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THE PROHIBITON OF *REFORMATIO IN PEIUS* AND ITS JUSTIFICATION OF IN THE ADMINISTRATIVE PROCEEDINGS IN THE HABSBURG SUCCESSION COUNTRIES

Summary

The prohibition of *reformatio in peius* is one of the most important procedural guarantees of contemporary administrative proceedings. The essence of this prohibition is that a decision issued by an administrative body of second instance cannot be less favourable to the one against which the appeal is lodged. This prohibition is known to the administrative proceedings of some Central European or Balkan countries, such as Poland, the Czech Republic, Slovenia, Romania, Croatia and North Macedonia. The main aim of this institution is that the appellant should not lodge an appeal for fear it may worsen their legal situation. The prohibition therefore ensures the security of the appealing party that their legal situation will not deteriorate. The justification for introducing the prohibition of *reformatio in peius* is sought by referring to the idea of the rule of law, guarantees of protection of its interest in the proceedings and protection of its trust in administrative bodies. In some countries, the provisions which prohibit changes to their disadvantage are considered as guarantee standards, subject to narrow interpretation.

Streszczenie

Zakaz *reformationis in peius* jest jedną z najważniejszych gwarancji procesowych współczesnego postępowania administracyjnego. Istotą zakazu polega na tym, że decyzja wydana przez organ administracji drugiej instancji nie może być mniej korzystna dla strony, od tej, od której wnosi odwołanie. Zakaz ten znany jest postępowaniom

administracyjnym niektórych państw środkowoeuropejskich czy bałkańskich, jak np. Polska, Czechy, Słowenia, Rumunia, Chorwacja czy Północna Macedonia. Głównym celem tej instytucji jest to, by odwołująca się strona nie obawiała się wniesienia odwołania z uwagi na to, że może pogorszyć swoją sytuację prawną. Zakaz zatem zapewnia odwołującej się stronie bezpieczeństwo, że jej sytuacja prawna nie ulegnie pogorszeniu. Uzasadnienia wprowadzenia zakazu reformationis in peius poszukuje się poprzez odwołanie do idei państwa prawnego, gwarancji ochrony jej interesu w postępowaniu oraz ochrony jej zaufania do organów administracji. W niektórych państwach przepisy konstruujące zakaz zmiany na niekorzyść uważa się za normy gwarancyjne, podlegające wąskiej interpretacji.

Keywords: *prohibition of reformatio in peius, worsening of the legal situation of appealing party, decision of the authority of the higher instance, administrative procedings, a guarantee of protection of the interest of a party in administrative proceedings, the rule of law*

Słowa kluczowe: *zakaz reformationis in peius, zmiana sytuacji prawnej strony na gorsze, decyzja organu odwoławczego, postępowanie administracyjne, gwarancja ochrony interesu prawnego strony w postępowaniu administracyjnym, zasada państwa prawnego*

Introduction

The purpose of this study is to draw attention to an important procedural institution, which is the prohibition of changing the decision to the detriment of the appellant. This prohibition is an important civilization achievement in every legal procedure, including administrative proceedings (J. Jug, 2014, p. 10, 12). The ban in administrative proceedings – in relation to the criminal and civil procedure – appeared as late as in the second half of the 20th century (M. Kopecky, 2010, p. 203; M. Šikić, 2021, p. 306, 308). The study presents the legal regulations of this interdict in administrative proceedings of Central European and Balkan countries and the justification for its introduction. The choice of these countries is not accidental: the laws of the Austro-Hungarian monarchy had in the past codified the administrative proceedings of these countries and then deeply influenced them (G. Cananea, 2016, p. 26; J.B. Auby, 2021, p. 7). As a result, despite the passage of time, the basic procedural

structures remained similar (J.B. Auby, 2021, p. 7) and therefore we can – without making large simplifications and generalizations – compare the legal solutions in the field of protection of the legal interest of the appealing party.

In the administrative proceedings of the analysed countries, the decision of the first instance authority – as a rule – is subject to appeal to a higher instance authority; or – in exceptional cases – as a result of reconsidering the case, it is reviewed by the same authority that had issued the decision (S. Košičiarova, 2013, p. 270-272; M. Srebalová, 2008, p. 103, et al.; 32; M. Srebalová, M., 2016, p. 105; V. Sládeček, 2013, p. 442;P. Andorova, 2017, p. 113 et al.; N. Pelivanova, M. Ristovska, 2014, p. 65; B. Davitkovski, D. A. Pavlovska, 2008, p. 350; N. Mijatović, 2005, p. 82-83). As a result, the appellant party to the proceedings may obtain – as a result of the appeal lodged by them – a decision less favourable to the decision of the first instance authority. In such cases, we are talking about the so-called *reformatio in peius*. Full *reformatio in peius*, i.e. changing a decision to the disadvantage of a party without restrictions protecting the party, is provided for, for example, by the legislator § 66 par. 4 of the Austrian AVG (Bundesgesetz vom 21 VII 1925 über das allgemeine Verwaltungsverfahren, BGBl 1925/274, t. jedn. BGBl 1991/51, BGBl. I Nr. 33/2013) or § 59 par. 2 of the Slovak Act on Administrative Proceedings. However, some other procedural regulations partially prohibit a change of decision to the detriment of the party. Such a structure is referred to as the prohibition of *reformatio in peius* (in Poland, see Art. 139 of the Administrative Proceedings Act dated 16th June 1960, Dz. U. of 2021, item 735, consolidated text) hereinafter referred to as "APA").

In the doctrine and jurisprudence of these countries (with the exception of Poland and – recently with the exception of the Czech Republic and Croatia), a discussion is still underway on the justification of the ban, so this problem is rarely discussed in separate articles. Mention of the prohibition of *reformatio in peius* can be found in the commentaries to the statutes or in studies devoted to the appeal procedure.

The essence of the prohibition of *reformatio in peius* and its legal regulations

On the basis of administrative proceedings in the countries of Central Europe and the Balkans, the prohibition of *reformationis in peius* began in the second half of the twentieth century, essentially following the solutions adopted earlier in criminal proceedings (M. Kopecky, 2010, p. 203; M. Šikić, 2021, p. 306; M. Srebalová, 2008, p. 103; C. Herke, C.D. Toth, 2011, p. 98). The specific scope of the prohibition in a given legal regulation depends on many criteria, first of all on the very wording of the act and the method of its interpretation (M. Šikić, 2021, p. 306, 308). The jurisprudence of national administrative courts and the views of the science of law also play an enormous role in determining the limits for departing from it.

The prohibition of *reformationis in peius* can be defined as an order addressed to the appeal body not to worsen the legal situation of the appealing party in certain situations determined by law. We define such a construction as the relative prohibition of *reformationis in peius* (A. Skóra, 2017, p. 11).

This prohibition is not implemented by, among others, the Austrian Federal Law on Administrative Procedures (A. Koprić, P. Kovač, V. Đulabić, J. Džinić, 2016, p. 97), the Slovak Law on Administrative Procedures (S. Košičiarova, 2013, p. 277; M. Srebalová, 2015, p. 105) and the Hungarian Law on General Administrative Procedures (2016. évi CL. Törvény az általános közigazgatási rendtartásról) dated 14th December 2016. In Austria, this *reformatio in peius* is adopted as an absolute rule in general (Art. 66 (4) AVG) administrative proceedings, from which there are no exceptions. It is worth mentioning that S. Košičiarova argues that the appeal body cannot worsen the legal position of a party if it has not discovered new circumstances that would justify this change (S. Košičiarova, 2013, p. 277).

In Hungary, on the other hand, the provisions of special laws provide for exceptions limiting *reformatio in peius* in specific cases (Z. Szente, 2017, p. 28; F. Gárdos-Orosz, I. Temesi, 2017, p. 167). But – by this principle – the second instance administrative body is not bound by the decision of the public authority delivered in first instance, in the sense that it may place the complainant in a worse position than he or she was in beforehand. This power can

be given for a more effective provision of public interest, even at the expense of the claimant's private interests (Z. Szente, 2017, p. 27-28; F. Gárdos-Orosz, I. Temesi, 2017, p. 167).

Also Romania has no legal prescriptions on this issue; so, theoretically, the *reformatio in peius* is possible. According to the doctrine, "a reformation in peius is however permissible if the authority has generally the competence to amend at any time and also ex offcio the contested decision to the detriment of the applicant" (D. Dragoş, 2016, p. 4). Exceptions can be found in the special legislation. Thus, Romanian Code of fiscal procedure states clearly that by solving the contestation the fiscal organ cannot worsen the situation of the complainant (Governmental Ordinance no. 92/2003: Art. 213 § 3; D. Dragoş, M. Swora, A. Skoczylas, 2012, p. 50; D. Dragoş, 2016, p. 4).

In Polish administrative proceedings, the partial prohibition of *reformatio in peius* was regulated in 1960 and has undergone an evolution aimed at strengthening its guarantee role, and the doctrine (B. Adamiak, 1992, p. 208 et al.; P.M. Przybysz, 2021, commentary to Art. 139) and judicial decisions (see among other the rulings by Regional Administrative Court in Warsaw: on 24.11.2017, V SA/Wa 3261/16; on 26.01.2018, II SA/Wa 584/17; on 28.03.2018, VII SA/Wa 1504/17, CBOSA) have consistently narrowed down the interpretation of the prerequisites allowing for such a change of the decision that would be less favourable for the party. Currently, in general administrative proceedings, this prohibition has been included *expressis verbis* in Art. 139 of the APA, which states that "the appeal body may not issue a decision to the detriment of the appealing party, unless the appealed decision grossly violates the law or grossly violates the public interest". Thus, the legislator limited the possibility of deteriorating a party's legal situation by the appeal body only to cases where the decision of the first instance body "grossly" violates the law or "grossly" violates the public interest.

The prohibition of *reformatio in peius* is also provided for in Art. 244 § 1 of the Macedonian General Administrative Procedure Act (O. G. of the Republic of Northern Macedonia No 124/15, consolidated text). According to its wording, "in order to correctly resolve the case, the second-instance body may change the decision of the first instance in favour of the appellant … regardless of the request contained in the appeal and within the framework

of a specific request addressed to the first-instance body, provided that the rights of another party are not infringed in this way". However, in the light of Art. 244 § 2 of the same Act, "for the same purpose [i.e. when it is to ensure the correct resolution of the case, comm. by author], the second-instance body may alter the first-instance decision … to the detriment of the appellant. However, it may do so "only for the reasons specified in Art. 263, 266 and 267 of this Act". These are the grounds for annulment of the administrative decision (Articles 266 and 267 of the Act) and for the repeal of the decision "when necessary, in order to eliminate a serious and immediate threat to human life and health, public safety, public order or public morality, when it is impossible to effectively eliminate it by other means that would affect the acquired rights [of the party, comm.by A.S.] to a lesser extent" (Art. 266 (1) of the Act).

The prohibition of *reformationis in peius* is also an important guarantee in the general administrative proceedings in Slovenia. The body of second instance may worsen the legal situation of the appellant only in cases specified in the Act, i.e. to protect the public interest or the rights of other parties to the proceedings. Pursuant to Art. 253 of the Slovenian Act on General Administrative Proceedings, this may take place if particularly significant violations of the law have been found in the decision of the first-instance authority or in the course of the proceedings pending before it, constituting the basis for initiating extraordinary proceedings (I. Koprić, P. Kovač, V. Đulabić, J. Džinić, 2016, p. 102), as specified in Art. 274, 278 and 279 of the Act. These are the defects that justify the revocation of a decision under supervision (e.g. as a result of issuing a decision in breach of the provisions on jurisdiction or in a situation where the matter was resolved with a different final decision, i.e. in the event of "violation" of the *res iudicata* principle), as well as faults that justify an extraordinary annulment of the decision (e.g. when the execution of the decision would endanger human life or health) and cases that the Slovenian legislator considers to be invalid (e.g. when the authority issued a decision without a legal basis or ruled without its application and did not obtain its consent to conduct it in the course of the proceedings (I. Koprić, P. Kovač, V. Đulabić, J. Džinić, 2016, p. 101-102).

The prohibition of *reformatio in peius* was introduced into the Czech administrative proceedings relatively late, in 2004. Interestingly, it was modelled on the solutions adopted in the Czech penal-administrative proceedings (*Zákonč. 200/1990 Sb. o přestupcích*). This Law was replaced by a new normative act on 1st July 2017 on the responsibility for the offences and on the proceedings concerning such cases (*Zákon č. 250/2016 Sb. o odpovědnosti za přestupky a řízení o nich*). In the light of the currently applicable art. 90 sec. 3 of the Act on Administrative Proceedings (*Zákon ze dne 24. Června 2004 – Správní řád, Zákon č. 500/2004 Sb*) dated 2004, the appeal body – when issuing a reform decision – may not change the decision unless another party is contesting the decision or unless the appealed decision violates the law or violates the public interest. In the light of the views of the doctrine, the prohibition should be understood as meaning that the authority of the second instance cannot withdraw the power granted to it before, or impose on it an obligation that had not been provided for by the decision of the body of first instance (E. Horzinková, V. Novotný, 2015, p. 250; Kopecky, 2010, p. 209). At the same time, the prohibition does not apply where, apart from the appellant, another party is contesting the decision and the appeals are inconsistent. Whether the interests of the different participants as appellants are the same can be assessed on the basis of their statements on appeal, i.e. on the basis of the appeals only (M. Kopecky, 2010, p. 207; S. Kadečka, S., 2006, p. 307; A. Koprić, P. Kovač, V. Đulabić, J. Džinić, 2016, p. 102).

Justification for the prohibition of *reformatio in peius*

General remarks

The introduction of this important legal structure to administrative proceedings was the result of numerous procedures and demands for the science of administrative proceedings and court practice. These efforts were aimed at delineating the limits of the application of the institution of *reformatio in peius*,

which was considered not harmonized with the basic goal of the assumptions of the modern administrative process (L. Bar, 1959, p. 1; M. Šikić, 2021, p. 309; 9. V. Ivančević, 1983, p. 425). Limiting the possibility for the appeal body to change its decision to the detriment of the given party is justified by referring to various theories. In individual countries where it was decided to limit the possibility of such a change, similar arguments are usually formulated. This results from – essentially a similar structure of administrative proceedings – which was created under the influence of solutions developed during the Austro-Hungarian monarchy and the belief that the prohibition of change to the detriment is incompatible with the idea of a modern rule of law (M. Šikić, 2021, p. 309).

The idea of the rule of law

The standard of administrative proceedings is, above all, the perception of the right to appeal as one of the structures of the rule of law (Z. Szente, 2017, p. 12 et al.). The introduction of the prohibition of *reformatio in peius* means that the appeal should be regulated in such a way as not to make the party fear the worsening of the situation as defined in the content of the first instance decision (S. Košičiarova, 2013, p. 277; A. Skóra, 2017, p. 13 et al.). The essence of the prohibition is the need to provide a party with procedural guarantees that as a result of the appeal, its legal situation will not change to its detriment (the ruling by Regional Administrative Court in Warsaw on 24.05.2017, II SA/Wa 188/17; the ruling by the Highest Administrative Court dated 5.10.2010, I OSK 622/10, both cited by CBOSA). In this way, it is possible to reduce the fear in the respective party of submitting legal remedies (E. Horzinková, V. Novotný, 2015, p. 249-250; A. Skóra, 2019, p. 46 et. al.). A party who – as a result of the issuance of a decision by the first instance body – has acquired certain rights or on whom obligations have been imposed must be rightly convinced that the appeal brought by it will, in the worst case, maintain its current legal position (B. Adamiak, 1992, p. 208), i.e. maintain the rights obtained or no new legal obligations will be imposed on them. The function of the prohibition of *reformatio in peius* is manifested, first of all, in overcoming the reluctance to question the decision which they are dissatisfied with, fearing

that the new decision of the appeal body would worsen their legal situation (S. Košičiarova, 2013, p. 277).

The prohibition of reformatio in peius as a guarantee of protection of the interest of a party in administrative proceedings

In the analysed European countries, the justification for the prohibition of *reformationis in peius* is most often justified by referring to the postulate of protecting the interest of the appealing party (T. Woś, 1989, p. 227; B. Adamiak, 1992, p. 208; M. Kopecky, 2010, p. 209; M. Šikić, 2021, p. 310-311; I. Koprić, P. Kovač, V. Đulabić, J. Džinić, 2016, p. 101; N. Mijatović, 2005, p. 82-83). This – seemingly obvious statement today – made its way with great difficulty in shaping the model of appeal proceedings. The possibility of making changes to the detriment of the party was considered to be inherent in the appeal procedure, and the prohibition – inconsistent with the nature of the administrative proceedings (M. Kopecky, 2010, p. 209; C. Herke, C.D. Toth, 2011, p. 98), as serving not only the party's interest protection but also the protection of public interest (G. Wielinger, 2010, p. 140-141; W. Fasching, W. Schwartz, 2003, p. 62). This does not mean, however, that this motive was not questioned by representatives of the more ancient literature on the subject. Already at the beginning of the 20th century in Austrian science, R. Herrnritt saw that the reason why the *reformatio in peius* should be excluded was the need to protect the legal position of the appealing party (R. Herrnritt, 1925, p. 211). However, this argument is not supported by doctrine in contemporary Austria (interest among others: G. Wielinger, 2010, p. 140-141; W. Fasching, W. Schwartz, 2003, p. 62). It is worth mentioning that in Poland, as early as the 1920s, a similar view was presented by some representatives of the administrative law (Z. Rolnicki, 1928, p. 42). In the discussed period, however, on the basis of European administrative proceedings, the dominant view was that the administration body should not be limited as to the possibility of adjudicating – both in *melius* (i.e. changes in favour of the given party) and in *peius*. Such an express position was slowly weakening, however, and this change took place in individual countries of the analysed area at different times.

Gradually, it was more and more often noticed that, due to their own interest, a party should have a choice between lodging an appeal or being content with a decision issued by the first instance authority. And yet they do not have this free choice if they have reason to fear that the lodging of an appeal may result in worsening their situation by an appeal body's decision (E. Iserzon, 1968, p. 235; Z. Janowicz, 1978, p. 167, A. Skóra, 2019, p. 46 et al.). The intention of the legislator was therefore to create more favourable conditions for defending the interests of a party in the appeal proceedings (M. Kopecky, 2010, p. 204). The content of the analysed provisions on the prohibition of changes for the worse in the studied countries allows for the conclusion that the possibilities of withdrawing from the ban are exceptional and are allowed only in situations of qualified violation of the law (Poland, the Czech Republic, Slovenia, Croatia, North Macedonia) and, exceptionally (as in Poland and the Czech Republic), of social interest. In the Czech Republic, Croatia and North Macedonia, it is also possible to withdraw from the ban when parties with conflicting interests have appealed (M. Šikić, 2021, p. 310-301; N. Mijatović, 2005, p. 83). The aforementioned provision of Art. 244 paragraph 1 of the Macedonian General Administrative Procedure Act states that "the second instance authority may change the first instance decision… provided that the rights of another party are not infringed in this way". Therefore, it provides an *expressis verbis* guarantee for other parties to the proceedings that, as a result of an appeal lodged by one of the parties, the acquired rights of the others will not be infringed. However, Art. 253 of the Slovenian Act on General Administrative Proceedings adopts a completely different solution, as the second instance authority may, in the event of the need to protect the public interest or the rights of other parties to the proceedings, change the decision of the first instance authority to the detriment of the party.

There is no doubt that the protection of a party's interests is nowadays the basic goal of administrative proceedings and finds expression in many institutions of this procedure. One of such elements is the limitation of *reformatio in peius* in the form of a partial prohibition of its implementation. This prohibition – by preventing the deterioration of the legal situation of the party determined in the decision of the first instance authority – creates an "incentive" to use legal remedies. The lack of restrictions on *reformatio in peius*

inhibits the party's freedom to undertake further defense of their interests for fear of deterioration of their legal situation, shaped by the decision of the first instance authority (B. Adamiak, 1992, s. 209; E. Iserzon, 1968, p. 234-235). Therefore, it is believed that the restriction of *reformatio in peius* is justified by ensuring the logical non-contradiction of the act, which would not be maintained if the legislator granted the party certain rights (i.e. the right to appeal), and at the same time provided for unpleasant consequences for it (i.e. *reformatio in peius*), if it would undertake their implementation (B. Adamiak, 1992, s. 209; M. Šikić, 2021, p. 312-313; V. Đerđa, 2010, p. 265; A. Rajko, 2017).

The conviction that it is necessary to protect the interests of a party – as a justification for limiting the possibility of changing a decision of an authority of first instance to the detriment of the appealing party – is also confirmed in the judicial decisions of national administrative courts (among other the ruling by the Highest Administrative Court dated 4.04.2019, II OSK 1270/17; the ruling by the Highest Administrative Court dated 6.12.2018, I GSK 3356/18; the ruling by WSA in Kraków dated 18.04.2018, II SA/Kr 93/18, quot. from CBOSA).

Protection of the party's trust in administrative proceedings as a justification for the prohibition of *reformatio in peius*

The justification for the prohibition of *reformatio in peius* is also sought (e.g. in Poland and the Czech Republic) by referring to the principle of protecting the party's trust in administrative proceedings (O. Bujkowa, 1984, p. 109; B. Adamiak, 1992, p. ?).

In European law, the principle of protection of trust was derived by the Court of Justice of the EU from the principle of legal security (Z. Szente, 2017, p. 7). Invoking this principle is only possible when there has been an act to substantiate trust, i.e. the EU should first have created a situation that can instil such confidence. Related to the principle of the protection of trust are the issues of withdrawal and cancellation of decisions and the *reformatio in peius*. The UE Tribunal of Justice dealt with the principle of *reformatio in peius* inter alia, in the case of Oliveir.

In Poland, the principle of the protection of trust is the basic principle of the rule of law, derived from Art. 2 of the Polish Constitution (Dz. U. No.78, item 483 as amended). On the basis of administrative proceedings, the principle of protection of trust was *expressis verbis* expressed in Art. 8 § 1 of the APA. The above rule most generally requires, inter alia, that public administration authorities are obliged to conduct the proceedings in a manner that strengthens the trust of the participants in the proceedings (including the parties appealing) to these authorities. It is assumed in the literature that the scope of the discussed principle is very broad, and the assessment of whether a certain action or set of actions complies with this principle must be carried out on the basis of a specific factual and legal situation (A. Skóra, 2019, p. 48).

When justifying the validity of the prohibition of *reformationis in peius* by referring to the principle of the protection of trust, it can be assumed that a party – when submitting an appeal – should not feel the fear that their consideration will lead to a deterioration of their legal position. Therefore, by limiting the possibility of changing a decision to the detriment of a party the trust of an individual, who is given the possibility of obtaining a decision by the legislator without unnecessary risk is protected. Depriving individuals of their rights or increasing the scope of their duties can be considered highly unfavourable for their legal awareness. In such cases, they lose trust not only in public administration bodies, but also in the very idea of law. In order to assess whether a given procedural structure meets the requirements of the rule of law – and the resulting principle of protection of trust – it is not enough to state that it complies with the law (A. Skóra, 2019, p. 50). Thus, the situation in which the legislator does not define the boundaries in which the deterioration of the position of the appellant party may occur should be considered as contrary to the principle of protection of trust. This is because it undermines an individual's trust in the activities of administrative bodies.

The prohibition of *reformatio in peius* as guarantee standard

In the context of deliberations on the prohibition of *reformatio in peius*, the protection of the party's trust is manifested not only in delineating the limits

of adjudication to the detriment of the party, but also in the postulate that these limits should be defined as precisely as possible. For this reason, among others in Poland, Croatia and the Czech Republic, the prohibition of changes possibly causing harm is perceived as a guarantee standard, i.e. a norm that should not be interpreted restrictively (M. J. Szewczyk, 2015, p. 278; M. Šikić, 2021, p. 312-313; V. Đerđa, 2010, p. 265;).

The doubts formulated in this respect concern in particular the setting by the legislator of the limits of *reformatio in peius* with the use of vague terms, which is emphasized by the science of law and court judicial decisions, among others, in Poland and the Czech Republic. There is an extremely serious problem with the way of their interpretation associated with the category of blurred concepts. It is oted that the broad framework of these notions creates considerable freedom for the public administration to define their scope (O. Bujkowa, 1984, p. 106; Z. Janowicz, 1982, p. 213; A. Skóra, 2019, p. 51). Such freedom may even lead to the discretion of the second-instance body. This lack of legal certainty resulting from the permissibility of using the "subjective" feelings of law enforcement when shaping the legal situation of the appellant party (M. Wyrzykowski, 1986, p. 52), can certainly be considered incompatible with the principle of the protection of trust. It is therefore generally accepted that the criteria for waiving *reformatio in peius* must be defined precisely (O. Bujkowa, 1984, p. 106; Z. Janowicz, 1978, p. 168; A. Skóra, 2019, p. 50).

The guarantee nature of this institution consists in securing the freedom to appeal against a decision by providing a party with conditions for a decision unhampered by fear to subject it to the control of a higher authority. At the same time, the guarantee nature of the prohibition means that the provisions limiting its operation (and therefore allowing for changes to the detriment of the party) should be interpreted restrictively – in accordance with the *exceptiones non sunt extendendae* rule (see among other R. Kędziora, 2015, p. 394; A. Skóra, 2019, p. 49 et al.). Administrative and judicial practice show that adjudication to the disadvantage of a party is currently exceptional under, for example, Polish, Czech, Croatian and Slovenian law.

Conclusions

The presented comments allow for the formulation of several important conclusions.

First of all – despite the common origin of the administrative proceedings of the Central European and Balkan states – their legal regulations regarding such an important institution as the possibility of the appeal body changing its decision to the detriment of the party are fundamentally divergent. In some of these countries (including Austria, Hungary, Slovakia) it is believed that *reformatio in peius* is a natural consequence of lodging an appeal and there is no need to limit it. At the same time, in other countries (such as Poland, the Czech Republic, Slovenia, North Macedonia, Croatia) the restriction of *reformatio in peius* seems justified, and the legislator introduces broader or narrower prohibitions on changing the decision to the detriment of the appellant party.

Secondly, compared to criminal or civil proceedings, the prohibition of *reformation in peius* in the administrative proceedings was introduced relatively late. The pioneers in the consistent protection of the appealing party against the possibility of deterioration of the legal situation were: the Polish APA, which was introduced in 1960 by the prohibition of *reformatio in peius*, and the law passed in the former Yugoslavia in 1957. It seems that pioneering solutions in this area have survived and have become established both in Poland and in the countries of the former Yugoslavia (such as Croatia, Slovenia and North Macedonia). On the other hand, in the Czech Republic, the impetus for the prohibition of changing parties to the detriment of the parties in the general administrative procedure in 2004 came from the positive experience in this regard in criminal and administrative proceedings

The third important conclusion is that in contemporary doctrine and in the judicial decisions of countries such as Poland, the Czech Republic, Slovenia, North Macedonia or Croatia, the prevailing view is that the prohibition of *reformatio in peius* is an important procedural guarantee for a party to the proceedings. Its validity is justified by reference to the basic principles of this procedure, such as the principle of protection of a party's interests and the principle of protection of their trust in state bodies. In Poland and the

Czech Republic, the prohibition of deterioration of the party's situation is also perceived as a guarantee standard (Polish, Croatian and Czech teaching of administrative law refers here to the experience of learning the criminal process), which is expressed, among others, by in the postulate that the provisions limiting its operation (and therefore allowing for a change to be made to the detriment of the party) should be interpreted restrictively – in accordance with the *exceptiones non sunt extendendae* rule.

Finally, it is also worth emphasizing that the introduction in Poland and in the countries of the former Yugoslavia of the ban on general administrative procedures was an unprecedented event compared to other European countries. In particular, countries close to Poland in terms of culture and legal tradition, either still allow *reformatio in peius* in general administrative proceedings (Austria, Hungary, Slovakia), or the ban has been in force there only for several years and to a limited extent (Czech Republic).

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