



Uniwersytet
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**DEKODYFIKACJA POSTĘPOWANIA ADMINISTRACYJNEGO
W ŚWIETLE ORZECZNICTWA SĄDÓW ADMINISTRACYJNYCH**

**DECODING ADMINISTRATIVE PROCEEDING IN VIEW OF
ADMINISTRATIVE COURTS JURISDICTION**

SUMMARY

Rozprawa doktorska przygotowana
w Zakładzie Sądownictwa Administracyjnego
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PhD thesis "Decoding administrative proceeding in view of administrative courts jurisdiction" explains and judges decoding administrative proceeding process.

Decoding this proceeding is the process of forming law rules out of essential act law from 1960 Code of Administrative Proceeding. PhD thesis presents analysis of the phenomenon in administrative courts jurisdiction and against evolution of administrative proceeding in Poland. In the PhD thesis there are presented the causes that created laws out of the code and the problem of common usage code rules and other acts by officials.

PhD thesis includes not only current contents of other acts administrative proceeding regulations but also negative effects of decoding process such as: disturbing of code monopoly regulations of administrative proceeding. The analysis of this takes into account representative and sample proceeding where some out of code rules are applied.

Proceedings which are based on other Polish law than code and the rules off the Polish law system / UE law/ or even proceeding which do not include commonly obliged laws / regulations in students matters/

First part of the dissertation chapter 1 -analyzes the process of decodification of administrative proceeding. Apart from explanation of the notion the process of codification was described and models of administrative proceeding systematization as well. Completed in 1960 administrative proceeding coding means initiation in basic regulations in Poland, defining standards of officials procedures. The chapter includes the analysis of the administrative proceeding form accepted in some European countries.

A very significant element of this part is the discussion of the works on the code in the '60s of the previous century. As one of the reasons for decodification was the manner of regulation adopted in the original text of the Code of Administrative Proceeding providing for special administrative proceedings.

The first Chapter also discusses the evolution of the law on administrative proceeding in Poland. The first codification of this law was actually the Ordinance on Administrative Proceeding from 1928 entering into force. The introduction of this legal act also led to the completion of legal territorial unification started after the recovery of independence by Poland.

This chapter also covers the analyses of basic terms necessary to discuss the process of decodification such as: administrative decision, administrative proceedings.

This chapter discusses the application scope of the Code of Administrative Proceeding, i.e. when and which matters this act applies to. Also, such provisions provided in the code are discussed which exclude the application of the Code of Administrative Proceeding in special administrative proceedings. This part of the dissertation also establishes the factual legal status in the scope of exclusions of special proceedings from the Code of Administrative Proceeding.

In chapter 2 the idea of administrative proceeding decoding was defined. The systematization of solutions and off code proceeding were described.

This chapter presents an extensive analysis of non-code provisions, including the analysis of non-code specialised proceedings of autonomous and non-autonomous types. The former proceedings are characterised by special process solutions, other than those in the code. They entail a different shaping of rights and obligations of authority and party, as compared to the basic model of administrative proceeding (e.g. proceeding in social insurance matters). Whereas the latter type of proceedings is a type where in a non-code legal act exclusively selected procedural institutions are regulated and some technical solutions are introduced, referring to another more extensive procedure in the case of matters not settled therein, i.e. code of administrative proceeding.

However, the basic task of Chapter II is to establish the reasons for decodification which have been divided into external and internal ones. The most important ones refer to the following: 1) special character of procedural law which fulfils an auxiliary function towards substantive law, as a consequence, creating, within the regulation of substantive law, procedural provisions adjusted to the special character of given substantive law institutions, 2) covering new social relations by administrative law regulation (e.g. nuclear law, the right for access to public information, matters from the scope of environmental protection), 3) failing to obtain by the code the prevailing character towards ordinary statutes. In the light of the regulation contained in the Constitution of the Republic of Poland, the code has not obtained a special character among legal acts (Article 87 of the Constitution of the Republic of Poland).

This chapter also discusses the results of decodification of the administrative proceeding, among others, violation of the principle of the internal consistency of law. A legal

act of the code significance is characterised by the consistency of legal terms, well-thought through hierarchical structure of procedural provisions; as a consequence, decodification refers to the violation of the understandability and clarity of a legal text and it is an element weakening the ordering and protective function of the procedure regulated directly in the Code of Administrative Proceeding.

In chapter 3 the author analyzed how the system of UE law affects administrative proceeding decoding process in Poland.

This chapter discusses the principles of EU functioning within the scope of forming procedural law. It presents the so-called principle of procedural autonomy of member countries and its exceptions. These exceptions are significant as the possibility of legal rules forming by the EU is decodification of the Polish administrative proceeding. This part of the dissertation discusses examples of provisions created by the EU (e.g. Community Customs Code) and discusses the principles of co-application with reference to the EU and code provisions.

The common element of 4 and 5 chapter is presenting off code solutions in view of court jurisdiction including court analysis of clauses in usage code regulations. Both chapters discuss in detail judicial decisions of administrative courts referring to non-code provisions. The analysis presents rich judicial decisions which appeared in matters where non-code provisions have been applied (construction law cases, student cases of agricultural payments, cases of legal advisers). Chapter IV also summarises the understanding of administrative courts concerning legal decodification of administrative proceedings. Whereas Chapter V presents the understanding of administrative courts of one of the manners of applying the code, i.e. appropriate application of the Code of Administrative Proceeding. This part of the dissertation defines this manner of code application.

The analysis confirmed existing different form code process solutions in terms of models and phases of proceeding and being other non-coding process institutions.

Conducted research for Phd thesis needs are based on comparative law and historic law method and legal and dogmatic analysis as well, including European and Polish law material and created on its basis judicial views and law doctrine

