові слова: адміністративний процес, громадська організація, форми участі в адміністративному процесі, учасники адміністративного процесу.

Ничипорук Я., Гжещук М. Эволюция форм участия общественных организаций в польском административном судопроизводстве. Вопрос о формах участия общественных организаций в польском административном судопроизводстве является интересным объектом исследования. Особенно важной является демонстрация эволюции в этой сфере. Происходящие изменения законодательства возникают из потребности адаптировать правовые нормы к новым реалиям. Размышления на эту тему важны с точки зрения интересов обеих сторон административного спора. Проблема участия общественных организаций в административном судопроизводстве является весьма актуальной. Общественная организация может участвовать в административном производстве в нескольких различных формах. В статье отмечено их эволюцию с точки зрения правовых норм, судебной практики, а также юриспруденции. В проведенном исследовании процесса эволюции форм участия общественных организаций в административном судопроизводстве было показано, что действующие правовые нормы являются результатом длительного исторического, политического и правового развития. Законодательные изменения продиктованы необходимостью адаптировать эти правила к меняющейся действительности и должны соответствовать более гибким правилам современного административного судопроизводства.

Ключевые слова: административный процесс, общественная организация, формы участия в административном процессе, участники административного процесса.

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J. Niczyporuk, M. Podleśny

Realization of the Principle of Objective Truth in the General Administrative Procedure

In the course of the administrative procedure, the primary responsibility of the authority is to determine the facts of the case. The principle of objective truth defines the basic rights and obligations of the public authority to establish the facts and legal status in order to issue an administrative decision. The conclusion is that the principle of objective truth is one of the guiding principles of general administrative proceedings realized both in the determination by the facts of the case as well as for all other activities undertaken in the course.

Key words: administrative proceeding, the principle of objective truth, proving, evidence.

Presentation of the scientific problem and its significance. One of the key principles that determine the manner of conducting the proceeding is a principle of objective truth. This principle implies a number of obligations (of the authority conducting proceeding) that boil down to determine how to proceed in order to accurately determine the facts and issue a decision. The key issue that needs clarification is to define the legal nature of the principle of objective truth and an indication on which stages of the administrative procedure this principle is applied.

Main content and justification of the study results. The primary objective of general administrative procedure is to determine the legal consequences of the existing norms of substantive administrative law. These consequences of the proceedings take most commonly the form of an administrative decision, an agreement (less likely), or decision (exceptional cases). The decision must of course be preceded by a phase of the investigation, when the body will determine the facts forming the basis for subsequent decision. These facts, despite marking with certain amount of subjectivity by the participating in the proceedings entities, exist objectively, and in the course of general administrative proceedings are subject to the principle of objective truth.

The principle of objective truth, also known as the principle of material truth is known as one of the main and most important (next to the rule of law principle) rules of administrative procedure. It was formulated in Art. 7 CAP «Public administration bodies shall uphold the rule of law during proceedings and shall take all necessary steps to clarify the facts of a case and to resolve it, having regard to the public interest and the legitimate interests of members of the public». Accurate determination of the facts is thus possible only if the public authority meets its obligation to make findings of facts.

According to E. Iserzon the principle of objective truth is to give the adjudicating authority in a specific proceeding the possibility to freely examine the case and a freely evaluate the results of this examination. The author rightly opposes this principle to the principle of formal truth, known to former lawsuit process based on a formal theory of evidence. Free evidence evaluation is based on a search for truth and is free from artificial restrictions, e. g. casuistic regulations leading to the so-called artificial process truth [1, p.153-154].

According to M. Wierzbowski principle of objective truth is a fundamental principle of the process, which is a specific requirement to base the decision only on the conditions that actually exist, and not derived by allegations or the truths admitted by sides [2, p.19].

Similar opinion has B. Adamiak, who defines the principle of objective truth as the supreme principle of proceeding, having fundamental effect on the whole proceeding, in particular on the distribution of the burden of proof in administrative proceedings. The author points out that the implementation of this principle is closely linked with expressed in Art. of the 6 CAP rule of law principle, meaning the correct determination of the facts is essential for the proper application of the substantive law norms [3, p.68]. It should be emphasized that the authority issuing the determination of the facts is required to act in accordance with law, and any action that violates the law should be treated as a breach of the objective truth principle. The reflection of this view can be found in the case law of the Supreme Administrative Court (SAC). In the SAC judgment of 22 October 1981, the Court stated that «in the administrative proceedings, the violation by the driver of the provisions on the prohibition of driving motor vehicles in the state indicating alcohol consumption evidence of recidivism may only be a recent extract from the criminal record. Unacceptable is, however, he treatment of judgments on conviction or punishment under the provisions on seizing as evidence» [4].

As a buckle for presented above views on the essence and function of the principle of objective truth in the general administrative procedure can be used a Constitutional Court's decision, in which the Court states that «one of the main rules of administrative procedure is the principle of objective truth, thus proving every fact that has legal significance may be done using all legal means» (Art. 7, Art. 76, Art. 77 § 3 and Art. 86 of the CAP). Any restriction in this regard can be derived only from law provisions [5].

The principle of objective truth its chief character derives from the fact that all the other general principles of proceeding intend to create such conditions in the proceedings, which will enable to make findings of fact consistent with reality. This principle creates a number of obligations of the authority conducting the proceeding, the most important of which are:

- indication of the evidence necessary to establish the facts of the case,
- analysis of the abovementioned evidence,
- create the possibility to a side to indicate new evidence in the proceedings, and to guarantee the right to express itself regarding the evidence gathered by the authority [6, p. 68-69].

Authority guided by the norms of substantive law is required to make an initial assessment of the facts, which will be important to the outcome of the administrative case and to indicate evidence that are necessary to prove the indicated facts. According to Art. 77 of the CAP, such an assessment should be included in the evidence ruling: «the public administration body is required to comprehensively collect and examine all evidential material (…) at each stage of proceedings a body can amend, supplement or withdraw rulings made regarding the examination of evidence».

The content of Art. 7 and 77 of the CAP clearly shows that the evidence taking should be based on the principle of officialdom, meaning the role of the Authority is to carry out the evidence to establish the facts.

In the administrative proceedings does not apply formal theory of evidence, according to which given circumstance can be proven only by means of such, and no other means of evidence, nor the principle that the role of the ruling body is the role of a passive entity waiting for the evidence offered by the party. On the contrary, the ruling administrative proceedings principle of officialdom (Art. 7, 75 of the CAP) requires that, in the course of the proceedings a public authorities takes all necessary steps to clarify and settle the matter, and accepts as evidence anything that might contribute to its explanation but is not contrary to the law, so that carried out evidence were to ascertain the facts [7].

Administration body is a kind of host (manager) of the proceeding determining the directions of its conduct, and the evidence required for a thorough explanation of the facts. The body is an entity which is required to be active in determining the actual basis of decision. The principle therefore means that the investigating body has a duty to collect all the evidence, and then draw the legal consequences of its findings. At this point you can ask yourself a question: what role in determining the facts will play a second entity of the proceedings – that party?

In accordance with the principle of active participation of the parties in the procedure set out in Art. 10 of the CAP the public authority is obliged to ensure that the parties are involved in every stage of the proceedings, and before the decision to allow them to comment on the evidence and materials collected and submitted requests. The wording of this provision clearly shows that the party is only entitled to present evidence, and in any case it is not her duty. Therefore, you can ask yourself another question: whether the realization of the principle of objective truth is possible without active participation of the party? Obviously, the answer to this question is ambiguous. On the one hand, there are proceedings in which the body has sufficient knowledge to issue a decision. Sometimes the body is able to obtain the necessary information using other sources of evidence and in the light of the obtained evidence to establish the totality of facts. However, in most investigations party is the one who has information that can significantly affect the shape of the decision. This will be the case for example when the not proving the fact will lead to the negative effects for the party. In the SAC judgment of 26 October 1984, the court held that in this case the authorities conducting a proceeding are not obliged to seek the evidence in support of a party's claim, when this party does not present such measures or her claims are vague or brief [8]. In this case, the authority should call this party to supplement and clarify its claims and only when the party does not indicate the specific circumstances negative effect may be withdrawn on it. The court's arguments seem to be debatable. Certainly in a situation when the party has a particular source of evidence (e.g. documents) and does not want to reveal this source and the body is not able to establish the facts on the basis of other evidence the party has to consider the negative consequences of its inactivity. Such a situation should occur when the body has attempted to search for specific sources of evidence to support the claims of the party, and the search resulted in the fiasco. Only in such a situation should be allowed to issue a decision unfavorable to the party.

Discussed issue relates to questionable issue connected with the burden of proof in administrative proceedings. The doctrine points out three basic ways of relating to the collection of evidence:

- factual materials and evidence are gathered only by the proceedings participants. It is a model that appears in the contradictory procedures,
- factual materials and evidence are collected only by the adjudicating body – the so-called inquisitorial method (inquiry),
- factual materials and evidence are gathered by both the parties and adjudicating body in accordance with the principle of cooperation.

According to Art. 7 and 77 of the CAP the public authority has a duty to establish the facts, hence authority has to prove circumstances relevant to the outcome. The statement, however, that the body bears an entire burden of proof would be a mistake. CAP provisions also pose a number of possibilities efforts to establish the factual basis to the party of the proceeding. The following rights should be indicated:

- a demand made by a party relating to the evidentiary process (art. 78 § 1 of the CAP),
- the opportunity for a party to challenge the evidence (art. 81 of the CAP),
- provide explanations and documents before the hearing and during the hearing, submit observations, requests, suggestions and objections supporting evidence (art. 90 § 2 and art. 95 § 1 of the CAP).

As you can see the active participation of the parties in the investigation is not only possible, but from the point of view of the principle of objective truth sometimes even necessary.

Another issue connected to the burden of proof is to answer the question: who and in relation to which facts is obliged to carry out a certain measure of inquiry? Roman Process Rule proclaims «ei incumbit probatio qui dicit non qui negat» – which means, the burden of proof rests on those who claim and not on those who denies. This principle does not fit perfectly to the administrative proceedings. CAP holds a provision allowing a situation in which the assertion of the party concerning certain facts is treated as evidence – Art. 75 CAP which provides that if a provision of the law does not require official confirmation of certain facts or legal status certified by the relevant authority, the public authority receives from the party, on its request, a statement made under penalty for perjury. In addition, the Polish model of the administrative procedure assumes an active role of public administration in evidence proceeding, and thus the body is charged with the burden of proof whenever it is the claiming body, and whenever a party is the one claiming when in support of their claims it does not present any evidence. A. Wiktorowska rightly notes that «it does not matter who can prove a particular thesis, but it is important that it can be proven, and therefore, can provide basis for resolving the case and issuing a decision» [9, p. 126]. The wording of Art. 78 CAP shows that the authority has a duty to determine the facts of the case having regard to the principle of objective truth, both when it gathered evidence itself, and when the materials have been gathered by the party [10].

Concluding it should be mentioned, that in the course of the administrative proceedings the burden of proving certain facts relevant to the outcome lies on the body conducting the proceeding. This principle

also applies where the party raises certain issues and does not provide any evidence for the support of this opinion. In a situation where such assertion of a party brings at least the smallest conviction that may affect the outcome of the case, a body should then take any steps to obtain other types of evidence to support the allegations raised by the party. Only in the absence of such measures, the authority may issue a decision to the detriment of the asserting party. Another argumentation imposing an obligation on the party to support its claims with the available evidence measures is not reflected in the provisions of the Code of Administrative Procedure, therefore cannot be considered as obligatory. A similar position was presented by H. Knysiak-Molczyk, according to whom, regardless the position and the initiative of the parties in the investigation proceeding, the scope of the proceedings is to be specified by the body conducting the proceeding, and even completely passive behavior of the party and lack of initiative does not relieve the administrative body from the duty to accurately explain the facts of the case [11, p. 146].

It is worth noting that the civil procedure regulations do not contain requirements relating to the issue of how to determine the burden of proof. This issue has been generally regulated in the provisions of the Civil Code. Art. 6 of the Civil Code states that the burden of proof lays on the person who emerges legal consequences from this fact. However, taking under consideration the fundamental differences between civil and administrative (contradictory) procedure, the above rule in any way cannot find its application to the administrative proceedings, even if such proceeding involves several parties with conflicting interests.

The principle of objective truth specifies the sequence of using various means of proof. Namely, the body conducting the proceeding in the first instance should use the direct evidence, i.e. those creating the possibility of direct perception and establishing the truthfulness of a particular fact, for example inspecting original documents, or testimonies of witnesses of certain events. Only when the body is not able to obtain such evidence, it may then use for example copies of such documents or witness testimony [12].

The condition for realization of the principle of objective truth, as mentioned above, is a prior collecting all the evidence. This material is a component of certain means of evidence, which after its assessment constitute the evidence for explaining the facts. The principle of defining how to collect the material and how to assess individual means of evidence constituting the subsequent evidence is known as the principle of free evaluation of evidence. Assessment of evidence means continuing valuation, starting from the moment in which the evidence was conducted and found itself in the materials of the authority conducting the proceeding until the final determination of the facts and issuing a decision [13, p. 209]. This principle finds its normative reflection in Art. 80 of the CAP, the public authority assesses on the basis of all the evidence, whether the fact has been proven or not. This provision gives the authority freedom to conduct self-assessment (unfettered by any regulations) of each of the means of evidence. Freedom of self-assessment does not mean, however, that the authority undertaking the determination of the facts operates completely arbitrary. Assessment of the evidence, according to E. Iserzon should be based on compelling grounds, and be reflected in an appropriate justification [14, p. 155]. The same author formulates certain rules that should limit the freedom of action of the authorities in the course of evidence proceeding:

- application referring to the fact should be based on the evidence collected and checked by the authority,
- assessment of the facts of the case should be based on the overall evidence of the case,
- authority should make a particular assessment of the evidence for their particular suitability for the proceedings. Public administration body has the ability, after the comprehensive assessment, to refuse to believe individual evidence, but must as well justify this assessment. Because of the fact that CAP provisions do not regulate the grounds for an assessment of the evidence, it is postulated that the assessment is guided by the principle of life experience,
- objective assessment of individual evidence shall be in accordance with the principles of logic [15, p. 156].

The next two principles also strongly emphasize the need to develop the principles of objective truth during the process of findings. They are the principle of an open list of the means of evidence and the principle of equal power of the means of evidence.

Art. 75 of the CAP establishes a catalog of evidence of general administrative proceedings. In the design of the catalog of evidence legislator uses a phrase «evidence may include, in particular…» which provides an open catalog of evidence. In the above article, the legislator lists the most commonly used evidence such as documentary evidence, witness statements, expert opinion, statement and hearing of the party, but this treatment has only organizing significance. These means of evidence usually are called as named evidence in contrast to those that are not listed in the provisions of the Code and are called the unnamed evidence [16, p. 207].

The basic criterion for determining the admissibility to take specific evidence is the criterion of the usefulness of this measure to clarify the case to be decided by the authority conducting the proceeding. The second criterion is the fact that the performed piece of evidence cannot be contrary to the law. It refers to both, respect to the consistency of substantive law as well as procedural law, which sometimes sets the appropriate limitations relating to the inability to take certain evidence [17, p. 207].

Restrictions on carrying out certain evidence cannot in any case result from the provisions of domestic law [18, p. 379]. Confirmation of this thesis can be found in the judgment of the SAC of 16.11.1984 in which the Court stated: «The implementation of the principle of objective truth needs to allow as evidence anything that might help to clarify the facts, and is not contrary to the law (Art. 75 of the CAP). Different rules in the internal acts do not apply to individual cases resolved by a given social organization by issuing an administrative decision» [19].

The principle of equal power of the evidence clearly rejects any evaluation and hierarchical ordering of the evidence. The only exception to this rule is party hearing (art. 86 of the CAP), which can be carried out by the authority conducting the proceeding only upon the occurrence of certain premises prescribed by the provisions of the Code.

In the judgment of 9 March 1989 of the SAC stated: «...in the light of Art. 75 of the CAP it is unacceptable to use a formal theory of evidence for the claim that a given circumstance can be proven only with certain means of proof or by creating new rules for the use of the evidence» [20]. A similar position was contained in the judgment of the SAC of 25 July 2007; «The Polish administrative procedure a formal theory of evidence is not admissible, if according to it a given circumstance can be proven only by the specific evidence. Sometimes, however, the need for restrictions on evidence exists and can be introduced, but it requires a precise provision of primary legislation» [21]. It is worth noting that the failure to comply with the principle of equal power of all of the evidence and the adoption of a formal theory of evidence is treated as a flagrant violation of the law and leads to the annulment of the decision [22].

According to Art. 7 of the CAP, organs in the course of the proceedings shall take all necessary steps in order to accurately determine the facts – meaning the principle of objective truth applies not only to the phase related to determination of facts and issuing a decision, but also to any actions occurring in the course of those proceedings. These actions include inter alia: determine the competences of the body, competence of a particular employee to examine and settle the matter, the determination of the parties, to determine the content of the party request, the settlement of non-core issues such as the regularity of calls, notifications etc.

According to Art. 19 of the CAP authorities generally comply with their jurisdiction. Compliance with this requirement means that the authority on its own initiative shall, immediately after receiving the request to start a proceeding, test its jurisdiction without waiting for requests on the study of the jurisdiction from other entities. In its decision the Supreme Administrative Court of 24 October 2006 [23], it was assumed that the jurisdiction of a body cannot be presumed, unless such construction is deliberately introduced by the legislator. It follows that the authority before making a final assessment regarding its jurisdiction or lack of it, and transferring a request to another competent authority should examine the whole of the provisions relating to the legal and factual circumstances, which may also affect the determination of the proper body. In a situation where the authority determines not having jurisdiction even before the start of a proceeding, according to the disposition of Art. 64 of the CAP it shall immediately forward such application to the competent authority and issue in this matter an appealable decision. However, in a situation where a body has already started a proceeding and only later on found the lack of jurisdiction, it should pass a file to the competent authority with an ordinary letter and inform the party of the proceeding [24, p. 119]. The consequences of breaching the provisions on jurisdiction are very severe, according to Art. 156 of the CAP a decision issued by the wrong body results in the need for annulment of such a decision, so it is important at the very outset of the case to establish a competent authority to settle the matter.

Another important issue for the proper conduct of the proceedings is to determine an employee of the public body that is competent and authorized to settle the case. Competences to settle the proceeding arise from the position held, or disposal of the relevant authorization granted pursuant to Art. 268 of the CAP. Still it is possible, that a competent person with the appropriate authorization will not be entitled to settle the matter. This is a case in a situation when the prerequisites of Art. 24 of the CAP justify the exclusion of the employee from the settlement. The necessity to apply the principle of objective truth appears is the case of exclusion of the employee under the law, e.g. if the conditions of Art. 24 § 1 and 2 of the CAP occur. With optional exemption carried out pursuant to Art. 24 § 3 of the CAP the principle of objective truth is reduced to probability of some evidence indicating the inability of the particular employee to carry out a proceeding. When excluding the occurrence of the relevant evidence from the laws it must be one hundred percent confirmed in accordance with the principle of objective truth.

Implementation of the principle of objective truth is to start with a determination of the exact content of the party request, for inaccurate explanation of this request always leads to an incorrect outcome [25, p. 23]. In case of any doubt about the contents of the request body has the duty to call parties to clarify it pursuant to Art. 64 of the CAP. It should be noted that this obligation also exists in relation to the requests made by the party during the proceedings, e.g.: requests to carry out certain evidence, drawing copies of the files, etc.

Also, the issue of possessing process legitimacy requires the authorities conducting a proceeding to ascertain whether the entity actually has such legitimacy. Regardless of which of the concepts of the process legitimacy of the parties is adopted an objective or subjective one, the fact of possession of legal interest must be determined in accordance with the principle of objective truth. The difference comes down only to the point where data findings can be made. By adopting the objective concept of legal interest, the check whether the entity has legitimacy to bring the proceedings will take place prior to the initiation of proceeding, whereas the subjective concept this check can be made only during the proceedings, after his initiation [26, p. 326].

If the party due to circumstances beyond its control fails to meet the term to perform a particular act, it has the ability under Art. 58 of the CAP to submit an application to reopen a term. This request must be submitted in a period of seven days from the date of cessation of the cause of failure. Authority in such a situation should carefully examine the point at which cessation of the cause of failure and in the situation that more than seven days passed the authority should issue an order refusing to reopen the period. A similar solution should be used at the reopening of the case. A party to proceeding, pursuant to Art. 148 § 1 and 2 of the CAP issues a request on reopening of the proceedings to the public authority that issued the decision at first instance, within one month from the date on which the party became aware of the circumstances giving rise to the reopen. The party is therefore obliged to prove the date on which he/she learned of the circumstances giving basis for reopen, to the extent that the authority had sufficient belief that her application was received before the expiry of one month from the date on which learned of the circumstances constituting the basis for the resumption of the proceedings [27].

Summary. In the course of general administrative proceedings the principle of objective truth serves a crucial role and is valid in all stages of the proceedings, from the initiation to the phase of the administrative decision. The guarantees for the principle of objective truth are the provisions of chapter Nr. 4 of the CAP governing the way to carry out the evidence. These norms are in turn a natural consequence of the provisions contained in chapter two of the CAP – «General Rules of Administrative Procedure». The conclusion is that the principle of objective truth is one of the guiding principles of general administrative proceedings realized both in the determination by the facts of the case as well as for all other activities undertaken in the course.

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Нічипорук Я., Подлєсни М. Реалізація принципу об’єктивної істини у адміністративному процесі. В ході адміністративного судочинства основним обов'язком влади є встановлення фактичних обставин справи. Принцип об'єктивної істини визначає основні права і обов'язки державного органу для встановлення фактів і винесення адміністративне рішення у справі. Зроблено висновок, що принцип об'єктивної істини є одним з основоположних загальних принципів адміністративного процесу, що реалізуються як під час встановлення фактичних обставин справи, так і під час усіх інших видів діяльності, що здійснюються у адміністративному судочинстві. В ході адміністративного процесу принцип об'єктивної істини відіграє вирішальну роль і діє на всіх стадіях судочинства, від початку і до вирішення адміністративного спору. Гарантією здійснення принципу об'єктивної істини є положення глави четвертої Адміністративного процесуального кодексу Республіки Польща, які регулюють доказування. Ці норми, в свою чергу, ґрунтуються на положеннях глави другої «Загальні правила адміністративного судочинства» Адміністративного процесуального кодексу Республіки Польща.

Ключові слова: адміністративне провадження, принцип об'єктивної істини, доказування, докази.

Ничипорук Я., Подлесны М. Реализация принципа объективной истины в административном процессе. В ходе административного судопроизводства, основной обязанностью власти является установление фактических обстоятельств дела. Принцип объективной истины определяет основные права и обязанности государственного органа для установления фактов и вынесения административного решения по делу. Сделан вывод, что принцип объективной истины является одним из основополагающих общих принципов административного процесса, которые реализуются при установлении фактических обстоятельств дела, так и во время всех других видов деятельности, осуществляемых в ходе административного судопроизводства. В ходе административного процесса принцип объективной истины играет решающую роль и действует на всех стадиях судопроизводства, от начала и до разрешения административного спора. Гарантией осуществления принципа объективной истины являются положения главы четвертой Административного процессуального кодекса Республики Польши, регулирующей доказывание. Эти нормы, в свою очередь, основываются на положениях главы второй «Общие правила административного судопроизводства» Административного процессуального кодекса Республики Польши.

Ключевые слова: административное производство, принцип объективной истины, доказывание, доказательства.