

UDC 342.92

DOI <https://doi.org/10.32837/apdp.v0i91.3239>*O. O. Markova*

## OVERVIEW OF THE GENESIS OF THE LEGAL REGULATION OF ADMINISTRATIVE PROCEDURE IN POLAND

Administrative procedure in Poland has been shaped by the Austrian system of procedural law. Austria is considered to be the country with the most extensive history of positive administrative procedural law, where the first act regulating administrative procedure was adopted. This act became the basis for the Polish legal act containing rules on general administrative procedure. Due to the crisis of the absolutist era, Austrian scholars Adamovich and Funk formed a legal position regarding administrative procedure, which in Polish law is called “postępowanie” [1, p. 292], which translated means proceedings to be regulated uniformly – by one law. Before 1925 administrative procedure was not regulated by law. Only as a result of the activities of the Administrative Tribunal in Vienna begin to form rules on the observance of due procedure on the part of administrative bodies in their decision-making process in relation to citizens. The Statute of the Tribunal provided for the annulment of court decisions (Entscheidungengeri) and rulings (Verfügungengeri), which were appealed because of “braki postępowania” [2].

In earlier periods, attempts to define and standardize procedure in administrative bodies were made by individual ministries and other superior bodies, which issued instructions and guidelines binding on the other bodies as part of their powers. However, these attempts were unsuccessful, as each of the bodies issuing such internal acts ignored the acts of the other bodies, resulting in a breach of procedure.

It was the jurisprudence of the Administrative Tribunal that started the process of creating uniform rules on administrative procedure and became the basis for the codification of these rules in Austria in 1925 [3]. We would like to note that the Austrian General Administrative Procedure Act is considered by many scholars as the first existing law in Europe. Even though the law enshrined the internal functioning of administrative bodies within the authoritarian regime, the legal formalism of the law was valuable, in terms of procedural guarantees it provided to citizens [4, p. 324]. Poland had a long tradition of administrative codification, it not only adopted one of the earliest codes of administrative procedure in 1928, but the Polish Constitution of 1921 was the vanguard in enshrining certain principles of administrative procedure [5, p. 130].

According to the doctrine, the codification of the rules of administrative procedure in 1925 provided a higher level of legal certainty, unified and simplified the application of the rules of administrative procedure, and (as a result of the jurisprudence of the Austrian Administrative Tribunal and the Constitutional Tribunal) consolidated the basic principles and procedural rights for individuals contained in the General Administrative Procedure Act. These procedural principles, which were expressed through the rights of procedure participants, included the principle of hearing

the parties, the principle of establishing the facts on the basis of the evidence gathered, the obligation of the authorities to justify the decision taken and the admissibility of various legal measures (in particular the reopening of proceedings, if there are grounds for doing so).

The successor country to the Austrian experience in the field of administrative procedure was Poland both in the question of the legal regulation of administrative procedure and in the nature of the model of administrative procedure. The proof of this is the legislative activity of the Polish legislator, the President and the activity of the Supreme Administrative Court of Poland.

The first full Polish codification of administrative procedural law took place on 22 March 1928 in the form of decrees issued by the President of the Republic of Poland having the force of law: on administrative proceedings, on compulsory proceedings in administration, and on criminal and administrative proceedings. The list of adopted laws is similar to the Austrian ones mentioned above.

The Presidential Decree on Administrative Proceedings came into force on 01.07.1928 and was formally in force until 01.01.1961, until the Code of Administrative Proceedings came into force [6]. The legislator took as a basis the Austrian Administrative Procedure Act of July 21, 1925. The jurisprudence of the Supreme Administrative Court of Poland also had a significant impact on the interpretation of the provisions on administrative proceedings. It was an administrative court established by the 1922 Act on the Supreme Administrative Court, the model for which was the Vienna Administrative Court. Subsequently, the Republic of Poland adopted the so-called German model of administrative court system, characterized by the existence of separate administrative courts (tribunals) within the judicial system, established solely for the purpose of resolving disputes between the citizen and the public administration.

The judicial activity of the Supreme Administrative Court was terminated with the outbreak of the Second World War, however, some provisions interpreting the norms of administrative procedural law retained their legal force and “usefulness” for administrative proceedings.

The 1928 Decree of the President of the Republic of Poland on Administrative Procedure formally entered into force after the end of the Second World War. Nevertheless, the importance of this act was weakened by the following reasons: first, the absence of a codified general administrative procedure, and second, the inclusion of procedural provisions in acts regulating the sphere of administrative law. On the basis of the principle *legis specialis* these provisions took precedence over the general norms of the 1928 Law “On Administrative Procedure” and were influenced by procedural law. Another example of the actual degradation of procedural rules was the adoption by the Council of State and the Council of Ministers of a joint decree of 14 December 1950 on the handling of appeals, complaints from the public and the press. The institute of complaints and petitions provided for in this decree was borrowed by the Polish law from the Soviet legal system and was based on *actio popularis*. However, the provisions of the Decree were not harmonized with the provisions of the Presidential Decree on administrative procedure, which allowed for dual challenges of administrative deci-

sions, even contrary to the principle of stability of final decisions (*stabilności orzeczeń ostatecznych*).

This necessitated the harmonization of regulations on administrative procedure, which resulted in the adoption of the Code of Administrative Procedure on June 14, 1960. This act unified the scattered provisions of the administrative procedural law. The biggest influence on Polish law and its contents, and particularly on administrative procedure, was caused by events that have taken place since 1944. The national liberation of Poland coincided with the social revolution. It culminated in the destruction of the old bourgeois statehood and the establishment of the People's Republic. This put Poland on the path of socialism and affected the Polish administrative procedure, which was seen as part of the basic legislation aimed at strengthening the fundamental guarantee of the rule of law in the state. These changes were the main reason that led to the need for a new codification of administrative procedure in place of the administrative procedural acts of 1928. The new procedure had to take into account the fundamental changes in the social and economic sphere of the State, which had to serve the interests of workers and be controlled by them. The new code was intended to create a procedure that would ensure harmonious cooperation between administration and the citizen, while at the same time making it possible, through the procedure, to protect the rights of citizens in cases of misuse of their powers by the authorities. The preparation of the new administrative procedure involved a national debate, the results of which were taken into account by the parliament when it adopted the Code of Administrative Procedure in 1960. The introduction of this code unified the scattered provisions of administrative procedural law. The Code initially enshrined provisions on the general administrative procedure and the complaints and petitions procedure. However, in 1980, the scope of the Code of Administrative Procedure was broadened by including new proceedings: proceedings for the issuance of certificates, in matters of resolving jurisdictional disputes between administrative authorities and courts of general jurisdiction. In 1990, the Code also included proceedings on individual cases conducted by local governments [7].

Considering the gradual development of the Code in the direction of expanding the number of proceedings it regulated, we assume that the Polish legislator tried to unite in one act the most important proceedings for the society with the aim of their unified regulation. The Code enshrined general rules and principles of administrative proceedings, concerning participation and involvement of citizens in the procedure affecting their rights, justification of decisions as well as forms of appeal and revision of administrative decisions.

There is a separate chapter that sets out provisions for the involvement of the prosecutor in administrative proceedings. In matters of appeal in first instance, the focus is on appeals to higher administrative authorities. Since its entry into force in 1960, the Polish Code of Administrative Procedure has been amended in response to changing political ideas and social conditions and ongoing administrative reforms.

To a greater extent the Polish model of administrative procedure is characterized by the jurisdictional nature indicated by the principles of administrative proceedings, the structure of administrative proceedings. The general administrative pro-

cedure is similar in its structure to court proceedings, consisting of similar stages and phases.

However, the reflection of new provisions in the code testify to the partial emergence of elements of the third generation model of administrative procedure associated with convergence, globalization and membership of the European Union, which have influenced the introduction of relevant amendments to the Code of Administrative Procedure: for example, administrative European cooperation (Section 8a), the principle of peaceful settlement of cases (Article 13), the use of mediation in administrative proceedings (Article 96a).

Administrative procedure in Poland is a result of historical development caused by objective laws and social development. Historical and legal developments in Austria had a decisive influence on the formation of the classical jurisdictional model of administrative procedure in Poland. After Poland became a member of the EU, however, elements of the third generation of administrative procedure started to appear in the model of administrative procedure: European administrative cooperation, mediation, the principle of amicable settlement of the case, which is definitely a positive development. The changes taking place in Polish administrative procedure ensure effective implementation of EU law in the national legislation.

A brief overview of the genesis of the legal regulation of administrative procedure makes it possible to conclude that Poland was influenced by the Austrian legislative experience and the activities of the Vienna Administrative Tribunal.

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### **Summary**

**Markova O. O. Overview of the genesis of the legal regulation of administrative procedure in Poland. – Article.**

In this article the author conducted a study related to the consideration of historical and legal issue of the emergence of administrative procedure in Poland. The historical and legal events which influenced the formation of administrative procedure in Poland have been analyzed. Poland was a successor country to the Austrian experience in the field of administrative procedure both in the question of legal regulation of administrative procedure and in the nature of the model of administrative procedure. A proof of that is the

legislative activity of the Polish legislator, the President and the activity of the Supreme Administrative Court of Poland. The first full Polish codification of administrative procedural law took place on 22 March 1928 in the form of Decrees issued by the President of the Republic of Poland having the force of law: on administrative proceedings, on compulsory proceedings in administration, and on criminal and administrative proceedings, and on executive proceedings in administration, which were in effect until the adoption of the Code of Administrative Procedure in 1960. The legislator took as a basis the Austrian Administrative Procedure Act of 21 July 1925. The jurisprudence of the Supreme Administrative Court of Poland has also had a significant impact on the development and interpretation of provisions on administrative proceedings.

Considering the gradual development of the Code towards increasing the number of proceedings regulated by it, we can affirm that the Polish legislator aimed at combining the most important proceedings in a single act in order to create a unified approach.

The new Code created a procedure that allowed for a harmonious relationship between the administration and the citizen, while at the same time providing for the possibility for citizens to defend their rights in cases of abuse of power by the authorities.

*Key words:* administrative procedure, historical and legal events, genesis of legal regulation.

### Анотація

*Маркова О. О.* Огляд генези правового регулювання адміністративної процедури в Польщі. – Стаття.

У цій статті автор досліджує історико-правовий аспект виникнення адміністративної процедури в Польщі. Були проаналізовані історико-правові події, що вплинули на становлення адміністративної процедури в Польщі. Польща була країною- правонаступником австрійського досвіду у сфері адміністративної процедури як у питанні правового регулювання адміністративної процедури, так і в характері моделі адміністративної процедури. Доказом цього була законотворча діяльність польського законодавця, Президента і діяльність Вищого адміністративного суду Польщі.

Перша повна польська кодифікація адміністративно-процесуального права відбулася 22 березня 1928 року у вигляді Указів, виданих Президентом Республіки Польща, які мали силу закону: про адміністративне провадження, про примусове провадження в адміністрації, а також про кримінально-виконавче провадження, про виконавче провадження в адміністрації, які діяли до моменту прийняття Кодексу про адміністративне провадження в 1960 році.

За основу законодавець взяв австрійський Закон про адміністративну процедуру від 21 липня 1925 р. Судова практика Вищого Адміністративного суду Польщі також мала значний вплив на розробку і тлумачення положень про адміністративне провадження. З огляду на поетапний розвиток кодексу в напрямі розширення кількості проваджень, які він регулював, ми можемо стверджувати, що польський законодавець прагнув об'єднати найбільш важливі провадження в одному акті з метою вироблення уніфікованого підходу до адміністративної процедури.

*Ключові слова:* адміністративна процедура, історико-правові події, генезис правового регулювання.