

Notion of a Social Organisation in Polish General Administrative Proceedings. Chosen Aspects

The article addresses the problems posed by the notion of a social organisation in general administrative proceedings. It presents the definition of the social organisation in the Code of Administrative Proceedings and presents, what a legal definition is. It was necessary to concentrate on the structure and the types of legal definitions. At the same time attention is drawn to the many problems with the interpretation of this definition. For correct understanding of the meaning of the term being analyzed, it should focus on its structure and legal categories that constitute it. The author concludes that the concept of social organization should change specifying general and special content and functional characteristics relevant social formations.

Key words: administrative proceedings, social organisation, definition, notion.

Presentation of the scientific problem and its significance. At the beginning of the analysis of the legal definition of a social organisation it is necessary to specify, what a legal definition is. The composition of a legal definition appears to be indispensable and essential for any further discussion on the notion of the social organisation from the point of view of the administrative procedure law.

Main content and justification of the study results. The issues related to the definition were pondered by logicians, starting from Aristotle until today. The term definition is polysemous and thus may be understood in a number of ways, depending on the definition at hand. Basically, every variant of a definition is different – nominal, real, stipulative, reporting, normal, deictic etc. The term definition may be described as a statement that determines the sense, meaning of the defined word or expression or provides an unambiguous characteristic of the defined object. The object of the definition is highly extensive, ranging from a name to a function word [1, p. 155]. Due to the character of the discussed notion it is necessary to concentrate on the structure and the types of legal definitions. Then in the legal language one can observe only definitions of names, however it is noteworthy that both simple names that consist of a single word and compound names that are comprised of a larger number of words are defined. Hence, we shall concentrate only on definitions of names, and the legal definition of the social organisation with regard to the administrative procedure law in particular.

It is noteworthy that every legal definition should fulfil certain criteria of correctness, that is to precisely formulate the meaning of the defined notion and to indicate only the relevant features of the denotata of the defined name. It must be formulated unambiguously using words that are known to its recipient. Otherwise there might be a number of mistakes which would complicate the analysis of a given notion. As it is proven further on, a paradoxical situation is the one of the analysed legal definition of the social organisation.

It must be emphasized that a legal definition is every definition formulated by a legislator that is placed in a legal text and concerns a word or an expression that is to be found in a legal text. The fact that the definition is in a legal text makes it a legal definition, regardless of its purpose, the reason for its being formulated or its structure. Due to the diversity of legal definitions it must be regarded as that part of the legal text in which the legislator determines how the word or the expression should be understood. In a narrower sense a legal definition is only a definition with a normal structure, consisting of three elements: a definiendum, a combining expression and a definiens, regardless of its style (lexicographic, semantic, objective). A criterion for distinguishing a legal definition as such is that it is placed in a normative act. Apart from that a legal definition can be formulated in the legal language [2, p. 188]. Moreover the object of the definition is a word or an expression – definiendum – which appears in this normative act, in which the definition was placed, or in the text of another normative act. Hence, one may conclude that by formulating a legal definition and by placing it in a legal text the legislator attempts to provide the reader of that text with information that contains the meaning of the defined word or expression. A. Malinowski observes that because it is placed in a legal text, the definition becomes normative, which means that it imposes on the person interpreting the law a certain linguistic behaviour as far as the attribution of meaning to the given word or expression being the definiendum of the definition, is concerned. W. Ziembicki regards it as a

metanorm which allows the attribution of only such meaning to the defined expression (*definiendum*) that was specified in the definition. The metanorm mentioned above refers to the way of comprehending legal texts which fall within the scope of the use of the definition [3, p. 159]. There are scientists who believe that the process of interpretation does not involve legal definitions, because they are the legislator's explanations on how the *definiens* should be understood, and that by using them the legislator avoids a misinterpretation of the expressions. It seems that this view is not entirely correct, at least not as far as the analysis of the legal definition of the social organisation is concerned. The legal provisions that include legal definitions are the basis for setting norms of linguistic behaviour. The interpretation of those norms takes place before the interpretation of the provisions that include the given expression. Moreover, with regard to the definition of the social organisation it appears that the interpretation of norms including the *definiendum* from the legal definition is an impossible or a very complex process if the legal definition has not been properly interpreted.

In accordance with the legal definition of the social organisation provided in art. 5 § 2 item 5 of the Polish Code of Administrative Proceedings [15], social organisations are trade, self-government, collective organisations and other social organisations. Thus, the legislator only enumerates the categories of subject of law that meet the criteria of social organisations. Since the defined expression appears not only in the defined element but also in the defining one, it should be assumed that the structure of that definition implies the mistake in the form of the so-called vicious circle (*circulus in definiendo*). On the other hand, it may have, as with the structure of the definition, the form of a direct vicious circle (also called an *idem per idem* mistake), which consists in that the given expression is present in both the *definiendum* and *definiens*. There is also another mistake in this definition, the so-called *ignotum per ignotum* mistake. This type of mistake occurs when the meaning of a word is explained by means of a word or an expression which is incomprehensible for the recipient. It is noteworthy that the *ignotum per ignotum* mistake occurs whenever there is the *idem per idem* mistake in the definition [4, p. 88]. Undoubtedly, these definition mistakes obscure the meaning of the notion of the social organisation and make the interpretation of this notion difficult. The legislator did not avoid mistakes when he introduced the legal definition of the social organisation into the Polish Code of Administrative Proceedings. Nevertheless, it would be desirable to explain the legislator's action in the context of the definition in question. The level of the organisational and legal complexity of social organisations, and above all the multitude of their forms and purposes of their activity, make defining it a very difficult task. In the present situation, with social organisations being so numerous and developing continually, the terminological precision of the notion appears unachievable. Simultaneously and no doubt deliberately, the legislator introduced the expression «other social organisations» into the defining element, as it seems in order to avoid limitation. His intention appears to be to leave the administrative proceedings open to a number of entities that meet the criteria of the social organisation. Hence, the expression «other social organisations» should be treated as something positive, as a «loophole» for such entities. The requirement of the clarity of law requires that every element that enters a dictionary has an accurate and definite meaning, unless the legislator deliberately allows vagueness. Considering this, the definition provided by the legislator should be regarded as deliberate. However it cannot be ignored that due to the vagueness and incompleteness of the definition, which is essential for the issue discussed here, the definitional crises of the notion of the social organisation is ever more frequently mentioned in specialist literature. What makes this problem even more complex is that apart from the notion of the social organisation there is a wide range of expressions related to that term, which only serves to aggravate the terminological problems. An example of such an expression is a non-government organisation. Thus, the source of difficulty is not only an attempt to determine the scope of the legal definition of the social organisation precisely, but also the determination of relations and comparisons of the notions of a «social organisation» and a «non-government organisation».

Considering this, it seems essential for further examination to determine the scope of use of the legal definition of the social organisation. Specifically, it is crucial that the relations between the procedural law on one hand and the material and the political law on the other are determined. The determination of the above-mentioned relations is no doubt vital for further investigation of the problem and thus it should be given due importance.

The problem of the relation between the procedural law and the material law has aroused a lot of interest and controversies which are of considerable theoretical and practical importance for the theory of law. The procedural law in its narrower meaning designates a collection of legal provisions that govern the procedures of state agencies and other public entities that have the power to execute acts in law, that is to create and apply law. It means that the subject matter of the procedural law is procedural actions as a specific type of conventional actions that differ from legal actions. W. Lang points out that as far as the relations between the material law and the procedural law are concerned, it is unquestionable that both types of norms

are indispensable for the functioning of legal order and they are interconnected. However there are controversial views on the matter and the first of them is that the material law is superior. It postulates that the procedural law is only instrumental and subsidiary in relation to the material law. This view is based on the classical procedure theory, which still dominates legal science. Then there are those who argue that most of the procedures essential from the point of view of the axiology of the procedural law are procedures that are fully autonomous in relation to the material law. This is the so-called postclassical concept of the process. The third view, considered to be the right one, holds that the procedural law is instrumental in its function in relation to the material law. However, it must be emphasized that some norms and rules of the procedural law have or gain limited autonomy in relation to various branches of the material law [6].

It appears that due to the notional aspect, with particular consideration of the legal definition of the social organisation, the third view should be supported. Considering the last opinion as the right one leads to the assumption that the autonomy of the procedural law is limited in relation to the material law, especially at the notional level.

As J. Niczyporuk rightly points out, a rational solution is an indirect standpoint based on the instrumentalisation of the procedural law. Making the relation between the political administrative law and the administrative proceedings more precise is possible especially if the last mentioned viewpoint – the instrumentalisation of the procedural law – is applied. The assumption that the administrative proceedings serve to implement the political administrative law and the material law does not contradict the fact that administrative proceedings gain a limited autonomy in relation to the political administrative law and the material law. Following this line of reasoning, we arrive at the conclusion that administrative proceedings have secured their autonomy in relation to the political administrative law and the material law, if only by a broader definition of a civil service body [7].

A feature of every legal definition is that it has a set of strictly defined legal texts, attributed to it by the legislator, and it is used to interpret the norms found in them. The scope of the application of a legal definition is a specific subset of legal texts to which the legal definition refers. This scope may be defined explicite by the legislator in the legal text [1, p. 159]. There is a rule that if in a given normative act the meaning of a given expression was specified by means of a definition, such an expression must not be used within that act in a different meaning. If an act in which a legal definition was formulated has a fundamental meaning for a given set of issues, the meaning of a given expression formulated in this act should be consistent throughout other acts concerning that set of issues. Any deviations from this principle must be clearly stated in the legal text, together with another meaning of the given expression and the determination of its scope of application and reference. In the structure of a legal text, a legal definition may be placed in a separate part of a normative act, called a glossary or an explanation of terms. Often, as it is the case with the definition of the social organisation, the definition is an element of an aggregate, which occurs when the legislator places several definitions in one footnote. Normal definitions are used in reference to expressions that are central to the legal text [1, p. 161].

The acceptance of this viewpoint gives rise to the following deliberations. Due to the fact that in art. 5 § 2 of the Polish Code of Administrative Proceedings the legislator uses the expression: «Whenever the provisions of the Code of Administrative Proceedings mention (...)» one may conclude that the legal definition of the social organisation becomes autonomous in relation to the political administrative law and the material law. Since it was formulated for the purpose of the Code, it is typical of the administrative procedure law. For this reason the analysis of related notions, including the notion of the non-government organisation, should only mention the problem and not discuss it in detail for the sake of retaining the terminological precision. Because of the matter discussed, it is advisable to emphasize the autonomous character of the definition in question, which results in narrowing the subject matter to the notion of the «social organisation» and the emphasis of the procedural character of this definition, which in turn indicates the necessity to distinguish this notion from the term non-government organisation.

In view of this, one should mention the opinion that in administrative proceedings, objective elements that refer to the purpose and activity of a given organisation, relevant for the interest investigated in the proceeding, should decide on the possibility that social organisations appear in such proceedings, and not be used for a detailed investigation of their «anatomic» features. Some doctrine members believe that by giving the right to participate in the proceedings the legislator does so not due to the objective character, but due to the type of the represented interest, which is relevant enough to be represented in the proceedings [8]. This view should be discussed first of all in the context of certain forms of the participation of social organisations in administrative proceedings, and especially of the participation as a participant equal to a party. Nevertheless it emphasizes the need to create a functional definition of the social organisation.

Another issue to be solved is the genre of notions that we use and based on what criteria their value should be measured. In other words, what is their «scientific genre», how are they justified and what are the consequences of their use? Intuitively we treat notions as if they were cognitive objects, something which in a way is discovered in the legal structure. Sometimes, equally intuitively, we use them as tools to describe and qualify the legal structure. Distinguishing between these two points of view, they should nevertheless be connected, sometimes even inseparably. This is because we come across both of them, and they both are present in almost every research situation. The notions express the existing law, a certain legal structure provided to us; from such a perspective notions are cognitive objects. However, notions are also the results of our research and discussions, which put into order, arrange, interpret, and criticise the existing law, and then notions are cognitive tools. As F. Lonchamps observes: it is impossible to resolve, which was the first, and which followed, which derives from which. Probably, there is a constant circulation of the data of legal life and reflection on them, which means there is a constant conceptualisation of the legal experience, which also enters the legal life [9, p. 888]. The value of the notions may be measured in several ways, that is in terms of the correspondence between them and the existing law, the usability for their intended interpretation, criticism, or potential modification or the cohesion of those notions [9, p. 888]. There is a need for a legal review so as not to be limited to the content of the normative structure alone, but to include also the mechanism of the persistence of this structure, its influence on the social environment, its being complementary. As far as the legal science is concerned, it is necessary to shift attention not only to unquestionable and priority tasks, but also to the law in real life, the legal reality, or the instances of the confrontation between the normative structure and life. From this point of view the notions in question play their role in the already mentioned circulation between the experience and the reflection, they are channels of this circulation. Generally, it could be suggested that a set of basic notions of the administrative law, treated as a whole, is consistently elaborated as a kind of solution to the problems that life poses in the matter at hand. It is noteworthy that the above-mentioned requirements, that is the correspondence to the legal experience, must be met at least in the case of new phenomena in the actions taken by the public administration for the society. Also the usefulness in terms of the influence on the legal life, the stability of law and order and the lack mutual exclusion. Generally speaking, it is suggested that some notions of the administrative law should be purposefully and critically updated. This is a serious task, all the more so because the part of the legal order, to which the notions in question belong, holds a priceless deposit: the values of order and humanism, which must not be violated for the sake of any one-sidedly understood postulates of the efficiency of actions. A revival is needed, but such that would not destroy certain high values, which are typical for the legal structure. Hence the demand for a review of some notions, but only such a review that would consolidate elements of significant value and develop them under new conditions, and modify the others [9, p. 886]. The classification of this part of legal law implies its qualification in terms of evaluation and leads to further consequences in the sphere of qualification [9, p. 890].

No doubt the remarks above can refer to the notion of the social organisation, especially the correlation of that notion with the notion of the non-government organisation. Once again it appears to be important to stress the need for some changes in this respect, in particular considering the demand for the lack of mutual contradictions among the notions. However one should not forget that the notion that we use has certain origins, which cannot be neglected. Still, a certain review is required due to new tasks, or new tools at the disposal of the administration. All this must be taken into consideration with the current administration in mind, and simultaneously one must not forget the value of humanism, law and order. The notions must be adapted to the new tasks not occasionally, but consistently. This is advantageous as it preserves cohesion and law and order. Big changes may, albeit temporarily, cause certain notional confusion. [10] It seems that this pertains to the question of the simultaneous existence of the two notions: «social organisation» and «non-government organisation». Nonetheless, due to the consequence of the assumptions, the autonomous character of the definition of the notion of the social organisation must be emphasized, as well as the limitations that result from the content of the normative structure. Hence it is necessary to concentrate on the code definition of the social organisation. The fact remains, however, that there is a real need for a review of these two notions, if only for the sake of terminological uniformity.

Another important issue is the explanation of the term notion, which is vital for the problem at hand. When determining the term notion it must be emphasized that it is a polysemous term in philosophy and in various logical systems as well. From the semantic point of view notion is the meaning of a term in the context of a given language. Legal notions, on the other hand, are meanings of terms that are found in the legal language, which is used to formulate the text of the binding law. A legal notion can be described in reference to their relation to colloquial notions and to their descriptive and evaluative character. Assuming that the colloquial notions are meanings of terms used in the colloquial language, the relation of colloquial

notions to legal notions is the consequence of the relation of the colloquial language to the legal language. The issue of the descriptive and evaluative character of the notions is highly complex due to the problem of contrasting the description with the evaluation [11].

Analysing the term notion, we touch upon the sphere of names that appear in the expressions of the legal language. First of all, it is necessary to consider the features of names that the legislator uses to formulate a statement in the legal language. This problem is a starting point for further analysis since names are the largest part of the texts that comprise the corpus of the legal language. The object designated by a given name is the designatum of that name. A set of objects denoted by the «name» [12] is attributed to it, and this set can be either empty or not empty. This set is called the scope of the name, the denotation of the name, or the set of the designata of the name. It must be emphasized that logic considers the name in plural and the name in singular as two separate names. Their designata are different – depending on the above, they are single objects or sets of those objects. A specific group of names that appear in legal texts are legal terms. The word term means here a simple or a complex name with a special meaning in a given field of science. In the context of the discussed field, a legal term is meant here. One should not forget that all the terms in a given field are called the terminology of that field. The typical features of a term are: it is a general name; its meaning is limited to the objects from a particular field of science; the scope of its use is also limited to a given field of science; there is a special relation between the terms and notions in a given field – terms are names for those notions; it is hermetic, which means that its users are related to that field; it is interconnected with other terms within the terminological system of that field of knowledge; it is unambiguous, taking into account the definitional method of introducing a notion, the term should be unambiguous. A legal term in legal literature is described as a way of understanding, in other words the meaning, of a legal notion [1, p. 153]. The term is a linguistic representation (name) of the notion [13]. Therefore, the «notion» is denoted by the term. However, one should remember that the distinction of a legal notion alone is not unambiguous in legal literature and questionable, which in turn makes the «legal term» ambiguous. Here some views on legal notions: legal notions are only those which appear in legal norms; legal notions are only those which have been coined by the legal science; legal notions are the notions used to create legal norms and the notions used by lawyers to express a legal norm; there is also a view that distinguishes between legal notions used in legal texts and legal notions used by people related to law. Hence, one should assume that legal notions are the notions in legal texts, and the notions created by the legal science are a separate group of legal notions. From this perspective legal terminology encompasses legal terms that denote legal notions and the terms that are repetitions of terms from normative acts. Therefore, the legal terminology consisting of the latter is a subset of the legal terminology consisting of the former. One should assume that legal terms are the terms that correspond to legal notions that appear in legal text formulated in legal language [1, p. 154].

It is noteworthy that the interpretation problems related to the above-mentioned definition of the social organisation provided in the code are also connected to the argumentation based on the principle «*eiusdem generis*» («of the same kind»). It states that if the legislator enumerates objects that belong to a particular category to make the scope of a given expression, which is the name of that category, more specific, then while evaluating and qualifying other objects one should omit those which bear no significant resemblance to the enumerated objects. In practice this rule applies to the interpretation of the provisions that include such expressions as: «and other(...)» or «as well as other(...)» [14, p. 75].

Considering this, it becomes necessary to relate the above-mentioned principle to the structure of the legal definition of the social organisation as provided in the Polish Code of Administrative Proceedings. This because it is impossible to ignore the fact that in the analysed provision the expression «other social organisations» is preceded by an enumeration of certain specific categories of objects that are jointly described as social organisations. As already mentioned it seems that the legislator's action should be treated as deliberate and considered positive, and not deserving criticism. It was also mentioned above that the open category of «social organisations» is a kind of «loophole» for entities that meet the criteria of social organisations, but are not included in any of the types of organisations enumerated directly in the provision. The enumeration of objects in the Polish Code of Administrative Proceedings cannot be treated as unnecessary or without purpose, or accidental. Instead it should be emphasized that the purpose of this enumeration is to show that the «other social organisations», mentioned after it, must bear similar features to the category of objects at the beginning of the definition. A. Bielska-Brodziak rightly observes that the separation of the category of designata that bear significant resemblance is a difficult task and it depends on the interpreter [14, p. 76].

Summary. It is evident for instance in the correlations of the notions of a «social organisation» and a «non-government organisation», and in the problems concerning the incorporation of foundations into the category of social organisations. Therefore it is evident that to determine the content of the notion of the

social organisation based on the code definition, one should also determine the scope of the expression «other social organisations». On the other hand, it is possible to determine the scope of that expression only if searching for entities that bear significant resemblance to the categories of social organisations that are directly mentioned in the first part of the definition. The consequence of such an assumption is that while evaluating and qualifying a given entity as a social organisation one should do so only with such whose features are similar to those which are mentioned at the beginning of the provision in question. Still it is difficult to determine the scope of entities belonging to «other social organisations» without determining the features typical of social organisations in general. If the incorporation into this category is possible only if there is a significant resemblance to the other categories from the definition, it cannot be done without determining the features that create the resemblance. Hence, the search for the structure elements of the notion of social organisations is going to be a search for the features typical of these entities. There is no doubt that the problems addressed here deserve further investigation as the above considerations do not exhaust the wide range of issues in this research area. Due to the formal limitations of the article, further research will be presented in another paper.

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Гжешук М. Поняття громадської організації в польських загальних адміністративних провадженнях. Окремі аспекти. У статті розглядається проблеми, пов'язані з поняттям громадської організації в загальних адміністративних провадженнях. Відповідно до законодавчого визначення громадськими організаціями є професійні організації, самоврядування, колективні організації та інші громадські організації (ст. 5 § 2 пункт 5 Кодексу адміністративного судочинства Польщі). Таким чином, законодавець перераховує тільки категорії суб'єктів права, які відповідають нечітким критеріям громадських організацій. Автор вважає, що структура цього визначення містить логічну помилку у вигляді так званого порочного кола. Цей тип помилки відбувається, коли значення поняття його творцем пояснюється за допомогою слова або виразу, яке незрозуміле для інших. В результаті помилки наведене визначення скоріше приховує зміст поняття громадської і ускладнює його інтерпретацію. Для правильного уявлення про зміст поняття, що аналізується, слід зосередитися на його структурі та юридичних категоріях, що його складають. Автор дійшов висновку, що поняття громадської організації слід змінити, навівши загальні та спеціальні змістовні та функціональні ознаки подібних соціальних утворень. На даний час автор вважає, що правильним є таке тлумачення поняття громадської організації у польському законодавстві, яке б було наближеним до поняття неурядової організації, що вживається у міжнародному праві.

Ключові слова: адміністративне провадження, громадська організація, визначення, поняття.

Гжещук М. Понятие общественной организации в польских общих административных производствах. Отдельные аспекты. В статье рассматривается проблемы, связанные с понятием общественной организации в общих административных производствах. Согласно законодательного определения общественными организациями являются профессиональные организации, самоуправление, коллективные организации и другие общественные организации (ст. 5 § 2 пункт 5 Кодекса административного судопроизводства Польши). Таким образом, законодатель перечисляет только категории субъектов права, которые соответствуют нечетким критериям общественных организаций. Автор считает, что структура этого определения содержит логическую ошибку в виде так называемого порочного круга. Этот тип ошибки происходит, когда значение понятия его создателем объясняется с помощью слова или выражения, которое непонятно для других. В результате ошибки приведенное определение скорее скрывает содержание понятия общественной организации и усложняет его интерпретацию. Для правильного представления о содержании понятия общественной организации следует сосредоточиться на его структуре и юридических категориях, которые ее составляют. Автор пришел к выводу, что понятие общественной организации следует изменить, приведя общие и специальные содержательные и функциональные признаки подобных социальных образований. В настоящее время автор считает, что правильным является такое толкование понятия общественной организации в польском законодательстве, которое бы было близко к понятию неправительственной организации в международном праве.

Ключевые слова: административное производство, общественная организация, определения, понятия.

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M. Podleśny

Ban on Interrogation of Priest about Facts Subject to the Seal of Confession in Polish General Administrative Proceedings

The author has analyzed the problem of restrictions to the principle of objective truth in administrative proceedings in view of evidentiary bans. He has presented the concept as well as the classification of evidentiary bans and the extent of their application. In the further part he has conducted analysis of the ban on interrogation of priest about the facts that they have learned during confession. The ban on priest's interrogation about the facts he or she found out during confession is absolute and does not provide any exceptions. If any third part who accidentally got access to information, contained in confession or provided confessor during confession, the author concluded that such persons may testify and prohibition of art. 82 of the Administrative Procedure Code of Poland does not apply to these individuals. The author considers that such regulation is not ethical and morally questionable, and therefore that article should be amended.

Key words: administrative proceedings, interrogation, priest, evidentiary bans, the seal of confession.

Presentation of the scientific problem and its significance. The essence of administrative proceedings is issuing a verdict on the basis of the actual state of affairs established by the authority within evidence activities conducted as part of the proceedings. The rules pertaining to the way of establishing those facts arise from the crucial principle in any proceedings – the principle of objective truth. The principle orders an authority to take any necessary steps in order to investigate a given affair and issue a verdict. The principle is elaborated upon in chapter IV module II of the Code of Administrative Procedure (CAP) pertaining to evidentiary proceedings [1]. Those regulations allow each person proving his or her legal interest to submit any motions of evidence that could help establish the actual state of affairs at any moment.

However, not always will the authority conducting the proceedings have the power to take specific evidence. In some cases examination of given evidence will not be allowed due to the introduction of evidentiary bans into the CAP.

Main content and justification of the study results. While attempting to specify the essence and classification of evidentiary bans in administrative proceedings, first, one should answer the question pertaining to the reason for the introduction of regulations banning the use of specific evidence during the