



## BASIC PRINCIPLES OF ADMINISTRATIVE RESPONSIBILITY FOR VIOLATION OF THE PROVISIONS ON ROAD TRANSPORT

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### Abstract

The article discusses the basic principles of administrative responsibility for violations of the provisions of the Polish Act of September 6, 2001. about road transport. They were included in art. 92a of the said Act. Administrative responsibility is a specific form of liability, because it is caused by the control body itself finding a violation of obligations imposed on the entrepreneur by Community regulations and national law (in this case of road transport) and is not based on the principle of guilt. The entity that is primarily responsible is the entrepreneur performing road transport of persons or goods, or (to a lesser extent) other entities indicated in the Act. The administrative penalty imposed in this mode is not fiscal but preventive - penal. Its basic purpose is to ensure compliance with regulations concerning the performance of road transport, and more specifically preventing the occurrence of infringements.

**Keywords:** Administrative responsibility, road transport

### 1. INTRODUCTORY NOTES

In the mid-fifties of the 20<sup>th</sup> century, the simple division of infringements into crimes and offences began to be complicated due to the introduction of the institution of penal liability which was neither a crime nor an offence into the legal system and which later began to be called administrative torts [1]. The first administrative torts were included in art. 6 of the 28 January 1953 decree on securing rational and economical use of electricity and heat (Journal of Laws No. 9, item 26). The sanction for non-compliance with particular provisions of the decree was a fine ranging from 500 to 20,000 Polish zlotys. In the subsequent years, this type of liability was introduced in other acts, in particular regarding environmental protection. Often, in one act, both crimes and offences as well as administrative torts were determined (e.g. in the 5 August 2015 Act on maritime labour). Although administrative responsibility raised numerous objections, the legislator consistently increased its scope, guided primarily by little-complicated mode of determining the persons guilty of breaking the law and adjudicating a penalty [2]. This type of responsibility has significantly been expanded in the first decade of the 21st century. It may be incurred not only by natural persons conducting business activity, but also those who do not run any activity. At present, there are several dozens of laws binding in Poland that contain provisions on administrative penalties in Poland and their number is constantly increasing. One of the serious shortcomings of the norms concerning administrative responsibility was the lack of general regulations [3]. Finally - after numerous discussions - this problem was solved by the 7 April 2017 Act about the amendment to the act - Code of Administrative Procedure and certain other acts (Journal of Laws of 2017, item 935), in which the entire section IV that was devoted to administrative fines was placed.

### 2. METHODOLOGY OF RESEARCH

The dynamically developing road transport in Poland also caused a large number of violations of the standards in force in this sphere, constituting crimes, offences and administrative torts. Since criminal and offence procedures are quite complicated and the proceedings conducted on their basis last for a very long time, the legislator - following the examples of other countries - more and more often reaches for provisions regulating administrative responsibility. The objective of this article is to analyze the basic regulations in force in this field

as the literature on this subject is - at least for now - very sparse [4]. These are both the provisions of Chapter 11 of the Road Traffic Act of 6 September 2001 as well as those included in chapter IVa of the Code of Administrative Procedure. Since they have been in force for a short time, no comments or thorough analysis by representatives of administrative law science have been obtained so far. A considerable part of the research material comes from the administrative courts' case law, which is rich in this respect. Therefore, a significant part of the article will be based on the analysis of applicable laws and statements on this subject of administrative courts. It is only recently that we can notice that the reflection reaches the Polish authorities guarding the observance of road transport regulations that their enforcement of fines by means of administrative means can be more effective and faster than using criminal repression.

### **3. RESULTS OF THE RESEARCH**

The Road Traffic Act of 6 September 2001 (consolidated text: Journal of Laws of 2018, item 2200) defines the rules for conducting the road transport of goods and persons within the territory of Poland. Among the numerous provisions included therein, regulations regarding administrative responsibility for violation of duties or conditions of the road transport occupy a prominent place [5]. The precise definition of this concept is of fundamental importance for the proper understanding of the regulations related to road transport. Pursuant to art. 4 a of Regulation (EC) No. 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonization of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) 2135/98 as well as repealing Council Regulation (EEC) No 3820/85 (Official Journal L 102 of 11/04/2006, page 1) in connection with art. 4 item 6a of the Road Transport Act, 'carriage by road' means any journey made entirely or in part on roads open to the public by a vehicle, whether laden or not, used for the carriage of passengers or goods.

The main principles of liability are set out in art. 92a sect. 1 and 3 of the above-mentioned Act. The proof of violation of the obligations imposed on an entrepreneur conducting the road transport by the Community provisions and the rules of the national is sufficient for the presence of responsibility. Administrative liability is not based on the principle of guilt (it can even be said that it is detached from guilt) and the proof of violation of the provisions (e.g. the Road Transport Act) by the driver carrying out the transport on behalf of the entrepreneur, even when there has been a violation (violations) in the manner which is caused by the entrepreneur will suffice to its occurrence [6].

Penalties imposed in this mode are not fiscal ones, yet, preventive and penal ones, which means that their aim is not to provide the state with income, but to achieve two significant effects:

- 1) ensuring that road carriers or other entities related to this carriage comply with the regulations concerning performance of transport by raising concerns related to sanctions that may occur in the event of committing the violation of these regulations,
- 2) punishing the entities that violate the provisions knowingly or through negligence.

It can also be considered that provision of art. 92a sec. 1 of the Act is to ensure avoidance of the necessity to pay an administrative penalty by all those entities that have shown respect for the road transport regulations and undertake the necessary actions aimed at preventing these violations in their enterprise and despite this fact, they have failed to prevent these violations [7].

On the one hand, an entrepreneur is obliged to create such working conditions for drivers so that they can comply with the provisions regulating the road transport and on the other hand, the entrepreneur must provide the transport services in accordance with the applicable law [8]. The view voiced by the District Administrative Court in Poznań that found that 'all statements made by the drivers themselves, e.g. concerning full responsibility for administrative fines and fines do not exempt the carrier from administrative penalties since to declare the entrepreneur's responsibility it is sufficient to determine that has been a breach of the obligations or conditions of carriage by road, even if it was not caused by fault' [9] must be considered relevant. The carrier

may be exempted from administrative responsibility (i.e. fines) when the circumstances of the case and evidence indicate that the entrepreneur had no influence on violation whereas the breach occurred as a result of events and circumstances that the entrepreneur could not foresee (Article 92c (1) item 1 of the Act). However, it is the carrier who bears the burden of proving that the entrepreneur has exercised due diligence in organizing the carriage and had no impact on the driver's infringement of the law, while the lack of this influence must exist realistically [10].

The administrative decision on imposition of the penalty is of special character as it is issued under the so-called constrained decision which does not practically give the authorized body any interpretative freedom. The adjudicating body is obliged to state whether there has been a violation of the rules, without investigating what were its causes and who is to blame for it. Establishing the event determined by law must result in its appropriate qualification which is in accordance with the provisions of the Act and afterwards - imposing the penalty in the amount required by this Act. It is not important whether there have been any proceedings on the basis of the provisions of the Code of Proceedings in Misdemeanors or the Code of Criminal Procedure pending against a person who was driving a vehicle at the time of the inspection. It remains without any impact on the administrative proceedings against the entrepreneur and its result. [11] The essence of administrative responsibility is correctly expressed by the District Administrative Court in Rzeszów that assumed that 'administrative responsibility' is liability independent of guilt in the sense that it is incurred in principle due to the occurrence of a specific effect (confirmed violation), without the necessity to indicate the causal relationship between the behaviour of the responsible entity and the resulting effect. Therefore, this responsibility is similar to the liability borne on a risk basis, although it is not unlimited [12] It should be added that this responsibility is also independent of good or bad will of the carrier.

The only kind of the administrative sanctions provided for violation of obligations or conditions of the road transport in the Road Traffic Act is an administrative fine [13]. Pursuant to art. 92a sec. 1 of the Act, the entity performing this type of carriage or other related activities is subject to a fine in the amount ranging from 50.00 PLN to 12,000.00 PLN for each violation. If more than the single infringement is found during one inspection, the sum of penalties cannot exceed 12,000.00 PLN (Art. 92a (3) of the Act). The amount of penalties for specific cases of violation is included in Annex 3 to the Act, with a separate penalty given for each violation. The term 'one inspection' used in art. 92a sec. 3 of the Act should be understood as the inspection carried out by the same controlling entity, at the same time and with reference to the same vehicle. In the event of the sums of the fines possible to be imposed for infringements found during the inspection in the entity performing road transport, it cannot exceed:

- 1) 15,000.00 PLN - for an entity employing drivers in an average arithmetic number to ten within six months before the date of commencement of the inspection,
- 2) 20,000.00 PLN - for an entity employing drivers with an average arithmetic number above ten to fifty within six months before the date of commencement of the inspection,
- 3) 25,000 PLN - for an entity employing drivers with an average arithmetic number above fifty to two hundred and fifty within six months before the date of commencement of the inspection,
- 4) 30,000.00 PLN - for an entity employing drivers in an average arithmetic number larger than two hundred and fifty in the six months before the date of commencement of the inspection,
- 5) 40,000.00 PLN - for the entity performing other activities related to road transport.

Since 3 September 2018 the group of entities with administrative responsibility for violation of duties or road conditions has been extended by:

- 1) transport manager,
- 2) micro-entrepreneur,
- 3) another person performing activities related to road transport.

A transport manager is a natural person employed by the entrepreneur or - if the entrepreneur is a natural person - that person or, if necessary, another natural person, designated by this entrepreneur pursuant to the

contract, managing the transport operations of the entrepreneur in a real and continuous manner [14]. The definition of a micro-entrepreneur is included in the provision of art. 7 sec. 1 item 1 of the 6 June 2018 Act - The Entrepreneurs' Rights [15]. This is an entrepreneur who - in at least one year of the last two financial years - has met all the following conditions:

- 1) employed on average less than ten employees per year, and
- 2) has achieved an annual net turnover from the sale of goods, products and services and from financial operations not exceeding the equivalent of two million euros, or the total assets of its balance sheet prepared at the end of one of these years did not exceed the equivalent of two million euros in PLN.

On the other hand, 'another person performing activities related to road transport' will be a person who has been authorized by the competent authority to practice the profession of road transport operator without appointing a transport manager. This happens in a situation where the entrepreneur does not meet the requirement of professional competence referred to in art. 3 sec. 1 letter b and d of Regulation (EC) No. 1071/2009 (i.e. it does not have good reputation and does not possess the required professional competences). The competent authority may then authorize to practice the profession of road transport operator without appointing a road transport manager, provided, however, that:

- 1) the entrepreneur shall designate a natural person residing in the European Community, meeting the requirements provided for in art. 3 sec. 1 letter b and d of Regulation (EC) No 1071/2009 (i.e. (i.e. this person has a good reputation and possesses the required professional competences) and authorized - under the contract - to perform the tasks of the transport manager on behalf of that entrepreneur,
- 2) the contract binding the entrepreneur with the person referred to in item 1 specifies the tasks that this person is supposed to perform in a real and continuous manner as well as it the scope of duties related to the function of a transport manager,
- 3) in the capacity of a transport manager, the person referred to above may manage transport operations of not more than four different enterprises, carried out with the help of the combined fleet, with the total fleet of no more than fifty vehicles,
- 4) such a person performs specific tasks only in the interest of the entrepreneur and his or her duties are performed independently of the entrepreneurs for whom the given entrepreneur performs carriage activities.

Pursuant to art. 92a sec. 2 of the Road Transport Act, each of the persons (entities) mentioned therein that has violated the obligations or conditions of the road transport, is subject to an administrative fine of 200.00 PLN to 2,000.00 PLN for each infringement, the sum of penalties imposed for infringements found during one inspection cannot exceed 3,000.00 PLN (art. 92a (3) of the Act). The chronological list of violations and the amount of fines for individual violations is included in Annex 4 to the Road Transport Act [16].

Contrary to the fines imposed pursuant to penal provisions with a statutory minimum and maximum limit, the penalties provided for in Annexes 3 and 4 of the Act cannot be graded, i.e. it is not possible, for example, to take into account the subjective or objective circumstances affecting the reduction or increase punishment. They are fixed in a strictly defined amount, without the possibility of reducing the rate of the financial penalty. Regardless of the number of infringements detected by the controlling entity during one inspection, this will always be one administrative matter handled by a single administrative decision specifying the financial penalty which will consist of penalties for individual violations [17].

The number of drivers listed in art. 92a sec. 3 of the Act applies only to those who were employed before the date of commencement of the inspection. For instance, if the inspection started on 10 August, the inspectors must assume the status of drivers in the controlled entity as at 9 August. This applies to both the drivers who were employed pursuant to the employment contract as well as civil law contracts (e.g. specific works), or in the form of so-called self-employment. The drivers in the discussed sense also include persons who were not employed by the inspected entity on the day of commencement of the inspection under an employment contract or a civil law contract, but personally carried out road transport on the controlled entity's behalf (Art.

92a (4) of the Act). Punishment of an employee who violates the provisions of art. 92a sec. 1 of the Act or termination of such proceedings in any other way does not lead to a situation in which the entrepreneur is released from legal and administrative responsibility.

An entity performing road transport can be either a natural person, a legal person or another person without legal personality. They have the status of an entrepreneur within the meaning of art. 431 of the Civil Code and art. 4 sec. 1 of the Act - The Entrepreneurs' Rights. In the case of a civil law partnership, all partners are its entrepreneurs and in the case of transport carried out with one carriage, it encumbers all partners jointly, and not for each of them separately. This means that administrative responsibility pursuant to art. 92a sec. 1 of the Act will also be borne by all partners. However, it is not acceptable to impose several separate fines on one partner for one violation committed by the joint venture [18]. In such a situation, one administrative decision should be issued, directed jointly to all partners, imposing one fine. This penalty should be within the limits set in art. 92a sec. 1 or 5 of the Act and all shareholders in a particular company are jointly and severally liable for its payment [19]. Certainly, the entity performing road transport will not be a lessor in the situation where the leased vehicle, being in use of the entrepreneur, was inspected by authorized services and violation of obligations or conditions of the road transport was found [20].

An entity that performs other activities related to road transport is an entity that does not carry out road transport, yet, other auxiliary activities, in particular consisting in preparation of goods for dispatch, e.g. forwarding activities. Undoubtedly, in the light of art. 92a sec. 1 of the Act, the entity performing 'other activities related to transport' will not be a driver [21]. The catalogue of entities performing the road transport activities is included in art. 92a sec. 11 of the Act and it contains, in particular: forwarder, sender, recipient, shipper, tour operator, organizer of transport, public transport operator. The use of the term 'in particular' in this provision means that the entities specified therein do not constitute a closed set and thus liability for violation of conditions or obligations of road transport may also apply to other entities. However, the condition of their responsibility is that the circumstances of the case and the evidence clearly indicate that these entities have had an influence or have agreed to occurrence of the violation. It should be emphasized that the initiation of proceedings against the driver who has committed the violations and the driver's conduct does not exclude - in any way - the initiation of administrative proceedings in relation to the entrepreneur performing road transport and the course of pending proceedings does not affect the possible initiation and the course of administrative proceedings against the entrepreneur for whom the driver performed the activities of driving the vehicle.

The rules of administrative responsibility provided for in art. 92a sec.1 and 3 - 6 of the Act - pursuant to art. 92a sec. 12 - are also applicable to entities whose:

- 1) permit to practise the profession of road transport operator has been withdrawn,
- 2) licence allowing to undertake and conduct business in the field of road transport has been withdrawn,
- 3) permit or licence to practise the profession of road transport operator or road transport has expired.

The obligation of these entities is to store and make the documents and other information carriers listed in art. 4 item 22 of the Act available to the persons authorized to control, for the period of one year counting from the day on which they ceased to perform road transport (Article 92a sec. 12 in connection with art. 16a sec. 1 of the Act). If they fail to comply with this obligation, then they will bear administrative responsibility. The similar rigour applies to:

- 1) the entrepreneur on whom the rights resulting from the authorization to practise the profession of road transport operator or a license pursuant to art. 13 sec. 2 of the Act have been transferred,
- 2) an entrepreneur or a natural person who possesses a permit to practise the profession of road transport operator or a license and has ceased to perform business or road transport (art. 92a sec. 12 in conjunction with art. 16a sec. 2 of the Act).

These persons must also (obligatorily) store and make documents and other media required by the provisions listed in art. 4 item 22 of the Act available to the persons authorized to control for the period of one year - counting from the day on which they ceased to perform road transport [22].

The circle of the entities that bear administrative responsibility due to violation of road transport regulations, art. 92a sec. 12 in conjunction from art. 33a of the Act includes also those that have ceased to perform business or road transport:

- 1) for their own needs,
- 2) as part of universal postal services,
- 3) not being entrepreneurs (and excluding farmers).

Also, this case regards the obligation to store and provide access to documents and other information carriers to the controllers for the period of one year from the date of discontinuation of road transport [23].

In addition, it should be pointed out that for conducting the inspections of documents and vehicles - pursuant to art. 89 sec. 1 of the Act - the following organs are entitled: Police officers, inspectors of Road Transport Inspection, customs officers, Border Guard officers, authorized employees of public road administrators (excluding documents referred to in Article 87 sec. 1 item 1 and item 2 letter and sec. 4 of the Act), inspectors of the National Labour Inspectorate (in relation to the entries of the device recording the speed of the journey and the time of driving and parking automatically), authorized employees of the competent authority referred to in art. 18 sec. 1 of the Act, i.e. the head of the municipality, the administrator, mayor, district administrator, provincial governor (in relation to regular and regular special services), municipal and city wardens (in relation to public collective transport within the scope defined by the 16 December 2010 Public Transport Act). It should be noted that the employees of public road administrators and local government administration bodies are not entitled to control the entries of the device recording automatically the driving speed, driving time and stoppage time, obligatory breaks and rest time as well as the certificate referred to in art. 31 of the 16 April 2004 Act on the working time of drivers. (i.e. Journal of Laws of 2012, item 1155 as amended). From the content of art. 31 of the Act, it results that an entrepreneur performing road transport is obliged to issue a driver who he employs a certificate, and in the event when a driver was on sick leave from work due to an illness, he was off work, drove a vehicle excluded from the scope of application of Regulation (EC) No. 561/2006 or the AETR Agreement, performed other work than driving a vehicle, remained ready within the meaning of art. 9 section 1 of the Act. The certificate should be issued on the form provided for that purpose, referred to in the Commission Decision No. 2007/230 / EC of 12 April 2007 on the form concerning social regulations relating to road transport activities (Official Journal L 99 of 14.04.2007, page 14, as amended) and handed over to the driver before the commencement of road transport, and the driver should sign the certificate.

#### **4. CONCLUSIONS**

The direction of changing particular provisions defining criminal liability (crimes and offences) on administrative liability that was adopted several years ago in the Polish legislation should be considered right. The number of violations of rules and obligations in the sphere of road transport is quite significant, however, many of them are only of formal nature. Of course, these violations also pose a greater or lesser danger during transport, but they are not serious enough to punish for their commitment with criminal penalties. It is also important that the administrative repression is faster and more severe for the road carrier. The analysis conducted for the purposes of this article confirms that this type of administrative responsibility is increasingly appreciated and applied by road transport law enforcement authorities, both in Poland and in other EU countries. Numerous important practical issues related to road transport are raised in the case law of the Polish administrative courts, while considering particular cases in this field. Still, administrative responsibility, including the one in the sphere of road transport, does not raise the interest of the Polish representatives in the doctrine of administrative law. Perhaps, this is caused by very frequent changes in the Road Transport Act.

Undoubtedly, significant disadvantage, particularly for those who apply the provisions on administrative responsibility in road transport in their daily work, is to regulate the discussed issue in two separate legal acts, i.e. in the Road Transport Act and in the Code of Administrative Procedure. Even when applying the principle of *lex specialis derogat generali*, it is not entirely clear which provisions of law should be implemented in a

specific case. It is complicated by the fact that the Road Transport Act (*lex specialis*) does not include all regulations regarding administrative responsibility for violation of obligations or conditions of road transport. It is true that it is possible to refer to the provisions of Section IVa of the Code of Administrative Procedure (*lex generalis*), however, art. 189a of this Code excludes their application if this matter is regulated in separate regulations (*lex specialis*). The solution that can be postulated for *de lege ferenda* would be to include complete provisions regulating administrative liability for violation of obligations or conditions of road transport in Chapter 11 of the Road Traffic Act of 6 September 2001.

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