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Administrative Sanctions as a Manifestation of State Coercion

Abstrakt

Sankcje administracyjne jako emanacja przymusu państwowego

Instytucja sankcji administracyjnej stanowi nieodłączny element władztwa państwowego, który polega na stosowaniu przymusu. Sankcja administracyjna ma stanowić skutek naruszenia prawa wywodzony z powszechnie obowiązujących przepisów prawa administracyjnego. W niniejszym artykule omówiono problematykę pojęcia i typologii sankcji administracyjnych w prawie polskim.

Słowa kluczowe: sankcje administracyjne, przymus państwowy, przymus administracyjny, prawo administracyjne

Abstract

Administrative sanctions are an integral part of the exercise of state power, which consists in using coercion. They are designed as consequences for violating legal regulations, derived from generally applicable provisions of administrative law. This article discusses the issue and the types of administrative sanctions under Polish law.

Keywords: administrative sanctions, state coercion, administrative coercion, administrative law

1. Preliminary issues

Not many theoretical papers in Poland undertake the concept of administrative sanctions in the doctrine of administrative law. As pointed out by

I. Niżnik-Dobosz, the institution of administrative sanctions is an inherent part of state power, which consists in the use of state coercion (including administrative coercion), especially in situations of executing orders or obeying the prohibitions laid down by an administration or directly deriving from the provisions of universally applicable law. The activity of public administration in the discussed sphere is and will always be determined by the legal obligation to take effective actions aiming at their full realization and leading to the harmony of existing situations or events with existing normative acts[1].

There is no doubt that administrative coercion is a form of state coercion, constituting a special right of the public administration to implement its own measures with its own means without having to involve other authorities (including the judiciary). Importantly, the concept of administrative coercion is linked in the literature of the subject with the guarantees of the rule of law[2]. It is more interesting that more and more often in literature dedicated to the functioning of the public administration, a need to develop other motivations than only apprehension against coercion is accented[3]. Administrative coercion – as an institution of administrative law – can above all serve to fulfil administrative obligations imposed mainly via the content of administrative decisions, which the addressees do not wish to perform on a voluntary basis. The primary purpose of administrative coercion is for an individual to obey an order issued by a public authority. This constraint will be applied if the individual does not behave in the manner prescribed by law.

This article discusses the concepts and typology of administrative sanctions and the specific type of sanctions that are administrative fines.

2. The essence of administrative sanctions and their typology

In legal theory it is stated that a sanction is related to the threat of directing a certain burden (adverse effect) towards an entity that, in carrying

1 I. Niżnik-Dobosz, *Aksjologia sankcji w prawie administracyjnym*, [in:] *Sankcje administracyjne. Blaski i cienie*, M. Stahl, M. Lewicka, R. Lewicki (eds.), Warszawa 2011, p. 121.

2 A. Łopatka, *Wstęp do prawoznawstwa*, Warszawa 1957, p. 178 i 179.

3 E. Kruk, *Przymus administracyjny*, „Administracja: teoria, dydaktyka, praktyka" 2009, Vol. 2 (15), p. 107.

out a certain action, violates a norm that applies to it/him. Sanctions are also used in administrative law. An administrative sanction is a legal instrument whose task is to impose a burden on an individual who does not perform administrative law obligations[4]. These obligations may arise directly from a normative act (law) or from an act of executive regulation or decision applying that law (administrative decision)[5].

The notion itself of an 'administrative sanction' has so far not received its own separate definition in positive law and is a product of legal language.[6] Administrative sanctions constitute a type of burden for committing an administrative offense through which should be understood an act of unlawful conduct or unlawful abandonment of an order of conduct that results in violation of the norms of administrative law. There is no doubt that the administrative sanction should be seen as an instrument of administrative power that is not a consequence of committing an offense, but is a result of the coming into existence of a state that is unlawful (in terms of administrative law).

According to one of the proposed approaches, administrative sanction constitutes the result of a breach of the law deriving from generally applicable administrative law,[7] which allows for the elimination from the scope of administrative sanctions any burden arising from the provisions of other branches of law. Orders and prohibitions resulting from the provisions of administrative law may be secured, among other ways, by criminal sanction or civil law penalty (e.g. compensation) – these do not constitute an administrative sanction. In this regard, however, from the scope of administrative sanction are also excluded enforcement penalties and sanctions of invalidity, which are based on the provisions of administrative law.

According to one of the proposed views, administrative sanction is intended to constitute an outcome of a breach of law deriving from generally

4 See: J. Filipek, *Sankcja prawna w prawie administracyjnym*, „Państwo i Prawo" 1963, No. 12, p. 87.

5 R. Stankiewicz, *Prawo administracyjne*, Warszawa 2011, p. 79.

6 M. Wincenciak, *Sankcje w prawie administracyjnym i procedura ich wymierzania*, Warszawa 2008, p. 13.

7 R. Lewicka, M. Lewicka, J. Wyporska-Frankiewicz*, Kilka uwag na temat przedawnienia sankcji administracyjnych,* [in:] *Sankcje administracyjne. Blaski i cienie*, M. Stahl, M. Lewicka, R. Lewicki (eds.), Warszawa 2011, p. 552.

applicable provisions of administrative law[8], which allows the elimination from the scope of administrative sanction all burdens arising from other branches of law. Orders and prohibitions resulting from the provisions of administrative law may be secured, among other ways, by criminal sanction or civil law penalty (e.g. compensation) – these do not constitute an administrative sanction. In this regard, however, from the scope of administrative sanction are also excluded enforcement penalties and sanctions of invalidity, which are based on the provisions of administrative law. M. Wincenciak notes, however, that administrative sanction may also be based on a provision of a generally applicable law deriving from non-compliance with the obligation resulting from the act of the application of law[9].

H. Nowicki, in turn, defines an administrative sanction as a burden, defined in the sanctioning norm and directly deriving from administrative law provisions, imposed for violating the (sanctioned) norm of this law. One must admit that this notion "integrates well into the general concept of sanctioned norms and sanctioning norms"[10]. Under administrative law, the first category of norms (sanctioned norms) includes those that describe the factual state as well as the rights and obligations that are to arise from its coming into existence. On the other hand, sanctioning norms define the means of coercion, responsibility and other negative consequences for failure to comply with the obligations imposed by sanctioned norms. The sanctioning norms are, in fact, a means of ensuring the observance and implementation of sanctioned norms. They determine the content of the relationship between individuals and administrations in situations in which these individuals, despite their obligations, do not comply with the norms of administrative law[11]. Administrative sanction, therefore, is directly an outcome of the regulations of administrative law and constitutes a burden (as defined in the sanctioning norm) for violating the (sanctioned) norm of this law[12].

According to J. Filipek, the administrative sanction is the totality of legal guarantees securing the implementation of the law in relation to all

8 R. Stankiewicz, *Prawo…*, *op. cit.*, p. 80.

9 M. Wincenciak, *Sankcje…*, *op. cit.*, p. 73.

10 R. Lewicka, M. Lewicka, J. Wyporska-Frankiewicz, *Kilka uwag…*, *op. cit.*, p. 556.

11 J. Filipek, *Sankcjonowane i sankcjonujące stosunki administracyjnoprawne,* [in:] *Księga pamiątkowa prof. E. Ochendowskiego*, Toruń 1999, p. 79.

12 H. Nowicki, [in:] *System Prawa Administracyjnego. Prawo administracyjne materialne*, R. Hauser, Z. Niewiadomski, A. Wróbel (eds.), Vol. 7, Warszawa 2012, p. 635.

situations in which the perpetrator behaved in a manner incompatible with the content of the legal norm[13]. In the case of this definition, the burden is therefore shifted from repression to a guarantee aspect that secures the legal order. The sanction is not only to discourage the addressees of legal norms from non-compliant proceedings, but to ensure that any violations of the law will be remedied and thus that the legal order will be secured. According to T. Kocowski, administrative penalties are "the adverse effects of a breach of legal obligations involving the loss or limitation of entitlements or the imposition of an obligation on the person who committed such an infringement, forming at the same time his legal position[14]". This is a fairly broad definition that allows the concept of administrative sanctions to include such acts whose repressive nature is essentially debatable. An example may be a demolition order for a building built without the required building permit (Article 48 (1) of the Construction Law), which undoubtedly constitutes a burdensome obligation on the investor (but it does not seem to serve the purpose of repression but rather restitution – the restoration to a state in keeping with the law[15]).

I. Niżnik-Dobosz defines sanctions in administrative law as potential burdens (unfavourable, negative legal and factual outcomes) which for all entities of administrative law foresee a sanctioning norm addressed to public authorities in the case of potential lack of realization, by an entity obligated by law, of decisions sanctioned by administrative norms[16]. In this case, it is worthwhile pointing out the emphasis placed on the administrative sanction as part of the sanctioning norm addressed to the public authority.

Administrative sanctions are usually analysed in a formal manner, from the normative point of view, i.e. as a burden resulting from the provisions of law[17]. as opposed to a realistic approach that emphasizes

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13 J. Filipek, *O definicji sankcji prawnej*, „Państwo i Prawo" 1965, Vol. 3, p. 873 and others.

14 T. Kocowski, *Akty bieżącego nadzoru reglamentacyjnego*, [in:] *Środki prawne publicznego prawa gospodarczego*, L. Kieres (eds.), Warszawa 2007, p. 94–95.

15 M. Rypina, *Art. 48 – commentary*, [in:] *Prawo budowlane. Komentarz*, A. Plucińska-Filipowicz, M. Wierzbowski (eds.), Warszawa 2015, p. 47; R. Dziwiński, *Glosa do wyr. NSA z 17.4.2000 r., IV SA 394/98,* „Orzecznictwo Sądów Polskich" 2000, No. 7–8, p. 107 and others; otherwise: M. Laskowska, *Glosa do wyr. WSA z 29.7.2008 r., VII SA/Wa 516/08,* „Gdańskie Studia Prawnicze – Przegląd Orzecznictwa" 2010, Vol. 2, p. 97 and others.

16 I. Niżnik-Dobosz, *Aksjologia sankcji…*, *op. cit.*, p. 121.

17 H. Nowicki, [in:] *System Prawa…*, *op. cit.*, p. 634.

sanction as an act of law enforcement[18]. It is also possible to deal with administrative sanctions at the psychological and societal level[19].

3. Typology of administrative sanctions

The doctrine also outlines, in relation to administrative sanctions, constitutional, procedural and enforcement administrative sanctions, as well as sanctions related to inter-entity procedural law[20]. Constitutional sanctions are those that relate to the relationship between public administration bodies, e.g. in the structure of supervision or in internal relations, e.g. disciplinary penalties[21]. Procedural sanctions are sanctions related to administrative proceedings to safeguard the proper conduct of such proceedings (e.g. penalties for the failure to appear despite the summons of an administrative body, e.g. article 88 of the Code of Administrative Procedure), and enforcement sanctions are sanctions to enforce the obligation that is the subject of execution proceedings, for example, a fine for the purpose of coercion[22]. Enforcement sanctions show far-reaching separateness from other administrative sanctions, especially from administrative punishment[23]. The doctrine notes that sanctions resulting from execution enforcement serve primarily to achieve effective enforcement of a duty imposed on the individual, rather than repression[24].

While the essence of administrative coercion lies in striving to enforce an administrative obligation on the addressee, the administrative sanction is an additional element associated with the pursuit of the protection of the previously infringed public interest. This may result in the administration triggering a specific burden associated with:

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18 M. Lewicki, *Pojęcie sankcji prawnej w prawie administracyjnym*, „Państwo i Prawo" 2002, Vol. 8, p. 6.

19 J. Śmiałowski, *Pojęcie i analiza sankcji prawnej*, „Zeszyty Naukowe Uniwersytetu Jagiellońskiego" 1962, Vol. 9, p. 263.

20 H. Nowicki, [in:] *System Prawa…*, *op. cit.*, p. 636.

21 *Ibidem*, p. 637.

22 J. Filipek, *Sankcjonowane i sankcjonujące…*, *op. cit.*, s. 80.

23 L. Klat-Wertelecka, *Sankcja egzekucyjna w administracji a kara administracyjna*, [in:] *Sankcje administracyjne. Blaski i cienie*, M. Stahl, M. Lewicka, R. Lewicki (eds.), Warszawa 2011, p. 72.

24 M. Lewicki, *Pojęcie sankcji…*, *op. cit.*, p. 6.

- the imposition of a specific financial penalty of an administrative nature intended to cause the addressee to suffer certain burdens due to non-compliance with the order or prohibition, or
- the use of certain enforcement measures to enforce another administrative obligation (to cause a burden in an indirect, anticipatory manner, in order to achieve the intended result), or
- limiting or withdrawing previously granted – by the state – powers to a given entity.

Administrative sanctions can thus take on a variety of forms, distinguished from the point of view of the cause of their occurrence and the effects they are expected to achieve. Therefore, amongst typical administrative sanctions, we include:

- administrative financial penalties – they may be imposed as a burden for acting without the required by law permission of the organ, or for violation of a prohibition or injunction specified by a norm of law or resulting from an administrative decision;
- enforcement type sanctions – used to force a given entity to perform a specific administrative obligation (administrative sanctions of an enforcement nature do not include the entire system of enforcement law, but only those indirect measures whose task is to force the relevant entity to perform the enforcement obligation that is to be borne by it/him – a fine for the purpose of coercion);
- sanctions of the deprivation or limitation of rights (concessions, permits, permission to carry out a specific activity authorized by an authority by an administrative decision)
- burdens related to the deprivation or limitation of a particular right.

4. Administrative fines as a type of administrative sanction

There have long been voices challenging whether the institution of fines, imposed by the decisions of administrative bodies, belongs in the framework of the administrative law system, placing them in the broadly defined criminal law system[25]. Nevertheless, the majority of views (rightly

25 For example, compare included views in: E. Szumiło-Kulczycka, *Prawo administracyjno-karne*, Kraków 2004, p. 45 and others.

so) treat such a sanction as one type of administrative sanction[26]. Therefore, this institution should be analysed, individually, each time, from the point of view of norms and the structure of administrative law. The imposition of an administrative fine is reduced to the issuance by an organ of public administration of an order to pay the amount specified in the act of application of the law by the entity that did not perform or performed inappropriately the administrative burden that had been placed upon it[27].

The Constitutional Court emphasized that the process of imposing fines should be seen in the context of the application of instruments of administrative authority. Administrative punishment – in the opinion of the Constitutional Court – is not a consequence of committing a forbidden act, but a result of the coming into existence of an unlawful state, which results in that the assessment of the offender's attitude to the offense does not fit into the regime of objective liability[28].

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Both in terms of doctrine and in case law, it is indicated that administrative fines are primarily intended to be preventive. The Constitutional Court stated that fines constitute measures aimed at mobilizing individuals to timely and properly perform their duties for the benefit of the State and are automatically applied by law and are of preventative importance. By announcing the negative consequences that will occur in the event of a breach of the obligations set out in the law or in an administrative decision, they motivate the performance of statutory duties, and the basis for the application of the penalties is the objective violation itself of the law[30]. An administrative fine is intended to discourage breaches of duty and to prevent repeated infringements of designated obligations in the future[31].

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26 M. Lewicki, *Pojęcie sankcji…*, *op. cit.*, p. 66.

27 See: L. Staniszewska, *Materialne i proceduralne zasady stosowane przy wymierzaniu administracyjnych kar pieniężnych*, [in:] *Administracyjne kary pieniężne w demokratycznym państwie prawa*, M. Błachucki (eds.), Warszawa 2016, p. 29.

28 Judgment of the Constitutional Court of 31 March 2008, SK 75/06.

29 L. Staniszewska, *Materialne i proceduralne…*, *op. cit.*, p. 29.

30 Judgment of the Constitutional Court of 25 March 2010, P 9/08.

31 Por. m.in. wyr. NSA z dnia 21 lutego 2012 r., II FSK 1442/10.

By announcing the negative consequences that will occur in the event of a breach of the obligations set out in the law or in an administrative decision, it motivates the addressees to perform their statutory duties[32].

This does not mean, of course, that the sanction of a particular type should fulfil only this one function. Administrative financial penalties also serve as a restitution function, although they do not negate the possibility of fulfilling their repressive function, which, however, cannot dominate the other functions. The primary purpose of administrative financial fines should, however, be a protective function in relation to the administrative order, and only at the end of the hierarchy of importance as a repressive measure[33]. Nevertheless, the Constitutional Court recognizes, in the function allotted to an administrative fine, that which distinguishes it from a criminal measure. It recognizes that the nature of criminal sanctions is repression, while that of administrative penalties is prophylactic and prevention (the latter are not punishments for the offense, but merely a coercive measure to ensure the implementation of executive and administrative tasks). However, its implementation basically determines whether the sanction is essentially criminal or administrative[34].

It should be noted that since 1 June 2017 the Administrative Procedure Code[35] has introduced the regulation of administrative financial fines in Poland. According to Art. 189 b, an administrative financial penalty means a monetary penalty imposed by a statute imposed by a public administration authority through an administrative decision following an infringement of the law based on the failure to comply with, or a breach of, a prohibition against an individual, a legal entity or an organizational unit that does not possess the status of a legal person. By means of the aforementioned amendment, the statute was supplemented with a new section that contains, most of all, general grounds for imposing such sanctions and using these types of sanctions by administrative bodies. It includes guidelines for the imposition of penalties, as well as

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32 Judgment of the Supreme Administration Court of 18 March 2015, I GSK 1456/13.

33 I. Niżnik-Dobosz, *Aksjologia sankcji…*, *op. cit.*, p. 136; A. Jaworowicz-Rudolf, *Funkcje sankcji administracyjnej i odpowiedzialności administracyjnej w ochronie środowiska*, Warszawa 2012, p. 223; see also M. Wincenciak, *Sankcje w prawie…*, *op. cit.*, p. 100.

34 Judgment of the Constitutional Court of 14 October 2009, Kp 4/09.

35 The Act of 14 June 1960 – the Administrative Procedure Code (consolidated text: Journal of Laws 2017 No. 98, item 1257, as amended).

rules for waiving penalties and granting relief. It also introduces a provision governing the accrual of interest from lateness and a prescription for imposing and enforcing administrativeness[36].

In keeping with the example of existing penal liability regulations, a norm has been introduced into the Code of Administrative Procedure whereby, if, during the time in which a decision is issued concerning an administrative financial penalty, a law, other than that which existed at the time of the failure to fulfil the obligation for which the penalty is to be imposed, is in force, then the new law is applicable; if, however, it is more relative and pertinent for the parties, then the previous law should apply[37]. In turn, in art. 189 d, what are known as directives of the administrative financial penalty are indicated. These directives constitute specific normative conditions affecting the determination of the amount of administrative financial penalties. These circumstances, like in the case of criminal liability, may have the effect of either mitigating or further encumbering the liability of the party upon whom the administrative financial penalty is imposed.

In addition, art. 189g provides for the introduction of the institution of the expiration of the possibility of imposing administrative penalties in the form of an administrative financial penalty by the issuing of an administrative decision (expiration of the imposition of a penalty) and the separate expiration of the obligation to perform obligations resulting from the fact of the imposition of an administrative financial penalty on the basis of a previously issued administrative decision (expiration of enforcement of a penalty).

The introduction of the above regulation will undoubtedly strengthen the guarantee system for the protection of the substantive rights of the party threatened with the imposition of an administrative financial penalty.

5. Administrative sanctions and procedural fairness

There is no doubt that putting administrative sanctions most material meaning will have keeping the procedural fairness. A vast jurisprudence

36 R. Stankiewicz, *Regulacja administracyjnych kar pieniężnych w Kodeksie postępowania administracyjnego po nowelizacji*, „Radca Prawny. Zeszyty Naukowe" 2017, Nr 2, pp. 9–32.

37 See art. 189 of the Administrative Procedure Code.

of the Constitutional Court[38] identifies procedural fairness exactly so as a part of the democratic-state-of-law clause. The Constitutional Court underlines that the principle of the democratic-state-of-law demands that all the proceedings—that are conducted by state institutions to decide the individual cases (so not only judicial proceedings)—should meet the requirements of the procedural fairness[39]. The CC has identified the values of procedural fairness that shall always be guaranteed by any procedure[40]. The first value is the possibility to be heard. It shall be guaranteed at least by the right to have access to the case file and the right to comment on the evidence contained in it as well as the right to file the motion for evidence[41]. The second value is the precise and understandable justification of the decision[42]. Third, the CC is of the opinion that in case of administrative bodies the review of their decisions by a court must be guaranteed; the court should exercise the control over the legality of the administrative proceedings[43]. Fourth, the duration of the proceedings should be reasonable[44].

The Constitutional Court decided on many occasions about the constitutionality of administrative laws prescribing the grounds for the imposition of administrative sanctions. As M. Bernatt points out, that „the Constitutional Court was faced with constitutional questions concerning the rules of liability and the scope of procedural rights the parties to administrative proceedings have. The Constitutional Court attempted

38 Quoting for M. Bernatt (see M. Bernatt, *Tailor-Made Rules Needed: a Balanced Approach to Imposition of Administrative Sanctions in Poland*, "Jean Monnet Working Paper" 2014, No. 22/14, p. 6 and others).

39 See the Constitutonal Court judgements of: 14 June 2006, K 53/05; 15 December 2008, P 57/07; 11 June 2002, SK 5/02; 10 June 2003, SK 37/02; 22 September 2009, P 46/07; 28 July 2004, P 2/04.

40 The Polish Constitutional Court accepts differentiation of level of the guarantees depending on the procedure and the case decided; see the judgment of 1 July 2008, SK 40/07.

41 See the Constitutional Court judgments of: 11 June 2002, SK 5/02; 6 December 2004, SK 29/04 and in case K 53/05, supra note 20.

42 See the Constitutional Court judgment in case K 53/05, supra note 20; the judgment of 16 January 2006, SK 30/05 and 13 May 2007, SK 68/06.

43 See the Constitutional Court judgments: of 7 July 2009, K 13/08 and in cases: P 46/07, supra note 20; P 57/07, supra note 20.

44 See the Constitutional Court judgments: of 26 February 2008, SK 89/06 and in case P 57/07, supra note 20.

to establish abstract criteria that distinguish administrative liability and administrative sanctions from criminal liability and criminal penalties and so clarify when the more automatic rules of imputation of liability and more limited scope of procedural rights characteristic for Polish administrative regime are constitutionally acceptable[45]. In the literature the doubts were raised whether the Constitutional Court managed to establish clear and convincing way to distinguish administrative regime from criminal one[46].

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45 M. Bernatt, *Tailor-Made Rules…*, *op. cit.*, p. 8–9.

46 M. Wyrzykowski, M. Ziółkowski, *Sankcje administracyjne w orzecznictwie Trybunału Konstytucyjnego*, [in:] *System Prawa Administracyjnego. Konstytucyjne podstawy funkcjonowania administracji publicznej*, R. Hauser, Z. Niewiadomski, A. Wróbel (eds.), Vol. 7, Warszawa 2012, p. 370–374.

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