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Acts of Planning in Administration: Towards Support for the Development of the Social Economy

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Abstract: **Background:** Public planning plays an increasingly important role as planning acts issued by the administration form the basis for the actions of public authorities, including determining the directions of legislative activity. Therefore, they are the subject of interest in the doctrine of public law.
Research objectives: The aim of this paper is to explore selected governmental development policy documents assessed from the point of view of social economy development in order to show both their complexity and the range of their subject matter. The issue of theoretical foundations of planning in administration and their scope was also taken into account.
Research design and methods: The research method used in the study is the legal-dogmatic method and the theoretical-legal method.
Results: Findings of the study expose that although in selected government strategic documents reference is made to social economy issues, due to the exclusively internal nature of planning acts and the overly general provisions of the analysed strategies, they can hardly provide a basis for coordinated action.
Conclusions: The study identifies a need for greater precision in the provisions so that they can become a basis for specific actions by the administration, including drafting of legislation.
Keywords: social economy, planning in administration, development policy, government strategies and programmes
JEL Codes: K190, K320, K400

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1. Introduction

The ability of the state to influence the behaviour of other actors derives from three premises: organisational or functional supremacy, proprietary powers and public-law powers of authority over third parties. Thus, the competence of public authorities is connected with the possibility of undertaking public planning, to which an increasingly important role is ascribed.

The step from public planning and government programmes of a non-binding character, in terms of shaping the rights and obligations of entities outside the administration, to the creation of universally-binding legal regulations – whether statutory or originating from public administration bodies, is a great one. The plans themselves may also be so vague that instead of specifying strategic goals and the methods of achieving them, they become little more than a diagnosis of the situation and an expression of political declarations.

Public planning – the content of the individual provisions, the objectives and tasks set for public bodies – is the externalization of public policy adopted by the legislator or the executive authorities. Even if it is a complicated and multi-stage intellectual process carried out in order to implement public policy, it will exist only if published in the form of an administrative planning act. Selected government documents issued as part of the execution of development policy will be assessed in this study from the point of view of support for the development of the social economy.

2. Material and methods

The aims of the research leading to this study were: first, to indicate the doctrinal basis for planning in administration, together with an indication of the normative basis for creating strategies and programmes, particularly in the field of support and development of the social economy. Then, an attempt was made to assess the content of these plans to determine how precise they are and to what extent they can constitute a real basis for programming and coherent actions by the administration. Finally, a review was conducted of the literature on the question of whether these plans are binding for parties outside the administration and to what extent they can provide a basis for legislative action, which is particularly important in the context of the actual effects of planning.

The research methods used in the paper are the legal-dogmatic method and the theoretical-legal method, applied especially to determine, for the needs of the argument, the content of the notions of public law. It means that, apart from the considerations in the field of administrative law, the doctrine of constitutional law and public economic law was also used.

A critical analysis was conducted of generally-binding law regulations defining the rules of administrative planning within the conception of conducting the policy of development. The explanation of concepts from the field of administrative law theory in the text of the publication was based on a review of the literature on the subject, which means that it was not possible, with the research method adopted, to indicate it in a separate fragment of the text. However, of particular importance for the content of the publication specified in its title was the analysis of selected planning documents in terms of their inclusion of social economy development issues.

3. Results and Discussion

3.1. Administration as a future-oriented activity

The goals and tasks of administration, which have changed over time, are reflected in its definitions. German science at the beginning of the 20th century included several features of administration, such as: the realisation of the state's goal in a concrete case, the shaping of society within the framework of laws, the use of authoritative means and the application of law in the area beyond civil and criminal disputes (Maurer, 2004, p. 23). The prominent Polish theorist of administrative law, Jerzy Stefan Langrod, during the Second World War defined the essence of administration as "the organisation of administrators" (Langrod, 2000, pp. 201–202), emphasizing its systemic aspect. As far back as the 1950s, however, François Franciszek Longchamps de Bérier pointed to the contemporary features of administration. He wrote that administration is a social phenomenon characterised by initiative and future-oriented activity (Longchamps de Bérier, 1958, p. 21). Contemporary definitions place emphasis on an object-oriented

understanding of administration, a new element of which is an emphasis on the notion of the common good as a feature of contemporary administration (Niewiadomski, 2010, p. 15). It is noted in the literature that the realisation of the common good has a permanent, systematic and future-oriented character. It is emphasised that administration is always active and looks towards the future with its actions, realising the administrative policy consisting of creative, to a certain extent of freedom, execution of laws. Action "towards the future" is indicated as one of the main features of administration (Lipowicz, 2013, pp. 29–30). Administrative planning acts taking the form of strategies, plans and programmes are to serve this purpose.

In the contemporary view of administrative functions and its tasks, administration manages current affairs, undertakes regulatory and interventional activities in its sphere of activity defined by law (with the Constitution at the forefront), performs tasks in the field of order and safety, development and maintenance of social and technical infrastructure, but also operates in the field of improvement of the living standards of its citizens and the protection of their welfare. Being future-oriented, administration influences the economy, acts to improve the quality of life of citizens, to eliminate social differences, to prevent exclusion, while simultaneously ensuring protection of the natural environment, i.e., pursuing a goal which can be defined as caring for economic growth with the broader perspective of the principle of sustainable development. Therefore, the state, acting here and now, should undertake activity taking into account social and economic results in a longer time perspective.

3.2. Planning in administration

The doctrine stresses that planning has become an element of rational action of public administration, a prerequisite for the effective performance of its tasks (Wlaźlak, 2009, p. 7), and the presence of plans, strategies and programmes in modern administration results from the importance attributed to the managerial function of administration and the desire to make more rational, coherent strategic decisions (Duniewska et. al., p. 143). On the other hand, it is noted that, as a legal category, planning in administration is a new phenomenon and is often identified with the recycling of concepts inherent in economic sciences to modern administration (Kijowski, 2013, p. 264).

Planning itself does not create a state doctrine, nor does it replace policy (it does not set objectives), but what it does do is serve to develop it and present methods of achieving it, options, barriers, and other conditions for its implementation, and planning acts may be treated as tools of this policy. Moreover, transforming the findings of the policy, including the planning (programming) arrangements, into concrete instruments of public management, not just regulatory but also legal and financial, is another issue (Izdebski, Kulesza, 2004, p. 124). It may also happen that plans and programmes are not implemented in the form of externally-binding legal norms or there may even be a contradiction between political declarations, framed in the form of an "adopted" programme, and legal reality. The content of political declarations in the form of government programmes and the content of legal norms concerning the development of the social economy will be analysed later in this paper.

3.3. Statutory principles for conducting development policy

Among administrative planning acts, the analysis should primarily focus on strategies referred to in the Act of 6 December 2006 on the principles of development policy, which allows the normative scope of the concept of development policy, the principles of its conduct and the entities conducting it to be defined.

Pursuant to the contents of Article 2, development policy is understood as a set of interrelated measures undertaken and implemented to ensure a permanent and sustainable development of the country, social, economic, regional and spatial cohesion, improvement of the competitiveness of the economy and creation of new jobs on a national, regional or local scale. This statutory definition is referred to as a definition sensu stricto in order to distinguish it from the broad definition of development policy, according to which it is an organised, institutional and multifaceted activity aimed at improving the condition and functioning of certain sectors of the economy, the environment, social life or culture, thus encompassing all activities undertaken for the development of some fields or sectors (Jaśkiewicz, 2013, point A1).

Pursuant to Article 4 of the Act on the principles of conducting development policy, it is conducted on the basis of development strategies, programmes and programme documents as well as public policies, and it may also be conducted on the basis of the legal and financial instruments specified in separate regulations. As Jacek Jaśkiewicz points out, those documents should be regarded as planning acts addressed to the entities responsible for the implementation of the development policy, specifying the planned and executive tasks and objectives of those entities' activities with regard to particular sectors and areas and the time perspective specified within those documents.

The Act on the rules of conducting the development policy defines the main planning documents falling within the scope of the term "development strategy" which include mid-term country development strategy, other development strategies, voivodeship development strategy, commune development strategy and supra-local development strategies. Until the provisions of the Act of 15 July 2020 amending the Act on the principles of development policy and certain other acts came into force on 13 February 2020, a long-term country development strategy, a document defining the main objectives, challenges and directions of social and economic development of the country, taking into account the principle of sustainable development, covering a period of at least 15 years, was also classified as a development strategy. The aforementioned amendment to the Act, in place of a long-term strategy, introduced the "national development concept", which is a document defining the development challenges of the country in the social, economic and spatial dimension for a period of up to 30 years. What is more, an extension of the planning period is also observed regarding the medium-term strategy, which, until the above amendment, used to be a programme valid for 4 to 10 years but is now drawn up for a period of 10 to 15 years. Therefore, one can observe a tendency to lengthen the administrative planning period, which should be seen as an extremely positive development.

Apart from the extension of the design period, the requirement to specify in detail the assumptions of the medium-term strategy should also be positively evaluated. At present the strategy is a document defining the basic conditions, objectives and directions of the country's development in the social, economic and spatial dimension for a period of 10–15 years, but also a document defining detailed activities for a period of four years, which is particularly crucial. The medium-term strategy should be implemented by "other strategies", voivodeship development strategies and programmes related to the spending of EU funds.

The concept of the country's development, introduced into the legal order by the amendment of the Act on the principles of development policy, is currently at the creation stage and has not yet taken a form that can be subject to analysis. Pursuant to Article 22 of the Act of 15 July 2020 amending the Act on the principles of development policy, the Council of Ministers adopts the Concept of National Development within two years from the date of its entry

into force, i.e. by 13 November 2022. Additionally, pursuant to Article 23 of the above-mentioned amending Act, the medium-term country development strategy in force on the date of the amendment of the Act – and the consequent change of the conditions that this document must meet – becomes a medium-term strategy within the meaning of the amended Act, i.e., it becomes a "new" strategy.

The medium-term strategy is a document which influences the administration to a greater extent than the previous long-term strategy and the current concept of the country's development. It also reflects the principle of a two-phase strategic planning more fully – as a planning act, it is oriented to a greater extent towards the implementation of the defined priorities and objectives, especially after amendment. The competence to prepare the project rests with the minister responsible for regional development, in cooperation with the other relevant ministers, and it is adopted by the Council of Ministers by way of a resolution. The document is currently the "Strategy for Responsible Development until 2020 (with an outlook until 2030)" adopted by Resolution No. 8 of the Council of Ministers of 14 February 2017. The previously adopted medium-term strategy – Strategy for National Development 2020, adopted by way of Resolution No. 157 of the Council of Ministers of 25 September 2012 – was overrode by the aforementioned Resolution No. 8 of the Council of Ministers of 2017.

The above-mentioned principle of maintaining in force the strategies issued under the Act in the wording prior to the amendment of 15 July 2020 also applies to sectoral and regional strategies, i.e., "other strategies" within the meaning of Article 9(3) of the Act on the principles of development policy. This category of documents, which at the same time serve the implementation of the Strategy for Responsible Development, includes: Productivity Strategy 2030, Human Capital Development Strategy 2030, Social Capital Development Strategy (Cooperation, Culture, Creativity) 2030, Efficient and Modern State Strategy 2030, National Regional Development Strategy 2030, Strategy for Sustainable Rural, Agricultural and Fisheries Development 2030, Strategy for Sustainable Transport Development until 2030, Energy Policy of Poland until 2040, Ecological Policy of the State 2030 – development strategy in the area of environment and water management.

3.4. Development of social economy in selected acts of development policy

Due to the limited framework of the present study, only development strategies will be analysed in the scope of social economy support – the medium-term national development strategy and the strategy falling within the concept of "other development strategies" referred to in Article 9(3) of the Act on the Principles of Development Policy – Social Capital Development Strategy.

Turning to the review of the provisions of the Strategy for Responsible Development, it should first be noted that the document is highly general and, in the author's opinion, fails to meet the requirements of two-phase planning. Although it indicates the main objectives and directions of development, the definition of the planned actions is only superficial, without going into any detail. Of course, it should be borne in mind that until the amendment of the Act on the principles of development policy, which came into force on 13 November 2020, this type of document was not supposed to indicate "detailed actions" or be implemented by other strategies and programmes.

For example, in the scope of description of the main areas of concentration of measures within Specific Objective I – "Sustainable economic growth based more and more on knowledge, data and organisational excellence", among the directions of intervention until 2020,

"Support for social and solidarity (cooperative) economy entities – preparation of legal solutions facilitating their current operation" was mentioned (p. 109). However, no specific areas of desirable legislative actions or legal barriers hampering the development of the social economy, which should be rectified, were indicated. Similarly, in the scope of improving access to services, including social and health services, one of the measures to be taken by 2020 is "Including citizens and social economy entities (including NGOs) in the delivery of social services" (p. 162) or "Including citizens and social economy entities (including NGOs) in the delivery of social services" (p. 162), or in the field of support for groups at risk of poverty or exclusion, one of the planned measures referred to is the initiation of legislative work related to the preparation of a draft law comprehensively regulating the sphere of the social economy. Although issues related to the broadly-understood social economy are mentioned over a dozen times in the document, each time the description of the situation and the planned measures are very imprecise and cover obvious social needs and measures which would be expected in any democratic state, rather than the results of planning processes in the administration – which, after all, has detailed data at its disposal and is expected to make use of that to take concrete measures for the realisation of the common good.

In view of the above, it needs to be established whether the 'other strategies', which are intended to add details to the medium-term strategy, are more precise and constitute a genuine planning tool.

One of the basic documents implementing the Strategy for Responsible Development is the "Social Capital Development Strategy (Cooperation, Culture, Creativity) 2030" adopted by way of Resolution No. 155 of the Council of Ministers of 27 October 2020. By indicating in the above resolution, the minister responsible for coordinating and supervising the implementation of the strategy demonstrates the material scope of this document. The minister mentioned is responsible for culture and national heritage protection.

Apart from the diagnosis and characteristics of selected aspects of social capital in Poland, the document outlines three main thematic areas: 1) Interaction – civic society, 2) Culture – civic identity and attitudes, 3) Creativity – cultural and creative potential. In addition, three specific objectives are defined in the document: 1. to increase the involvement of citizens in public life, 2. to strengthen the role of culture in building identity and civic attitudes, 3. to strengthen the socio-economic development of the country through the cultural and creative sectors.

What is particularly noteworthy in the write-up of the thematic areas (covering more than 50 pages of a 115-page document), the individual subsections constitute a diagnosis of the current state, mainly deficits and problems. However, the methods of solving them are not indicated. For example, in terms of thematic area 1 – "Cooperation", there is a chapter entitled "The need for fuller exploitation of the potential of social and solidarity-based economy", but it contains nothing more than statistical data and information about the current economic state. The following sentences, which should be quoted here, are significant as they reflect the nature of the entire document: "The social economy is still a new phenomenon in Polish social and economic life, with a relatively low level of awareness and barely known to the average citizen, decision-maker or entrepreneur. (…) These deficiencies in knowledge and awareness hinder further development of the social economy, which also requires numerous skills – both professional and social, not only among people involved in creating social enterprises, but also among the general public or local decision makers".

The declared objectives, directions of intervention and implementation tools constitute the next part of the document. Point 1.2.4. entitled "Supporting the development of social and

solidarity-based economy" refers to the issue of the social economy. It states, among other things, that it is necessary to plan a comprehensive catalogue of public administration tasks in this scope – referring to the next document entitled "National Programme for Social Economy Development until 2023. Economy of Social Solidarity", which is discussed below. The activities planned in the strategy are limited to building a positive brand of the social economy and closer to educational activities, consisting of the creation of a postgraduate programme of managerial studies in the field of social enterprise management, as well as an unspecified programme for promoting entrepreneurship among children and young people. It seems clear that far more should be expected from a government document that is intended as a strategy than merely lamenting the poor state of social awareness and pointing to solutions to the problem through unambitious educational activities.

The last document analysed is the "National Programme for the Development of the Social Economy until 2023. Social Solidarity Economy" issued in the implementation of the Strategy for Responsible Development and the Strategy for Social Capital Development. It was adopted by Resolution No. 164 of the Council of Ministers of 12 August 2014, i.e., even before the adoption of the Strategy for Responsible Development (which took place in 2017) and was amended by Resolution No. 11 of the Council of Ministers of 31 January 2019, amending the resolution on the adoption of the programme entitled "National Programme for the Development of the Social Economy".

From the formal point of view, it constitutes a development programme within the meaning of the Act on the principles of development policy, as opposed to the above-mentioned strategies. Pursuant to Article 15 (1) of the Act on the principles of development policy, the development programme is a document of an operational nature established to implement the development strategy, specifying measures to be carried out in accordance with the established programme implementation system and financial plan. The National Programme for Social Economy Development sets out key challenges for the development of the social economy until 2030, including deepening cooperation of the social economy sector with the cooperative sector, strengthening of links between social economy entities and social assistance institutions, especially in the scope of active integration, development of the social economy in the area of the circular economy, supporting activity of social economy entities in new development areas (e.g. renewable energy).

Similar to the documents discussed earlier, the National Programme is a voluminous paper, covering about 100 pages. It is of a descriptive nature, constructed in a manner uncharacteristic for normative acts, presenting the situation of specific social groups, statistical data and economic information. The programme defines the long-term strategic objective (The social and solidarity-based economy will become an important instrument of active social policy, support for social and local development), the main objective and four specific objectives (e.g., "1. Supporting sustainable partnership of social and solidarity-based economy entities with local self-government in delivering social services of public interest and public tasks for local development").

In the National Programme, a more precise diagnosis was made and specific actions to be taken were presented, e.g., which laws should be amended, what the assumptions of newly created normative acts should be. The range of potential actions is extremely broad and covers various spheres of social and economic activity. Some of the points are specific – they list the planned mechanisms of financial support along with the definition of conditions to be met – unfortunately, in most cases they are limited to statements such as "Support will also be

provided for voluntary work, internships and work placements in social and solidarity economy entities". A positive evaluation should be given to the determination of the sources of financing of the planned measures, with an indication of specific Operational Programmes under European Union funds and the estimated amount of national funds from specific sources. The programme is therefore far more concrete than others and can act as the basis for the creation of specific actions under the consistent state policy

3.5. Formal and actual validity of administrative planning acts

In a situation when a planning act takes the form of internal law – as is the case in the discussed issue of supporting the development of the social economy – it will be addressed exclusively to organisational units subordinate to the body that issued the act. Creation by the administration of universally-binding norms without legal basis or attempts to bind entities outside the administration with norms of internal character is unacceptable. Inclusion in the system of universally-binding law sources of internal law, created by governmental administration organs, cannot be accepted in a contemporary state of law, either as a form of administration activity resulting from some general administrative competence, or as a form of administration activity resulting from the nature of administrative activity itself (Błaś, 2001, p. 49).

The open catalogue of internal acts, on the basis of article 93 of the Constitution, as well as the authorisation of other administrative bodies to issue them, does not affect their legal nature, i.e., the lack of possibility to determine on the basis of internal acts the rights and obligations of entities not located within the administration. This has been explicitly confirmed by the Constitutional Tribunal (TK), in whose opinion inclusion in an internal act of universally-binding norms is inconsistent with the Constitution (TK verdict of 12 December 2011, P 1/11). At the same time, it is argued in the literature on the subject that they indirectly affect the legal situation of citizens. As Irena Lipowicz writes, a synthesis of the theoretical and practical difficulties posed by the internal sphere became the formula that they are "non-normative acts which are legal in essence", which – as estimated in the literature – constituted up to 80% of the actually binding norms (Lipowicz, 2013, p. 33).

An issue to which particular attention should be paid in the context of the principles of conducting development policy analysed below is the validity of internal acts, in particular their susceptibility to political change. As indicated above, they cannot contain universally-binding norms, but their addressees are the organisational units subordinated to the issuer of the act and the employees of these units (Ochendowski, 2013, p. 125). Regarding the planning acts analysed below in the form of the country development strategy, adopted by resolution by the Council of Ministers, it should be noted that, due to the hierarchical structure of government administration, they potentially apply to all government administrative bodies and all its employees (officials). At the same time, a long programming period should be set against the changeability of directions and detailed objectives of the state resulting from the tenure of parliament and changes in the composition of the Council of Ministers. It is a fact that strategic planning is politically conditioned and, consequently, it is inevitable that planning acts will be modified in the event of a change of government, or a revision of the assumptions adopted by it – a modification consisting of the adoption of new plans, programmes or strategies. This susceptibility to political change applies to a varying degree to all planning acts in the internal sphere, but essentially to strategic planning acts adopted at the level of the Council of Ministers or its individual members. One needs simply to note the adoption, regardless of their legal

basis, of various strategic design or planning acts by successive governments of varying political parties from 1989 to the present day.

To conclude the argument, attention should also be drawn to the issue of the validity of internal planning acts when ministers issue regulations implementing laws. When issuing generally-binding acts in the form of a regulation implementing a statute, the administrative authority is directly bound by the content of the provision of the act which authorises the issuance of the act, and indirectly by the entire system of overriding generally-binding norms. However, it is not legally obliged to implement the provisions of internal planning acts, unless such an obligation arises directly from the content of the statutory mandate.

A contradiction between a normative act issued by an administrative body and the content of internal planning acts may give rise, first and foremost, to political liability, but with the possibility of taking action, as provided for by law, to remove such an act from the legal order. Political responsibility in the broad sense of the term includes the possibility of the Council of Ministers, at the motion of the Prime Minister, repealing a regulation or order issued by a minister. The conditions for derogation of the act are not only legal, but also political and pragmatic, e.g., inconsistency with government policy. According to some representatives of the doctrine of constitutional law, in the situation of derogation of a minister's act by the government at the request of the Prime Minister, due to the illegality of the act or its inconsistency with government policy, the exclusion of such a minister from the composition of the Council of Ministers should follow (Dudek, 2016, p. 787). However, it should be stressed that the derogatory sanction is optional on the part of both the Prime Minister and the Council of Ministers, which significantly weakens its legal character and brings it closer to a political decision (Wiącek, 2016, p. 68).

4. Conclusions

The literature also notes the complex arrangements of relationships between planning acts – the obligation of some plans to take into account the provisions of others, drawn up by other entities, their occurrence in a group of their counterparts (Duniewska et al., 2005, p. 143). These dependencies are particularly clear in the case of the above strategies and the programme implementing them. The diversity also relates to the different modes of adoption, including with the participation of other entities, and consequently to the degree to which they are effective, i.e. functioning in the external or only internal sphere of administration.

The impact of a "binding" strategic planning act (such as the medium-term national development strategy or other acts analysed in this paper) on the establishment of generally-binding norms is political in nature, but not formal or legal. The plans, specifying the assumptions of economic policy and indicating the desired future solutions, in many cases require implementation in the form of generally-binding normative acts in order to be effective. The creation of tax incentives or the determination of the amount of expenditure from the state budget for specific purposes remain within the competence of the legislature. The Parliament is not bound by strategic planning acts.

The permanence of these documents is illusory and they do not outline policy directions, but rather constitute its manifestation or description. A change in the objectives of social and economic development policy and the mechanisms of their implementation, for whatever reason, leads to the nullification of earlier plans and the repeal, or at least non-application in

the practice of administration, of planning acts that do not fit in with the new assumptions of public planning policy.

Having analysed the Strategy for Responsible Growth and the Social Capital Development Strategy, it should be concluded that the greatest shortcoming in creating government strategies is their superficial character resulting from the excessive generality of their provisions. Apparent planning is based on overly-extensive descriptions of the diagnosis, which are generally descriptions of the actual situation, with planning limited to indicating a number of postulates and desired actions, without specifying actual means of implementation. In this context, the analysed operational and implementation programme (National Programme for the Development of the Social Economy) should be assessed in a more favourable light, as it at least partly defines the necessary administrative measures, legislative initiatives and financing sources.

Planning acts to a limited extent shape the legal situation of entities external to the administration. It is virtually impossible to classify these strategies as acts containing universally-binding provisions; indeed, they do not in fact contain any behavioural norms that could constitute the basis – even factual – for actions by public administration bodies. Therefore, the legal impact of these plans, declared at the normative level, is less significant than could be inferred from the statutory provisions. Such a claim is based on the analysis of their substantive content – principally, excessive generality of the provisions, validity in the internal sphere, but also susceptibility to political change.

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