Кмечик З. Р. Психическая болезнь и умственная отсталость как препятствия к заключению брака в польском семейном праве. Статья анализирует – в свете польского семейного права – вопрос возможности вступления в брак и его сохранение в случае психической болезни или умственной отсталости одного из супругов. В начальной части статьи обсуждаются условия вступления в брак, предусмотренные для психически больных и умственно отсталых лиц. Автор объясняет при этом, как нужно понимать термины «психическая болезнь» и «умственная отсталость» в контексте этого исследования. Затем представлены аргументы как критиков действующих положений (как дискриминирующих психически больных и умственно отсталых лиц), так и их сторонников, а также позицию автора статьи. Разграничены ситуации, когда психическая болезнь одного из супругов может быть основанием для объявления брака недействительным, а также когда мы имеем дело с валидацией (процедурой подтверждения действительности) такого брака, исключающей возможность его аннулирования. Автор затронул также два других вопроса, важных с точки зрения действительности брака: возникновение психической болезни после заключения брака и выздоровление после психической болезни.

Ключевые слова: психическая болезнь, умственная отсталость, дискриминация, заключения брака, объявление брака недействительным, валидация брака.

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J. Niczyporuk, M. Grzeszczuk

Evolution of Participation Forms of Social Organizations in the Polish Administrative Proceeding

The issue of forms of participation by social organizations in the Polish administrative proceedings is an interesting subject of research. Especially important seems to be a demonstration of the evolution process of this field. Occurring changes undoubtedly arise from the needs to adapt the legal rules to the changing reality. Reflections on this subject are important from the point of view of both entities, those administrating and administered ones.

Key words: administrative proceeding, social organization, forms of participation in the administrative proceedings, the participants of the administrative proceeding.

Presentation of the scientific problem and its significance. According to the existing provisions of the Polish Administrative Proceedings Code, participation of social organizations in administrative proceedings can take different forms, namely participation in a role of authority conducting the proceeding, as a party to the proceeding, a participant with the rights of the party and the other participant to the proceeding. Research is to demonstrate that the current state of the binding law in this regard is the result of a noticeable evolution in forms of participation by social organizations in administrative proceedings. Indicated scientific problem is essential both for administrative bodies, as well as participants in the administrative proceedings.

Main content and justification of the study results. According to Art. 1 para. 2 of the Code of Administrative Procedure [28] social (community) organization bodies are empowered to conduct administrative proceedings. The basis for the exercise of this function will provide either direct provision of universally binding law, or allowed by such a provision agreement between a public authority and «the other entity». The case law indicates numerous cases of conducting administrative proceedings by the social organizations [1, 2, 3]. It should be stressed that the procedural position of authority conducting administrative proceedings binds with possessing competences by a specified entity to arbitrate individual cases by an administrative decision. At the same participation of the social organization body as the authority conducting the administrative proceeding is not indifferent to the realm of administrative litigation, namely in accordance with Art. 32 of the Law on proceedings before administrative courts [4] in the administrative proceeding parties are the applicant and the authority whose action or inaction is the subject of the complaint. In this case, the litigation against the action or inaction of the social organization body takes the process effect. At the same time it is related to the occurrence of a number of procedural rights and obligations on the side of the social organization body.

Social organization may be involved in administrative proceedings as a party to the proceeding. In accordance with Art. 28 of the CAP party to the administrative proceedings is anyone whose legal interest [5, 6] or responsibilities are the object of the proceedings or who requires the intervention of a body in respect of their legal interests or responsibilities. This article thus contains two distinct legal provisions. These

provisions are independent of each other, since the use of one of them, excludes the application of the other. In both legal norms derived from Art. 28, there are several common elements. The first is the subject – «everyone» [7, p. 225]. The provision of Art. 29 of the CAP lists entities that are subject to the collective term [8, 9]. The second element is a legal interest and a third one – obligation [7, p. 225]. The party is the subject of process statements in administrative proceedings. Social organization is equipped as a party to the proceeding in a number of rights and obligations of the process nature [10, 11]. The participation of social organization in administrative proceeding as a party or issuing a complaint to the court also causes process effects in the sphere of Polish administrative proceedings. As a consequence, the social organization may participate in administrative court proceedings due to the personal legal interest and is a party to the proceeding or a participant with the rights of the party. [12]

Referring to the above considerations, it should be mentioned that social organization can also be a party to the proceeding before administrative courts belonging to the category of participants of Art. 33 § 2 of the Law on Proceedings before Administrative Courts (LPAC). In this case, the organization can take part in it if so requests and will be allowed to participate by the relevant decision of the court [13, p.71]. In turn, the social organization in terms of its statutory activities, in matters relating to the legal interests of other persons, where it participated in the administrative proceedings, shall be entitled to bring a complaint to court [13, p. 87].

Social organization can also participate in administrative proceedings as a participant with the rights of the party. This is possible when two conditions are met, namely, if it is justified by the statutory objectives of the organization and where it is in the public interest. The concept of public interest has been widely analyzed in the literature [14, 15, 16], it belongs to a category of vague concepts, its content is determined by the deciding authority. The process initiative of the organization may in this case take several forms – a request to initiate proceeding, request to initiate the proceeding and to participate in this proceeding and request to authorize to participate in pending proceeding. It should be assumed that in the context of the above forms of participation in the administrative proceedings there are limitations in the scope of the request to initiate proceedings on the initiative of social organization to the category of cases which the body has the power to initiate ex officio. Public administration body considering a request of social organization as reasonable decides to initiate proceedings ex officio or to allow it to participate in the proceeding. In the absence of the above conditions, a public authority shall issue a refusing decision in one of two forms, namely, the decision not to initiate a proceeding ex officio or on the refusal to allow the organization to participate. Social organization being the participant with the rights of the party has the procedural powers of the party. It should however be noted, that it cannot have powers of material nature. There are a number of procedural rights, which the organization in this situation can not possess. These are the actions based on the principle of availability of parties [7, p. 262].

Social organization can participate in the current Polish administrative proceedings in other forms – as another participant of the proceeding. It may (with the consent of the authority conducting the proceeding) present its views in the case matters, expressed in a resolution or a statement of its statutory body. In this case, the rights of the organization are not limited due to its statutory objectives and the public interest. In this situation the only requirement is to obtain the consent of the public authority body. The Code however does not specify the form in which it should be issued. The rules also provides for the possibility of social organization to be involved as another participant in the proceeding in accordance with Art. 90 § 3 of the Code of Administrative Procedure. In this case, it is assumed that this is done to ensure the participation of the organizations that have an actual interest in the case. A wording of Art. 90 § 3 of the CAP provides the basis for the adoption of a two-step action against those entities that have an actual interest in the case. Firstly authority shall notify organizations of their intention to hold a hearing and only after the declaration of interest – calls for participation in the trial [7, p.428].

To sum up, on the basis of the abovementioned examples it can be mentioned, that there is a wide range of forms of social organization participation in administrative proceedings. Each form is dependent on the type of interest represented by the social organizations and the objectives that underlie them in a specific action [29].

In the context of the above topics it should be noted that social organization can now take part in special proceedings, simplified and enforcement administrative proceedings [17]. The regulations relating to those proceedings participation by organizations is regulated in a distinct manner. It is worth noting that under the current legal solutions [18], the legislator equips environmental organizations with the wider than before powers in proceedings requiring public participation. According to the existing legislation environmental organizations that rely on its statutory objectives and wish to participate in a particular proceeding requiring public participation, may participate in it as a party. Interestingly, the environmental

organization has the right to appeal against the decision issued in the proceeding requiring public participation, if it is justified by its statutory objectives, even when it did not participate in a particular proceeding requiring public participation carried out by the first instance body. In addition, the environmental organization can use a complaint to the administrative court decision issued in the proceedings requiring public participation, if it is justified by its statutory objectives, even when it did not participate in a particular proceeding requiring public participation.

The problem of the evolution of forms of participation of social organization in administrative proceedings is an important issue for several reasons. Firstly, due to the determination of the origin of forms of participation of social organization that is the basis for further discussions. It is not possible to considering present process position of the social organization in an administrative procedure without asking about the reasons for its present form. The examination of evolution process allows to draw conclusions as to the origin of particular forms of participation, and hence a conclusion concerning their present character and functions in administrative proceedings. This issue has also an impact on the appreciation of the importance of these institutions. It should be kept in mind that the evolution process has not been completed – it is still a dynamic process. Both the Code of Administrative Proceedings, as well as special provisions specify the list of entitlements of social organizations in the administrative proceedings. These powers are inseparable forms of participation of social organization and at the same time are in constant evolution. It is worth noting that we are dealing with an active evolutionary process, which means that the issue is still alive and very interesting. The following comments intend to outline the evolution of these forms and their present form. Changes in the list of entitlements of social organizations in the administrative proceedings are not without significance for the individual forms of participation. They should be treated as a natural phenomenon, part of social and political development. It seems that the impact on the current shape of the individual forms of participation of social organizations in administrative proceedings has also the activity of civil society, associated with the intensification of the social factor in administrative proceedings.

In the course of discussion of the present process position of social organization in an administrative procedure outlines the evolution of previously mentioned position on the basis of the rules governing the administrative proceedings. For a more complete understanding of the present legal institutions we should refer to these regulations, as well as to the directions of contemporary researches and their results, which undoubtedly are the cornerstone of the current legal solutions. The characteristics of the previous rules also should not be skipped, as there can be seen a certain continuity of legal regulations, judicial decisions and theoretical reflection [7, p. 216].

As a starting point we should take the process position of social organization in the Decree of the President of the Republic of Poland of 22 March 1928. [19]. This provision introduced the concept of a person of interest and distinguishes it from the concept of the party. According to the provisions of the DP «person of interest is anyone demanding authority actions to whom the actions relate, or the authority actions even indirectly refers to», what is more, «persons of interest who participate in the proceeding on the basis of a legal claim or legally protected interest are treated as parties». At that time J. Pokrzywniki wrote that «one of the hardest and most questionable both in theory and in practice is a matter of definition of the term «party» [20]. W. Klonowiecki outlined, that «the parties in the case may only be people of interest that are involved in the case in order to realize its subjective public rights» [11, p.17]. It must therefore be a legal provision ensuring protection to person of interest or realizing protection of legal interests. These considerations create a necessity to distinguish the parties from the person of interest. That distinction is of great practical importance because of the special procedural rights enjoyed by the parties. Following the notion of J. Pokrzywnicki the very concept of a person of interest does not create many difficulties. It was just a case of practical criteria giving the possibility of choice of the great and the obscure mass of the persons of interest in this category, process-privileged which constitute a party [20, p. 65].The concept of the party is both procedural and substantive. Procedural – as only the person involved in the case can actually be a party and the material – since a legal provision must be defined that would protect its interests, positive or negative. The nature of the party cannot be decided alone by the will of person of interest, and only these two above elements. The literature indicated that there is no need to define the concept of party using the definition of the person of interest. This way of defining cannot bring anything positive, because party is only the category of the person of interest. The concept of the persons of interest is broader, and includes parties in it. Each party is also a person of interest. Thus, it seems that defining some part (party) using a wider concept (people of interested) in a matter so subtle and difficult cannot give any positive results.

With this in mind it should be emphasized that the definition of the terms «person of interest» and «party» is the basis for all subsequent discussions. Distinguishing people of interest from the party creates a need of reference of this method of reasoning in relation to the process status of social organization.

In the contemporary regulation a party could be a natural persons and legal persons. Associations also could be parties unless having legal personality (higher utility associations and registered associations). However, mere association without legal personality may be parties in cases covered by the law on associations regarding their establishment, operation and resolving. It was not dealing with a natural person nor a legal, but with a group of people with interests protected by law, and therefore having the party rights in administrative proceedings. Such a provision also knew «the collective party with reduced legal activity, limited by the scope of their interests in a certain sphere, covered by a particular group of legal norms» [20, p. 72].

As mentioned above the DP distinguished the institution of person of interest, therefore the regulation can extract this form of social organization participation in administrative proceedings. In accordance with Art. 9 of the DP from the circle of people of the interest parties were selected as a closer group of entities. According to W. Dawidowicz «introducing an institution of participant with a right of a party to the CAP provided some degree of vitality of the traditional distinction between a party and a person of interest» [21, p. 78]. The person of interest was the body that fit at least one of the three conditions, namely, demanded action from the body, this action was related to him or concerned his interest. A party was a person of interest, who participated in the case on the basis of legal claims or legally protected interest. Person of interest could appoint a proxy in accordance with the Art. 11 of the DP, had the right to learn about the outcome of the case – Art. 14 paragraph 1 of the DP. According to Art.101 paragraph 1 of the DP one could also submit an application for annulment of the decision as being invalid. From the above we can see that a person of interest could take an active part in the proceedings, demanding action by the public authority referred to legal proceedings.

These considerations raise the need to refer these institutions to today's regulations concerning the forms of participation of entities in administrative proceedings. This leads also to the appreciation of the values of contemporary solutions, even in the context of the persons of interest.

Another essential issue is the procedural position of social organization in the original version of the Code of Administrative Proceedings of 1960. Draft of this Code in Art. 19 § 2 allowed the social organization to participate in the proceedings as a party when it was justified by the statutory objective.

In turn Art. 28 of the original CAP text established that the public authority body is to allow social organization to participate as a party in proceedings relating to another person, where such participation is justified by the statutory objectives of the organization and if it is required by the public interest. Social organization, which is not allowed to participate in the proceedings, is able to issue a complaint. Therefore the Code of Administrative Proceedings introduced the obligatory admission of social organization to the administrative proceedings, if it fulfills the mentioned above conditions.

In the context of the participant with the rights of a party it seems useful to recall the view that the institution of social organization acting as a party was not mentioned in the DP. The literature indicates that this statement is not entirely correct, because people of interest not being a party were eligible to receive messages on the case [7, p. 255].

Participation as a party was a different kind of the above form of social organization participation in the administrative proceedings constituted by the original version of the CAP. In accordance with Art. 25 of the original version of the Code, a party is anyone whose legal interests or responsibilities are the object of the proceedings or who requires the intervention of a body in respect of their legal interests or responsibilities. It’s worth to mention the question of legal capacity of social organization in the administrative proceedings. Bearing in mind that according to the DP social organizations - associations with legal personality could be parties to the administrative proceedings, the separateness of the original text of the CAP should be emphasized on this issue. In accordance with Art. 26 of the original text of CAP parties could also be social organizations without legal personality.

A separate form of participation of social organization in the administrative proceedings can be derived from Art. 2 of the original text of the Code, which provides the participation of organizations as the authorities conducting the proceedings. The specified norm indicated that the provisions on administrative proceedings also apply before the authorities of the professional organizations, local government, cooperative and other social organizations, where they are appointed by law to handle administrative matters. From a theoretical point of view, it was important to establish the conditions, the fulfillment of which made it possible to recognize both the state authority and other state organizational unit or social organization as the body conducting the proceeding in the administrative case. The determination of competent jurisdiction in the administrative law by the legislator was the only thing deciding in this matter [21, p. 57]. The literature suggests that the extended scope of the transfer of functions of state administration to associations and other organizations (non-government bodies) is governed by the CAP, which was the first set of rules developed in

the Polish People's Republic, which defined the role and place of these entities in the system of administration, and particularly in administrative proceedings [22]. Taking into account all the abovementioned, it is worth to mention the nature of the matter of delegated administration functions. In this context we should refer to the concept of decentralization of administration by outsourcing administrative functions. The concept of outsourcing administrative functions means transferring certain administrative functions to e.g. associations, by allowing to use in these cases the measures of imperious actions [23].

It is worth noting that the removal of the institution of person of interest from regulations on administrative proceedings provoked some consequences and was subject for certain scientific discussions. In order to illustrate this situation, it seems useful to recall observations of W. Dawidowicz [24]. Formally the institution of person of interest ceased to exist in 1960 upon the enactment of the Code of Administrative Procedure, but there was a need to reconstruct the characteristics of a procedural concept. Although it no longer existed in the Polish system of administrative procedure, it belongs to the arsenal of concepts generated by the doctrine of administrative proceedings and may be confronted with the solutions adopted in existing legislation. W. Dawidowicz pointed out that adopted in the original text of the CAP institution of a participant with a right of a party is limited to the social organizations and bodies of the Prosecutor's Office and, therefore, closes the way for an ordinary citizen to participate in a proceeding. The purpose of these observations was to «stress the problem, which boils down to the question of how to classify the procedural situation of the entity that has certain interest in order to influence the course of the administrative proceedings, and can not be considered as a party to the proceeding» [24, p. 73]. Such an approach to the problem points out the need to deepen the existing protection of the interests of citizens in the administrative proceedings.

Amendment to the Code of Administrative Procedure of 1980 introduced further changes in process position of social organization in administrative proceedings. New solutions reinforced this position and differentiated the behavior of these entities.

Referring to the reinforcement of the process position of social organization in administrative proceedings arising from the mentioned amendment to the CAP, we should mention the new Art. 31.

The analysis of this article indicates that the purpose of the participation of social organization in administrative proceedings concerning another person is to introduce social control to this proceeding [25].

Mentioned amendment also indicated the possibility of social organization to initiate proceedings in favor of other people. At the same time was introduced the obligation of public authority to notify the community organizations on proceedings related to their statutory objectives. Moreover, the organization has been authorized to give suggestions on the case. Introduced changes also created a possibility for social organization to participate in proceedings referring to complaints and requests.

It is worth noting that another important issue from the point of view of further considerations is to define correlation between administrative proceedings and other proceedings under the system of administrative procedure [26]. This underlines the importance of the problem, due to the fact that certain forms of participation of social organizations in the administrative proceedings will sometimes have on their participation in other proceedings, belonging to the system of administrative procedure. For example this will be the issue in case of participation of social organization in administrative court proceedings. Sometimes the possibility of their participation in the proceedings depends on their previous participation in the general administrative proceedings. It should be noted, however, that the law does not always determine such a requirement. For example environmental organization can use a complaint to the administrative court on the decision issued in the proceedings requiring public participation, if it is justified by the statutory objectives of the organization, even when it did not participate in a particular proceeding requiring public participation [27].

Given the above, the conducted research has demonstrated that the current regulations concerning the forms of participation of social organizations in the Polish administrative proceedings are effect on the noticeable evolution of regulations of administrative procedural law, as well as the evolution in the field of case law and theoretical thoughts. Process position of social organization in the applicable regulations of the administrative proceedings is the result of evolution of those forms and its adaptation to the changing reality. The legislator must take into account the need for «flexibility» of created rules. The above comments are meant to convey to the fact of evolution of the process position of social organization in administrative proceedings.

Summary. The problem of participation of social organizations in the administrative procedure is the current object of interest. Social organization can participate in the administrative proceedings in several different forms. Over the years was noted their evolution in terms of legal regulations, case law, as well as views of the doctrine. In the conducted research process it was showed that the current regulations in this

regard are the result of long evolution process. Occurring changes are dictated by the need to adapt these regulations to the changing reality and based on the need of more flexible rules of administrative procedure.

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Нічипорук Я., Гжещук М. Еволюція форм участі громадських організацій в польському адміністративному судочинстві. Питання про форми участі громадських організацій в польському адміністративному судочинстві є цікавим об'єктом дослідження. Особливо важливо, здається, демонстрація еволюції в цій сфері. Зміни законодавства, що відбуваються, безсумнівно, виникають із потреби адаптувати правові норми до нових реалій. Роздуми на цю тему є важливими з точки зору інтересів обох сторін адміністративного спору. Проблема участі громадських організацій в адміністративному судочинстві є досить актуальною. Громадська організація може брати участь в адміністративному провадженні в декількох різних формах. У статті відзначено їх еволюцію з точки зору правових норм, судової практики, а також юриспруденції. В проведеному дослідженні процесу еволюції форм участі громадських організацій у адміністративному судочинстві було показано, що чинні правові норми є результатом тривалого історичного, політичного та правового поступу. Законодавчі зміни продиктовані необхідністю адаптувати ці правила до мінливої дійсності і мають відповідати більш гнучким правилам сучасного адміністративного судочинства.

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.