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

proceedings. Quoting Kwiatkowski, one may assume that evidentiary bans are legal rules that limit or even make it impossible to reach the truth, that is to establish facts that are true, if it could interfere with the country's significant interests as well as social or individual interests [2, p. 44].

Grzegorczyk defines evidentiary bans in a similar way, naming them norms prohibiting examination of evidence in specified conditions or creating limitations in the search for evidence [3, p. 437].

On the other hand, Marszał points to the existence of two meanings of the term «evidentiary ban». In a narrow sense evidentiary bans mean bans on examination of specific evidence, however, in a wide sense evidentiary bans refer to any limitations within the introduction, examination and use of evidence in a case [4, p.176].

Essentially, every evidentiary ban diminishes the chances of finding the evidence, thus it is an exception to the principle of objective truth. As a result, bans are applied only within the scope specified by legal regulations in detail [5, p. 353].

Therefore, one may assume that evidentiary bans are exceptional in nature and constitute compromises between various goods having priority over the principle of objective truth. Moreover, they become two-sided, which means that on the one hand they deprive an authority of evidence and, on the other hand, they order this authority to search for other evidence that could help account for the objective truth [6, p. 45].

Thus evidentiary bans are a guarantee and a compromise between various socially accepted goods and the need for establishment of the truth during the proceedings as well as are introduced by the legislator always where the benefit arising from establishment of the truth might be smaller compared to the disadvantage that could arise from examination and use of given evidence [7, p. 45].

In general administrative proceedings evidentiary bans are legal regulations contained in chapter IV of the CAP, constituting specific legal structures, by means of which obtaining evidential materials with use of given evidence is either restricted or even prohibited. The essence of bans is based on the need to protect specific interests, goods and values other than the principle of establishing the actual state of affairs in accordance with the truth.

Due to the nature of administrative proceedings classification of evidentiary bans is not complicated. In contrast with criminal proceedings, where regulations pertaining to evidential proceedings constitute a very complex and complicated element of the criminal case, in general administrative proceedings legal solutions pertaining to the ways of examination of evidence, including the ones regulating the matter of evidentiary bans, appear in a much narrower range.

The basic criterion that should be accepted while attempting to classify evidentiary bans in general administrative proceedings is the criterion of the scope of a given ban. Does it become an absolute ban, which does not allow for any exceptions in using specific evidence, or does it become a relative ban, which does not really ban but restricts the possibility of reaching the truth?

By accepting the criterion of the scope of application of a given ban one may distinguish two basic groups: relative or absolute bans. The characteristic feature of absolute evidentiary bans is the fact that they are not subject to any exceptions, which means that there are no legal or actual possibilities of taking evidence that is subject to the abovementioned ban. This group includes the ban on summoning a witness that is unable to note and communicate his or her observations (art. 82 p. 1 of the CAP) as well as the ban on interrogating a priest about facts that he or she has learned during a confession (art. 82 p. 3 of the CAP) .

Relative evidentiary bans refer to bans on using some evidence, however, at the same time providing appropriate exceptions to the abovementioned bans. Within relative evidentiary bans two groups may be distinguished. Firstly, relative evidentiary bans in case of which the witness cannot decide by himself or herself about the exception to the ban. This group includes the inability to be a witness due to the need to protect a state secret – art. 82 §2 of the CAP; as well as the inability to be a witness due to the need to preserve a service secret – art. 82 §2 of the CAP.

Secondly, relative evidentiary bans depending on the will of the interrogated person. In case of relative evidentiary bans the witness may decide whether a given situation is a basis for his or her resorting to refusal to testify or answer a specific question or whether he or she does not have any objections and given evidence may be taken. This group of evidentiary bans includes:

- the right to refuse to testify by the immediate family of the party – art. 83 §1 of the CAP;
- the right to refuse to answer a specific question due to the obligation to keep a service secret – art. 83 §1 of the CAP;
- the right to refuse to answer a specific question if the answer could expose the witness or his or her immediate family to criminal liability, indirect damage to property or disgrace – art. 83 §2 of the CAP;
- the ban on interrogation of a person using diplomatic immunity, unless the person consents to it;

- the ban on interrogation of a party that has not consented to it;

- the ban on summoning an expert if he or she is subject to exclusion on the basis of art. 24 of the CAP or if he or she has the right to refuse to testify if the conditions from art. 83 of the CAP arise.

In accordance with art. 25 of the Constitution of the Republic of Poland, the public authorities in the Republic of Poland must remain impartial in their religious and philosophical beliefs as well as world view, ensuring freedom of their expression in the public life [8]. Simultaneously, one needs to note that the model of separation of church and state accepted in the Republic of Poland refers to all churches and religious associations [9, p. 26].

The independence and autonomy of church and state, however, is not absolute in nature and does not mean complete separation of the institutions, which is indirectly indicated by art. 25 of the Constitution of the Republic of Poland, accepting respect and cooperation for the common good as the basis for the process of shaping the discussed relations [10, p.126].

An example of the relations between the state and religious associations is the protection of confidential exchange of information taking place during confession. In commentaries within administrative proceedings the issue of the ban on using facts that the priest has learned during confession has not received much attention, sometimes treated as a marginal issue. The main reason for this situation is probably the belief that in practice the issues connected with protection of the seal of confession do not cause so many problems, which seems to be confirmed by few judicial decisions pertaining to the discussed topic. However, legal regulations pertaining to the abovementioned issues undoubtedly do restrict the principle of objective truth.

In spite of apparent clearness of the regulations provided by art. 82 §2 of the CAP, the issues raise many doubts that could be reduced to one question: to whom and to what does the ban refer, that is, what does the subjective and objective scope of the ban look like?

Due to the fact that in most cases the art. 82 of the CAP regulations will be applied in Roman Catholic clergymen, the reflections below will be based mainly on the Code of Canon Law. In the Roman Catholic Church the idea of the seal of confession was regulated by canons 983 and 984 of the CCL. In accordance with the canons, the seal of confession is inviolable and thus the confessor may not disclose the information provided by the penitent in words or any other way for any reason and in any situation. The interpreter, if he or she is present, as well as any other people who have received the information about the sins from the confession also have the obligation to preserve the secret. It is absolutely forbidden for the confessor to use the information obtained during confession in a way that could incriminate the penitent, even if there is no risk of the information being disclosed. Moreover, in accordance with canon 984 §2 of the CCL, every person who has knowledge of the sins confessed at any time during the confession cannot use it in any way in the outside world. The obligation to preserve the seal of confession is explained by the Catholic Church by two kinds of goods that need to be protected. Those include the penitent's good (bonum penitentum) and the sacrament's good (bonum sacramenti) [11, p. 68].

Quite a broad spectrum of the regulations pertaining to the seal of confession indicate the great importance of this idea as well as its absolute nature [12, p. 532].

The canon laws have been combined with the administrative proceedings laws, establishing a ban on interrogation of clergymen about facts subject to the seal of confession in art. 83 §3 of the CAP.

The objective scope of the seal of confession should be discussed first with differentiation between two forms of confession: ordinary and extraordinary. In accordance with canons 959 and 960 of the CCL the ordinary confession consists in individual and integral confession, during which in the sacrament of penance an authorized steward hears people's sins, contrition as well as promise of at least satisfaction, as a result of which, through absolution given by him or her, the people are absolved of their sins by God and, at the same time, reunite with the church. One may be excused from such confession only in case of physical or moral inability. The extraordinary form of confession may be applied only if the conditions specified in art. 961 of the CCL arise, that is if there is danger of death and there is no time for a priest or priests to hear particular penitents or if it is necessary, namely, if due to a large number of penitents and not enough confessors to hear each person individually in appropriate time penitents would remain without sacramentary grace or holy communion for a long time, not out of their own fault, but sufficient necessity is not considered to exist when confessors cannot be present due only to the large number of penitents such as can occur on some great feast or pilgrimage. However, even in such a situation the penitent, in accordance with canon 963 of the CCL, should go to individual confession at the earliest convenience before another general confession, unless there is a justified reason.

Due to the issue connected with evidentiary bans only the ordinary form of confession will have application here, as this is the only form that provides for the obligation to keep the seal of confession.

From art. 82 §3 of the CAP it arises that clergymen cannot testify about the facts that they have learned during confession, which means that one needs to define the facts, the priest as well as the confession in detailed analysis. The linguistic interpretation of the word fact in colloquial language is associated with the real existence. In accordance with Eryciński, «facts are any phenomena and events specified in time and space as past or present as well as procedural facts significant for procedural prerequisites» [13, p.443].

Therefore, the linguistic interpretation does not provide satisfactory results, as during confession the priest may obtain or provide much information other than and as significant as facts, however, expressed during confession as judgment, his or her own evaluation of the facts or information provided by the priest in the form of instruction, advice or obligation to undo the harm [14, p. 131].

Rakoczy also emphasizes the fact that evidentiary restrictions refer only to situations in which the priest has learned specific facts from the penitent. However, this restriction does not apply in a situation where during confession the penitent receives from the confessor specific information, including facts, which could be related to third persons [15, p. 131].

In such a situation, instead of the linguistic interpretation, the author advocates application of the theological interpretation and assumption that the discussed ban pertains to any information obtained during confession, regardless of whether the information has been provided by the confessor or the penitent. Only after that would the seal of confession be interpreted correctly [16, p. 132].

The abovementioned view requires a commentary. One cannot disagree with the first part of the argument presented above. Limitation of the evidentiary ban only to true statements seems not only pointless but also unfair, and, most importantly, impossible. The priest does not have any rights, competences or power to evaluate whether the statement given by the penitent is real. Hence one needs to assume that all statements disclosed by the penitent to the confessor during confession are subject to evidence.

Definitely, the most questionable is the second statement, in accordance with which interpretation of regulations pertaining to the seal of confession should assume protection of any information disclosed and obtained during confession, regardless of whether it has been disclosed by the confessor or the penitent. In the first place one needs to note that the mere awarding of the privileged status to some evidence, especially in view of implementation of the principle of objective truth, is controversial. It is caused by the fact that evidentiary bans may conceal significant, sometimes even crucial for the settlement of the case, evidence. However, if, in spite of the above, the legislator decides that some values are more important than the search for the truth itself, then the prerequisites should be interpreted in a narrow way, especially as the discussed ban has been implemented as an absolute ban, not subject to any exceptions [17, p. 71].

Thus one should assume that the discussed ban pertains only to the information that the confessor has learned from the penitent during confession. In case of the reverse, the penitent will be obliged to testify about the facts that he or she has learned from the confessor during confession.

Another issue as significant as the establishment of the subject of the discussed ban is establishment of the person to whom the discussed ban applies – that is establishment of its subjective scope. The disposition of art. 82 of the CAP is extended to clergymen, however, it does not attempt anywhere, just as in the case of the criminal and civil procedure, to specify this term. In 1992 the Supreme Court ruled that a priest is a person belonging to the Catholic Church or any other church or religious association, distinguished from other believers by the fact that he or she has been appointed to organize and perform religious services [18].

Hence the ban is extended to clergymen of all religious associations, regardless of the nature or obligation connected with their function, if only the churches or religious associations work legally and provide confessions [19, p. 173].

Analysis of the internal regulations of a given church allows for establishing who is accepted as a priest able to hear confession within this church. In accordance with canons 965 and 966 of the CCL the steward of penance may be only a priest who, aside from ordination, has received the right to hear confessions on the basis of the law itself or by means of receiving suitable rights from a competent authority. At the same time one must note that the obligation to preserve the seal of confession pertains also to an ex-priest, who, as a result of secularization, has become a lay person. Such a person does not have a right to administer sacraments, however, may absolve a person in danger in the face of death. It is beyond doubt that in such a situation an ex-priest will not be able to testify about the facts that he or she has learned during confession either.

An issue worth attention is also a situation in which the person hearing the confession does not have appropriate authorization to administer this sacrament, which might stem from the fact that the person is not a priest at all or is one, however, does not have an appropriate right to hear confession. Here Rakoczy states that application of the evidentiary ban depends on the good or bad intention of the penitent. If the penitent

does not realize that the person to whom he or she is confessing his or her sins is deprived of suitable rights, then the seal of confession and simultaneously the evidentiary ban should be preserved. However, if the penitent acts out of bad intentions, then there is no basis for using the protection provided by art. 82 § 3 of the CAP [20, p. 134].

Another issue is connected with whether the seal of confession pertains to a third person who has obtained some information either by the penitent's consent, as in the case of confession in the presence of an interpreter, or has obtained some information from the priest or the penitent himself or herself, as well as whether a third person has learned the information contained in the confession regardless of the priest and the penitent's will. The canon law doctrine distinguishes the seal of confession that should be kept by every person who has obtained information on the sins disclosed during confession in any way [21, p. 134].

However, in procedural regulations there is no law that would in any way relate to the canon law regulations within the discussed topic. Lack of any such regulations, however, does not mean that one should not scrutinize this issue, mainly due to the fact that the legislator has accepted the seal of confession as a value subject to legal protection. As for confession in the presence of an interpreter, one must accept, regardless of whether the interpreter is a sworn professional or simply a person knowing a foreign language, that such a person will always exercise the right to protect the seal of confession. Otherwise, participation of an interpreter in confession would make no sense, as it is difficult to imagine a penitent trusting any interpreter without the certainty that the sins he or she confesses during confession cannot be disclosed on an authority's demand.

As for third persons who have learned the information contained in the confession accidentally or as a result of information given to them by the penitent or the confessor, one must assume that such persons may testify and the ban from art. 82 of the CAP will not find application in relation to those persons. In accordance with *de lege ferenda* – what the law ought to be (as opposed to what the law is), one may demand that in such a situation the evidentiary ban be extended to third persons as well, as acceptance of evidence provided by a person who has obtained knowledge of the topics touched upon during confession illegally seems unethical and morally dubious. As Rusinek rightly states, a believer summoned as a witness faces a dilemma whether to remain faithful to the church's laws that order him or her to protect the seal of confession or to comply with the procedural law. Thus the legislator should take into consideration potential danger arising from such collisions and extend the discussed ban to third persons as well [22, p. 78].

The last element that requires a closer look is the idea of confession. Jurzyk has created typology of the notion of «confession», indicating the following ways in which it may be understood:

1) sacramentary confession – confession consisting in individual confession of sins to a confessor. It can be found in the Catholic Church and some Christian Churches,

2) confession during which admission to sins occurs, however, it is not sacramentary in nature (Protestant Churches),

3) a pastoral conversation, of which confession of sins might be one, not necessarily dominant, element – some Protestant Churches or some factions of Judaism [23, p. 74].

The evidentiary ban will certainly pertain to the first understanding of confession, that is sacramentary confession. Jurzyk, however, notes that such limited understanding of this ban might give rise to accusations of discrimination. On the other hand, extending the abovementioned ban to other churches and religious associations where only a pastoral conversation is practiced would require extending this ban to such conversations held by priests, friars and nuns in the Catholic Church as well. Therefore, during analysis of those regulations one needs to acknowledge such problems, especially as the way of interpretation presented above is quite prevalent, e.g. in American jurisdiction [24, p. 75].

Summary. 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.

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provided by a person who has obtained knowledge of the topics touched upon during confession illegally seems unethical and morally dubious.

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Подлєсни М. Заборона на допит священнослужителя про факти, що повідомлені на сповіді, у польських загальних адміністративних процедурах. Відповідно до ст. 25 Конституції Республіки Польща, органи державної влади повинні залишатися неупередженими у своїх релігійних і філософських переконаннях, а також світогляді, забезпечуючи свободу їх вираження в суспільному житті. Ця модель поділу церкви і держави застосовується до всіх церков і релігійних об'єднань. У 1992 р. Верховний Суд Польщі ухвалив, що священик як особа, яка належить до католицької церкви або будь-якої іншої церкви або релігійного об'єднання, відрізняється від інших віруючих тим, що він або вона були призначені організовувати і проводити релігійні служби. Тому заборона на допит священнослужителя поширюється на усі релігійні об'єднання, якщо тільки ці церкви і релігійні асоціації працюють легально і забезпечують віруючим обряд сповіді. Обов'язок зберігати таємницю сповіді пояснюється католицькою церквою на прикладі двох видів духовних благ, які повинні бути захищені. Вони включають в себе щире каяття (bonum penitentum) і таїнство сповіді (bonum sacramenti). Прикладом відносин між державою та релігійними об'єднаннями є захист конфіденційної інформації, обмін якою відбувається під час сповіді. Заборона на допит священника про факти, які він або вона дізналася під час сповіді, є абсолютною, тобто не передбачає будь-яких винятків. А це означає, що не існує жодних юридичних або фактичних можливостей отримання доказів, які є

предметом вищевказаної заборони. Що стосується третіх осіб, які випадково отримали доступ до інформації, що міститься в сповіді або наданої духівником під час сповіді, то за висновком автора такі особи можуть виступати свідками і заборона ст. 82 Адміністративного процесуального кодексу Польщі на них не поширюється. Автор вважає, що таке регулювання є не етичним і морально сумнівним, а тому у вказану статтю має бути внесено доповнення, яке б поширила заборону розголошувати таємницю сповіді і на третіх осіб.

Ключові слова: адміністративне судочинство, допит, священнослужитель, таємниця сповіді.

Подлесны М. Запрет на допрос священнослужителя о фактах, которые сообщены на исповеди, в польских общих административных процедурах. В соответствии со ст. 25 Конституции Республики Польша, органы государственной власти должны оставаться беспристрастными в своих религиозных и философских убеждениях, а также мировоззрении, обеспечивая свободу их выражения в общественной жизни. Эта модель разделения церкви и государства применяется ко всем церквям и религиозным объединениям. Примером отношений между государством и религиозными объединениями является защита конфиденциальной информации, обмен которой происходит во время исповеди. В 1992 г. Верховный Суд Польши постановил, что священник как лицо, принадлежащее к католической церкви или любой другой церкви или религиозному объединению, отличается от других верующих тем, что он или она были назначены организовывать и проводить религиозные службы. Поэтому запрет допроса священнослужителя распространяется на все религиозные объединения, если только церкви и религиозные ассоциации работают легально и проводят обряд исповеди. Обязанность хранить тайну исповеди объясняется католической церковью на примере двух видов духовных благ, которые должны быть защищены. Они включают в себя искреннее раскаяние (bonum penitentum) и таинство исповеди (bonum sacramenti). Запрет на допрос священника о фактах, которые он или она узнали во время исповеди, является абсолютным, то есть не предусматривает каких-либо исключений. А это значит, что не существует никаких юридических или фактических возможностей получения доказательств, которые являются предметом вышеуказанного запрета. Относительно третьих лиц, которые случайно получили доступ к информации, содержащейся в исповеди или предоставленной духовником во время исповеди, то по заключению автора такие лица могут свидетельствовать и запрет ст. 82 Административного процессуального кодекса Польши не распространяется на них. Автор считает, что такое регулирование является не этичным и морально сомнительным, а потому в указанную статью должны быть внесены дополнения, в соответсвии с которыми запрет разглашать тайну исповеди возлагался бы и на третьи лица.

Ключевые слова: административное судопроизводство, допрос, священнослужитель, тайна исповеди.