

Miłosz Jarzyński

*Effectiveness of punitive suspending decisions issued by the bodies of
the Inspection for Environmental Protection under the Environmental
Protection Law*

SUMMARY

Doctoral dissertation prepared in the
Department of Administrative Law and
Administrative Science under the supervision
of prof. dr hab. Marek Górski

Lodz 2019

The aim of this thesis is to examine the effectiveness of administrative sanctions under the environmental protection law, defined in the doctrine as “punitive suspending decisions.” These sanctions, in addition to punitive obligating decisions and financial and legal measures, are the key measures of implementing administrative responsibilities provided for by the provisions of the Act of 27 April 2001, Environmental Protection Law¹.

The examined legal measures have been established both in the provisions of Section III of Title VI of the Environmental Protection Law and in separate acts of law, i.e. in the Waste Law², the Water Law³, the Act on Greenhouse Gas Emission Trading Scheme⁴, the Act on Fertilizers and Fertilization⁵, or the Geological and Mining Law⁶. Based on the aforesaid legal acts above, these decisions are issued mostly by the bodies of the Inspection for Environmental Protection; however, in some cases they are also issued by the bodies of the State Sanitary Inspection, the State Fire Service and local government units in relation to individuals. Given the intended objectives, it was justified to narrow the research field to a certain category of legal instruments existing within a single statutory regulation and the bodies of a single competent administrative agency, i.e. the Inspectorate for Environmental Protection. Furthermore, it was deemed that a study of the effectiveness of legal norms contained in multiple legal acts and applied by various administrative authorities would prove difficult and too broad in terms of scope, whereas punitive suspending decisions issued by the bodies of the Inspection for Environmental Protection under the Environmental Protection Law are, relatively, the most commonly used and apply to the broadest group of entities.

The study consists of a preface, four chapters and a conclusion. The first chapter, titled “Conceptual Arrangements” serves as an introduction and provides the theoretical issues related to key concepts of the subject and the typology cited by particular representatives of the given doctrine. The issues discussed refer to the function, nature and principles of administrative responsibility in environmental protection, the principles according to which it can be reduced or waived, and the matters of function and nature of sanctions determined under this responsibility.

¹ The Act of 27 April 2001, Environmental Protection Law, consolidated text: Journal of Laws of 2018, Item 799, as amended.

² The Act of 14 December 2012 on Waste, consolidated text: Journal of Laws of 2018, Item 992, as amended.

³ The Act of 20 July 2017, Water Law, consolidated text: Journal of Laws of 2018, Item 2268, as amended.

⁴ The Act of 12 June 2015 on Greenhouse Gas Emission Trading Scheme, consolidated text: Journal of Laws of 2018, Item 1201, as amended.

⁵ The Act of 10 July 2007 on Fertilizers and Fertilization, consolidated text: Journal of Laws of 2018, Item 1259.

⁶ The Act of 9 June 2011, Geological and Mining Law, consolidated text: Journal of Laws of 2017, Item 2126, as amended.

The second chapter is titled “A Model of Punitive Suspending Decisions Issued by the Bodies of the Inspection for Environmental Protection Under the Environmental Protection Law.” The introductory part of this chapter presents different approaches to classification of the sanctions discussed in the thesis and statistical data with regard to the scale of their application. The subsequent inquiries examine the meaning of the discussed legal measures based on analyses of the construction of a legal norm, its constituent parts and their content, which enabled them to be assigned to the typologies demonstrated by the particular representatives of the doctrine.

Afterwards, taking into account the functions of normative acts such as the Environmental Protection Law, the functions of punitive suspending decisions were reconstructed with a distinction into three basic levels on which they are characterized, that is regarding the stages of threat, imposition and execution of the sanction, as proposed by M. Lewicki in his publication on the function of sanctions in administrative law⁷. As a result of such analyses, the dominant functions at each individual stage of implementation of sanctions were determined, which was followed by ascertaining the key function that dictates their final nature. Afterwards, an assessment was made as to whether the functions of isolated sanctions correspond to the functions of substantive regulations in which they are stipulated, and whether they ensure the performance of obligations set out in the sanctioned standards.

Analyses related to the process of enforcing the law are presented in the later chapters of the thesis. In order to obtain a full picture of the decision-making process, the pre-decision phase of the application of the law was taken into consideration including the activities related to establishing the facts and legal status, as well as the decision-making phase where the content of the decision on the imposition of law and its justification are determined. With regard to the pre-decision phase, matters related to the performance of inspection tasks by the Inspection for Environmental Protection are broadly presented, since the disclosure and proving of facts forming the basis for imposition of a punitive suspending decision occur in principle during the control activities carried out in accordance with the Environmental Protection Inspection Act⁸. The objective of these considerations is to assess whether the powers and measures at the disposal of inspection authorities allow for effective discovery of facts and evidence related to the activities of the inspected entity that violates specific obligations in terms of protection,

⁷ M. Lewicki, *Funkcje sankcji prawnych w prawie administracyjnym – zagadnienia wybrane (Functions of Legal Sanctions in Administrative Law – Selected Issues)*, “Acta Universitatis Lodzensis, Folia Iuridica” 2009, Issue 69, p. 47.

⁸ The Act of 20 July 1991 on the Inspectorate for Environmental Protection, consolidated text: Journal of Laws of 2018, Item 1471, as amended.

including the scale of potential threats to the environment resulting from the identified violations of law. This part of the study presents the course of the proceedings and the production of evidence; however, attention is also paid to the issues of mutual relationship between the inspection proceedings and administrative proceedings, in particular from the standpoint of efficiency and effectiveness of the actions.

With respect to the decision-making phase of the imposition of law, the thesis describes certain matters related to the adequate application of procedural rules, according to which punitive suspending decisions must define a deadline for suspending operations or usage or make the particular order immediately enforceable, and which, in certain cases, provide the ability to set a deadline for correcting the given violation. Afterwards, factors were examined that affect the effectiveness of the sanctions at the stage of appeal proceedings conducted by the Chief Inspector for Environmental Protection as a higher instance authority compared to Voivodship Inspectorates for Environmental Protection, as well as at the stage of proceedings before an administrative court.

The considerations of the third chapter, titled “Characteristics of Punitive Suspending Decisions and Rules of Accountability” aim to present the analysed legal norms in a separate manner, showing their specificity and the various practical problems that may arise in the course of their application, which may influence effective decision-making. Analyses carried out in this part of the thesis are intended to determine the subject and scope of individual decisions, goals to be implemented, and obligations to be upheld. Attention was also paid to the mutual relation between the discussed legal norms and other instruments of administrative responsibility stipulated in the Environmental Protection Law. In addition, it was examined whether the correct application of individual decisions depends on or is conditioned by the positions or resolutions of other administrative bodies.

The fourth chapter examines the process of executing punitive suspending decisions pursuant to the Act of 17 June 1966 on Enforcement Proceedings in Administration⁹. This part of the thesis analyses the series of activities carried out by Voivodship Inspectorates for Environmental Protection in order to enforce the orders and prohibitions resulting from punitive suspending decisions, wherein the Inspectorates act both as the obligee and the enforcement authority. It also presents the key characteristics of enforcement measures and safeguards at the disposal of administration authorities in cases related to the enforcement of non-financial obligations.

⁹ The Act of 17 June 1966 on Enforcement Proceedings in Administration, consolidated text: Journal of Laws of 2018, Item 1314, as amended.

Analyses carried out on the basis of the assumptions presented above allowed them to be put to practical use in assessments and postulates related to the making and application of law. In particular chapters of the thesis, a number of solutions were proposed to improve the reliability and efficiency of the process of issuing and enforcement. More precisely, solutions were proposed to increase the effectiveness of actions in cases where suspending decisions should be issued immediately and environmental protection considerations should be treated as more important than the particular interests of a given entity. In other cases, the formulated *de lege ferenda* conclusions are related to proposals aimed at ensuring a more adequate balance of proportions between the objective and the means to achieve it.

9.05.2019v.

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