JOURNAL OF MODERN SCIENCE

Special Issue

5/59/2024

www.jomswsge.com

DOI: doi.org/10.13166/jms/192838

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EXERCISE OF A PARTY'S RIGHTS TO ACTIVE PARTICIPATION IN ADMINISTRATIVE PROCEEDINGS. SELECTED ISSUES IN THE CONTEXT OF SELF-GOVERNMENT BOARDS OF APPEALS RULINGS

Abstract

Self-Government Boards of Appeals (SBoAs) act, within their statutory competence, as bodies of higher instance, within the meaning of the Code of Administrative Procedure and the Tax Ordinance Act, in individual public administration matters falling within the jurisdiction of local governments, unless specific provisions of law provide otherwise. In view of this, inevitably, their adjudicatory practice relies, among other things, on the direct application of general principles articulated in the Code of Administrative Procedure and the Tax Ordinance Act, especially in terms of ensuring active participation of the parties in the appeal proceedings. Given the specificity of the court operating as a quasi-judicial body, the article analyses the interplay between the general principles related to active participation of the parties to proceedings and outlines difficulties (and challenges) related to the issues discussed. The study was conducted by employing the formal and dogmatic method, as well as auxiliary legal-historical method, with a view to presenting the normative context of the adopted legal solutions. Moreover, the conduced analysis of court and tribunal jurisprudence allowed inclusion of the practical aspects of the general principles in question and their application.

Keywords: *active participation of a party to administrative proceedings, rule of law, efficiency of public administration, objective truth*

Introduction

The normative purpose of administrative procedure is to create a system of rules regulating the operation of public administration bodies, but also, above all, to ansure that their subsumption stands as an embodiment of the principle of a democratic state of law, which, under Article 2 of the 1997 Constitution of the Republic of Poland, ought to implement the principles of social justice. The latter is possible only if a rational legislator establishes adequate procedural guarantees to protect the interests of parties to proceedings and ensure full compliance with statutory rule of law (Article 6 of the Code of Administrative Procedure). Although the Code of Administrative Procedure does not explicitly evoke the principle of procedural justice, procedural law ought to ensure that at every stage of particular proceedings, individuals have access to appropriate procedural instruments and confidence that the procedural impact on their legal situation remains cosistent with the fundamental values of the rule of law (Adamiak, 2001, p. 20; Constitutional Tribunal judgment

of 14.06.2006, K 53/05, OTK ZU 2006, no. 6/A, item 66; CT judgment of 12.04.2012, SK 30/10, OTK ZU 2012, no. 4/A, item 39).

The principles that are directly rooted in the overarching concept of the rule of law include in particular: the principle of objective truth (Article 7 of the Code of Administrative Procedure) and the principle of active participation of a party in proceedings (Article 10 of the Code of Administrative Procedure), or the principle of procedural swiftness (Article 12 of the Code of Administrative Procedure). Analogous solutions also apply to the tax procedure regulated in the Tax Ordinance Act. When it comes to self-government boards of appeals, individual cases are considered in line with both mentioned procedures underlying the right of a party to participate in the proceedings.

Naturally, the above list of guarantees is hardly exhaustive, drawing up such a list was not the research objective in the present study. The profiled analysis of selected principles was only to facilitate further discussion on their practical reception by bodies such as self-government boards of appeals (SBoAs), especially from the perspective of their mutual coupling in the context of the principle of active participation of parties in administrative and tax proceedings. Self – government boards of appeals operate in specific social conditions, which also determines the form (and effectiveness) of the conducted proceedings.

The constitutional-legal nature of the self – government board of appeals

The functioning of the SBoAs is regulated by the Act of 12 October 1994 on self-government boards of appeals (consolidated text Dz. U. of 2018, item 570, hereinafter the ‚SBoAs Act'). Pursuant to Article 1(1) of the Act, SBoAs serve as higher-instance bodies, within the meaning of the provisions of the Code of Administrative Procedure and the Act of 29 August 1997. – Tax Ordinance Act, in individual matters falling within the scope of public administration and the competence of local self-governments, unless specific provisions provide otherwise. As follows from Article 2 of the SBoAs Act, in cases referred to in Article 1(1) thereof, the boards constitute authorities competent in particular

to examine appeals against decisions, complaints against decisions, requests for the resumption of proceedings or annulment of decisions. In t tax related cases, it is important to note the unique character of the SBoA, distinguishing it from other tax authorities. The package of regulations defining the legal situation and organisational principles of the boards is relatively broad.

For the purposes of this study, only the main aspects related to the issue at hand will be highlighted. First and foremost, the far-reaching guarantees of independence, both vis-à-vis the government and local self-government, are of particular importance. This is reflected by the organisational structure of the board itself. Unlike, for example, the director of the tax chamber, the president of the SBoA is not a tax authority as such. The board (a composed of three members) stands as the authority, while the tasks of the president are managerial and representational only. Directors of tax chambers report to and are appointed by the Minister of Finance, which in essence, constitutes a direct employment relationship between a superior and a subordinate. Theoretically, this could affect the course of tax proceedings – including the implementation of principles shaping the rights of a party, e.g. in terms of the interpretation of specific provisions. Such a concern does not exist with regard to the Prime Minister's supervision over the administrative activities of the SBoAs. Both the wording of the SBoA Act itself and the relevant regulation of the Council of Ministers make it clear that the Boards can only be evaluated in terms of their organisational efficiency, and not the substantive aspects of their activity (Article 3a of the SBoAs Act). In the current legal circumstances, it is difficult even to imagine effective interference of governmental administration in the merits of cases handled by the Boards. The president thereof is appointed by the Prime Minister and does not operate as a tax authority, while the decisions of the SBoA are made in the course of hearings or closed sessions – by panels composed of three members. Decisions are made by majority vote and no member may abstain from voting. This state of affairs guarantees independence of the Boards adjudicating as *quasi-judicial* bodies in administrative matters subject to their jurisdiction, and contributing to the realisation of the right to administrative proceedings (Skibiński, 2009, pp. 122-126; Szremski, 2021, p. 54).

Another aspect setting the SBoA apart relates to the fact that it is the only collegiate tax authority (other tax authorities are monocratic). in this context,

one should emphasise the high professional requirements for Board members, as well as the fact they remain bound by the provisions of generally applicable law (Tarno, 2002, pp. 9-20; Skibiński, 2009, p. 122). It seems that, in contrast to a monocratic body, a collegiate body has more conducive to a multifaceted analysis of factual and legal facts, within the framework of a substantive discussion leading up to the ruling – with due consideration for parties' rights related to active participation in administrative (tax) proceedings.

Unfortunately, there are also certain aspects of the Boards which, in the context of the issues addressed in this paper, may arouse controversy or even a negative assessment. The specificity of SBoAs also lies in the fact that its competences are limited to verifying the decisions of lower-level tax authorities. This applies both in instanced and extraordinary tax proceedings. At the same time, it should be noted that the scope of such verification is sometimes much narrower compared to the prerogatives of the director of a tax chamber, as is the case, for example, in matters involving so-called discretionary reliefs. In the current legal system, a self-government board of appeals, when considering an appeal in this type of case, cannot reverse the decision of the first-instance authority. Moreover, serious practical controversies arise here regarding the interpretation of the Tax Ordinance provisions applicable in this context. Although normally authorised to issue decisions overruling and resolving cases as to their merits, in matters related to so-called discretionary reliefs subject to appeal, a SBoA is competent only to overrule the appealed decision (Article 233 §3 of the Tax Ordinance, although of course, constitutional standards of self-governance, independence of local government units and their right to a stable budget revenue policy must not be overlooked in this context). Undoubtedly, such a construction does not allow for a substantive settlement of the taxpayer's application. The Board cannot change the decision of the first-instance body and grant tax relief (as expected by the appellant party to the proceedings). It may only point out certain procedural deficiencies and based on the same, revoke a tax decision unfavourable to the taxpayer for reconsideration by the first-instance body. In practice, however, after reconsideration by the first-instance authority, this rarely results in rulings in favour of the appealing party. As a rule, a decision with the same substantive content (unfavourable for the party) tends to be issued after the relevant deficiencies have been rectified. Under these conditions, the question

arises not only whether the party's rights related to active participation in tax proceedings are duly realised, but also if the proceedings themselves serve any meaningful purpose.

Given the specificity of SBoAs outlined above, the research task indicated in the title was adopted with a view to analysing the practical operation of such Boards in the context of the cited principles by assessing, firstly, the correctness, and secondly, the adequacy of the adopted legislative solutions relative to empirical requirements. To this end, formal and dogmatic methods were employed alongside an analysis of case law. Additionally, where necessary, the historical-legal method was also used.

The institution of active participation of a party to proceedings

One of the key procedural rights of a party to administrative proceedings is rooted in the statutory institution of active participation (Malanowski, 2015, p. 67; Knysiak – Molczyk, 2015, pp. 114-116). A public administration body is obliged to create appropriate legal and organisational conditions at each stage of administrative proceedings, from initiation to resolution, to realistically ensure that an interested party can take an active part in the proceedings. The provision stipulates that before a decision is rendered, the parties should be given an opportunity to express their position on the evidence taken, materials gathered, and claims filed (Article 10 §1 of the Code of Administrative Procedure). Public administration bodies may derogate from the aforementioned rule only in cases where resolution of the case requires urgent attention because of threats to human life or health or the threat of irreparable material damage, and only after the reason for such derogation has been duly recorded in the case file, by way of annotation (Article 10 §2 and §3 of the Code of Administrative Procedure). As such, the right of a party to actively participate in administrative proceedings includes the right to file submissions, supplement their content, attach annexes, provide oral and written explanations, and participate in hearings, etc. Pursuant to Article 75 of the Code of Administrative Procedure, evidence may be anything that can

contribute to clarifying a case and is not contrary to law. Thus, the catalogue of admissible evidence is very broad, meaning that the wording of the Code of Administrative Procedure cannot be enumerative.

A similar institution applies to tax procedure. Pursuant to Article 200 of the Tax Ordinance, prior to issuing a decision, the tax authority sets a seven-day period for the party to express its opinion on the evidence collected. At the same time, a relatively broad catalogue of exceptions to this rule is provided, including cases where proceedings initiated by a party are are resolved in full compliance with the party's application; cases involving determination of tax liabilities which, under separate regulations, are determined annually; if the facts on the basis of which the amount of the tax liability for the previous period was determined have not changed; or decisions on crediting a tax payment, overpayment, or refund. On the one hand, therefore, when compared to Article 10 of the Code of Administrative Procedure, a *stricter* formal requirement is noticeable. Specifically, the Tax Ordinance stipulates a 7-day deadline while no such time limit is established in Article 10 of Code of Administrative Procedure (in fact, Art. 200 of the Tax Ordinance originally used to stipulate a 3-day deadline – the Act of 13 November 1997, Journal of Laws of 1997, No. 137, item 926). On the other hand, a much broader catalogue of exceptions is provided, dictated – generally speaking – by considerations of speed expedience and economic efficiency (simplicity, reduction of costs) of proceedings.

Notwithstanding the above differences between administrative and tax proceedings before SBoAs, many important aspects thereof remain clearly consistent. For the purposes of this study, we will focus on administrative proceedings. A statutory example illustrating fulfilment of the legal standard related to ensuring active participation of a party in administrative evidentiary proceedings before the SBoA can be found in the provisions of Article 79, in conjunction with Article 86, of the Code of Administrative Procedure. It stipulates that parties to proceedings have the right to at least 7 days' notice of the place and date of the taking of evidence from witnesses, experts or examinations (the requirements also apply to taking evidence from the hearing of a party) and to participate in the evidentiary process, to ask questions of witnesses, experts and parties, and to file explanations. It has been argued that in the case of other evidence (i.e. other than referred to in Article 79 in

conjunction with Article 86 of the Code of Administrative Procedure), the authority is not obliged to notify the party of the evidentiary proceedings, but without limitation (or exclusion) of the principle stipulated in Article 10 of the Code of Administrative Procedure. However, for active participation in administrative proceedings to be comprehensive, it should extend to cases other than indicated in Article 79 in conjunction with Article 86 of the Code of Administrative Procedure, to provide the party with the ability to also challenge evidence taken in the party's absence (Knysiak – Molczyk, 2004, LEX el.).

The right to comment on the full range of evidence taken is intended as an element contributing to the relative openness of Polish administrative proceedings, materialised in particular by allowing the parties' access to case files (Article 73 in conjunction with Article 9 of the Code of Administrative Procedure; Knysiak – Molczyk, 2004, LEX el.; Gajda-Durlik, 2019, p. 100; Wojciechowska, 2020, pp. 271-287; Zieliński, 2022, pp. 597-612; TK judgment of 11.06.2002, SK 5/02, OTK ZU 2002, no. 4/1, item 41). Within the premises of the public administration body and in the presence of an employee of that body, parties may freely view the case file at any stage of the proceedings (also post-award),make notes and copies thereof. A public administration authority may perform the afore obligation via its ICT system, subject to party authentication in line with the provisions of the Act of 17 February 2005 on Informatisation of the Activity of Entities Performing Public Tasks. However, there are certain limitations when it comes to both general access to files, and requests for authentication of copies or notes from the case file or issuance of certified copies from the same (qualified access). Specifically, general access may be subject to limitation if information classified as ‚secret' or ‚top secret' is involved or such access is deemed to be against important public interest. In the case of the qualified form of access, the party must demonstrate the existence of important interest (Article 73 §2 of the Code of Administrative Procedure). In the latter situation, the burden of proof regarding the existence of circumstances evidencing such important interest rests with the party willing to exercise its rights in a qualified manner. If the party's request is dismissed – be it with regard to basic or qualified form of access – the authority should issue a decision, which may be appealed against (Article 74 §2 of the Code of Administrative Procedure). As a side note, it should be added that

although the principle of openness itself was not expressly introduced into the Code of Administrative Procedure, it may be derived from other general principles of administrative Procedure, in particular the principle of the rule of law, and thus also principles such as the principle of active participation, the principle of notification, the principle of persuasion, or the principle of fostering trust in public administration (Muzyczka, 2022, pp. 74-82; Strzępek, 2023, pp. 158-173; Rzepka, 2019, p. 267).

The aforesaid duties of the authority, especially in terms of rendering parties' active participation in proceedings more realistic, aligns with the provisions of Article 89 of the Code of Administrative Procedure which stipulates that a hearing shall be held, ex officio or at the request of a party, as part of proceedings in each case where this can expedite or simplify the proceedings or whenever it is required by law. Furtehrmore, the authority should hold a hearing when there is a need to reconcile the interests of the parties and when it is necessary to clarify the case with the involvement of witnesses or experts or by means of an inspection. The hearing is the most comprehensive form of the investigation procedure which, on the one hand, allows the authority to gather evidence in accordance with the principle of concentration, and on the other hand, ensures the party's ability to actively participate in the proceedings (e.g. by way of notifications received from the authority as regards the right to ask questions to witnesses, experts, parties, the right to file explanations, the right to testify at the hearing (in conjunction with Art. 9 of the Code of Administrative Procedure), effective delivery of written summons at least 7 days before the planned date of the hearing (in accordance with Art. 8, Art. 90 §2, Art. 91, and Art. 95 of the Code of Administrative Procedure). It should be added, however, that the absence from the hearing of a party that has been duly summoned does not prevent the hearing from being conducted. The person conducting the hearing is obliged to postpone it only if he is aware of serious discrepancies in the summons served on the parties, if the party's failure to appear was caused by circumstances that were difficult to overcome, or for any other serious reason (Article 94 of the Code of Administrative Procedure).

As one of the key principles of administrative procedure, the principle of the parties' active participation in proceedings, directly translates into a catalogue of specific procedural. The scope of its procedural impact is reflected

by the fact that it constitutes a direct basis for engaging extraordinary administrative procedure, i.e. recommencement of proceedings in the two procedural modes available to the SBoA (Article 145 §1 point 4) of the Code of Administrative Procedure and 240 §1 point 4) of the Tax Ordinance). Grounds for recommencement include a situation where a party, through no fault of its own, was unable to participate in the proceedings, i.e. it did not participate in procedural acts which were significant to the resolution of the case, and in which the party was allowed to participate under relevant regulations, or it did participate, but the authority failed to provide adequate conditions for active participation. Under such circumstances, the proceedings are subject to recommencement regardless of whether or not the infringement of procedural standards had actual impact on the content of the decision rendered. Notably, however, this does not apply to situations where the authority performs all of its obligations related to duly notifying the party and providing conditions for active participation, but the party shows no procedural initiative (Knysiak – Molczyk, 2004, LEX el.; Daniel, Wilczyński, 2014, p. 6; judgment of the WSA in Kielce of 19.09.2007, II SA/Ke 344/07, LEX No. 372523). Notably, there is a certain inconsistency in the application of provisions relating to administrative proceedings regulated under both procedures and those relating to ruling verification in administrative court proceedings conducted in accordance with the Law on the Administrative Court Procedure. Pursuant to Article 145 §1 (1) (b) of the Act, the court, having recognised a complaint against a decision or ruling, revokes such a decision or ruling in whole or in part if it finds evidence of a breach of law giving rise to the recommencement of the administrative proceedings. As follows from an analysis of court rulings handed down to date, that the assumption that every violation of the principle set out in Article 10 of the Code of Administrative Procedure provides sufficient grounds for the elimination of the contested decision or ruling is no longer valid. Although the doctrine still maintains that each infringement of the principle of active participation of a party in the conducted proceedings, i.e. lack of the party's participation in relevant judicial acts, should constitute grounds for recommencement of the proceedings, administrative courts sometimes require examination of the circumstances of such a violation (as in the case of the separate provisions of Article 145 §1.1(c) of the Code of

Administrative Procedure, where *other violations influencing the decision* are mentioned). This kind of peculiarly divergent analysis has been presented in a number of rulings of regional administrative courts, e.g. in the judgment of the WSA in Warsaw of 10.01.2018, IV SA/Wa 2205/17, LEX No. 2536031. A similar worrying tendency has been noticed by representatives of the doctrine (Sawuła, 2008, p. 34). Under the conditions of the aforementioned interpretative obfuscation at the junction of case law – doctrine – and wording of provisions, one must maintain a nuanced approach to the specific types of violations regarding the right to active participation in ongoing proceedings. Not every breach will automatically constitute grounds for eliminating a decision or order from legal circulation. As follows from the long-established line of administrative court rulings, a violation of Article 10 of the Code of Administrative Procedure involving failure to notify a party of the collection of evidence, the possibility of reviewing evidence and submitting motions should always be considered by accounting for the actual procedural action that the party may have been prevented from taking and the impact of the same on the outcome of the case (e.g. judgment of the Supreme Administrative Court of 15.03.2024, I GSK 287/23, LEX no. 3698708). The burden of proof in evidencing causal connection between the breach of Art. 10 and the outcome of the case lies with the party motioning the court. Specifically, it has been argued that what a party should demonstrate is that if the relevant procedural infringement had not occurred, the outcome of the case would have most likely been different (e.g. the judgment of the Supreme Administrative Court of 18.12.2012, II OSK 1490/11, LEX No. 1286271). Hence, the discussed violation related to a party's active participation in proceedings does not automatically constitute grounds for recommencement of proceedings under Article 145 §1(4) of the Code of Administrative Procedure, and as such, will not be assessed in the administrative court proceedings by evoking Article 145 §1(1)(b) of the Code of Administrative Procedure. Instead, Article 145 §1(1)(c) of the Code will apply (Chróścielewski, Tarno, 2016, p. 39). A distinction has been made between a situation where a party did not participate in the pending proceedings, or essential activities in the course thereof, and a situation where the party did participate in the entirety of the proceedings, and the court only failed to notify it of an evidentiary procedure. Nonetheless, even in the latter case, no automatism is implied here

as the relevant facts of the matter must still be examined and considered (e.g. in cases with the involvement of multiple parties, some of whom may have been notified while other were not – as was the case in e.g. the resolution of 7 judges of the Supreme Administrative Court of 25.04.2005, FPS 6/04, ONSAiWSA 2005, no. 4, item 66; Daniel, Wilczyński, 2014, pp. 18-20).

A similar tendency to move away from an automatic negative assessment of non-participation in pending Procedure can also be observed in the context of tax cases (pursuant to Article 200 of the Tax Ordinance). In principle, such a situation qualifies as a significant procedural defect constituting grounds for revocation of the decision (recommencement of proceedings). Until recently, this orthodox (or unequivocal) interpretation has generally been maintained in case law (e.g. judgment of the Supreme Administrative Court of 18.11.2004, FSK 1216/04, LEX no. 147893). Over time, however, certain serious controversies emerged in this context, leading to diversification of jurisprudential lines (Dzwonkowski, LEX el.). Ultimately, the Supreme Administrative Court held that depriving a taxpayer of the right to express his or her opinion under Article 200 of the Tax Ordinance does not always constitute grounds for revoking the decision under appeal (Resolution of 7 judges of the NSA in Warsaw of 25.04.2005, FPS 6/04, ONSAiWSA 2005, No. 4, item 66). The Court concluded that failure to set a time limit for a party to challenge the evidence collected may indeed lead to reversal of the decision appealed against, but only if the breach could have had a significant impact on the outcome of the case. The obligation in question also applies to appellate proceedings before the SBoA. Notably, a party to appeal proceedings should be able to challenge all the evidence relevant to a given tax case – i.e. also evidence gathered by the first-instance tax authority (Borkowski, 134-140). Thus, while the importance of the assessment of the collected evidence at the stage of both instances has been emphasised, the necessity to notify the party pursuant to Article 200 of the Tax Ordinance has been subjected to some relativisation.

The principle of active participation and the principle of objective truth

Currently applicable regulations state that public administration bodies act on the basis of provisions of law (i.e. in accordance with the rule of law expressed in Article 6 of the Code of Administrative Procedure). To this end – ex officio or based on a party's application – they necessary steps to accurately clarify the facts and dispose of the case, with due consideration for public interest and the legitimate interest of citizens (Article 7 of the Code of Administrative Procedure). It is precisely the court's obligation to seek the objective truth of the matter that underlies its duty to exhaustively investigate all the facts relevant the case, gain full understanding of its circumstances, and establish the basis for the correct application of the adequate legal standard. Undoubtedly, this shifts the burden of proof in administrative proceedings to the public administration body, which, however, is not equivalent to a party's complete noninteraction with the authority, with understandably negative consequences for the latter. Although active participation in proceedings is only a right (rather than obligation) of the party involved, failure to prove certain factual circumstances is likely to lead to a less than desirable outcome (Borkowski, 2010, p. 142). This is because the burden of proof regarding a specific fact still rests with the person seeking to derive a legal effect from said fact (e.g. judgment of the Supreme Administrative Court in Warsaw of 16.02.1999, III SA 2322/98, LEX no. 38142). What principle means in practical terms is that a SBoA is obliged to actively seek, even despite a party's passivity, to clarify the facts of the case using all evidentiary means available to it (Borkowski, 2015, p. 39). Naturally, fulfilment of said requirements will not always be tantamount to uncovering, within the framework of the evidentiary initiative demonstrated by the authority, all the facts, as some may only ever be known to the interested party.

The principle of objective truth is further elaborated by the provisions of the Code of Administrative Procedure, which simultaneously establish guarantees of its implementation. Article 77 of the Code stipulates that the public administration body is obliged to comprehensively collect and examine all evidential material. It is only on the basis of the entirety of the collected evidence that the body may assess whether a given circumstance has been proven.

Hence, it follows that it should determine ex officio what evidence is necessary for a full and proper clarification of the facts of the case by employing the criterion of materiality (Article 80 of the Code of Administrative Procedure). The determinant of *materiality* to the case follows from the provisions of substantive law. If the proceedings are brought by a party, the administrative body should, ex officio, clarify the actual content of the party's petition in an unquestionable manner and take further necessary procedural action (including, in case of doubts as to the party's intention, calling upon the party to clarify its intentions). However, the Board of Appeal may also disregard a party's petition if it is not duly filed in the course of the evidentiary process, or at the hearing if the petition relates to circumstances already established by other evidence, unless relevant to the case.

Any motions to take evidence should be analysed by the authority, within the framework of its competence, by considering their relevance to the case and usefulness in establishing the factual circumstances, while also taking the principle of procedural expedience into due consideration (Article 12 of the Code of Administrative Procedure). Naturally, the above ought to be without prejudice to the authority's obligation to establish the objective truth (e.g. judgment of the Supreme Administrative Court of 17.03.1986, III SA 1160/85, ONSA 1986, No. 1, item 19). It should also be added that a party is not bound by specific deadlines when filing claims, neither before the first-instance or appellate authority, even under extraordinary procedural modes. The system of evidentiary preclusion does not apply to such proceedings (Siedlecki, 1972, p. 90). In addition to the expectation that public administration should act diligently and thoroughly, the Code of Administrative Procedure expressly aims to ensure its efficiency. It seems that the legislator is less concerned with the gradation of administrative procedural principles (although undoubtedly some, e.g. the principle of the rule of law, are of fundamental importance), and more with adequately balancing the same. Hence, the rational legislator aims to achieve a suitable equilibrium between ensuring a fair and thorough process conducted with due respect for the guarantees of active participation, and maintaining procedural efficiency (Kędziora, 2019, pp. 108-109). Article 12 §1 of the Code of Administrative Procedure stipulates that public administration bodies deal with cases thoroughly and promptly, using the simplest available

methods to resolve them. Simple matters that do not require the collection of evidence, information or clarification, should be dealt with without delay (§2).

To facilitate the reception of the principle of expedience, procedural guarantees of preventive and repressive nature have been implemented in the Code of Administrative Procedure (Kędziora, 2018, pp. 139-140; Adamiak, Borkowski, 2009, p. 119). The former group includes regulations that introduce statutory, instructional deadlines for handling cases, depending on the nature of the case at hand and its complexity (one-month with a possible extension in particularly complex cases pursuant to Article 35 of the Code of Administrative Procedure, subject to the provision that different deadlines may be defined by higher-instance bodies – e.g. 14 days for considering an appeal against the refusal of access to public information, or 7 days to respond to a higher body's call for action from a public administration authority). On the other hand, guarantees of a repressive character include provisions enabling parties to to submit interlocutory objections and complaints to administrative courts, citing inaction or protracted handling of proceedings (Article 37 of the Code of Administrative Procedure). Other provisions introduce sanctions against negligent administrative employees who has fail to handle a case in a timely manner or extend proceedings beyond the period necessary to handle the case (liability to order or disciplinary action referred to in Article 38 of the Code of Administrative Procedure). The existing legislative solutions concerning the timeliness of casework can be said to be fairly balanced. The introduced deadlines establish instructional, maximum timeframes of procedural (rather than substantial) nature. This means that of the Board of Appeal may still adjudicate in the case even if a particular deadline is not met, without fear of material deficiency of the decision issued (Klat – Wertelecka, 2005, p. 492; Judgment of the Supreme Administrative Court in Katowice of 7.05.1998, I SA/Ka 1215/96, LEX No. 35938). Consequently, a mere delay in issuing a decision does not constitute an independent basis for reversing the decision of the authority on the grounds of formal and legal allegations. Nonetheless, in cases of procedural inaction or protraction, when the causal relationship with the authority is jeopardised, liability for damages may apply.

Conclusions

The selective and summary overview of the implementation of parties' rights to active participation in administrative proceedings before the SBoAs allows us to draw several conclusions of systemic and accessory nature. Firstly, both procedures (administrative and fiscal) strongly emphasise the protection of parties' rights in this respect. The protection of said rights is perceived as an important duty of public administration authorities such as SBoAs. As a rule, any failure in this respect will lead to concrete procedural consequences, mainly amounting to a negative assessment and elimination of the consequences of the SBoA's actions. However, this principle is not mandatory and can be subject to certain limitations. The overall systemic and legal premise of these solutions should be evaluated positively.

There is a clear, two-directional tendency to draw specific lines in the implementation of this principle. Firstly, we observe a kind of interaction within the set of procedural principles (active participation of the party versus the principles of: objective truth, speed, simplicity and cost-efficiency of proceedings). Secondly, over the years, case law has started to lean towards softening the practical implications of the principle in question. This occurs through a kind of relativisation (moderation) of the guarantee of active participation by employing specific relevant criteria, e.g. *significant impact on the outcome of the case*. The universal and underdefined character of such phrases is not without significance here.

Finally, the juxtaposition of the equivalent (at least in principle) institutions of administrative and tax proceedings revealed observance of a stricter formal and legal regime in the latter. In particular, the Tax Ordinance introduces casuistic prerequisites underlying the institution and stricter time limits (Article 200 of the Tax Ordinance *versus* Article 10 of the Code of Administrative Procedure). Consequently, in the case of a public administration body such as the SBoA, there is observable diversification in the manner (sometimes even extent) in which parties' rights to active participation in pending proceedings are ensured. In addition, it should be stressed that the legal and systemic specificity of the Boards themselves also influences the slightly different conditions and methodologies under which the analysed procedural guarantees are practically implemented.

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