

Radosław Bulejak*

**THE INDIVIDUAL'S RIGHT OF DEFENCE
AS AN INSTITUTION OF THE ADMINISTRATIVE
PROCEDURAL LAW**

Abstract

This paper deals with the issue of the individual's right of defence in the administrative procedural law. In the opinion of the author, in addition to the principle of the right to a fair and equitable trial and the right to good administration, the individual should have the right to defend his or her legal interest by the possibility to initiate appropriate procedures to verify the activities of the public administration. The grounds for deriving the individual's right of defence should be based on the principle of a democratic rule of law. The exercise of this right shall take place in different proceedings and through different legal remedies.

Keywords: administrative proceedings, administrative law, right of defence, rights to a trial, right to good administration

The right to exercise administrative control in (indirect and direct) determination of the sphere of individual's rights and obligations constitutes an

* Radosław Bulejak, Ph.D., attorney-at-law; e-mail address: radoslawbulejak@gmail.com.
ORCID: 0000-0003-1240-526X.

immanent feature of the public administration.¹ The administrative control is based on the administrative-law relationship. F. Longchamps indicated that the legal relationship is always established when “(...) the right in question is significant for two legal entities so that in specific circumstances the legal situation of one entity is in a certain manner connected with the situation of the other entity.”² Whereas, the essence of the administrative-law relationship consists in the right of the public administration to bindingly adjudicate and settle the situation of the entity outside the organisation’s structure.³ The public administration authority acts on behalf of the state and to the benefit thereof, which gives it the right to apply authoritative measures.⁴ Administrative control does not have a uniform character, which results from the diversity of substantive law regulations, where the individual’s rights and obligations are written down. The multitude of legal forms of public administration’s activity translates into the gradability of the administrative control. Interference of the public administration authority shall be different in the case of issuing a classic, individual administrative act and in the case of supervision over the individual’s execution of the obligation stipulated under the law. A lack of the equivalent position of the public administration authority and the individual obligates to provide the individual with the right to subject the activities to verification and assessment in relevant procedures. In the democratic rule of law based on legalism and legality, it is difficult to accept a situation when an individual does not have relevant legal instruments to counteract legally unjustified public administration’s interference.

It is therefore desirable that the procedural law should include appropriate legal institutions that would enable an individual to actually defend his or her legal interest.

¹ See: Krawczyk, M., *Istota władztwa administracyjnego a obszar wolności jednostki*, in: Zimmermann, J. (ed.), *Wolność w prawie administracyjnym*, Warszawa 2017, pp. 97–120.

² Longchamps, F., *O pojęciu stosunku prawnego w prawie administracyjnym*, “Acta Universitatis Wratislaviensis” No. 19, Prawo XII, Wrocław 1964, p. 45.

³ Filipek, J., *Stosunek administracyjnoprawny*, Kraków 1968, p. 21.

⁴ Zimmermann, J., *Prawo administracyjne*, Kraków 2006, p. 142.

It needs to be made clear that the concept of 'legal institution' is a legal language term. T. Stawecki and P. Winczorek indicated that a legal institution means "permanent (relatively permanent) forms of legal regulation of typical social relations."⁵ And Z. Ziemiński pointed out that the term "legal institution" can be understood not only as a set of legal standards distinguished as a separate whole (basic meaning), but also as a set of activities resulting from the separated set of standards (functional approach) or a group of persons acting under the authority of legal standards or in their implementation (personal approach).⁶ However, the key feature of a legal institution is its goal-oriented approach. There is no doubt that the content of a legal institution may be included both in a single standard and a set of standards. Hence, under the administrative procedural law it should be accepted that the procedural institution is a set of standards regulating the procedural situation of an individual in relations with a public administration body.

The objective of this publication is therefore to derive an individual's right of defence from the rules of administrative procedural law. Such an objective requires, in the first place, an analysis of already developed standards of procedural protection of an individual, i.e. the right to a fair and just trial and the right to good administration. Then, it will be essential to determine how the protection of individual's legal interest is developed by the administrative procedural law in the context of the ways in which administrative and legal relationships are established (individual's right of defence). Whereas, to determine the content of an individual's right of defence, his or her legal remedies should be analysed in accordance with the Act of 14 June 1960 – the Code of Administrative Procedure,⁷ the Act of 29 August 1997 – Tax Ordinance,⁸ the Act of 17 June 1966 on enforcement proceedings in administration,⁹ the Act of 30 August 2002 – the Law on proceedings before administrative courts.¹⁰ Since the deliberations will

⁵ Stawecki, T., Winczorek, P., *Wstęp do prawoznawstwa*, Warszawa 2003, p. 104.

⁶ Ziemiński Z., *Problemy metodologiczne badania instytucji prawnoustrojowych*, "Problemy Rad Narodowych" 1973, No. 25, p. 12; Ziemiński Z., *Szkice z metodologii szczegółowych nauk prawnych*, Warszawa–Poznań 1983, pp. 88–90.

⁷ Consolidated text Dz.U. (Journal of Laws) of 2020, item 256, as amended, hereinafter: the Administrative Procedure Code.

⁸ Consolidated text Dz.U. (Journal of Laws) of 2019, item 900, as amended, hereinafter: the Tax Ordinance.

⁹ Consolidated text Dz.U. (Journal of Laws) of 2019, item 1438, as amended.

¹⁰ Consolidated text Dz.U. (Journal of Laws) of 2019, item 2325, as amended, hereinafter: the Law on proceedings before administrative courts.

be carried out in the form of theoretical studies, the analytical-legal (logical-linguistic) method has been considered as an appropriate research method.

The right to a fair and just trial

Pursuant to Article 31 par. 1 of the Constitution of the Republic of Poland,¹¹ human freedom is subject to legal protection. Guarantee of the right to court pursuant to Article 45 par. 1 of the Constitution of the Republic of Poland, according to which: “Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court,” whereas, in the scope of the criminal proceedings, Article 42 states as follows: “Anyone against whom criminal proceedings have been brought shall have the right of defence at all stages of such proceedings. He may, in particular, choose counsel or avail himself – in accordance with principles specified by statute – of counsel appointed by the court (par. 2). Everyone shall be presumed innocent of a charge until his guilt is determined by the final judgment of a court (par. 3).” The right to a fair and just trial is similar in wording to the constitutional right to court and the source thereof is provided by Article 6 par. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms,¹² which stipulates that: “In the determination of his civil rights and obligations of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (...).” Article 14 par. 1 of the International Covenant on Civil and Political Rights¹³ adopts the right to a fair and just trial as the basic civil right. Furthermore, the right to court constitutes one of the general rules of the Union law, which is confirmed with the contents of the Charter of Fundamental Rights of the European Union.¹⁴ Pursuant to Article 47 of the Charter of Fundamental Rights: “(...) Everyone is entitled to a fair and public hearing

¹¹ Dz.U. (Journal of Laws) of 1997, No. 78, item 483, as amended, hereinafter: the Constitution of the Republic of Poland.

¹² Dz.U. (Journal of Laws) of 1993, No. 61, item 284, as amended, hereinafter: the Convention.

¹³ Dz.U. (Journal of Laws) of 1977, No. 38, item 167, hereinafter: the International Covenant.

¹⁴ Official Journal of the European Union C 326 of 2012, p. 391, hereinafter: the Charter of Fundamental Rights.

within a reasonable time by an independent and impartial tribunal previously established by law (...).” It should be noted that the aforementioned legal guarantees do not directly refer to the administrative law. Nevertheless, it is acceptable in the jurisdiction to apply them to certain categories of administrative cases, respectively.

For example, in the judgment of 3 November 2004 the Tribunal stated that the concept of criminal liability “has a broader meaning than the one adopted by the Criminal Code. (...) The Constitutional meaning of this concept cannot be determined by reference to the binding legislation, otherwise the analysed provision would lose its guarantee significance. Therefore, it should be assumed that the scope of applying Article 42 of the Constitution comprises not only the criminal liability in the strict sense of this word and thus, the liability for crimes, but also other forms of legal liability related to awarding punishments against the individual.”¹⁵ The Constitutional Tribunal included in these other forms of liability: the disciplinary liability,¹⁶ liability for offences¹⁷ and liability of collective entities.¹⁸

In the scope of liability for administrative financial penalties, the Constitutional Tribunal limited application of Article 42 of the Constitution of the Republic of Poland only to penalties of a repressive character. In its decision of 5 March 2008, the Tribunal did in fact state that the financial penalty is not covered with criminal liability, since “it does not constitute a retribution for the committed act, but it has a character of a coercive measure for ensuring execution of executive–administrative tasks of the administration aggregated by the concept of a public interest. Therefore, it constitutes a manifestation of the state intervention in the sphere that has been recognised by the legislator as especially important”.¹⁹ The Constitutional Tribunal noticed that in the cases when due to its severity a sanction causes the given standard to become, in fact, a basic criminal standard, it is

¹⁵ Judgement of the Constitutional Tribunal of 3 November 2004, K 18/03, OTK–A 2004, No. 10, item 103.

¹⁶ See: Judgement of the Constitutional Tribunal of 23 October 2001, K 22/01, OTK–A 2001, No. 7, item 215.

¹⁷ See: Judgements of the Constitutional Tribunal of 8 July 2003, P 10/02, OTK–A 2003, No. 6, item 62; of 26 November 2003, SK 22/02, OTK–A 2003, No. 9, item 97.

¹⁸ See: Judgement of the Constitutional Tribunal of 3 November 2004, K 18/03, OTK–A 2004, No. 10, item 103.

¹⁹ See: Decision of the Constitutional Tribunal of 5 March 2008, SK 82/06, OTK–A 2008, No. 2, item 34.

necessary to provide a procedural standard in criminal cases.²⁰ Furthermore, the criminal-administrative liability shall belong to the criminal liability.

Whereas, in the jurisdiction of the European Court of Human Rights,²¹ the concepts of a civil case and a criminal case have an autonomous character, independent of domestic regulations. The European Court of Human Rights adopted as a criminal case, among others: disciplinary proceedings (case *Engel*,²² *Demicoli*²³), anti-monopoly proceedings (case *Menarini*²⁴), stipulation of an administrative sanction (case *Steininger*²⁵), stipulation of a tax obligation (case *Pakozdi*²⁶). The Tribunal accepted as civil cases: proceedings for a permit to buy land (case *Ringeisen*²⁷), or the right to build on own land (case *Zander*²⁸), restrictions regarding sales of alcohol (case *Tre Traktorer*²⁹), performance of free professions (case *Koenig*³⁰), or proceedings in social insurance cases (case *Salesi*).³¹ The referred jurisdiction confirms that regulations included in the Constitution as in the aforementioned international law acts can also be applied in administrative cases in which individuals are subject to the authoritarian intervention of public administration authorities in the scope of their rights and obligations.³²

²⁰ See: Judgement of the Constitutional Tribunal of 18 April 2000, K 23/99, OTK–A 2000, No. 3, item 89; see more: Szumiło-Kulczycka, D., *Prawo administracyjno-karne*, Kraków 2004, pp. 173–197 and p. 188.

²¹ More: the European Court of Human Rights.

²² See: ECtHR, *Engel and others v Holland*, Application no. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72, Plenary, 23 November 1976.

²³ See: ECtHR, *Demicoli v Malta*, Application no. 13057/87, Chamber, 27 August 1991.

²⁴ See: ECtHR, *Menarini Diagnostics S.R.L v Italy*, no. 43509/08, Second Section, 11 September 2011.

²⁵ See: ECtHR, *Steininger v Austria*, Application no. 21539/07, First Section, 23 October 1995.

²⁶ See: ECtHR, *Pakozdi v Hungary*, Application no. 51269/07, Second Section, 25 November 2014.

²⁷ See: ECtHR, *Ringeisen v Austria*, Application no. 2614/65, Chamber, 16 July 1971.

²⁸ See: ECtHR, *Zander v Sweden*, Application no. 14282/88, 25 Chamber, November 1993.

²⁹ See: ECtHR, *Traktorer AB v Sweden*, Application no. 10873/84, Chamber, 7 July 1989.

³⁰ See: ECtHR, *Koenig v Germany*, Application no. 6232/73, Plenary, 28 June 1978.

³¹ See: ECtHR, *Salesi v Italy*, Application no. 13023/87, Chamber, 26 February 1993.

³² As also Adamiak, B., in: Hauser, R., Wróbel, A., Niewiadomski, Z. (eds.), *System prawa administracyjnego. Prawo procesowe administracyjne*, Vol. 9, Warszawa 2014, p. 102.

The right to good administration

The individual's right to impartial and just hearing of his or her case on the grounds of the administrative law can also be deduced from the conception of the individual's right to good administration. It should be noticed that at the beginning, the good administration standard was expressed solely in the jurisdiction of the Court of Justice of the European Union,³³ or in the act of non-binding character, i.e. the Resolution of the European Parliament of 6 September 2001 on the European Code of Good Administrative Behaviour,³⁴ the Recommendation of the Committee of Ministers of the Council of Europe of 20 June 2007 CM/Rec(2007) on Good Administration.³⁵ Only as on entry into force on 1 December 2009 of the Treaty amending the Treaty on European Union of 13 December 2007 the right to good administration obtained a binding character.³⁶ The Charter of Fundamental Rights became, in fact, the primary legislation of the European Union.

In Article 41 of the Charter of Fundamental Rights entitled "Right to good administration" the following principles of good administration have been adopted *expressis verbis*: "1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union. 2. This right includes: a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; c) the obligation of the administration to give reasons for its decisions. 3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States. 4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language."

According to M. Wyrzykowski and M. Ziólkowski, it should be indicated that the right to good administration shall consists of:

³³ See: e.g. Case 29/69, *Erich Stauder v Stadt Ulm – Sozialamt*, ECLI:EU:C:1969:57.

³⁴ <https://www.rpo.gov.pl/pliki/12124042030.pdf>. Accessed on: 11.11.2019.

³⁵ <https://wcd.coe.int/ViewDoc.jsp?id=1155877&Site=CM>. Accessed on: 11.11.2019.

³⁶ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community signed in Lisbon on 13 December 2007, Official Journal of the European Union C 306, 17.12.2007, pp. 1–271.

- the right to initiate proceedings before administration authorities,
- the right to develop administrative procedure in compliance with principles of justice, publicness and two-instance,
- the right to obtain resolution of the administrative case and
- the right to proper development of the system and the position of authorities hearing the administrative case.³⁷

It should be agreed that the right to good administration does not directly include domestic administration executing the Union law. The Charter of Fundamental Rights applies exclusively to institutions, bodies and agencies of the European Union.³⁸ Nonetheless, in Article 51 par. 1, first sentence of the Charter of Fundamental Rights it has been stated that: “The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law.” It means that it is acceptable to extend the scope of the Charter’s application to the situations, when structures of a given state apply the Union law and in particular when their activity can be treated as executing administration on behalf and to the benefit of the European Union.

In the Polish law there are no provisions directly regulating the individual’s right to good administration. In chapter II of the Constitution of the Republic of Poland the right to good administration was not enumerated as one of the human’s, citizen’s freedoms or rights. In the doctrine, an opinion was expressed that it is, however, possible to deduce particular components of the right to good administration in domestic provisions.³⁹ As an example, general principles of administrative (tax) proceedings should be indicated, among others, the principle of conducting proceedings in such a way as to increase the trust of citizens in the state bodies (Article 8 par. 1 of the Code of Administrative Procedure) or the principle of conducting tax proceedings in a manner that builds confidence in the tax authorities (Article 121 par. 1 of the Tax Ordinance).

³⁷ Wyrzykowski, M., Ziółkowski, M., in: Hauser, R., Niewiadomski, Z., Wróbel, A. (eds.), *System Prawa Administracyjnego. Instytucje prawa administracyjnego*, Vol. 1, Warszawa 2012, p. 32.

³⁸ Magiera, S., in: Meyer, J. (ed.), *Charta der Grundrechte der Europäischen Union*, Baden–Baden 2006, commentary to Art. 41, p. 435.

³⁹ Kieres, L., *Pojęcie prawa do dobrej administracji w przepisach prawa konstytucyjnego*, in: *Prawo do dobrej administracji*, “Biuletyn Biura Informacji Rady Europy” 2003, No. 4, pp. 24–28.

The individual's right of defence

The right to a fair and just trial and the right to good administration are based on the assumption that legal provisions should grant the individual a possibility of protecting his or her rights and obligations under the properly developed procedure. These are undoubtedly the basic legal standards, which should be met within the administrative (tax) proceedings. This view is presented by B. Adamiak, who – using the term “the right to trial” – indicates the need to ensure that an individual case is dealt with in administrative proceedings in accordance with the procedural guarantees, provided that “the applicable legal order includes a standard of the substantive law which gives rise to its authoritative specification in terms of individual's right or obligation in the form of an administrative decision.”⁴⁰ The limits of the right to trial will be determined by the general competence of a public administration body (Article 5 of the Administrative Procedure Code, Article 13 of the Tax Ordinance) and the concept of a party to administrative proceedings (Article 28 of the Administrative Procedure Code, Article 133 of the Tax Ordinance).⁴¹

However, it should be indicated that administrative-law relationships can be established in two ways. First of all, the administrative-law relationship can be established under an administrative act, i.e. a conventional action of the public administration body. According to R. Hauser, such a relationship is a consequence of the authoritarian specification of the law conducted by the authorised body⁴². Secondly, the legal provision itself can constitute the basis of the administrative-law relationship. J. Zimmermann explains that thus, “in principle, solely the obligations of the other party to the legal relationship are created, they are specified by particular factual events and the public administration cannot immediately proceed to enforcement thereof without a separate act of specification.”⁴³ By using the concept of a legal situation, J. Boć indicates that in the case of developing the individual's rights and obligations under the law, the role of the body comes down only to control, whether the behaviour of specific entities in particu-

⁴⁰ Adamiak, B., w: Hauser, R., Wróbel, A., Niewiadomski, Z. (eds.), *System prawa administracyjnego. Prawo procesowe...*, p. 102.

⁴¹ Ibidem, pp. 103–107.

⁴² Hauser, R., in: Hauser, R., Wróbel, A., Niewiadomski, Z. (eds.), *System prawa administracyjnego. Instytucje...*, p. 216.

⁴³ See: Zimmermann, J., op. cit., p. 257.

lar situations is compliant with the law. “The administrative authority intervenes only when it believes that the individual does not apply the standard, despite the factual circumstances justifying application thereof, or when he or she interprets the standard wrongly.”⁴⁴ In such an understanding, the standard itself, despite the developed administrative procedure, seems to be insufficient.

The situation of the individual can be developed by the public administration authority outside the administrative (tax) proceedings. From the individual’s point of view it shall be therefore crucial to allow initiating a relevant procedure within which public administration activities shall be verified. As rightly indicated by M. Bernatt, the principle of the democratic rule of law and the principle of social justice implies the obligation to develop a mechanism of effective legal protection in the statutorily stipulated procedure against all activities of state authorities, provision of just and equitable procedures, as well as extension of the individual’s procedural guarantees in doubtful situations.⁴⁵ Therefore, the basis for deducing the individual’s right of defence on the grounds of the administrative procedural law should be sought in Article 2 of the Constitution of the Republic of Poland (the principle of the democratic rule of law), as well as Article 7 of the Constitution of the Republic of Poland (the principle of legalism).

Whereas, the effective right of defence requires equipping the individual with legal remedies providing grounds for demanding recognition of his or her case and providing legal protection by the control of activities undertaken with regard to the individual. Thus, these are specific procedural solutions with which the individual can pursue from relevant authorities a specific behaviour within the given legal relationship.⁴⁶ In this respect, it should be noted that in the administrative law, the individual’s legal interest is subject to protection. According to S. Włodyk, a legal interest exists when the individual loses any legal advantages that can be manifested as an increase in the obligations or a decrease in the

⁴⁴ Boć, J., in: Boć, J. (ed.), *Prawo administracyjne*, Wrocław 2007, p. 374. Also see: Chelmoński, A., *Typy norm materialnego prawa administracyjnego i ich rola w kształtowaniu sytuacji prawnej jednostki*, “Acta Universitatis Wratislaviensis – Przegląd Prawa i Administracji” 1972, No. 2.

⁴⁵ Bernatt, M., *Sprawiedliwość proceduralna w postępowaniu przed organem ochrony konkurencji*, Warszawa 2011, p. 51.

⁴⁶ Hauser, R., *Ochrona obywatela w postępowaniu egzekucyjnym w administracji*, Poznań 1988, p. 45.

rights.⁴⁷ Whereas, according to J.P. Tarno, “an individual has a legal interest in proceedings, if between his or her legal situation and the matter of proceedings there is, justified with the contents of the substantive law norm, an actual and factual connection causing the individual to be »interested« in these proceedings and, in consequence, entitled to participate therein as a party thereto.”⁴⁸

The access to the effective legal remedy is guaranteed both, by Article 13 of the Convention and Article 47 of the Charter of Fundamental Rights. Article 78 of the Constitution of the Republic of Poland also vests in the individual the right to appeal decisions and judgments. According to this provision “Each party shall have the right to appeal against judgements and decisions made at first stage. Exceptions to this principle and the procedure for such appeals shall be specified by statute.” However, the right to appeal does not take into consideration all relationships of the individual with public administration authorities. In fact, B. Adamiak notices that the contents of Article 78 of the Constitution of the Republic of Poland concerns only appealing decisions by the parties to the proceedings. Whereas, with regard to the subject of appeal, the Constitution of the Republic of Poland is limited only to resolutions in the form of administrative decisions, it does not include decisions issued at a given instance.⁴⁹

In the doctrine of the administrative law, the concept of “a legal remedy” is defined differently. According to T. Bigo, “a legal remedy is a request to implement internal control based on the claim submitted to the authority for re-examining the case.”⁵⁰ Whereas, J. Starościak considers legal remedies to be control measures which the party to the proceedings or the participant thereof can apply.⁵¹ A legal remedy is defined in a similar manner by E. Iserzon, who is of the opinion that a legal remedy means the possibility of appealing acts issued in administrative proceedings. While, in general, the aim of such an appeal is to verify the correctness of the act in terms of its legality and, in effect, amendment or repeal

⁴⁷ Włodyka, S., *Interes prawny jako przesłanka dopuszczalności zaskarżenia orzeczeń w procesie cywilnym*, “Nowe Prawo” 1963, No. 9, p. 928.

⁴⁸ Tarno, J.P., in: Chróścielewski, W., Tarno, J.P., *Postępowanie administracyjne i postępowanie przed sądami administracyjnymi*, Warszawa 2011, p. 160.

⁴⁹ Adamiak, B., in: Hauser, R., Niewiadomski Z., Wróbel, A. (eds.), op. cit., pp. 220–226.

⁵⁰ Bigo, T., *Prawo administracyjne i instytucje ogólne*, Wrocław 1948, p. 207.

⁵¹ Starościak, J., *Prawo administracyjne*, Warszawa 1969, p. 300.

thereof.⁵² On the other hand, B. Graczyk indicates legal remedies in the broad and narrow understanding. The former are to serve the individual to take the initiative of challenging the decision. Whereas, the latter create a special entitlement of the party to question the decision with legally specified consequences.⁵³ While, W. Kałuski is of the opinion that “A legal remedy is each, stipulated in a formal provision, act of the party or authority aimed at amending the decision.”⁵⁴ Legal remedies are understood differently by I. Wajnes, who indicates legal remedies *sensu largo* and *sensu stricto*. The former constitute protective instruments which, due to the public good or individual’s interest, enable control or amendment of decisions taken in administrative proceedings. The latter are vested in the party for the protection of his or her interests.⁵⁵ As far as the contemporary doctrine of the administrative law is concerned, it is worth noting the opinion of A. Wiktorowska, who defines legal remedies as: “(...) procedural institutions, such instruments through the agency of which entities whose identity is being established (parties and entities participating as parties) initiate the mechanism of control executed by administrative bodies and administrative court over correctness of administrative resolutions (decisions and rulings).”⁵⁶ Whereas, according to R. Hauser, legal remedies constitute legal possibility of undertaking by a specific entity a legal activity which results in the control of legal and factual activities undertaken by authorities conducting the proceedings.⁵⁷

The double manner of establishing an administrative-law relationship results in various legal remedies being vested in the individual in order to defend his or her legal interest. In the case of issuing an individual administrative act, the individual’s defence shall be executed under administrative proceedings. Defence measures shall include: an appeal (Article 127 par. 1 of the Code of Administrative Procedure, Article 220 par. 1 of the Tax Ordinance), a request for revision

⁵² Iserzon, E., *Postępowanie administracyjne. Komentarz. Orzecznictwo—Okólniki*, Kraków 1937, p. 345.

⁵³ Graczyk, B., *Postępowanie administracyjne. Zarys systemu*, Warszawa 1953, p. 152.

⁵⁴ Zimmermann, M., in: Jaroszyński, M., Zimmerman, M., Bigo, T., *Prawo administracyjne. Cz. 2 (The Administrative Law. Part 2)*, Warszawa 1952, p. 124.

⁵⁵ Wajnes, I., *Ochrona praw i interesów jednostki w postępowaniu administracyjnym*, Vilnius 1939, p. 103.

⁵⁶ Wiktorowska, A., in: Wierzbowski, M., Szubiakowski, M., Wiktorowska, A., *Postępowanie administracyjne*, Warszawa 2008, p. 180.

⁵⁷ Hauser, R., in: Leoński, Z. (eds.), *Zarys prawa administracyjnego*, Warszawa–Poznań 1985, p. 196.

of a case (Article 127 par. 3 of the Code of Administrative Procedure) and an objection (Article 141 par. 1 of the Code of Administrative Procedure, Article 236 par. 1 of the Tax Ordinance), and then an appeal to the administrative court (Article 3 par. 2 point 1 and point 2 of the Act of 30 August 2002 – the Law of the Administrative Courts Procedure⁵⁸). It shall also be acceptable to verify the administrative decision or ruling in extraordinary proceedings i.e. revision of proceedings (Article 145 of the Code of Administrative Procedure, Article 240 of the Tax Ordinance), annulment of decision (Article 156 of the Code of Administrative Procedure, Article 247 of the Tax Ordinance), reversal or amendment of a decision (Article 154 and Article 155 of the Code of Administrative Procedure and Article 253 and Article 253a of the Tax Ordinance). Whereas, in the case of rights and obligations resulting directly from legal provisions, the individual can protect his or her legal interest only at the moment of undertaking supervisory activity by the public administration authority. A lack of the obligation to specify the substantive law norm results in unacceptability of conducting the administrative (tax) proceedings. However, the individual can defend his or her legal interest in the course of the enforcement proceedings or under administrative court proceedings. In the case of obligations under law defence measures shall be, among others: administrative legal remedies in enforcement proceedings e.g. charges in the case of conducting administrative enforcement (Article 33 of the Act of 17 June 1966 on the Enforcement Proceedings in Administration), or an appeal to the administrative court on rulings issued in enforcement proceedings (Article 3 par. 2 point 3 of the law on administrative court proceedings). Despite the above, the individual shall have the right to appeal to an administrative court on other acts or activities in the scope of public administration concerning rights or obligations resulting from legal provisions (Article 3 par. 2 point 4 of the law on administrative court proceedings).

Conclusions

The research shows that the individual's right to defend his or her legal interest, which is complementary to the right to a fair and just trial and the right to good administration, can be derived from the standards of the administrative procedural law. When building the content of the individual's right of defence,

⁵⁸ Consolidated text: Dz.U. (Journal of Laws) of 2018, item 1302, as amended.

account should be taken of the ways in which administrative and legal relationships are established (by administrative act and by virtue of law). In this context, the individual's right of defence will exceed the regulations on administrative (tax) proceedings. Legal remedies available to the individual should be considered as the exercise of this right. Due to the multitude of procedural arrangements, these remedies will not be uniform and will depend on the type of administrative and legal relationship. In the cases subject to authoritarian specification, defence measures shall constitute the means of challenge regulated in provisions on administrative (tax) proceedings, i.e. an appeal, a request for revision of a case, an objection and then, an appeal to the administrative court. Defence of the individual's rights shall also be acceptable by activating extraordinary proceedings. In the case of rights and obligations resulting from provisions the individual's right of defence shall be exercised under enforcement proceedings, among others, by administrative legal remedies or under an appeal to the administrative court.

Literature

- Bernatt, M., *Sprawiedliwość proceduralna w postępowaniu przed organem ochrony konkurencji*, Warszawa 2011.
- Bigo, T., *Prawo administracyjne i instytucje ogólne*, Wrocław 1948.
- Boć, J. (ed.), *Prawo administracyjne*, Wrocław 2007.
- Chełmoński, A., *Typy norm materialnego prawa administracyjnego i ich rola w kształtowaniu sytuacji prawnej jednostki*, "Przegląd Prawa i Administracji" 1972, No. 2.
- Chróścielewski, W., Tarno J.P., *Postępowanie administracyjne i postępowanie przed sądami administracyjnymi*, Warszawa 2011.
- Filipek, J., *Stosunek administracyjnoprawny*, Kraków 1968.
- Graczyk, B., *Postępowanie administracyjne. Zarys systemu*, Warszawa 1953.
- Hauser, R., *Ochrona obywatela w postępowaniu egzekucyjnym w administracji*, Poznań 1988.
- Hauser, R., Niewiadomski, Z., Wróbel, A. (eds.), *System Prawa Administracyjnego. Instytucje prawa administracyjnego*, Vol. 1, Warszawa 2012.
- Hauser, R., Niewiadomski, Z., Wróbel, A. (eds.), *System prawa administracyjnego. Prawo procesowe administracyjne*, Vol. 9, Warszawa 2014.
- Iserzon, E., *Postępowanie administracyjne. Komentarz. Orzecznictwo—Okólniki*, Kraków 1937.

- Jaroszyński, M., Zimmerman, M., Bigo, T., *Prawo administracyjne. Cz. 2*, Warszawa 1952.
- Kieres, L., *Pojęcie prawa do dobrej administracji w przepisach prawa konstytucyjnego*, in: *Prawo do dobrej administracji*, “Biuletyn Biura Informacji Rady Europy” 2003, No. 4.
- Krawczyk, M., *Istota władztwa administracyjnego a obszar wolności jednostki*, in: Zimmermann, J. (ed.), *Wolność w prawie administracyjnym*, Warszawa 2017.
- Leoński, Z. (ed.), *Zarys prawa administracyjnego*, Warszawa–Poznań 1985.
- Longchamps, F., *O pojęciu stosunku prawnego w prawie administracyjnym*, “Acta Universitatis Wratislaviensis”, No. 19, Prawo XII, Wrocław 1964.
- Magiera, S. in: Meyer, J. (ed.), *Charta der Grundrechte der Europäischen Union*, Baden–Baden 2006.
- Starościak, J., *Prawo administracyjne*, Warszawa 1969.
- Stawecki, T., Winczorek, P., *Wstęp do prawoznawstwa*, Warszawa 2003.
- Szumiło-Kulczycka, D., *Prawo administracyjno-karne*, Kraków 2004.
- Wajnes, I., *Ochrona praw i interesów jednostki w postępowaniu administracyjnym*, Vilnius 1939.
- Wierzbowski, M., Szubiakowski, M., Wiktorowska, A., *Postępowanie administracyjne*, Warszawa 2008.
- Włodyka, S., *Interes prawny jako przesłanka dopuszczalności zaskarżenia orzeczeń w procesie cywilnym*, “Nowe Prawo” 1963, No. 9.
- Ziemiński, Z., *Problemy metodologiczne badania instytucji prawnoustrojowych*, “Problemy Rad Narodowych” 1973, No. 25.
- Ziemiński, Z., *Szkice z metodologii szczegółowych nauk prawnych*, Warszawa–Poznań 1983.
- Zimmermann, J., *Prawo administracyjne*, Kraków 2006.

Legislation

- Act of 29 August 1997 – Tax Ordinance, Consolidated text, Dz. U. (Journal of Laws) of 2019, item 900, as amended.
- Act of 30 August 2002 – the Law of the Administrative Courts Procedure, Consolidated text, Dz. U. (Journal of Laws) of 2018, item 1302, as amended.
- Act of 17 June 1966 on enforcement proceedings in administration, Consolidated text, Dz. U. (Journal of Laws) of 2019, item 1438, as amended.
- Act of 14 June 1960 – the Code of Administrative Procedure, Consolidated text, Dz. U. (Journal of Laws) of 2020, item 256, as amended.

- Act of 30 August 2002 – the Law on proceedings before administrative courts, Consolidated text, Dz. U. (Journal of Laws) of 2019, item 2325, as amended.
- Charter of Fundamental Rights of the European Union, Official Journal of the European Union C 326 of 2012, p. 391.
- Constitution of the Republic of Poland of 4 April 1997, Dz. U. (Journal of Laws) No. 78, item 483, as amended.
- Convention for the Protection of Human Rights and Fundamental Freedoms, Dz. U. (Journal of Laws) of 1993, No. 61, item 284, as amended.
- International Covenant on Civil and Political Rights, Dz. U. (Journal of Laws) of 1977, No. 38, item 167.
- Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community signed in Lisbon on 13 December 2007, Official Journal of the European Union C 306, 17.12.2007, pp. 1–271.

Judicial decisions

- Case 29/69, *Erich Stauder v Stadt Ulm – Sozialamt*, ECLI:EU:C:1969:57.
- Decision of the Constitutional Tribunal of 5 March 2008, SK 82/06, OTK–A 2008, No. 2, item 34.
- ECtHR, *Ringeisen v Austria*, Application no. 2614/65, Chamber, 16 July 1971.
- ECtHR, *Engel and others v Holland*, Application no. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72, Plenary, 23 November 1976.
- ECtHR, *Koenig v Germany*, Application no. 6232/73, Plenary, 28 June 1978.
- ECtHR, *Traktorer AB v Sweden*, Application no. 10873/84, Chamber, 7 July 1989.
- ECtHR, *Demicoli v Malta*, Application no. 13057/87, Chamber, 27 August 1991.
- ECtHR, *Salesi v Italy*, Application no. 13023/87, Chamber, 26 February 1993.
- ECtHR, *Zander v Sweden*, Application no. 14282/88, 25 Chamber, November 1993.
- ECtHR, *Steininger v Austria*, Application no. 21539/07, First Section, 23 October 1995.
- ECtHR, *Menarini Diagnostics S.R.L v Italy*, no. 43509/08, Second Section, 11 September 2011.
- ECtHR, *Pakozdi v Hungary*, Application no. 51269/07, Second Section, 25 November 2014.
- Judgement of the Constitutional Tribunal of 18 April 2000, K 23/99, OTK–A 2000, No. 3, item 89.
- Judgement of the Constitutional Tribunal of 23 October 2001, K 22/01, OTK–A 2001, No. 7, item 215.

Judgement of the Constitutional Tribunal of 8 July 2003, P 10/02, OTK–A 2003, No. 6, item 62.

Judgement of the Constitutional Tribunal of 26 November 2003, SK 22/02, OTK–A 2003, No. 9, item 97.

Judgement of the Constitutional Tribunal of 3 November 2004, K 18/03, OTK–A 2004, No. 10, item 103.