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PECULIARITIES OF AVERMENT STAGES IN CASES OF ADMINISTRATIVE OFFENCES

Rolandas Krikščiūnas

Mykolas Romeris University, Faculty of Law,
Department of Administrative Law and Procedure
Ateities 20, LT-08303 Vilnius, Lithuania
Telephone (+370 5) 271 4639
E-mail rolandkr@mruni.eu

Snieguolė Matulienė

Mykolas Romeris University, Faculty of Law,
Department of Criminal Procedure
Ateities 20, LT-08303 Vilnius, Lithuania
Telephone (+370 5) 271 4639
E-mail m.sniega@mruni.eu

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Abstract. *The article explores theoretical and practical aspects of evidence collection, examination and assessment in cases of administrative offences, which have been little analyzed as yet. In the article, evidence collection refers to the search for evidence, its discovery and consolidation in a material object. Evidence examination is defined as the establishment of actual data on the circumstances relevant to the case, which are recorded in the evidence, and an additional examination of certain circumstances. Evidence assessment means thinking activities to analyze evidence collected and examined in the case and to establish the truth in the case, according to appropriate criteria. Referring to the opinions of various scientists and the case law of the Supreme Administrative Court of Lithuania, the article reveals elements of evidence in cases of administrative offences, thoroughly explores each stage*

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of the averment process and provides practical examples and makes suggestions for solving problems. The article substantiates a conclusion that early examination and assessment of evidence should also be carried out during the process of drawing up a record of administrative offence.

Keywords: *Administrative procedure, evidence; evidence collection, investigation of administrative materials (cases), evidence admissibility, connection, certainty, reliability.*

Introduction

In order to implement tasks of the procedure of administrative offence cases established in Article 248 of the Code of Administrative Offences (hereinafter referred to as "CAO"), which are related to a rapid, comprehensive, thorough and objective establishment of circumstances of the case and the solving of the case, it is necessary to determine all elements of the composition of an administrative offence, examine and evaluate these elements and other evidence confirming circumstances of an administrative offence. Usually all this is established, examined and assessed by institutions (officials) that draw up records of administrative offences and/or investigate cases of administrative offences, and by courts during the averment process.

It is important to mention that both the applicable Law on the Procedure of Administrative Cases of the Republic of Lithuania (hereinafter referred to as "the LPAC") and the CAO unthoroughly regulate the averment institution in the administrative procedure, therefore, in the article, we will try to reveal problems which are the most common problems at averment stages. During the averment process, certain separate, yet closely related actions are performed to collect, record, examine and assess evidence. In literature, these actions taken in the averment process are called stages or elements of the averment process. Some scientists use the concept "elements of the averment process" and state that calling actions taken in the averment process "stages" is incorrect, since this presupposes that "stages consistently follow each other and are separated by a particular period of time, yet the averment process is a solid and undivided cognitive process in which these elements repeat several times and can even coincide in terms of time."[1] This idea is opposed by D. Urbonas who states that certain consistency is typical of actions performed in the averment process, as "collected evidence only can be examined and assessed, while assessment of evidence without checking its admissibility and connection would be void."[2] Taking into account the discussed positions of the scientists, we believe that it is more purposeful to use the concept of stages of the averment process, since a consistent and continuous course of certain actions is typical of the averment process, like any other process. This means that the averment process consists of complexes of consecutive and related actions that begin with practical activities to collect and record

1 Rinkevičius, J. *Procesiniai įrodinėjimo baudžiamojoje byloje pagrindai* [Procedural Basics of Averment in a Criminal Case]. Vilnius: Vilniaus universiteto leidykla, 1990, p. 22.

2 Urbonas, D. Įrodinėjimo administracinių teisės pažeidimų bylose problemos [Problems of Averment in Cases of Administrative Offences]. *Jurisprudencija*. 2003, 41(33): 134.

evidence and end with thinking activities to examine and evaluate evidence gathered. In some cases, individual stages may be separated by a very short period of time, however, this does not imply that several stages coincide, since a peculiar nature of cognitive activities, content and goal of performed actions are typical of all the stages of averment. The exact repetition of a stage of the averment process is doubtfully possible during the consideration of the case of administrative offence, since even after the examination and assessment of collected evidence, and the establishment of its insufficiency, it is possible to re-collect and re-record not the evidence present in the case, but rather other evidence supplementing this evidence.

Taking into consideration the conceptions of evidence and the averment process, we would single out the following main stages of the averment process in cases of administrative offences:

1) Evidence collection;
2) Examination of collected evidence;
3) Assessment of collected and examined evidence.

1. Evidence Collection

Officials and participants in the proceedings who have the rights and duties granted by the law to collect or present evidence, examine and assess it, and also express their opinion on circumstances that are to be proved are considered to be averment entities in the case of administrative offence.

The duty of averment in cases of administrative offences is assigned to the institution (official) investigating and considering the case.[3] The offender cannot be obliged to aver that he/she is not guilty. The victim (his/her representatives) are also not bound by law to aver, currently averment is their right, rather than duty. He/she can give explanations and express his/her opinion on circumstances that are to be proved and on evidence assessment.

It is laid down in Article 256 paragraph 3 of the Code of Administrative Offences (hereinafter referred to as "CAO") that evidence is collected and, if necessary, an expert or a specialist is assigned by officials who are entitled to draw up a record of administrative offence and by a body (official) considering the case of administrative offence. This provision imposes an exclusive duty of evidence collection on entities drawing up records of administrative offence and considering cases. Moreover, the aforesaid provision cannot be interpreted to mean that the institution (official) drawing up a record of administrative offence can be exempted from the duty to collect evidence or submit incomplete, inexhaustive or low-quality material of the case to the institution (official) or the court considering the case[4].

3 Code of Administrative Offences, Articles 259, 259, 260, 284 and 286.

4 Ruling of the Constitutional Court of the Republic of Lithuania of 28 May 2008 on the Compliance of Paragraph 3 of Article 256 of the Code of Administrative Offences of the Republic of Lithuania (version of 19 September 2000) with the Constitution of the Republic of Lithuania. *Official Gazette*. 2008, No. 62-2353.

Article 256 paragraph 3 of CAO entitles not only institutions (officials) considering cases of administrative offences to collect evidence, but also district courts of districts (cities) (judges of district courts) considering cases of administrative offences. The Constitutional Court of the Republic of Lithuania has stressed that a court cannot be a passive observer of the proceedings in cases and "the following situations are likely to develop: during the court hearing, circumstances which are relevant to the adoption of the right decision, yet have not been established by the person drawing up the record of administrative offence, emerge or the material submitted to the court is insufficient for the adoption of the right decision. In such a case, seeking to objectively and thoroughly investigate all the circumstances of the case and to establish the truth in it, a court (judge) has powers to take necessary proceedings by themselves, as administration of justice cannot depend only on what material of the case has been submitted to the court."[5] It should be emphasized that administrative courts have not only the analogous right (Law on the Procedure of Administrative Cases, Article 57, paragraph 4), but also the duty to take an active part in the examination of evidence, the establishment of all the circumstances relevant to the case and their comprehensive and objective investigation. This duty has to be implemented through the consideration of cases of administrative offence by regional administrative courts and it is implemented in the court of appeal instance only in exceptional cases when evidence collection does not require high additional expenditures and does not form a basis for the application of subparagraph 2 of paragraph 1 of Article 141 of the Law on the Procedure of Administrative Cases (hereinafter referred to as "LPAC"). This is usually implemented in practice when the court of appeal instance or the appellant expresses a doubt over the propriety of evidence examination and assessment carried out by the court of first instance.

Institutions (officials), district courts of districts (cities) (judges of district courts) and regional administrative courts considering cases of administrative offences frequently do not implement the duty to gather additional evidence in the case of administrative offence, but rather choose the following options of solving the case:

• To dismiss a case of administrative offence, giving reasons that the incident and the composition of an administrative offence are absent, since no sufficient evidence has been collected to state the fact of violation or the guilt of the person who is made administratively liable.

• To return a case of administrative offence to the institution drawing up the record of administrative offence, giving reasons that it is necessary to conduct an additional investigation of circumstances and collect extra evidence.

Considering an appeal against a ruling in the case of administrative offence, the regional administrative court should not take over functions that are assigned to the institution empowered to draw up a record of administrative offence[6], as, in this case, the

5 Ruling of the Constitutional Court of the Republic of Lithuania of 28 May 2008, *supra* note 4.

6 Raižys, D. Raižys, D. *Procesas pirmosios instancijos teisme.* Daktaro disertacija. Socialiniai mokslai (teisė) [Proceedings in the Court of First Instance. Doctoral dissertation. Social Sciences (Law)]. Vilnius: Mykolo Romerio universitetas, 2008, p. 115.

border between the functions performed by institutions of judicial power and institutions of executive power disappears. Therefore, the procedural law should lay down specific grounds "for the return of the case as a result of incomplete investigation of case circumstances to the institution empowered to draw up a record of administrative offence. The SACL has however, formulated grounds of this nature in its practice, stressing that the return of the case of administrative offence to the institution which has drawn up a record is possible, yet in exceptional cases when "the record has been drawn up improperly – essential <...> elements of the composition of administrative offence have not been indicated and the record or case material has other essential shortcomings impeding the consideration of the case in court."[7] In such a case, after passing a reasoned judgement specifying the shortcomings identified, the court should return the case to the institution which has drawn up the record to revise the record or to additionally investigate the case subject to the circumstances of the case. Such proceedings are only possible if the court is unable to eliminate the aforesaid shortcomings on its initiative and the presence of these shortcomings has considerable significance for the establishment of violation and guilt facts. In view of the above, we believe that in the process of consideration of administrative offence case, proceedings taken by the court which has many possibilities for collecting evidence should, first of all, be directed at the implementation of the tasks set out in Article 248 of the CAO and the establishment of the truth in the case, rather than at the refusal to perform additional functions of institutions of executive power.

Under Article 272 paragraph 1 of the CAO, a person who is made administratively liable has the right, but not the duty to provide the institutions considering the case with evidence confirming or denying the fact of the commission of administrative offence, his/her guilt and other circumstances related to the violation. The above-mentioned provision, in conjunction with Article 53 paragraph 2 of the LPAC and Article 6 paragraph 3 of the European Convention on Human Rights guarantee the right of defence for a person made administratively liable. Usually a person made administratively liable, seeking to avoid the application of administrative liability and the imposition of an administrative penalty, is concerned with the collection and provision of exculpatory evidence[8], however, denial of guilt without providing confirming evidence should not be considered to be reasonable. The SACL has emphasized that the right of a person who is made administratively liable to provide evidence is exercised improperly when, in the appeal brought to the court, this person disagrees with the conclusions of the court which are unfavourable to him/her, and presents his/her own version and evidence assessment acceptable to him/her when the data convenient to this person is manipulated and essential actual circumstances are withheld or presented

7 Administracinių teismų praktika Nr. 7 [Case law of administrative courts No. 7]. Vilnius: Lietuvos vyriausiasis administracinis teismas, 2005, p. 258.

8 This fact corresponds to the circumstance established during the research: the surveyed officials and civil servants confirmed that approximately 83% of persons who are made administratively liable actively exercise the right of defence.

from the positions beneficial to him/her, yet evidence confirming all this is not presented[9]. This means that the evidence provided by the person who is made administratively liable will be recognized as proper evidence in the case of administrative offence, if it does not distort real actual circumstances surrounding the violation, is objective and has all the discussed qualities of evidence.

Under Article 273 paragraph 2 of the CAO, the victim is also entitled to participate in the averment process by presenting evidence. The victim also has the right to apply to the institution (official) or the court considering the case of administrative offence to sue out evidence.

Taking into account the fact that further consideration process of the case, the content of the ruling issued in the case and the final outcome of case consideration depend on the quality and quantity of evidence collected and presented during the investigation and consideration of the case of administrative offence, we believe that the person gathering evidence should carry out an early examination and assessment of every collected and obtained piece of evidence by analyzing it and determining its admissibility, connection, certainty, reliability, consistency and sufficiency. Such proceedings taken would guarantee submission of proper and thorough material of administrative offence case to the institution considering the case, would speed up consideration of the case and prevent possible disappearance of uncollected evidence. Actual circumstances of the commission of an administrative offence are determined by institutions (officials) investigating and considering the case, i.e. the body (official) investigating and considering the case has the duty of averment in cases of administrative offence[10]. When gathering material for the article, it was established that the above-mentioned duty is usually fulfilled by more than two thirds of the officials surveyed (73%), while the rest (27%) tend to neglect this duty, therefore, the need for the collection of additional evidence often arises during the consideration stage of administrative offence cases.

2. Evidence Examination

Entities drawing up the record of administrative offence perform an early examination of evidence by individually familiarizing themselves with the evidence which is being and has been collected. Evidence examination conducted during the consideration of the case begins with the publishing of the record of administrative offence. If necessary, the essence of the indictment formulated in the record can be explained to a person who is made administratively liable. Should persons participating in the consideration of the case make requests for change in the procedure for evidence examination, the institution (official) or the court considering the case, taking into account the requests made and the circumstances of the case, establishes the procedure for evidence

9 Judgement of the Supreme Administrative Court of Lithuania of 9 February 2007 in the administrative case No. N-62-343/2007.

10 Judgement of the Supreme Administrative Court of Lithuania of 24 July 2009 in the administrative case No. N-662-1783/2009.

examination that is the most suitable for the consideration of a specific case of administrative offence. The following procedure for evidence examination is usually used during the consideration of administrative offence cases: testimony of the person made administratively liable is heard, he/she may be asked relevant questions; testimony of victims, witnesses and officials drawing up the record of administrative offence is heard, these persons may also be asked relevant questions; written explanations of victims and witnesses, and official reports of officials drawing up the record of administrative offence are read; documents in the case are read and submitted for direct familiarization; material evidence is examined; the expert's conclusion is read, he/she may be asked relevant questions; the specialist's explanations are heard, he/she may also be asked relevant questions; photographs and audio or video recordings are heard or watched. It should be emphasized that the scope of evidence examination and taken proceedings of evidence examination differ subject to the circumstances averred in the case and the nature of collected evidence.

It should be stressed that the institution (official) or the court considering the case of administrative offence should take an active part in the examination of evidence so that all the information relevant to the case consideration will be determined. Such active participation is represented by asking persons involved in the case consideration questions. However, improper and incomprehensive examination of evidence is frequently stated when the above-mentioned right is infringed. For example, after considering the case[11] of violation of Article 214[12] paragraph 1 of the CAO, the SACL stated that neither in the pre-trial stage, nor during the judicial investigation D. L. who was made administratively liable was able to question the experts whose conclusions contained certain discrepancies in order to have their reliability thoroughly checked or raise any doubts over the experts' conclusions. As the establishment of D. L. guilt by the court was based on the experts' conclusions, rejection of her request for questioning the experts restricted the right of D. L. to fair trial to a certain extent and resulted in incomprehensive examination of evidence collected in the case. In view of the above, the case was returned to the court of first instance for re-consideration.

Improper examination of evidence is also stated in the cases where, in the process of case consideration, witnesses or victims whose testimony is essential to the outcome of the case are not questioned and, during the case consideration, written explanations of these persons are announced, or where, in the process of case consideration, officials drawing up the record of administrative offence, whose official reports are not precise and thorough or indicate circumstances which do not coincide with the circumstances disclosed by other evidence, are not interviewed. For example, in the considered case[12], the SACL stated that, issuing a ruling in the case, the First District Court of Vilnius City took into account only the written explanations of witness G. R. which could not be equated to witness testimony and replace it. Moreover, the SACL established that

11 Judgement of the Supreme Administrative Court of Lithuania of 30 April 2009 in the administrative case No. N-502-3895/2009.

12 Judgement of the Supreme Administrative Court of Lithuania of 10 April 2009 in the administrative case No. N-575-679/2009.

the aforesaid explanations were not detailed. The SACL stressed that failure to question the witness whose testimony was the only one and essential to the outcome of the case created preconditions for infringing the right granted to the person made administratively liable to question witnesses; on the basis of witnesses' testimony, the court finds the person guilty of the violation.

Evidence examination at the court of appeal instance differs from this stage of averment process at the institution or the court of first instance considering the case. It is laid down in Article 137 paragraph 2 of LPAC that cases based on appeals against court rulings in administrative offence cases are considered under the procedure of written proceedings, unless the judicial panel decides otherwise. This means that parties to the proceedings and other participants in the proceedings do not take part in the hearing and the court familiarizes itself with the evidence collected in the case on its own without publishing it. In certain cases, if it is necessary to additionally question the person who is made administratively liable, the victim, the witness, the official who has drawn up the record of administrative offence, the expert or specialist, a hearing in the SACL can take place following the procedure of verbal proceedings, however, such cases are rare. In accordance with Article 138 paragraph 3 of the LPAC, the SACL is entitled to re-examine or additionally examine the evidence studied by the court of first instance; to examine evidence that the court of first instance refused to study; to examine new evidence that was not presented to the court of first instance, if the court recognizes reasons for not studying the evidence before as sound, or when the necessity to present new evidence arises later. These opportunities for examining evidence provided for the SACL guarantee a proper and thorough examination of evidence in administrative offence cases and ensure the implementation of Article 248 of the CAO, yet, in each case, the *non reformatio in peuis* principle has to be applied which guarantees that the situation of the person who has appealed against the ruling in the case of administrative offence will not worsen.

Consequently, evidence examination is the central stage of averment process and its proper implementation helps to duly carry out evidence assessment or helps to establish evidence that is lacking. Moreover, studied evidence only can be assessed to reach a decision in the case of administrative offence.

3. Evidence Assessment

The third stage of averment process covers "thinking activities based on the laws of logic"[13] to establish the truth in the case of administrative offence. It is the last and the most important stage of averment process which aims to establish whether a certain piece of evidence can be considered a proper piece of evidence in the case and whether cumulative evidence collected in the case enables reaching an unambiguous conclusion concerning the determination of the fact of commission of administrative offence or the

13 Goda, G.; Kazlauskas, M.; Kuconis, P. *Baudžiamojo proceso teisė: vadovėlis* [Law of Criminal Procedure: textbook]. Vilnius: Teisinės informacijos centras, 2005, p. 183.

establishment of the guilt of the person who is made administratively liable etc. It is laid down in Article 257 of the CAO that the body (official) assesses evidence according to their inner conviction based on thorough, full and objective examination of the totality of circumstances of the case, following the law and legal consciousness. The analogous provisions are set out in Article 57 paragraph 6 of the LPAC establishing that the court assesses evidence according to its inner conviction based on thorough, full and objective examination of the totality of circumstances of the case, following the law and also the criteria of justice and prudence. These provisions grant institutions (officials) and courts considering cases of administrative offence an exclusive right to assess evidence. As mentioned above, the duty of evidence assessment is also imposed on institutions (officials) drawing up records of administrative offence. Persons participating in the hearing of the case of administrative offence are entitled to express their opinion or submit their proposals concerning evidence assessment or conclusions to the institution (official) or the court considering the case, yet entities considering the case do not need to take these opinions or proposals into account.

After the analysis of Article 257 of the CAO and Article 57 paragraph 6 of the LPAC, the following rules for assessing evidence in a case of administrative offence should be singled out:

• *Evidence is assessed according to the inner conviction of the body (official) or the court.* Inner conviction is defined as a conclusion based on evidence which is "drawn from collected evidence when significant facts are examined, versions are introduced and analyzed and each piece of evidence separately and cumulative evidence are assessed" [14]. It should be stressed that the inner conviction of the entity assessing evidence forms through their personal and work experience, and accumulated knowledge, therefore, the result of evidence assessment, to a certain extent, always depends on subjective circumstances, i.e. the ability of this person to apply gained practice and available knowledge. Although a subjective factor exists in evidence assessment, it is, undoubtedly, always necessary to distance yourself from any possible outside influence on the final result of evidence assessment and to evaluate evidence independently and impartially.

• *Evidence assessment is based on comprehensive, full and objective examination of the totality of circumstances of the case*. This means that during evidence assessment it is necessary to perform a thorough analysis of evidence confirming circumstances of the case: to examine incriminating and exculpatory evidence, to analyze each piece of evidence separately and compare it with other evidence in the case, and to draw final conclusions taking into account the cumulative evidence in the case.

• *Evidence is assessed following the law and legal consciousness.* This means that evidence assessment is based on the application of material and procedural rules of law, and, when considering an appeal against the ruling in the case of administrative offence, evidence assessment is also based on rules of law which were applied in the previous

14 Judgement of the Supreme Administrative Court of Lithuania of 24 July 2009 in the administrative case No. N-662-1798/2009.

averment process. The requirement to follow legal consciousness covers qualifications ("synthesis of legal knowledge, legal skills and the moral position to faithfully serve the rule of law"[15]) of the entity considering the case of administrative offence and the ability to use them for the consideration of cases.

In order to determine legally relevant circumstances, sufficiency of collected evidence, its consistency, its possible contradictions and logic, circumstances of the indication of appropriate data and reliability of evidence sources should be evaluated[16]. It should be emphasized that we recommend adding evidence admissibility, connection and certainty to the above criteria of evidence assessment. Only after the assessment of the aforesaid aspects, a legal and reasonable decision in the case of administrative offence can be made. The research revealed that officials and civil servants who draw up records of administrative offence and consider cases of administrative offence encounter problems with the assessment of all the above-mentioned elements of evidence, however, the evaluation of evidence certainty and reliability (79%), sufficiency (61%) and connection (54%) is the most difficult for them.

Evidence inconsistency can be determined when certain discrepancies between all pieces of evidence collected in the case are found or when at different times different actual data relevant to the case is obtained from the same evidence source (for example, explanations of the person who is made administratively liable provided in the record of administrative offence differ from his/her testimony given during the consideration of the case). When the problem with the assessment of contradictory evidence arises in the case of administrative offence, it is necessary to deny this evidence by using other evidence gathered in the case. In this case, in order to make a legal and reasonable decision, it should specify, giving reasons, what evidence is contradictory, why it is contradictory, which other evidence in the case denies contradictory evidence etc. For example, considering the case[17] of violation of Article 172 paragraph 1 of the CAO, the SACL established that, when the customer I. J. called in the evening, K. P. made administratively liable agreed to transport the group of passengers formed by the customer in advance, which was done, yet these explanations contradicted actual data recorded in the contract for passenger carriage and the sheets of passenger carriage, as the contract for passenger carriage No. 711 between I. J. and K. P. was not concluded in advance. Both this contract and the sheets of passenger carriage No. 100354 were concluded on the day of the carriage of passengers. The SACL stated on the basis of this evidence that other written evidence in the case denied explanations of K. P.

When assessing evidence certainty and reliability, it is necessary to determine whether actual data present in certain sources of evidence is not doubtful, i. e. whether it is true. Assessment of evidence certainty comprises "evaluation of the capability of the person providing data to give true and comprehensive testimony or of the conditions

15 Vaišvila, A. *Teisės teorija* [Theory of Law]. Vilnius: Justitia, 2004, p. 222.

16 Judgement of the Supreme Administrative Court of Lithuania of 29 May 2009 in the administrative case No. N-444-886/2009.

17 Judgement of the Supreme Administrative Court of Lithuania of 13 March 2009 in the administrative case No. N-62-570/2009.

for finding a material source of information; assessment of the analysis of testimony content; comparison of data obtained from one procedural source with data received from other procedural sources" [18]. In the process of collecting material for the article, we established that the problem of assessment of evidence certainty and reliability in cases of administrative offences arises due to a possible interest of persons involved in the case (the person who is made administratively liable, witnesses, victims, officials drawing up records of administrative offence, specialists and experts) in the outcome of the case, due to incompetence of experts or specialists, or the possibility of falsification of material evidence or documents. Consequently, in case of doubt over evidence certainty and reliability, it is necessary to establish relations between the person who is made administratively liable and the aforesaid persons providing actual data, the competence of the expert or specialist, to disclose the certainty of the version presented by the person made administratively liable and to determine authenticity of material evidence and documents.

The assessment of evidence sufficiency is related to the circumstances which are to be proved in the case of administrative offence and the boundaries of the averment object. A certain circumstance which is to be proved in the case of administrative offence is considered to be proved, if examined and assessed cumulative evidence enables an undoubted conclusion about the presence of this circumstance. It should be stressed that a person can be made administratively liable only when the fact of the commission of an administrative offence and the person's guilt can be stated on the basis of all the evidence collected in the case, and when no serious doubt remains over the absence of such circumstances.

Evidence insufficiency in cases of administrative offences is usually stated when the duty to gather sufficient evidence confirming the fact of the commission of an administrative offence or the offender's guilt is not implemented properly. For example, having considered the case[19] of violation of Article 127 paragraph 2 of the CAO, the SACL established that explanations of the persons who were involved in the traffic accident and other persons about the circumstances of the traffic accident were different, the scene of the traffic accident was indicated differently. The expert explained in court that he was unable to draw a conclusion concerning the mechanism of the traffic accident and the causes of the accident as a result of insufficient data to determine how the wreck spread after the traffic accident and what the angle of the collision of the cars was. In view of the above, the SACL stated that the investigation of circumstances conducted in the case was not comprehensive and full, and insufficient evidence was collected, consequently it was necessary to perform a re-examination of the scene of the traffic accident and to draw a scheme of the traffic accident and present it to the expert together with precise data on damage to the cars, and to settle the issue regarding the performance of expert evaluation so as to identify causes and mechanism of the traffic accident.

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18 Sabonis, D. Vidinis įsitikinimas, kaip įrodymų ir duomenų vertinimo kriterijus [Inner Conviction as a Criterion for Assessing Evidence and Data]. *Teisės problemos*. 2006, 2(52): 50.

19 Judgement of the Supreme Administrative Court of Lithuania of 30 April 2009 in the administrative case No. N-444-859/2009.

It should be noted that detailed assessment of evidence collected and examined during the investigation and consideration of the case of administrative offence should be presented in the ruling in the case of administrative offence and/or in the decision on the ruling in the case of administrative offence. It is laid down in Article 286 of the CAO that the description of circumstances determined during case consideration and their reasoned evaluation represent one of the components of the content of the ruling in the case of administrative offence. Article 86 paragraph 2 of the LPAC establishes that, reaching a decision, the administrative court evaluates the evidence examined at the court hearing and states which circumstances particularly relevant to the case were and were not determined. It is laid down in Article 87 paragraph 4 subparagraphs 1, 2 and 3 of this Law that the motivated part of the decision must specify the circumstances of the case determined by the court, evidence underlying court conclusions and arguments for rejecting some evidence by the court. The above provisions require that every ruling in a case of administrative offence should be based on the evidence examined during case consideration, a ruling and/or a decision should not be restricted to the description of evidence, but give a reasoned and thorough analysis of every piece of evidence, should discuss whether evidence is accepted or rejected and indicate reasons for this, and should state by giving reasons which evidence underlies or denies the presence of circumstances which are to be proved in the case, and a ruling and/or decision should not be based on assumptions or probabilities. Practice of the consideration of administrative offence cases shows that motiveless and unreasonable decisions are frequently made in cases. For example, after considering the case[20] of violation of Article 110 paragraph 3 of the CAO, the SACL stated that the judgement of iauliai Regional Administrative Court, in which the appeal of D. K. against the decision of the Public Order Division of Public Police of Tel iai District Police Unit was rejected, failed to indicate which circumstances relevant to the case were and were not determined, did not assess any evidence and failed to point out what material of the case proved the guilt of D. K. about violating requirements of the rules on raising and keeping animals in Tel iai District confirmed by Tel iai District Municipal Council. In another case[21], the SACL established that, considering the case of violation of Article 41^4 paragraph 3 of the CAO, in its ruling, Vilnius District Court listed only documents present in the case without analyzing their content and without establishing the guilt of A. P. over the violation incriminated to him. The SACL stated that this decision did not comply with the requirements of legitimacy and validity.

In summary, the averment process covers evidence collection, examination and assessment, which are carried out in accordance with procedural rules and principles of law. Not only institutions (officials) drawing up records of administrative offence and institutions (officials) and courts considering cases are entitled to take part in this process, but also other participants in the proceedings. In every case, the role of these

20 Judgement of the Supreme Administrative Court of Lithuania of 13 March 2009 in the administrative case No. N-756-606/2009.

21 Judgement of the Supreme Administrative Court of Lithuania of 7 June 2007 in the administrative case No. N-62-1150/2007.

entities at a separate stage of the averment process is related to proceedings of a different content for which different requirements are laid down. All results of the averment process are recorded in the ruling of the administrative offence case and/or in the decision on the ruling in the administrative offence case.

Conclusions

Imperfection of legislation and shortcomings in legal regulation reduce the efficiency of averment in cases of administrative offences and create preconditions for breaching rights and legal interests of persons involved in the averment process.

The record of administrative offence is one of the key measures used in the averment process of an administrative offence. The record not only formulates an indictment for an administrative offence, but also indicates other collected evidence and other circumstances relevant to the case. The record of administrative offence is drawn up after the examination and assessment of evidence collected in the case and is considered proper evidence, if, in the process of drawing up the record, requirements of evidence admissibility and sufficiency were not violated.

Explanations and testimony of the victim and the person who is made administratively liable and official reports, explanations and testimony of officials drawing up the record of administrative offence refer to disclosure of circumstances relevant to the case, which are known to these persons, to the entity drawing up a record of administrative offence and considering the case. The assessment of explanations and testimony which are given by the above-mentioned persons requires carefulness, since they are always, to a certain extent, interested in the outcome of the case, therefore, they can give distorted explanations and testimony or withhold circumstances relevant to the case. Assessment of this evidence should cover the evaluation of its admissibility, connection, certainty, reliability and consistency.

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ĮRODYMŲ ADMINISTRACINIŲ TEISĖS PAŽEIDIMŲ BYLOSE RINKIMO, TYRIMO IR VERTINIMO ASPEKTAI

Rolandas Krikščiūnas, Snieguolė Matulienė

Mykolo Romerio universitetas

Santrauka. *Straipsnyje išnagrinėti iki šiol mažai analizuoti įrodymų administracinių teisės pažeidimų bylose rinkimo, tyrimo ir vertinimo teoriniai ir praktiniai aspektai. Įro-*

dymų rinkimu vadinama įrodymų paieška, jų suradimas ir įtvirtinimas materialiame objekte. Įrodymų tyrimas apibrėžiamas kaip įrodymuose užfiksuotų faktinių duomenų apie bylai reikšmingas aplinkybes nustatymas ir papildomas tam tikrų aplinkybių ištyrimas. Įrodymų vertinimu laikoma mąstomojo pobūdžio veikla, kuria, remiantis atitinkamais kriterijais, išanalizuojami byloje surinkti bei ištirti įrodymai ir nustatoma tiesa byloje. Straipsnyje, vadovaujantis įvairių mokslininkų nuomonėmis ir Lietuvos vyriausiojo administracinio teismo praktika, atskleista įrodymų administracinių teisės pažeidimų požymiai bei detaliai išnagrinėtas kiekvienas įrodinėjimo proceso etapas, pateikiant praktinius pavyzdžius ir siūlymus nustatytoms problemoms spręsti.

Įgyvendinant Administracinių teisės pažeidimų kodekso 248 straipsnyje įtvirtintus administracinių teisės pažeidimų bylų teisenos uždavinius, susijusius su greitu, visapusišku, išsamiu ir objektyviu bylos aplinkybių nustatymu ir jos išsprendimu, būtina nustatyti visus administracinio teisės pažeidimo sudėties elementus, ištirti ir įvertinti šiuos elementus ir kitas administracinio teisės pažeidimo padarymo aplinkybes patvirtinančius įrodymus. Paprastai visa tai atlieka, t. y. įvertina, administracinių teisės pažeidimų protokolus surašančios ir (ar) administracinius teisės pažeidimų bylas nagrinėjančios institucijos (pareigūnai) ir teismai įrodinėjimo proceso metu.

Įrodinėjimo procese yra atliekami veiksmai, kurie mokslinėje literatūroje vadinami įrodinėjimo proceso etapais arba elementais. Kai kur literatūroje pateikiama „įrodinėjimo proceso elementų" sąvoka ir reiškiama nuomonė, kad įrodinėjimo proceso metu atliekamų veiksmų įvardijimas „etapais" yra neteisingas, nes įrodinėjimo procesas yra vientisas ir nedalomas pažinimo procesas, kuriame šie elementai pasikartoja ne vieną kartą, o laiko atžvilgiu gali net sutapti; įrodinėjimo proceso metu atliekamiems veiksmams būdingas tam tikras nuoseklumas, kadangi tik surinkti įrodymai gali būti ištirti ir įvertinti, o įrodymų įvertinimas nepatikrinus jų leistinumo ir sąsajumo būtų niekinis.

Įrodinėjimo procesą sudaro vienas po kito einančių ir tarpusavyje susijusių veiksmų kompleksai, kurie prasideda praktine veikla, renkant ir fiksuojant įrodymus, ir baigiasi mąstymo veikla, tiriant ir vertinant surinktus įrodymus. Straipsnyje keliamas klausimas, ar įmanomas visiškas įrodinėjimo proceso etapo pasikartojimas nagrinėjant administracinio teisės pažeidimo bylą, nes net ir ištyrus ir įvertinus surinktus įrodymus ir nustačius jų nepakankamumą, iš naujo gali būti renkami ir fiksuojami nebe tie patys byloje esantys įrodymai, bet šiuos įrodymus papildantys kiti įrodymai.

Reikšminiai žodžiai: *įrodymų rinkimas, administracinių medžiagų (bylų) tyrimas, įrodymų leistinumas, sąsajumas, tikrumas, patikimumas, neprieštaringumas, pakankamumas.*

Rolandas Krikščiūnas, Mykolo Romerio universiteto Teisės fakulteto Administracinės teisės ir proceso katedros docentas. Mokslinių tyrimų kryptys: administracinė teisena, viešųjų finansų kontrolė, kriminalistika.

Rolandas Krikščiūnas, Mykolas Romeris University, Faculty of Law, Department of Administrative Law and Procedure, associate professor. Research interests: administrative law, administrative procedure, criminal investigation.

Snieguolė Matulienė, Mykolo Romerio universiteto Teisės fakulteto Baudžiamojo proceso katedros docentė. Mokslinių tyrimų kryptys: smurtinių nusikaltimų tyrimas, finansinių nusikaltimų tyrimas, kriminalistika.

Snieguolė Matulienė, Mykolas Romeris University, Faculty of Law, Department of Criminal Procedure, associate professor. Research interests: investigation of violent crimes, investigation of financial crimes, criminal investigation.