U N I W E R S Y T E T Z I E L O N O G Ó R S K I

DYSKURS PRAWNICZY I ADMINISTRACYJNY 2/2022 ISSN 2657-926X

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Request for electronic access to administrative court case files in the context of Art. 74a(1)(1) of the Act on Administrative Court Procedure

Keywords: administrative court procedure, electronic access to case files, electronic service of letters

Summary. The author analysed Art. 74a AACP which regulates the issue of electronic service of letters in administrative court procedure in the context of a request for electronic access to case files. The conclusion of the paper is that the legislator made the use of electronic service fully dependent on the express and undoubted consent of a party. Electronic filing of a request for mere access to the case file obligates the administrative court only to provide access to the case file in that form and does not authorise the administrative court to serve the party all correspondence electronically. If, after the case file has been made available in the electronic mode, further correspondence between the administrative court and the party is to be conducted in this mode, then the party should file a separate request referred to in Art. 74a(1)(2) AACP, or the court should request their consent under Art. 74a(1)(3) AACP to use electronic means of service.

Wniosek o elektroniczny dostęp do akt sprawy sądowoadministracyjnej w kontekście art. 74a §1 pkt 1 ustawy – Prawo o postępowaniu przed sądami administracyjnymi

Słowa kluczowe: postępowanie przed sądem administracyjnym, elektroniczny dostęp do akt sprawy, doręczenia elektroniczne

Streszczenie. Autorka poddała analizie art. 74a Prawa o postępowaniu przed sądami administracyjnymi, regulujący kwestię doręczania pism drogą elektroniczną w postępowaniu sądowo administracyjnym, w kontekście wniosku o udostępnienie akt sądowo administracyjnych sprawy drogą elektroniczną. Konkluzja pracy jest taka, że ustawodawca w pełni uzależnił korzystanie z usługi elektronicznej od wyraźnej i niewątpliwej zgody strony. Złożenie wniosku o udostępnienie akt sprawy drogą elektroniczną zobowiązuje sąd administracyjny jedynie do udostępnienia akt sprawy w takiej formie i nie upoważnia sądu administracyjnego do doręczania stronie wszelkiej korespondencji drogą elektroniczną. Jeżeli po udostępnieniu akt sprawy w trybie elektronicznym dalsza korespondencja między sądem administracyjnym a stroną ma być prowadzona w tym trybie, wówczas strona powinna wystąpić z odrębnym wnioskiem, o którym mowa w art. 74a ust. 1 pkt 2 lub sąd powinien wystąpić o jej zgodę na podstawie art. 74a ust. 1 pkt 3 do korzystania z elektronicznych środków doręczeń.

Computerisation of administrative court procedure

Computerisation is one of the key technological processes in the modern world. It consists in automation of information processing, which, as a result of numerous improvements and facilitations, leads to benefits in various areas of life[1]. A natural consequence of the digital development of the society was the entry of computerisation into legal solutions. The introduction of new technologies into the operations of public authorities in Poland began as early as the 1990s[2].

The computerisation of administrative court procedure is intended to streamline and speed up proceedings in administrative courts and reduce their operating costs. For the organisation of the administrative judiciary, computerisation means staff and financial savings. For the citizen, on the other hand, computerisation should mean greater accessibility to an administrative court (on a 24/7 basis) at a lower cost[3].

The broadly defined computerisation of administrative court procedure occurred gradually. One of its first manifestations was to make judgments of administrative courts available on the publicly accessible website, http://orzeczenia.nsa.gov.pl/cbo/query, and to publish the summary of cases in the electronic case list[4].

Electronic mailbox

As of 11 August 2014, by adding paragraph 1a to Art. 16 of the Act of 17 February 2005 on the Computerisation of Activities of Entities Performing Public Tasks[5], each public entity was obliged to make available and operate an electronic mailbox in accordance with the standards defined by the minister in charge of administration. According to this provision, "The public entity shall make available an electronic mailbox which meets the standards defined and published on the ePUAP platform by the minister in charge of computerisation, and make sure that

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1 J. Janowski, *Trendy cywilizacji informacyjnej. Nowy technototalitarny porządek świata,* Warszawa 2019, p. 17.

2 See further G. Sibiga, *Komunikacja elektroniczna w Kodeksie postępowania administracyjnego. Komentarz,* Warszawa 2011, p. 18 ff.; S. Pieprzny, *Postęp techniczny w administracji samorządowej – wybrane zagadnienia,* [in]: *Wybrane aspekty informatatyzacji w samorządach a zasada dobrej administracji,* ed. by M. Sitek, P. B. Zientarski, Warszawa 2019, p. 127 ff.

3 Cf. G. Sibiga, *Komunikacja elektroniczna…,* p. 14-15.

4 The literature on the subject draws attention to the other side of the issue of computerisation of administrative court procedure, which is the appropriate technical equipment and software for administrative courts, which for obvious reasons will not be covered in this study – see more on the issue of computerisation of the administrative judiciary in P. Pietrasz, *Informatyzacja polskiego postępowania przed sądami administracyjnymi a jego zasady ogólne*, Warszawa 2020, p. 16, 69 ff.

5 Consolidated text: Journal of Laws of 2019 item 700. Paragraph 1a was added to Art. 16 by the Act of 10 January 2014, Journal of Laws item 183.

it is operated". Thus, the legislator left no choice for public authorities but to use electronic communication and possibly replace traditional means of communication with it. However, the obligation to communicate electronically with the parties to the proceedings was introduced gradually. It had been imposed much earlier on public administration bodies which, for 6 years then, had been required to communicate with anyone concerned by electronic means whenever the latter so wished. However, in the proceedings in administrative courts, the fundamental changes related to the launch of electronic correspondence between the party to the proceedings and the court, including making case files available online, were initiated much later. They followed the entry into force on 31 May 2019 of Art. 4 of the Act of 10 January 2014 on Amending the Act on the Computerisation of Activities of Entities Performing Public Tasks and Certain Other Acts (Journal of Laws of 2014 item 183, as amended) and the entry into force of the Act of 12 April 2019 on Amending the Act on Administrative Court Procedure and Certain Other Acts (Journal of Laws of 2019 item 934).

The electronic mailbox is a nationwide ICT platform which is a publicly available means of electronic communication[6]. It is used to transmit an electronic document to a public body. It is part of the ePUAP system[7]. It should be emphasised that sending a letter by an interested party to a public authority by electronic means to any e-mail address of the authority or the administrative court is not the same as submitting a letter via an electronic mailbox. The provision of Art. 54(1a) of the Act of 30 August 2002 on Administrative Court Procedure[8] requires that a complaint be filed electronically via ePUAP. This excludes the possibility of transmitting the document in another way, *e.g.*, by handing it over to the administrative court on a data carrier (CD).

Incidentally, only with regard to filing complaints and requests referred to in Section VIII of the CAP, the legislator left the possibility of filing them electronically based on § 5 of the Regulation of the Council of Ministers of 8 January 2002 on the Organisation of the Receipt and Examination of Complaints and Requests[9]. For this reason, the administrative courts have e-mail addresses to which only letters of this type, *i.e.*, complaints or requests, can be sent. It means that an administrative court may contact a party to the proceedings by sending letters to

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[6] More on the ICT system used by a public entity to perform public tasks, *cf.* K. Chałubińska-Jentkiewicz, M. Karpiuk, *Prawo nowych technologii. Wybrane zagadnienia,* part IV: *Reorganizacja władzy. Prawa i obowiązki jednostki oraz władz publicznych w warunkach nowych technologii*, chapter 10: *Przestrzeń e-administracji i demokracji cyfrowej*, 2) *Informatyzacja działalności podmiotów realizujących zadania publiczne*, Lex online (published: LEX 2015).

[7] The ePUAP system is also connected with other solutions within e-government, *e.g.,* "CEPIK" or "obywatel.gov.pl".

[8] Consolidated text: Journal of Laws of 2022 item 329 (hereinafter referred to as the "AACP").

[9] Journal of Laws of 2002 no. 5 item 46.

any e-mail address specified by the latter, while the effectiveness of a party to the proceedings sending a letter to an administrative court depends on whether the former uses their profile on the ePUAP platform.

Principle of openness of administrative court procedure

Providing access to the files of administrative court proceedings is an implementation of the principle of openness of administrative court procedure[10]. Although until 2010 the provisions of the AACP did not contain a regulation explicitly stipulating a party's right to unlimited access to the files of an administrative court case, it was not disputed that they are entitled to it under Art. 51(3) of the Polish Constitution[11]. According to this provision, "Everyone shall have a right of access to official documents and data collections concerning himself. Limitations upon such rights may be established by statute." This applies both to administrative court files in their full scope and to administrative files while such files are in court after being transferred pursuant to Art. 54(2) AACP. The doctrine of administrative court proceedings treats the "official documents" and "data collections" used in the cited provision as very broad terms, covering all documents and materials that make up the case files[12].

As indicated in the literature on the subject, being familiar with the case file is a prerequisite for the reliable preparation of pleadings addressed to the administrative court and speeches at the hearing. Moreover, access to the case file allows a party to scrutinise the assessments made by the court and possibly challenge them through legal remedies[13].

Electronic access to administrative court case files

Pursuant to § 2(1) of the Decree of the President of the Republic of Poland of 27 May 2019 on the Manner of Handling the Administrative Court Case Files in Voivodeship Administrative Courts and the Supreme Administrative Court, a case file is created by order of the chairperson of the department[14]. Files in adminis-

[10] M. Jaśkowska, [in:] M. Jaśkowska, M. Masternak, E. Ochendowski, *Postępowanie sądowo--administracyjne,* Warszawa 2004, p. 78.

[11] Journal of Laws of 1997 no. 78 item 483.

[12] G. Łaszczyca, *Akta sprawy w ogólnym postępowaniu administracyjnym*, Chapter 6: "Udostępnianie akt sprawy", 6.2: "Podstawy prawne czynności udostępniania akt sprawy", 6.2.1: "Podstawy konstytucyjne" – Lex.

[13] Commentary to Art. 12a(3) in Section III "Zasady udostępniania akt stronom postępowania" Legalis – Art. 12a AACP ed. by Wierzbowski 2019, 6th ed., Drachal/Wiktorowska/Rząsa.

[14] Journal of Laws of 2019 item 1004 (hereinafter referred to as the "RACCF").

trative court proceedings are created in electronic form (electronic files) or in paper form. The choice of form in a particular case is left to the chairperson of the department (§2(2) RACCF). The irreversibility of the computerisation process in this matter is guaranteed by the provision of § 2(2) RACCF according to which, if the file of a given case is kept in electronic form, it is not possible to change its processing to paper form[15].

The construction of Art. 12a(1) AACP, which provides that "files shall be created in electronic or paper form", indicates that the two forms are equivalent, and the creation of electronic files does not oblige the court to maintain paper files in parallel. The literature on the subject suggests that the systematics of Art. 12a AACP may indicate that the legislator intended that the electronic form of files should play the primary role[16].

Administrative course files are a structured collection of documents compiled by the administrative court and sent or submitted by the parties and other entities in connection with the adjudication of a case[17]. At the stage of proceedings in the Voivodeship Administrative Court, in addition to the documentation submitted directly to it and the materials produced by it, the administrative files sent by the public administration body should be taken into account together with the complaint and the answer to the complaint. The importance in administrative court proceedings of administrative files which should be complete and orderly is indicated by the wording of Art. 133(1) *ab initio* AACP, which provides that "the court shall issue a judgment" on their basis. In the judgment of 12 September 2019, the Voivodeship Administrative Court (WSA) in Poznań overruled the contested decision because the administrative files submitted to it by the authority were so incomplete that they did not allow the Court to review the arguments and course of action of the Social Insurance Institution (ZUS)[18]. At the same time, as the

[15] It is significant that analogous irreversibility of the computerisation process at the level of creating files in public administration bodies is ensured by the provision of § 1(4) of Appendix No. 1 – Chancellery Manual (Regulation of the Prime Minister of 18 January 2011 on the Chancellery Manual, Uniform Material Lists of Files and Instructions on the Organisation and Scope of Activity of Company Archives, Journal of Laws of 2011 no. 14 item 67), which introduced a ban on the renewed indication of the traditional system in the event of prior indication of the Electronic Document Management system as the primary means of documenting the course of handling cases. The administrative files are sent to the Voivodship Administrative Court once the complaint and the answer to the complaint have been forwarded to it. Thus, the creation of administrative files in electronic form undoubtedly has an impact on the speed with which administrative court files are made available to a party in the ICT system after the party submits a request in this regard. The analogue form of administrative files requires that they be digitised in order to obtain their digital reproduction.

[16] Commentary to Art. 12a(4) in Section II "Zasady zakładania, prowadzenia i przechowywania akt" Legalis – Art. 12a AACP ed. by Wierzbowski 2019, 6th ed., Drachal/Wiktorowska/Rząsa.

[17] Cf. ruling of NSA of 20 December 2016, I OZ 1915/16, CBOSA.

[18] III SA/Po 452/19, CBOSA.

Supreme Administrative Court (NSA) pointed out in its judgment of 27 June 2019, "the obligation to issue a judgment on the basis of the case file means only the prohibition to go beyond the material in the case file"[19].

Since case files should be kept in order, the documentation in them shall be collected in chronological order. Pursuant to § 3(1) RACCF, an electronic case file consists of electronic documents received by the court, electronic documents produced by the court, and documents converted from paper to electronic form including metadata. If a paper document needs to be attached to a case file created in electronic form, then pursuant to § 4(1) RACCF the document shall be converted to electronic form by making its certified copy. If full conversion of a document from paper to electronic form is not possible due to technical reasons or unreasonable due to the costs of conversion, the basic data allowing for identification of the document, data relevant for the case and the parts of the document that can be converted are stored in the case file in electronic form (§ 4(3) RACCF).

A party's right to inspect the file shall include all letters, materials, and documents on the basis of which the administrative court, pursuant to Art. 133(1) AACP, adjudicates the case. According to § 5(1)(1) of the Internal Rules of Procedure of the Administrative Courts[20] and § 3(1)(1) of the Internal Rules of Procedure of the Supreme Administrative Court[21], the tasks related to making files available to parties in individual administrative courts are carried out by the judicial information divisions. Access to the file may consist in allowing a party to inspect the file, or to obtain copies, reproductions, or excerpts thereof.

Access to files in the ICT system can only take place as a result of a request submitted electronically. Pursuant to Art. 12b(2) *ab initio* AACP, a request for access to the files in the ICT system in the form of an electronic document is submitted to an administrative court via the ePUAP electronic mailbox. As stated above, making such a request, and sending it to an e-mail address is ineffective. This address should not be confused with the electronic mailbox of the administrative court. To send a letter to an administrative court electronically, the requesting party must have an account on the ePUAP platform and affix an electronic, trusted, or personal signature to the request.

The date of filing a letter requesting access to the files in the court ICT system is the date of entry of the letter into the court ICT system, as specified in the official certificate of receipt. The administrative court shall make the case file available on PASSA within 5 business days of the request. Importantly, subsequent

[19] I OSK 2153/17, CBOSA.

[20] Decree of the President of the Republic of Poland of 5 August 2015, Journal of Laws item 1177.

[21] Resolution of the General Assembly of Judges of the Supreme Administrative Court of 8 November 2010, Official Gazette of the Republic of Poland 2010 item 86, as amended.

documents included in the case file during the course of the proceedings can be viewed based on the previously granted access without the need to make further requests in the case.

Regulations on electronic service of letters in administrative court procedure

The issue of electronic service of letters in administrative court proceedings was regulated by the legislator in Art. 74a AACP. According to this provision: "§ 1 Service of letters by the court shall be affected by means of electronic communication if a party has fulfilled one of the following conditions:

1) filed a letter in the form of an electronic document via the electronic mailbox of the court or authority through which the letter is filed;
2) requested the court for such form of service and provided the court with their electronic address;
3) agreed to be served by such means and provided the court with their electronic address.

§ 2 If a party elects not to have letters served by electronic means of communication, the court shall serve the letter in the manner prescribed for a letter in a form other than the form of an electronic document. The declaration that service is no longer to be affected by electronic means of communication shall be made by an electronic document".

Importance of the party's will concerning the electronic service of documents

The provision of Art. 74a AACP cited above entered into force on 31 May 2019. From that moment on, communication between a party and an administrative court should be effected electronically if the party, pursuant to Art. 74a(1)(1) AACP, files a letter to an administrative court in electronic form, or – pursuant to Art. 74a(1)(2) AACP, files a letter in traditional/paper form and then requests the court to be served electronically, or if the administrative court requests the party to express their consent to being served letters electronically (Art. 74a(1)(3) AACP).

The following categorical wording of Art. 74a(1) AACP by the legislator: "Service of letters by the court shall be effected by means of electronic communication if..." and the simultaneous enumeration of three cases when the court is entitled to use this form of service indicates that the choice of this method of service of letters is left to the will of the party to the proceedings. There is also no doubt that this will must be expressed in a clear and unambiguous manner.

It also follows from Art. 74a(2) AACP that a party at any stage of the administrative court proceedings has the right to withdraw their consent and resign from electronic service of letters. Moreover, they may exercise this right repeatedly and without limitation in a proceeding.

The above analysis leads to the conclusion that the legislator, when constructing Art. 74a AACP, was highly concerned with taking into account the will of the party each time when it comes to electronic service of letters.

Electronic request for access to case files in administrative court proceedings

The analysis of one of the WSA judgments leads to a disturbing conclusion that an administrative court of the first instance, relying on the solution adopted in Art. 74a(1)(1) AACP, takes the view that if a party files any letter, including a request for access to the case file, in the form of an electronic document, then all letters in a given case – following this step – should be served in this mode[22]. However, an analysis of the above provision leads to an unambiguous conclusion that the legislator's intention when introducing the provision of Art. 74a AACP was to always leave the party the choice as to whether to accept electronic service. This is because the provision was formulated in such a way that there is no doubt that even if a party files a letter by electronic means – it may at the same time express their will to be served letters by the court in a traditional manner.

There is no doubt that Art. 74a(1)(1) AACP applies when a party files any substantive pleading in a case, e.g. in the form of a complaint or cassation appeal or interlocutory appeal. This action, as it were, automatically results in the administrative court's obligation, as a result of a substantive letter – especially one that is the execution of a remedy – to serve such a requesting party all letters in the case electronically, as it may be concluded that the requesting party chose this form of communication with the court in the given administrative court case. At the same time, as it has already been said, even if the complainant files such a substantive letter, such as a complaint or cassation appeal or interlocutory appeal in electronic form, pursuant to Art. 74a(2) AACP, they may express the will to receive all correspondence in traditional form. Moreover, as noted above, the applicant may repeatedly in a proceeding express and withdraw their desire to correspond with the court electronically, thereby switching to a traditional form.

It should be emphasised that an analysis of the construction of Art. 74a(1) and (2) AACP leads to the conclusion that the way of construing of Art. 74a(1) indicated above should not apply to a non-substantive letter which is not an expression

[22] Ruling of WSA in Poznań of 3 March 2020, II SA/Po 440/19.

of execution of a remedy in the form of *e.g*. a complaint, but which is only a request for electronic access to the case file. In this case – which needs to be emphasised – the person filing such a request would not be able to simultaneously express their resignation from the electronic exchange of the requested correspondence with the administrative court, because it is obvious that the simultaneous electronic filing of a request for access to the case file and expression of the will referred to in Art. 74a(2) AACP would nullify the sense and logic of this action. By doing so, the requesting party would be contradicting themselves. Therefore, mere filing of a request for electronic access to a case file with the court should not result in any further correspondence – other than the access to the file itself – being sent to the requesting party in electronic form.

Priority of electronic form over paper form

The duality of solutions allowing for the creation of case files both in paper and electronic form results in the fact that a party has the possibility to demand that correspondence be addressed to them and that letters be served by the administrative court in traditional form or by means of electronic communication. Moreover, in the same case, a party – who has consented or requested it – may be served correspondence electronically, while a participant in the proceeding may be served in a traditional manner or vice versa.

In one of its recent judgments, NSA indicates that the electronic form should take precedence over the paper form if a party has agreed to electronic service of letters. Namely, in its ruling of 13 December 2019 (I OZ 1072/19 – CBOSA), NSA took the position that in a situation where a party files a complaint in both paper and electronic form, the administrative court is "bound by the fact of filing the complaint... in the form of an electronic document". For this reason, NSA found prior service by WSA of the summonses in traditional form to be ineffective. Thus, in a case – rare in practice – where a party submits the same complaint to an administrative court in both traditional and electronic forms, the latter has been given priority.

Conclusion

The provision of Art. 74a(1)(1) AACP, in force for one year now, undoubtedly constitutes a significant step forward in the functioning of the administrative judiciary, which may be viewed in the context of increasing the level of accessibility to the court for the parties by introducing the obligation to exchange correspondence with the parties in electronic form, provided that they express their will to

that effect. At the same time, it must be remembered that its application cannot take place without and against the will of the parties and their attorneys at law. Directing all correspondence to a party – and not only providing access to the case file – electronically, after the party has filed an application for electronic access to the case file, would nullify the legislator's assumptions underlying the construction of Art. 74a AACP. In principle, the legislator made such a method of service fully dependent on the express and undoubted consent of a party. Electronic filing of a request for access to the case file obligates the administrative court only to provide access to the case file in that form. If further correspondence between the administrative court and the party is to be conducted in this form, the party or their attorney at law should file an appropriate request referred to in Art. 74a(1)(2) AACP, or the administrative court should request their consent under Art. 74a(1)(3) AACP to use electronic means of service.

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