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ADMINISTRATIVE SUPERVISION OF WORK OF PORT AUTHORITIES IN THE REPUBLIC OF CROATIA

ABSTRACT

Administrative supervision is one way of holding control over administration and legal persons who have certain public authorities when performing their function, one of such being the Port Authority. Performing public authorities - concerning the fact that it is a form of public power - must be under legal supervision of the state and its bodies. The Act on Maritime Domain and Sea Ports as well as the Act on Inland Ports, each in its particular area, foresee the possibility of performing administration supervision over port authorities work. This is a legally and functionally extremely interesting form of supervision; administration supervision is not brought up for the reason of performing some internal police function that shows up once in a while only if there are some difficulties in work. Administration supervision must be continuous and provide assistance to bodies over which the supervision is held. This paper analyses legal grounds and potential forms of administration supervision over the work of port authorities.

KEY WORDS

administration, administration supervision, sea ports, inland ports, port authorities, public authorities

1. INTRODUCTION

Port authorities on the sea as well as those on inland waters perform certain public authorities under the usual scope of their functionalities. "Performing public authorities, concerning the fact that it is a form of public power, must be under legal supervision of the state and its bodies." Such supervision must be completed by the state administrative bodies which are primarily state administrative bodies that are usually in charge of the situation in the area of work performed on the basis of public authorities. [1] Therefore, the acts that regulate the basis of port authorities' work, Act on Maritime Domain and Sea Ports (*Zakon o pomorskom dobru i morskim lukama*¹ [ZPDML]) and Act on Inland Ports (*Zakon o lukama unutarnjih voda*² [ZLUV]) foresee performing of Administration supervision over port authorities' work.

2. ADMINISTRATION SUPERVISION IN GENERAL

Administration supervision is one of the ways of controlling the administration. "So various and rich in content as the administration, the same applies also for the group of subjects that represent the bearers of administration control." [2] Pusić says on the subject of control in administration: "Control in administration means comparing the real activity of administration organizations and their results with the activity and results that have been expected based on the set criteria." [3] From the aspect of control bearers, the administration supervision falls under the type of control with the administration itself as the bearer. [4] Borković says: "Among types of control over administration, the stress is on the control within administration (the administration control). To organize such control means to regulate the relationship between administration and authorities of higher and lower positioned bodies within it. The essence of such control is that it does not leave the frame of administration structure and it is done in such a way that one administrative body supervises the other." [5] Borković further says: "Performance of administration control is particularly emphasised among the work of state administration." [6]

From the above we may conclude that the administration control will be done in the port authorities only in the part where public power is performed, i. e. activities that originally belong to the administration (in terms of state). Over the functions of port authority that do not fall under the public power, other sorts of control may be performed, such as financial supervision, but not the administrative one. Performing administration supervision over the work of port authority which has not been taken over by the state administration in a way that one body controls the other, would step out of the frame of the administration structure (in the state administration work, the port authority must act as state administration body and apply certain regulations determined for state administration!), and in that case it would not fall under administration supervision.

3. ACTIVITIES OF STATE ADMINISTRATION TAKEN OVER AND PERFORMED BY THE PORT AUTHORITY

A question is asked: Which are the activities done by the port authority that may be considered as taken over from the state administration; namely, which the port authority is performing based on the public power?

Article 32 of the Act on Inland Ports (ZLUV) states that the duty of the port authority is to permanently and uninterruptedly perform public services and other tasks and that in regard to public services the port authority is entitled to public authority under which it may bring administrative and other regulations and decide on the issues significant to the port system development. However, these public authorizations are not listed nor found under business ones performed by the port authority - in no way is it listed which services are public ones and which are not, and neither is there a list of administrative regulations brought by the port authority. The Act on Maritime Domain and Sea Ports (ZPDML) is not explicit on the public authorization of port authority, but lists under Article 54, among the duties of administrative council, the activities that undoubtedly fall under public authorities: the decision on public tender for concession and deciding on granting a concession (for any disputes regarding concession the Court of Administration is in charge - which means that it may be concluded that this refers to administrative regulations)³, as well as determining the port tariffs.

However, regarding the fact that the issue of administrative regulation in the Croatian judicial system has not been precisely defined yet - we reach the point of how difficult it is to determine the scope of administration supervision in the port authority. It should definitely be better determined and *de lege ferenda* precisely defined which are the public authorities of the port authority and which are the duties that may be considered as taken over from the state administration.⁴

4. MANAGEMENT SUPERVISION ACCORDING TO THE PROVISIONS OF THE ACT ON MARITIME DOMAIN AND SEA PORTS AND THE ACT ON INLAND PORTS

With regard to the port authorities of inland waters, the management supervision is regulated by Article 64 of the Act on Inland Ports (ZLUV): "The ad-

ministration supervision over the implementation of this Act's provisions, as well as administration supervision over Port authority's work in performing the tasks taken over from the state administration, is done by the Ministry." When it comes to port authorities on the sea, the administration supervision is defined very briefly by Article 84 of the Act on Maritime Domain and Sea Ports (ZPDML): "Administration supervision of the implementation of provisions of this Act is done by the appointed employees of the Ministry and the state administration offices in the County in coordination with the Act on State Administration System." In both Acts, the term "Ministry" refers to the ministry in charge of maritime and inland navigation. In accordance to the Act on Structure and Scope of Work of Central Bodies of State Administration (*Zakon o ustrojstvu i djelokrugu središnjih tijela državne uprave*)⁵ it is the Ministry of the Sea, Tourism, Transportation and Development).

None of the above-listed acts defines or explains in details the description and the functions of the administration supervision. Rather, they are placed under general regulations, Act on State Administration System (*Zakon o sustavu državne uprave*)⁶, in Articles 19-22. This Act defines the implementation of administration supervision as done by the state administration bodies who also supervise the implementation of the acts and other regulations as well as legal aspects of work and state administration performance, bodies of local self-government and legal persons with public authorities in the activities taken over from the state administration [Article 19].

The scope of administration supervision is defined by Article 20 of the Act on State Administration System (*Zakon o sustavu državne uprave*). It states that in the implementation of the administration supervision, the state administration bodies monitor in particular: 1. legal aspects of the work and performance; 2. solving administrative issues; 3. efficiency, effectiveness and purpose of work while performing state administration; 4. purpose of internal structure and capability of employees for performing duties of state administration and 5. relationship of the employees towards the citizens and other clients. A slightly ambiguous phrase "to particularly supervise" says that the listing under Article 20 of the Act on State Administration System (*Zakon o sustavu državne uprave*) is individual, not scaled.⁷

The measures of administration supervision are listed in Article 21 of the Act on State Administration System (*Zakon o sustavu državne uprave*) where it is stated that should the state administration bodies during the implementation of administration supervision find out certain irregularities or discontinuities in bringing regulations, work or performance; should there be any drawbacks in solving the administration

issues, non-advisability of internal structure or inappropriate relationship between employees and the citizens and clients – measures will be taken in order to remove such irregularities and particularly: 1. request reports, data and other information on performance of the state administration; 2. discuss the situation of performing duties of state administration and propose measures that must be taken in order to perform certain activities of state administration; 3. start procedure to determine the responsibility of individual employees; 4. directly perform tasks within one's scope that are under jurisdiction of the state administration, bodies of local self-government or legal persons with public authorities at their expense, when estimated that act or regulation cannot be implemented in any other way and state administration body has not performed a certain state administrative task within the determined deadline; 5. undertake other measures regulated by special act.

Article 22 of the Act on State Administration System (*Zakon o sustavu državne uprave*) states that ministries and state administrative organizations supervise the work of the state administration bodies, bodies of local and regional self-government and legal persons with public authorities in the tasks taken over from the state administration – which again refers to the provision of Article 64 of the Act on Inland Ports (ZLUV) and Article 94 of the Act on Maritime Domain and Sea Ports (ZPDML).

5. GOALS OF MANAGEMENT SUPERVISION

Pusić stresses the tight connection between control and responsibility. However, he points out that administrative control done by controls of administrative organization within the administration itself is often wider than the term of responsibility. "Usually, the responsibility bears certain negative connotations of a gap made by the responsible party. On the contrary, the control that follows continuous check-ups on the successfulness of the performance of administrative programs, under changeable circumstances, does not have any implication of guilt, non-direct in any way from the side of those who were responsible for the implementation." [7]

With these aspects by Pusić, we may fully agree – administration supervision is not based on the idea of some internal administration police that shows up every once in a while should some difficulties in work occur. It should remain a permanent form of reviewing of the efficiency of port authority activities when performing tasks taken over from the state administration. Administration supervision performed in case of suspicion of work regularity of any administrative

body must be presented as an exception, rather than a basic form of performing administration supervision.

6. CONCLUSION

Administration supervision must be continuous and present assistance to the bodies that perform the supervision. The person who performs administration supervision must be primarily a consultant, an expert advisor whose knowledge and experience would help in performing certain very complex duties such as, for example, establishment of concession relations. When it comes to such complex duties the port authorities may face troubled situations, from the lack of experience to insufficient number of quality experts (especially when it comes to port authorities located in smaller cities).

Briefly: it is natural to send administration supervision to port authority if any irregularity in their work is suspected – but it is incorrect if administration supervision is used for such purposes mostly or only. Its role may be much stronger and it may come forward to correct inappropriate behaviour of state administration or bodies with public authorities. It should also be considered that a person entering administration supervision is not a controller of work but, on the contrary – a counsellor who must be informed about the ambiguous situations and doubts, so that such could be solved on time, before any irregularities appear in the work.

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SAŽETAK

UPRAVNI NADZOR RADA LUČKIH UPRAVA U RH

Upravni nadzor je jedan od oblika kontrole nad upravom te nad pravnim osobama koje u obavljanju svoje funkcije imaju određene javne ovlasti, a među koje ulaze i lučke uprave. Naime, obavljanje javnih ovlasti, s obzirom na to da se radi o nekom obliku javne vlasti, mora biti pod pravnim nadzorom države, odnosno njezinih tijela. Zakon o pomorskom dobru i morskim lukama te Zakon o lukama unutarnjih voda, svaki u svom području, predviđaju mogućnost obavljanja upravnog nadzora nad radom lučkih uprava. U pitanju je pravno i funkcionalno iznimno zanimljiv oblik nadzora; upravni nadzor nije zamišljen niti bi trebao predstavljati nekakvu internu upravnu policiju koja se pojavljuje tek ukoliko negdje postoje vidni problemi u radu. Upravni nadzor mora biti kontinuiran i u biti predstavljati pomoć tijelima kod kojih se nadzor vrši. U članku se analizira pravna osnova i mogući oblici upravnog nadzora nad radom lučkih uprava.

KLJUČNE RIJEČI

uprava, upravni nadzor, morske luke, luke unutarnjih voda, lučke uprave, javne ovlasti

REFERENCES

1. "Narodne novine"*, No. 158/03
2. "Narodne novine", No. 142/98 and 65/02
3. ZPDML states that in case of dispute regarding concessions an administrative court procedure may be filed for, while administrative cases are covered by the Administrative Court of the Republic of Croatia.
4. Administrative regulation and its scope is one of the main issues of administrative act – on which no doctrine nor legislative or court practice have given a precise answer.
5. "Narodne novine", No. 199/03 and 30/04.
6. "Narodne novine", No. 75/93., 92/96, 48/99, 15/00, 59/01, 190/03 (cleared text) and 199/03.
7. Scaled (lat. taxare = estimate) is taken in cases of only cases that the legal regulation refers to are listed. Such cases complete the closed circle in quantity aspect. Indi-

vidual (lat. exemplum = example) exists when the legal regulation is applicable not only to the listed cases but also to the similar ones that may not be listed in the regulation. It is based on conclusion by analogy. More about the subject: Vuković, M - Vuković, Đ: Znanost o izradi pravnih propisa – nomotehnika, Zagreb, Informator 1997, pp. 114-115

- * "Narodne novine" is Official Gazette of the Republic of Croatia.

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- [1] **Krijan, P.:** *Javne ovlasti – poseban oblik javne vlasti*, Pravo i porezi, Zagreb, No. 11., Vol. VIII, November 1999, pp. 34-35
- [2] **Borković, I.:** *Upravno pravo*, Narodne novine, Zagreb, 2002., page 114
- [3] **Pusić, E.:** *Uprava*, Knjiga I., Školska knjiga, Zagreb, 1961., page 316
- [4] Cf. *Ibid.*, page 114
- [5] **Borković, op. cit.**, p. 123
- [6] *Ibid.*
- [7] **Pusić, op. cit.**, p. 318.