European Research Studies Journal
Volume XXIII, Special Issue 1, 2020

pp. 651-659

The Right of the Individual to Good Administration in the Context of the Concept of Sustainable Development: Legal Issues

Daria Bieńkowska[1], Agnieszka Lipska-Sondecka[2], Aneta Kamińska-Nawrot [3]

Abstract:

Purpose: *The right of the individual to good administration goes beyond legal standards which determine the actions of entities to which they are addressed. This paper indicates that the inclusion of sustainable development as one of the principles in the Polish constitutional law obliges all entities responsible for the implementation of the objectives and tasks of the state to act within the constitutional imperative.*
Design/Methodology/Approach: *The main goal of this article is to present the issue of the right of the individual to good administration in the context of the concept of sustainable development. The article is based on a legal analysis including dogmatic and axiological methodology.*
Findings: *The role of the public administration is emphasized in respect of the policy of the effective application of the law to citizens in terms of creating stable living conditions and facilitating development which takes into account intergenerational solidarity through distributive justice.*
Practical implications: *The extension of the positivist concept of sustainable development to include the language of human rights indicates that it can be treated as a "meta-principle", extending its semantic scope beyond the right to a clean environment.*
Originality/value: *Our in-depth legal and axiological analyses included in this paper will contribute to the overall strengthening of the concept sustainable development.*
Our manuscript creates a paradigm for future studies concerning the evolution of rights and value based sustainable policy.

Keywords: *Human rights, rights and freedoms of the individual, right to good administration, public administration, sustainable development, distributive justice, Polish constitutional law.*

JEL classification: *K1, I3, F5.*

Paper Type: *Research study.*

---

[1]*Pomeranian University, ORCID ID: 0000-0002-5659-4819, tittke@wp.pl;*
[2]*Pomeranian Center of Human Rights, ORCID ID: 0000-0001-8911-4087, agalipska@wp.pl*
[3]*Pomeranian University, ORCID ID: 0000-0003-0270-2447, aneta.kaminska-nawrot@apsl.edu.pl;*

1. Introduction

The 20th century, and especially the second half of it, brought new phenomena and problems, which became civilisational and cultural challenges for contemporary states and their societies. Globalisation, economic and financial crises, military conflicts, and endogenous factors have created numerous tensions between entities engaged in the political game and social life and have exposed the lack of capacity for political dialogue with all participants in public life. The tumultuous changes in a globalising world have resulted in widening gaps in the standard and quality of life at national, regional, and transnational levels. When in the 1970s, the democratic states of the West made strong progress in science and technology, the societies of Central and Eastern Europe remained "trapped" in the doctrine of a uniform and indivisible power of the state. This caused many tensions and widened the civilisation gap.

The dynamics and intensity of economic and social changes based on free access to natural resources made what was treated as an unlimited resource a finite one. As early as in the late 1960s, the United Nations pointed out that environmental degradation has a negative impact on individuals and large human communities, thus contributing to human rights violations. The inevitability of economic development under civilisational and cultural progress and the resulting threats to the natural environment and man who is its integral part contributed to the emergence of the idea of ecodevelopment, and then to the concept of sustainable development. It is based on a belief that social and economic development must take into account the existing environmental conditions and that their violation leads to developmental dysfunctions which pose a significant threat to the harmonious existence of individuals, social groups, and nations. In this context, sustainable development is a commitment to past and future generations under intergenerational solidarity (Izdebski, 2012).

2. The Idea of Sustainable Development and its Interdisciplinarity

The term "sustainable development" is used by representatives of various fields and disciplines of science: philosophers, lawyers, sociologists, political scientists, economists, and anthropologists. This means that each discipline interprets this term based on its methodological criteria within its conceptual framework. While Thomas Kuhn argues that the model of concepts binding in a given discipline is not absolute and permanent, it must be assumed that the perception of phenomena in the world must differ and is based on the historical and cultural experiences of individuals, social groups, and human communities (Kuhn, 2009). Thereby, he points out that a methodology can constitute a utility to correctly understand the values in which individual disciplines deal. What we mean here is the methodology of semiotics, i.e., analysis, hermeneutics, and argumentation (Stelmach and Brożek, 2007).

We owe the concept of sustainable development to ecologists and their efforts to shape environmental awareness and ethics (Hausner, 2008). Its basis consists of treating man as an integral part of the natural world coupled with the awareness of limited natural resources, and the obligation to care for the planet interpreted in terms of intergenerational solidarity and collective cultural heritage.

In the 1970s, the issue of sustainable development became an important point of reference in the work of the United Nations. In 1975, at the third session of the Governing Council of the United Nations Environment Programme, *sustainable development* was defined as a 'course of inevitable economic development which does not impact the human environment in a significant and irreversible manner, and does not lead to biosphere degradation, and does not interfere with the rights of nature, economics, and culture' (Najder-Stefaniak, 2017). The idea of sustainable development was intended to has its roots in a society which 'recognises overriding ecological requirements which must not be disrupted by the growth of civilisation and cultural and economic development, and which are capable of managing their development on their own to maintain homeostasis and symbiosis with nature. Thereby, these requirements must respect efficient production and consumption, and waste utilisation, considering the future consequences of the undertaken measures, and thus, the needs and health of future generations' (Fiedor, 2002).

In subsequent years, the issue is question was addressed by the Brundtland Report, which called for a new era based on sustainable development. *Sustainable development* was defined as a process aimed at integrating and harmonising activities in the political, economic, and ecological spheres at a global level. Its essence is to fulfil the developmental aspirations of present generations with it being possible to implement them also by future generations (Papuziński, 2006).

3. The (Non)Normativity of Sustainable Development

Modern legal sciences are experiencing an open debate on the normative status of sustainable development. The doctrine standpoints on this topic vary. The plentiful literature on the subject points to sustainable development being regarded as a political ideal (Forsyth, 2003), as standards of generally applicable legislation (French, 2010), and as a principle of customary international law (Sands, 2003).

In the context of a deficit of sorts as regards theoretical consistency, given the lack of a definition in the doctrine, the case law of the International Court of Justice (ICJ), which tries to fill the cognitive gap through specific judgments, is invaluable. The discussed case law is based on a conviction fitting in the "from ideas to laws" view, i.e. that jurisprudence helps to particularise the correct meanings of individual expressions. As indicated by A. Brodecka "... court judgments affect the effectiveness of the enforcement of rights based on so-called "hard law", while policies are conditional on the doctrine. Those policies are manifested in the activities of state institutions (formal and legal approach), functions of the social

system (functional approach), decision-making (rational approach), and solving social problems (behavioural approach)' (Brodecka, 2016).

The extensive case law of ICJ, which invokes sustainable development in many of its judgments (e.g. in Gabčíkovo-Nagymaros of 1997 (Hungary/Slovakia), Costa Rica v. Nicaragua of 2015), demonstrates that sustainable development does not have a normative status and is regarded as a principle or a concept.

An approach based on understanding sustainable development as a principle or a concept, which does not meet the normative standard, but rather servers to determine political objectives aimed at achieving certain legal and political ideals, (Beyerlin and Marauhn, 2011), can be found in Resolution 37/24 on Promotion and protection of human rights and the implementation of the 2030 Agenda for Sustainable Development adopted by the Human Rights Council in March 2018. In this Resolution, one can read that the new Agenda, which is well established in international human rights standards, goes way beyond the Millennium Development Goals, by including civil and political rights, as well as the right to development next to economic, social, and cultural rights.

Strongly rooted in human rights, established in the Charter of the United Nations, the Universal Declaration of Human Rights, international human right treaties and other instruments, it explicitly indicates that the goals of sustainable development are to realise all human rights and highlights 'the responsibilities of all States ... to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status'[4]. Significantly, the new Agenda 'is to be implemented in a manner that is consistent with the rights and obligations of States under international law'[5]. This means that any gaps or ambiguities should be addressed following the requirements of international human rights law, therefore indicating that sustainable development is understood as a principle or a concept (Bieńkowska, 2020).

In the Polish legal system, the legislator highlights the term of sustainable development in Article 5 of the Constitution of the Republic of Poland of 1997. Therefore, it points to sustainable development being a general systemic principle. The inclusion of this principle in the Polish constitutional system obliges all entities responsible for the implementation of the objectives and tasks of the state to act within the constitutional imperative. This imperative points to a certain legal and political convergence where there is a consensus between the two fields of knowledge as regards the values which should form the basis for the effectiveness of the law and the policy of its application. The extension of the positivist concept of sustainable development to include the vocabulary of human rights indicates that it

[4]*Article 19 of the Resolution.*
[5]*Article 18 of the Resolution.*

can be treated as a 'meta-principle' (Lowe, 1999), extending its semantic scope beyond the right to a clean environment. Jacek Sobczak underlines this aspect by stating that the essence of this concept lies in determining rights for future generations (Sobczak, 2020). Such an understanding is well illustrated by the idea of distributive justice (Bieńkowska, 2018), which is becoming in terms of sustainable development a stimulus for action for all entities that are committed to the convergence of different, often contradictory, interests and needs of diverse communities (Beyerlin, 2013). It is a catalyst in the process of further development of international human rights law (Beyerlin, 2013).

States, on the other hand, are tasked with creating appropriate conditions to facilitate the implementation of a programme for civilisational and cultural development under intergenerational solidarity. It will not be possible to meet this objective without creating specific instruments facilitating consistent and effective implementation of tasks. In modern states, it is the administration which is responsible for their practical implementation. This is to be understood as a specific set of instruments responsible for fulfilling obligations towards the state and society.

4. Public Administration as an Entity Implementing the Tasks of the State

Public administration forms an institutional part of the structure of public authorities. The way how citizens perceive the state depends on the manner it is organised. The administration is an indispensable link between design and execution and between policy and technology (Ferier, 1974). The activities of the administration concern handling the political factor, drafting of administrative decisions and documents, and direct implementation of political decisions and provision of public services (Wojciechowski, 2009). This means that the administration is responsible for implementing the tasks formulated in the political agendas of the ruling groups. This is a great responsibility. The administration plays the main part in solving social problems, and any resulting errors or omissions have consequences that can lead to various conflicts and crises. Those, in turn, decrease the legitimacy of the authorities.

In modern countries, at the turn of the 21st century, the administration adopted the implementation of new tasks resulting from socio-economic development. These new responsibilities triggered changes in the organisation and operation of administration bodies to steer them towards the needs of service recipients. According to Guy Peters, American specialist in public administration, the reforming was based on one of the following models: the market, participatory, flexible, or deregulatory model (Peters, 199). Each of these was aimed at improving the quality of services provided by the administration while differing in methods and means to an end. The sense of existence of every administration boils down to the Latin *administrare*, which means to serve, to be of use. Therefore, for modern states, how their administration bodies are organised, and act is of special importance. The administration not only carries out tasks which fall within the regular list of its

function but also has to solve problems resulting from increasing globalisation and Europeanisation. It is and will be responsible for generating civilisational and cultural development and for the shaping of the social order. This means that the implementation of the concept of sustainable development is also the responsibility of the administration; however, it is implemented to a different extent and in different ways in individual countries. In the Federal Republic of Germany, there is no separate body dealing with the subject in question at the level of central administration. The issues of sustainable development are pursued within sectoral policies. The federal government has established the Interministerial Committee on Sustainable Development, the so-called Green Cabinet, and the German Council for Sustainable Development. *Perspective for Germany: Our strategy for sustainable development*, adopted by the federal government in April 2002, is the main basis for public authorities in Germany to implement the objectives and tasks related the issue at hand (Bukowski, 2011). Sweden has much more experience in implementing the concept of sustainable development. This is understandable since the Swedish state and society are aware of the inevitability of changes and are ready to re-evaluate old operational plans. Starting from late 1990s, Sweden has created an institutional system entrusted with the implementation of the concept of sustainable development. There are institutions responsible for its implementation at the central, regional, and local levels. The strong support, also in financial terms, provided by the government administration translated into a high level of social and civic awareness of the need to implement a sustainable development policy in a broad sense.

In the case of the Polish legal system, this principle was developed through ordinary legislation. The regulations introduced by way of the Act of 27 April 2001, in Article 3 (50) read that '"sustainable development" shall mean such socio-economic development which integrates political, economic and social actions, while preserving the natural equilibrium and the sustainability of basic natural processes, with the aim of guaranteeing the ability of individual communities or citizens, of both the present and future generations, to satisfy their basic needs'. Furthermore, Article 8 of the aforementioned act indicates that 'Policies, strategies, plans or programmes relating in particular to industry, energy, transport, telecommunications, water management, waste management, land-use planning, forestry, agriculture, fisheries, tourism and land use shall take into account the principles of environmental protection and sustainable development'. The application of the aforementioned provisions depends mainly on the effectiveness of actions undertaken by individual public authorities and on the manner of organising the executive apparatus (Zientarski, 2019).

Socio-economic development is brought about through a set of instruments which should be well thought out and purposeful, as only then will they be effective in the tasks to be implemented. Adaptability, which makes it possible to generate changes stemming from growth and development, is a deciding factor in their efficiency (Hausner, 2008).

5. The Right to Good Administration as a Principle in the Implementation of the Concept of Sustainable Development

In modern democratic states, administration is responsible for managing and administering communal life. Therefore, the better it is organised, the more capable it is to efficiently meet the needs of citizens and appropriately serve them not only at the national but also at the intrans-national levels (Kowalewski, 1982).

The intensity and complexity of social and economic changes have contributed to special attention being drawn to the issue of developing appropriate standards for administrative activities. Access to high-quality services, and reliable, professional, and competent 'service' have set out the basic criteria for the citizen-state relations. The right to good administration has become an important point of reference in terms of modernising the executive apparatus of the state, as well as of other entities involved in governance. The right to good administration has its roots in the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Article 6 of the ECHR serves as a source of individual's rights applicable in the procedural context before public authorities. This correlation can be observed in the wording of constitutional principles. Among other things, one should point to the rule of law, the right to a fair trial, and access to information as playing a major role in the shaping of the administration systems in many European countries (Jackiewicz, 2008).

The concept of the right to good administration combines two approaches: one, which describes administration as an effective instrument to implement policies, and the other – related to the concept of protecting fundamental subjective rights (Lipska-Sondecka, 2015). In Europe, the issues of the right to good administration were first recognised by the Council of Europe, which acted in the 1970s to determine general principles in citizen-administration relations. In the documents of the Council of Europe which deal with the issue at hand, one can find a call for the introduction of unified standards of administrative procedure, to guarantee individuals a fair implementation of certain provisions of substantive law (Jackiewicz, 2008). The European Union also refers to good administration, currently treating it as a fundamental right (e.g. Article 6 TEU). The right to good administration is worded in the Charter of Fundamental Rights of the European Union (Article 41 of the Charter of Fundamental Rights) and the European Code of Good Administrative Behaviour. While the right to good administration is soft law, member states try to respect the commitments stemming from being part of a transnational community and the application of *acquis communautaire*.

In Poland, the issue of the right to good administration has its constitutional basis in Articles 2, 7, and 153. In terms of normal legislation, many principles of good administration can be found in the Code of Administrative Procedure. Their implementation is guaranteed through the activity of the administrative court system, which exercises indirect control by filing complaints against the decisions of

authorities as well as direct control consisting in challenging the activities of administrative authorities (Oniszczuk, 2008). The right to good administration should not be, however, considered solely through the lens of legal solutions. While well-designed regulations are important since they facilitate correct and effective implementation of tasks by administrative authorities, the awareness of citizens' right to subjective treatment in relations between individuals and authorities is equally important. In this context, the right to good administration is a subjective right, fitting in the classic catalogue of human rights, which comprise the rules of social coexistence. By regarding sustainable development as a human right to live in an unpolluted environment, one should indicate that the duty to protect the environment lies with the state and its executive apparatus (Sobczak, 2020). The transfer of knowledge and information in this respect is of key importance if one wants to be part of conscious policy of the state, which will bring about environmental security and ensure the preservation of the cultural and natural heritage of current and future generations.

6. Final Remarks

In modern democratic states, administration forms an integral part of the public administration system. It is responsible for the practical implementation of tasks encompassed within the political programmes of ruling entities. The turn of the 21st century saw the emergence of new challenges and problems to tackle. The increasing globalisation and the advancing technological revolution which accompanies it have resulted in a need for changes in the fundamental function of administration. The shifts in its position and function in the system of public authority stemmed from developing societies needing a modern executive mechanism for the tasks of the state, which would facilitate change caused by civilisational and cultural challenges. One of such challenges is the concept of sustainable development. It assumes stable existential and developmental conditions for current and future generations and respect for human dignity. The role of administration in realising this idea is crucial if one wants to knowingly participate in the shaping of the civilisation and cultural progress.

References:

Beyerlin, B., Marauhn, T. 2011. International Environmental Law. Hart Oxford, 73-84.

Beyerlin, U. 2007. Different Types of Norms in International Environmental Law: Policies, Principles and Rules. In: Oxford Handbook of International Environmental Law, eds. D. Bodansky, J. Brunnée and E. Hey, Oxford, Oxford University Press, 425.

Bieńkowska, D. 2018. Medycyna Defensywna. Nadużycia medyczne w systemie prawnym Stanów Zjednoczonych Ameryki. Poznań, Silva Rerum.

Brodecka, A. 2016. Supradyscyplinarna analiza praw człowieka. Gdańsk, Wydawnictwo Uniwersytetu Gdańskiego.

Bukowski, Z. 2011. Koncepcja zrównoważonego rozwoju w działalności administracji publicznej, In: Administracja publiczna – człowiek a ochrona środowiska. Zagadnienia społeczno-prawne, Eds. M. Górski, *et al.* Warszawa.

Ferier, I. 1974. O naukowym administrowaniu. Warszawa.
Forsyth, T. 2003. Critical Political Ecology. London, Routledge.
Frenchn, D. 2010. Sustainable Development. In: Research Handbook on International Environmental Law, Eds. M. Fitzmausrice *et al.*, Edward Elgar Cheltenham, 55-168.
Hausner, J. 2008. Zarządzanie publiczne. Warszawa, Scholar.
Izdebski, H. 2012. Doktryny polityczno-prawne. Warszawa, LexisNexis.
Jackiewicz, A.J. 2008. Prawo do dobrej administracji jako standard europejski. Toruń Adam, Marszałek.
Karta Praw Podstawowych Unii Europejskiej, 2012/C 326/02, Dz. U. UE C 326/391.
Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. uchwalona przez Zgromadzenie Narodowe w dniu 2 kwietnia 1997 r., przyjęta przez Naród w referendum konstytucyjnym w dniu 25 maja 1997 r., podpisana przez Prezydenta Rzeczypospolitej Polskiej w dniu 16 lipca 1997 r., Dz.U. 1997 nr 78 poz. 483.
Kowalewski, S. 1982. Nauka o administrowaniu, Warszawa.
Kuhn, T. 2009. Struktura rewolucji naukowych. Warszawa, ALETHEIA.
Lipska-Sondecka, A. 2015. Transformacja administracji publicznej w Polsce. Od upadku realnego socjalizmu do członkostwa w Unii Europejskiej, Warszawa.
Lowe, V. 1999. Sustainable Development and Unsustainable Arguments. In International Law and Sustainable Development: Past Achievements and Future Challenges, Eds. A.E Boyle *et al.*, Oxford, Oxford University Press, 19-37.
Najder-Stefaniak, K. 2017. Rozwój zrównoważony i wartości uniwersalne. In Teoria i praxis zrównoważonego rozwoju. Trzydzieści lat od ogłoszenia raportu, Eds. R.F. Brundtland *et al.* Warszawa.
Oniszczuk, J. 2008. Prawo jednostko do dobrej administracji publicznej. In Administracja publiczna na progu XXI wieku. Wyzwania i oczekiwania, Ed. J. Osiński, Warszawa, Szkoła Główna Handlowa.
Papuziński, A. 2006. Filozoficzne aspekty zrównoważonego rozwoju – wprowadzenie. Problemy Ekorozwoju, No. 2.
Peters, B.G. 1999. Administracja publiczna w systemie politycznym państwa. Warszawa, Scholar.
Podstawy ekonomii środowiska i zasobów naturalnych, Ed. B. Fiedor, 2002, Warszawa.
Prawa człowieka a zrównoważony rozwój. Konwergencja czy dywergencja idei i polityki, Eds. D. Bieńkowska, R. Kozłowski. Warszawa, C.H. Beck.
Sands, P. 2003. Principles of International Environmental Law, 2nd ed. Cambridge, Cambridge University Press.
Sobczak, J., Kakareko, K. 2020. Czy zrównoważony rozwój jest możliwy? In: Prawa człowieka a zrównoważony rozwój. Konwergencja czy dywergencja idei i polityki, Eds. D. Bieńkowska, R. Kozłowski, Warszawa, C.H. Beck, 27-48.
Stelmach, J., Brożek, B. 2007. Metody prawnicze. Warszawa.
Traktat o funkcjonowaniu Unii Europejskiej (wersja skonsolidowana: Dz. U. UE C 202 z 7.06.2016r. s. 42).
Ustawa z dnia 27 kwietnia 2001 roku Prawo ochrony środowiska. Tekst jednolity: Dz.U.2001, nr 62, poz. 627.
Wojciechowski, E. 2015. Refleksje na temat rządzenia. Warszawa, DIFIN.
Zientarski, P.B. 2019. Zrównoważony rozwój samorządu terytorialnego z perspektywy polityki państwa, In: Wybrane aspekty realizacji zasady zrównoważonego rozwoju samorządu terytorialnego, Eds. M. Sitek, P.B. Zientarski, Warszawa.