

DOCTORAL DISSERTATION SUMMARY

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Title: The decision-in-principle as a form of public administration activity in the process of preparation and implementation of investments in nuclear power facilities

The scope of considerations undertaken in this work is determined by the general formulation of the topic: “The decision-in-principle as a form of public administration activity in the process of preparation and implementation of investments in nuclear power facilities”. The decision-in-principle is regulated in the third chapter of the Act of 29 June 2011 on the preparation and implementation of investments in nuclear power facilities and accompanying investments (consolidated text: Journal of Laws of 2017, item 552, as amended; hereinafter: the Investment Act). It shall be noted that this decision is a novelty in the Polish legislation. At the same time, in the provisions of the aforementioned Act, there is no legal definition for the term “decision-in-principle”. Pursuant to the provision of the Act, the decision-in-principle is issued at the investor’s request by the minister competent for energy, after consulting the Head of the Internal Security Agency regarding the impact of the investment on the state’s internal security. In addition, a decision-in-principle is a preliminary condition for the investor to apply for a building permit for a nuclear power facility or permit for preparatory works. Among other documents, the investor is obliged to attach to the application for a decision-in-principle the decision on the location of the investment in a nuclear power facility (siting decision). Therefore, the decision-in-principle delimits the siting procedure and the subsequent construction process for a nuclear investment. However, the justification for the bill of the Investment Act states that the decision-in-principle “will be an expression of state’s approval for the construction of a nuclear power facility in a specific location, by a specific investor, using a particular technology”. In this sense, the decision-in-principle appears as a strategic act, the purpose of which is to secure country’s economic and political interests. The statement that the decision-in-principle will be an expression of “state’s approval” implies a number of important legal questions, especially in the context of the subject matter of such decision, its legal nature and form in which the decision-in-principle should be taken. The decision-in-principle is a condition *sine qua non* for an investor before applying for a building permit. As

a result, the decision-in-principle produces specific legal consequences for the entity commencing administrative proceedings, i.e. the investor. Moreover, the linguistic interpretation of the provisions of the Investment Act does not provide an answer to the question of the legal form of the decision-in-principle, which is of significant importance for investor's procedural position in the proceedings for the issuance of that decision. In the case that the decision-in-principle is recognized as an individual administrative act, the fundamental issue is to determine the content of such decision. It should be pointed out that in this respect the provisions of the Investment Act are not only inconsistent with the justification of the bill, but also do not provide an answer to the question on the subject of the decision-in-principle.

The reason for undertaking research on the decision-in-principle, a legal institution hitherto unknown to the Polish legislator, is the necessity to define its legal character on the basis of administrative law. Defining the legal character of the decision-in-principle will in fact determine the procedural position of the party (investor) in the proceedings for issuance of this decision.

Considering the above, the objectives of this dissertation are as follows:

- 1) providing an answer to the question on the legal character of the decision-in-principle and placing it within – known to the science of administrative law – structure of legal forms of public administration activities,
- 2) reconstruction of the *ratio legis* of the decision-in-principle based on the applicable law and available external sources, defining its subject matter, that is, the content of the decision-in-principle addressed to the entity commencing proceedings for issuance of this decision,
- 3) identification of legal conditions for obtaining the decision-in-principle, including criteria regarding investor applying for the decision-in-principle, as well as the catalog of documents that the investor should obtain or prepare before submitting the application for a decision-in-principle,
- 4) indication of possible procedural differences in relation to the provisions of the Act of 14 June 1960 – the Code of Administrative Proceedings (consolidated text: Journal of Laws of 2017, item 1257, as amended; hereinafter: the Code) in the administrative proceedings on the issuance of a decision-in-principle, deriving from the provision of the Investment Act and the legal nature of this decision,
- 5) presentation of the decision-in-principle in a comparative context and indication of possible inspirations for the Polish legislator, including the analysis of the similarities and differences between Polish decision-in-principle and its “counterparts” present in

foreign regulations, as well as the desirability of the reception of foreign solutions into a domestic legal order.

Such determination of objectives implies that the dissertation covers mainly the area of administrative law. In addition, the author refers in his considerations to selected issues from the field of international and European laws, which result from the significant internationalization of the nuclear energy sector and the important influence of the international community's activities on the shape of national legal orders.

Due to the "technical" nature of the analyzed area, before proceeding to the proper part of the deliberations, it is necessary to define terms used by the author in relation to the field of nuclear energy, which set the framework of this dissertation. Moreover, the author found it necessary to present the genesis of the development of nuclear energy in Poland, including the state strategy in the field of nuclear energy, as well as the framework of institutional and legal changes, the purpose of which is to prepare a national legal system for future nuclear infrastructure. Presentation of these issues should allow a more thorough understanding of the specifics of the analyzed matter. And so, the work begins with observations concerning the development of nuclear energy in Poland and terminological issues related to the scope of the Act on the preparation and implementation of investments in nuclear power facilities and accompanying investments (first chapter). In the definitional context, the author primarily reconstructs terms such as "nuclear power facility", "nuclear facility", as well as "investment accompanying investments in nuclear power facility". Furthermore, in order to determine which of the nuclear power facilities are covered by the necessity of obtaining a decision-in-principle, the author characterizes the nuclear fuel cycle.

In the second chapter, the author analyzes the legal character of the decision-in-principle and the legal consequences in the sphere of public-law relations deriving from obtaining this decision. The question about the legal nature of the decision-in-principle is crucial for the place of a decision-in-principle in the structure of legal forms of public administration activities and their possible evolution. This chapter attempts also to reconstruct the essence and objectives of the decision-in-principle, both, under the provisions of the Investment Act and external sources. In the final part of the chapter, the author puts forward the thesis on the discretionary character of the decision-in-principle, combining the possibility of refusing the issuance of a decision-in-principle with the premise of a social interest and the need to justify activities involving exposure to ionizing radiation. The author makes also specific proposals, the implementation of which would allow a more comprehensive realization of the legislator's assumptions regarding the *ratio legis* of the decision-in-principle.

The third chapter is devoted to a detailed analysis of the premises determining the issuance of the decision-in-principle by the minister competent for energy. In this chapter, the author identifies the criteria relating to the investor applying for the decision-in-principle, as well as indicates the catalog of documents that the investor should obtain or prepare for the application for the decision-in-principle.

The purpose of the fourth chapter is to present procedural differences in the procedure for issuance of the decision-in-principle in relation to the general rules laid down in the Code. In this part of the dissertation, the author analyses issues such as: the determination of parties to the proceedings, the authority competent to issue the decision-in-principle, as well as the possible participation of social organizations in proceedings with the rights of a party. In addition, the chapter discusses specific solutions, resulting from the provisions of the Investment Act, which will apply to administrative proceedings in the matter of issuing a decision-in-principle.

In the last (fifth) chapter, the decision-in-principle is analyzed from a comparative perspective. While the decision-in-principle has not appeared in the Polish law until the Investment Act, the author argues that the national legislator – while constructing Polish decision-in-principle – was inspired by the legal institution of the decision-in-principle present in the Finnish nuclear energy law. For this reason, the author analyzes the similarities and differences between Finnish solution and the construction adopted in Polish legislation, in particular with regard to their legal characters, the authority competent for issuing the decision-in-principle and the moment of applying for such decision in the whole cycle of the investment and construction process. In the further part of the study, the construction and rules for granting the decision-in-principle in the Hungarian nuclear energy law are considered. The intention of the author is to indicate the advantages and disadvantages of selected solutions, as well as to consider the desirability of reception of such solutions into the national legal order.

In the final conclusions, the author presents findings of the research of the decision-in-principle and, on their basis, formulates proposals *de lege ferenda*.

This dissertation refers to the decision-in-principle as a legal form of public administration activity in the investment process of nuclear power facilities. Outside the scope of the consideration are issues related to detailed procedural regulations for localization, environmental and construction proceedings with regard to nuclear investments. Author narrowed the scope of this dissertation, because the decision-in-principle delimits localization and construction proceedings. Therefore, the author analyzes the procedural issues related to these proceedings only to the necessary extent (especially in the third and fourth chapter).

In terms of methodology, a multi-faceted approach was used in the dissertation, using mainly three methods: a linguistic-logical (formerly called a formal-dogmatic approach), comparative and empirical (although the latter in the smallest degree). It should be noted that in the case of Polish literature, there is no study comprehensively capturing the institution of the decision-in-principle. Available literature includes only a few articles which – except for one – deal with the decision-in-principle only on the side of considerations, limiting itself practically to quoting the justification of the draft of the Investment Act. Consequently, the considerations are complemented with foreign literature, especially English, German and French, acquired by the author, *inter alia*, during a study visit at the International Atomic Energy Agency. Due to the scope and subject of the analysis undertaken, it was necessary to embed the conducted research in the context of comparative law. In this respect, the author refers primarily to Finnish and Hungarian law, in which solutions similar to Polish institution of the decision-in-principle are present. Finally, the issue of the decision-in-principle on the grounds of substantive and procedural administrative law, in addition to numerous references to literature and writing, required extensive use of the decisions of the Supreme Administrative Court, provincial administrative courts, and – where necessary – the Constitutional Tribunal and the Supreme Court.

The information provided in the dissertation is based on the laws being in force as at 1 February 2018.