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**„Dopuszczenie dowodu
uzupełniającego z dokumentu w postępowaniu przed sądami
administracyjnymi”**

**(Admission of supplementary evidence from the document in proceedings
before administrative courts)**

SUMMARY

This doctoral dissertation has been prepared
in the Department of Administrative Judiciary
under the supervision of prof. dr hab. Jan Paweł Tarno

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In the Polish legal order judicial control over the activities of public administration is exercised by administrative courts. The fundamental purpose of administrative court proceedings is to decide on the legality of the contested act of a public administration. In the light of the provisions of the Constitution of the Republic of Poland, the subject of the proceedings is the control of public administration by the administrative court.

The cassation type jurisdiction of administrative courts dominate in European countries (sometimes supplemented by the possibility of adjudicating reforms). In the administrative judicial model adopted by the Polish legislator, the administrative court exercises control over individual administrative acts on the basis of the criterion of legality. In Poland, the control carried out by administrative courts is initiated by lodging a complaint against the final decision of the administrative body. The administrative court does not take over the matter for substantive settlement. It controls the contested act from the point of view of legality.

According to above, the evidence procedure is determined by the basic function of administrative judiciary, i.e. the assessment from the point of view of the legality of the process of specifying substantive law norms in a given factual situation. The scope of evidence is also related to the cassation nature of the administrative court's judicial powers.

From the content of art. 106 § 3 of the Law on proceedings before administrative courts it follows that the court may ex officio or at the request of the parties take supplementary evidence from documents, if this is necessary to clarify material doubts and does not cause excessive prolongation of the proceedings in the case.

The administrative courts do not conduct the proceedings to take evidence, they decide on the basis of the files of the case (art. 133 § 1 of the Law on proceedings before administrative courts). Therefore the administrative court procedure does not include the provisions concerning evidence and the method of taking evidence, because the court refers to the results of the administrative proceedings. On the exceptional basis art. 106 § 3 of the Law on proceedings before administrative courts authorises a court to act on its own motion or on the motion of the parties and to take the supplementary documentary evidence, should it be necessary to clarify the serious doubts and not result in the excessive extension of the

proceedings in the case. This is a significant limitation concerning the means of evidence, since the court can make additional explanations only on the basis of documentary evidence.

According to above, the court does not carry out evidence proceedings in the form in which public administration does. Moreover, the rule is that the court decides on the basis of case files (administrative and court files), without conducting separate evidence proceedings, based on factual material and evidence of the case collected by public administration in proceedings at both instances, which culmination is the contested act. The exception is the situation when the court carries out evidence from the document.

The subject of interest determining the research scope of this doctoral dissertation is the possibility to initiate and conduct supplementary evidence proceedings before an administrative court in the context of the obligation of public administration bodies to implement the principle of objective truth.

The main purpose of this doctoral dissertation is to examine the role of supplementary evidence procedure in the light of the Polish administrative judicial model, which determines the assessment of an administrative act from the point of view of legality

Achieving the following purpose is carried out by research which goal is to provide answers to the following questions:

- 1) Is it proper that an administrative court does not conduct its own evidentiary proceedings but adjudicates on the basis of a case file, constitute a sufficient condition for the effective performance of judicial review of the legality of the functioning of the public administration?
- 2) What is the role of the institution of supplementary documentary evidence in such a model of judicial control of administration?

The doctoral dissertation consists of five chapters.

The first of them discusses the principle of material truth as a rule for determining the facts in administrative proceedings. The following issues are analysed: the concept of the general principle of law, the principle of seeking material truth and the burden of proof.

In the second chapter the author presents the issues of administrative evidence proceedings. This chapter provides an analysis of the course of evidence in the light of the

principle of material truth, with particular emphasis on procedural guarantees arising from the principle of active participation of a party.

The third chapter is devoted to the Polish model of administrative judiciary in the context of the possibility of conducting evidence proceedings. The author also presents a review of the general principles of proceedings before administrative courts.

Chapter four discusses the principle of adjudication based on the case file. The author presents definitions: case file (also in electronic form) and well-known facts. This part of the doctoral dissertation also includes the issue of unexplained facts in the context of the lack of specific documents in the case file.

Chapter five focuses on a detailed analysis of the admissibility procedure and the procedure for conducting supplementary documentary evidence proceedings before an administrative court. This section includes considerations regarding the "electronic document" as a new form of traditional (paper) document. The author explains that, supplementing the proceedings to take evidence requires the court to make the decision on evidence. In the decision to take evidence the court points to the facts to be established and the means of evidence, bearing in mind the object of evidence are only the facts material for the case. In the evidence procedure before the administrative courts there apply some rules of the Civil Procedure Code¹.

The conducted analysis is an attempt to confirm the following thesis.

The main purpose of supplementary documentary evidence is not to establish the facts of the case, but to supplement the evidence in the case file with existing and relevant documents for the settlement.

The basic purpose of the supplementary evidence proceedings from the document is to shorten the settlement period not only of the administrative court case, but above all of the administrative case. On the other hand, the implementation of the principle of seeking objective truth is only a secondary goal of the institution of supplementary evidence proceedings from the document.

¹ H. Dolecki, *Stosowanie przepisów procedury cywilnej w postępowaniu sądowoadministracyjnym*, ZNSA z 2010 r., nr 5.

Art. 106 § 3 of the Law on proceedings before administrative courts leaves the administrative court too much discretion as to whether to carry out supplementary documentary evidence. As a result, in practice, the possibilities offered by this institution in the field of procedural economy are not fully used, since it is much easier for the court to issue a judgment annulling the contested act.

In the current model of judicial administration control in Poland, where, as a rule, no explanatory proceedings are conducted in administrative court proceedings, a fundamental change in the nature of the jurisdiction of administrative courts from cassation to reformatory would be irrational, because the administrative court has no full possibility of verifying the facts of the administrative case.

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