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RIGHT TO MAKE A MISTAKE BY ENTREPRENEURS IN THE CONTEXT OF PUBLIC INTEREST

Abstract

This study refers to the new institution regulated in the Entrepreneurs' Act of 6 March 2018 – the right to make a mistake. The study aims to answer the question of what values impacted the formation of this new institution, its purpose, and what circumstances determine its application.

KEYWORDS

right to make a mistake, entrepreneur, public interest, principle of the entrepreneur's trust in public authority, Entrepreneurs' Act

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prawo do popełnienia błędu, przedsiębiorca, interes publiczny, zasada zaufania przedsiębiorcy do władzy publicznej, Prawo Przedsiębiorców

1. INTRODUCTION

In the Act of 31 July 2019 on the amendment of certain acts to limit regulatory burdens,[1] Article 21 was added to the Entrepreneurs' Act[2] of 6 March 2018, which introduced an institution previously unknown in Polish law – namely the 'right to make a mistake'. In the opinion of the legislator, this institution is 'based on the assumption that most of the violations committed by emerging Polish entrepreneurs are not the result of their bad will but rather have the nature of unintentional mistakes'.[3] Therefore, these mistakes neither pose a threat to the interests of other legal entities nor do they harm public safety or the legal order. The legislator also points out that very often errors and violations on the part of entrepreneurs are a consequence of unclear regulations, their incoherent interpretation by individual authorities and institutions, as well as the non-uniform practice of public administration.[4] The intent of the legislator was that in the event of a violation of the regulations related to the conduct of economic activity, an entrepreneur would have the opportunity to rectify his mistake. It is obvious that this particular benefit might not have been addressed to all entrepreneurs and applied in all situations related to the conduct of economic activity. At the stage of drafting the Act, it was necessary to take into account many substantive and procedural issues. Introducing a new institution also required considering whether, *inter alia*, the possibility of rectifying a mistake by entrepreneurs is in line with the public interest and whether this also excludes potential abuses. It was the public interest that was the main reason why Article 21a of the Entrepreneurs' Act provided for exceptions excluding the possibility of invoking the right to make a mistake and therefore preventing misuses.

This study aims to show the essence of the institution of the right to make a mistake and its rationale in the context of public interest. The most important ideas about public interest will be presented in the first part of the study.

[1] Journal of Laws, item 495, as amended.

[2] Consolidated text: Journal of Laws of 2021, item 162 as amended – hereinafter referred to as the Entrepreneurs' Act.

[3] Justification of the draft of the act amending certain acts in order to limit regulatory burdens – Parliamentary printed matter No. 3622, https://www.sejm.gov.pl/sejm8.nsf/druk.xsp?nr=3622 (accessed: 20 March 2023) – hereinafter referred to as: Justification of the draft of the act, printed matter No. 3622.

[4] Ditto, p. 48.

2. CONCEPT OF PUBLIC INTEREST

The concept of public interest was and still is the subject of numerous research studies.[5] The public interest clause is one of the essential general clauses in Polish law of a constitutional[6] but also political, economic, and social nature. This clause, on the one hand, is the basis for interference in the sphere of individual freedom; on the other one – according to A. Żurawik – is also to play a huge role in implementing the postulates of the social market economy.[7] The author rightly points out that what is in the public interest should be subject to assessment on the part of the legislator because it is the act that reflects the principles and values guiding the adoption of this and not the other solutions.[8] The public interest does not have a general, all-encompassing descriptive meaning. Its meaning is associated with the social and political context,[9] which further emphasizes the dependence of this concept on the state of the social market economy.

So what is the public interest? *Utilitas publica* is a concept known to Roman law. We cannot forget about the sentence spoken by Ulpian: '*Publicum ius est quod ad statum rei Romanae spectat, privatum quod ad singulorium utilitatem*' ('Public law is the law that applies to the Roman state, and private law is the law that serves the interests of individuals'). In this approach, the law should serve creating and maintaining social and economic relations beneficial to those entities in whose interest each state organization acts. Therefore, if the law permits an individual to perform certain activities, it does so bearing in mind also the interest of the state as a whole.[10] However, 'at that time, this maxim was used not in the

[5] In particular: A. Żurawik, *„Interes publiczny", „interes społeczny" i „interes społecznie uzasadniony". Próba dookreślenia pojęć,* Ruch Prawniczy Ekonomiczny i Socjologiczny, 2013, Vol. 2, p. 60 *et seq.*; *idem*, *Interes publiczny w prawie gospodarczym,* Warszawa 2013, p. 127 *et seq.*; *idem*, *Pojęcie interesu publicznego,* (in:) R. Hauser, Z. Niewiadomski, A. Wróbel (ed.), *System prawa administracyjnego. Publiczne prawo gospodarcze,* Vol. 8A, Warszawa 2013, p. 410 *et seq.*; E. Komierzyńska, M. Zdyb, *Klauzula interesu publicznego w działaniach administracji publicznej,* Annales Universitatis Mariae Curie-Skłodowska Lublin – Polonia, 2016, Vol. LXIII, 2., p. 161 *et seq.*

[6] This reference is included in Art. 1, which indicates that the Republic of Poland is the common good of all citizens, Art. 17 or 22, as well as Art. 31 sec. 3. Cf. M. Zdyb, *Interes publiczny w orzecznictwie Trybunału Konstytucyjnego,* (in:) A. Korybski, M.W. Kostyckij, L. Leszczyński (ed.), *Pojęcie interesu w naukach prawnych, prawie stanowionym i orzecznictwie sądowym Polski i Ukrainy*, Lublin 2006, p. 206.

[7] A. Żurawik, *Pojęcie interesu publicznego, op. cit*., p. 410.

[8] *Ibidem*, p. 410.

[9] J. Blicharz, *Kategoria interesu publicznego jako przedmiot działania administracji publicznej,* Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji 2004, Vol. 40, p. 39.

[10] Z. Brodecki, B. J. Kowalczyk, *Podstawowe wartości jurysprudencji rzymskiej,* Gdańskie Studia Prawnicze, Vol. XXXV 2016, p. 111.

interest of the entire Roman society, but of its strata deriving individual profits at the expense of work of vast quantity of citizens employed in farm works'.[11]

According to Aristotle, 'so it turns out that systems which aim at the common good are found in accordance with the principle of absolute justice to be the right ones, while those which aim only at the good of the rulers are erroneous and represent all the degenerations of the right ones; for they are despotic, and yet the state is a community of freeborn people'.[12]

This conflict between the opposites represented by an individual, on the one hand, and the community, on the other, still represents an element of legal reality.[13]

The concept of public interest has been the subject of extensive research in the science of administrative law. As indicated in the literature, the concept of public interest always depends on the adopted system of values and is not closed conceptually.[14] It must be acknowledged that there is no rational justification for creating a legal definition of 'public interest' as it is impossible to construct one objective definition of public interest.[15] When discussing the public interest, it must be underlined that the intention of acting stems from implementing goals for the common good, not from an individual goal. Its importance should be interpreted in relation to constitutional values.[16] In the opinion of M. Wyrzykowski, the concept of public interest is defined by basic, universally recognized values for which there is a fundamental social consensus.[17]

E. Schmidt-Aβmann, juxtaposing the concepts of public and private interest, indicates that the public interest is the one that is aimed at directly supporting a common goal, which, however, cannot be identified with the general interest. Still, when the state's interest as a community is at stake, we can talk about common interests. The author stresses the need to weigh public and private interests, as both can serve the same purpose.[18]

In France, the clash of public interest with private interest was most evident in a very intense study by J. Ellul, who compared the concept of general interest to a rhetorical device used by the bourgeois class to impose the ideal of progress, regardless of the costs for individuals. He strongly opposed the notion that technical progress was in the general interest since the venture could be very

[11] See W. Rozwadowski, *Prawo rzymskie. Zarys wykładu wraz z wyborem źródeł,* Poznań 1992, p. 26.

[12] Arystoteles*, Polityka,* Book III, Part 4.

[13] Z. Brodecki, B. J. Kowalczyk, *op. cit*., p. 111.

[14] J. Zimmermann, *Prawo administracyjne,* Zakamycze 2006, pp. 265-266.

[15] W. Jakimowicz, *Publiczne prawa podmiotowe,* Zakamycze 2002, p. 115.

[16] L. Bielecki, *Pojęcie „interesu publicznego" (społecznego)*, (in:) M. Zdyb, J. Stelmasiak (ed.), *Prawo administracyjne*, Warszawa 2016, p. 109.

[17] After: Z. Duniewska, *Cel publiczny, interes publiczny i dobro wspólne,* (in:) M. Stahl (ed.), *Prawo administracyjne. Pojęcia instytucje, zasady w teorii i orzecznictwie*, Warszawa 2019, p. 86.

[18] E. Schmidt-Aβmann, *Ogólne prawo administracyjne jako idea porządku. Założenia i zadania tworzenia systemu prawnoadministracyjnego,* Warszawa 2011, p. 192.

questionable, similarly to its results.[19] On the other hand, F. Rangeon equated the concept of public interest with ideology.[20]

Strong links between administrative law and public economic law[21] make many representatives of public economic law draw from the theory of administrative law also as regards decoding the concept of public interest. They treat it as an element of the general principles of public economic law, within the scope of which the realization of the common good based on a common idea and a common goal was distinguished.[22] When defining 'administrative, economic law', A. Chełmoński pointed out that it reflects mutual sequences 'expressed in the attempt to satisfy the public good, on the one hand, and protect the rights and freedoms of the individual's interests, on the other'.[23] The public interest is recognised in the context of principles of public economic law also by M. Zdyb, who states that there is no public interest that digresses from the interest of an individual and that 'weighing interests makes sense only when both interests will come down to the same level and one can look at it through the prism of interests at stake'.[24] In turn, according to K. Jaroszyński, 'the public interest embraces the values necessary for the survival and development of a community, including the protection of rights and freedoms of other people'.[25]

The protection and realisation of public interest is the main objective of public administration within the area of public economic law. A. Borkowski is of the opinion that 'Public interest is not an independent entity. Its meaning depends on the social context in the sense of realising certain values accepted and desired in a given society at a certain time. Hence, the public interest requires continuous redefinition, analysis, re-evaluation, and assessment. Justified in this process is

[19] cf.: J. Ellul, *Exégèse des nouveaux* lieux communs, Paris, Calmann – Lévy, 1966.

[20] cf.: F. Rangeon, *Idéologie d'intérêt général*, Paris, Éditions Economica, 1986. As an example of a conflict of public and private interest, the author cited the airport project in Notre Dame des Landes, which was completed after several decades of political, legal and economic struggle only in 2018.

[21] T. Rabska, R*efleksje nad nauką publicznego prawa gospodarczego,* Roczniki Nauk Prawnych, Vol. XXI, No. 1, 2011, p. 270.

[22] Similarly L. Kieres, *Konstytucyjne publiczne prawo gospodarcze,* Ruch Prawniczy Ekonomiczny i Socjologiczny 2014, No. 2, p. 200.

[23] A. Chełmoński, *Realizacja dobra publicznego a ochrona interesów jednostki*, (in:) A. Borkowski, A. Chełmoński, M. Guziński, K. Kiczka, L. Kieres, T. Kocowski*, Administracyjne prawo gospodarcze*, Kolonia Limited 2005, p. 65.

[24] M. Zdyb, *Publiczne prawo gospodarcze,* Kraków – Lublin 1997, p. 100.

[25] K. Jaroszyński, *Klasyfikacja funkcji administracji gospodarczej*, (in:) H. Gronkiewicz-Waltz, M. Wierzbowski (ed.), *Prawo gospodarcze. Zagadnienia administracyjnoprawne*, Warszawa 2017, p. 191.

the participation of jurisprudence of common and administrative courts and the Constitutional Tribunal'.[26]

Whereas R. Blicharz writes about the public interest as a universal category classified as values. On the other hand, A. Żurawik, by systematizing the concept of public interest designated on the basis of value criterion, presents the so-called axiological concept in which value and good complement each other. In this sense, the public interest is assessed from the perspective of a specific community. The axiological rationale of public interest forces the need to refer to specific situations and changes taking place in society. Another concept links public interest with goals (the so-called praxeological concept) regarding relations between the state and the public interest, in which public interest is not considered the same as the interest of the state. Another concept is a notion that links public interest and needs. However, when determining the meaning of the concept of public interest, it is reasonable to apply the deduction method, i.e., adopting *a priori* a specific labelled definition of public interest and then examining how the legal status based on a legal norm meets the requirements of the facts understood in such way. This is how F. Longchamps formulated this concept. A. Żurawik also indicates the so-called mixed concepts, which combine different foundations of interest, in which values and goals complement and condition each other. E. Żurawik listed Modliński, M. Wyrzykowski, A. Szafrański, and W. Jakimowicz as representatives of this concept.

3. RIGHT TO MAKE A MISTAKE – THE ESSENCE AND OBJECTIVES OF THE REGULATION

The institution of the right to make a mistake entered into force on 1 January 2020. It does not embrace all entrepreneurs but only those who are listed in the Business Activity Central Register and Information Record (CEIDG) and who violated the law related to their business activity within the period of 12 months from the date of undertaking business activity for the first time or again after at least 36 months from the date of its last suspension or termination. Limiting the application only to natural persons entered into the CEIDG[27] was intentional. This was intended to eliminate potential abuses consisting in situations where, among others, 'persons establishing, for example, a limited liability company could bring

[26] A. Borkowski, *Interes publiczny a partnerstwo publiczno – prywatne,* (in:) J. Blicharz (ed.), *Prawne aspekty prywatyzacji*, Prace Naukowe Wydziału Prawa, Administracji i Ekonomii UWr, Wrocław 2012, p. 445.

[27] M. Etel, *Prawo do popełnienia błędu według przepisów ustawy – Prawo przedsiębiorców,* Przegląd Ustawodawstwa Gospodarczego, 2021, No. 10, p. 38.

about its liquidation after a year from the commencement of its business activity and the commencement of operations of a new company with practically the same profile, assets, and personnel, which would once again benefit from the benefits of the said law'.[28] The right to make a mistake is also unrelated to the size of an entrepreneur.[29]

The legislator not only deliberately limited the subjective scope of the institution of the right to make a mistake but also specified what law violations he had in mind. Namely, only those that result in the initiation of proceedings by police penal orders or proceedings for the imposing or levying of an administrative fine – before imposing a fine on an entrepreneur by way of a penalty ticket or levying an administrative fine on him, this authority calls on an entrepreneur, by means of an order, to remove the identified violations of the law and the effects of these violations, if such effects occurred, within the deadline prescribed by them. Pursuant to Article 21a sec. 2 of the Entrepreneurs' Act, in the event of proceedings by police penal orders, a representative of the competent authority may collect a written statement from an entrepreneur in which an entrepreneur undertakes to remove the identified violations of the law and the effects of these violations, if such effects occurred, within the prescribed deadline. In this case, the competent authority does not call on an entrepreneur to remove the identified violations of the law and the effects of these violations. Removal of violations may occur by submitting a statement 'on the spot' (directly) without the need for a separate call by means of an order. It should be pointed out that if an entrepreneur refuses to submit a statement, he is deprived of benefiting from this provision. It is also essential that correcting the error will not always be possible at the same time as submitting a statement. Therefore, the authority may set a deadline for an entrepreneur to remove the violations. Pursuant to Article 21a sec. 3 of the Entrepreneurs' Act, if an entrepreneur abides the request or fulfils the obligation contained in the written statement, the competent authority will refrain from imposing or levying an administrative fine on him. Instead, the proceedings will end up with a warning, and if the violation of the law is a petty offense or a tax offense, an entrepreneur will not be subject to a penalty.[30]

The provision of Article 21a sec. 5 of the Entrepreneurs' Act also provides for the possibility that an entrepreneur who violates the law will be able to escape penalties if he voluntarily, without any call, ceases to violate the law and removes the effects of these violations (voluntary disclosure).[31] The drafter also indicates that 'solutions similar to voluntary disclosure are introduced by Article 21a sec.6 of the Entrepreneurs' Act in respect of acts for which fines would be imposed by

[28] Justification of the Law, printed matter No. 3622, p. 51.

[29] *Idem*, pp. 51-52.

[30] *Idem*, p. 49.

[31] cf. A. Hołda-Wydrzyńska, *'Prawo do popełnienia błędu' w świetle nowelizacji Prawa przedsiębiorców,* Acta Universitatis Wratislaviensis, Prawo CCCXXIX, No. 3977, 2019, p. 81.

way of a penalty ticket, i.e., petty offenses and tax offenses. However, it would be possible if an entrepreneur submitted the corresponding notification. It could be, however, submitted also to the representative of the authority present on the spot'.[32]

From the public interest perspective, not only subjective and time-related limitations but also the introduction of subject-matter restrictions are relevant. The legislator accepted that despite the fulfillment of subjective and time-related prerequisites, the right to make a mistake cannot always be exercised. It concerns situations indicated in Article 21a sec. 8, i.e., such cases when: 1) violation concerns the provisions of law that have been violated by an entrepreneur in the past, or 2) violation of the law is flagrant, or 3) it is not possible to rectify the violations of the law or they have caused irreversible consequences, or 4) the need for imposing a fine by way of a penalty ticket or imposing, or levying an administrative fine results from a ratified international agreement or directly applicable provisions of law of the European Union, or 5) the violation of the law consists in conducting business activity despite the lack of a license, permit or entry in the register of regulated activities required by law, or operating without obtaining a consent, permit or permission of the competent authority for this action beforehand, if the provisions provide for the obligation to obtain them, or activities inconsistent with such consent, permit or permission, or 6) separate provisions providing for imposing a fine by way of a penalty ticket or imposing, or levying an administrative fine for a failure to implement post-audit recommendations.

In the justification for a draft of the law amending certain acts in order to limit regulatory burdens, it is indicated that the idea underlying the new institution is that the introduced regulations can be used as a kind of lesson for an entrepreneur who, by exercising the right to make a mistake, was also instructed about how to proceed in order to avoid possible penalties in the future. That is why the subsequent violation of the law will result in specific sanctions.

The right to make a mistake also cannot be exercised in a situation of gross wrongdoing. When determining whether this is such a case, it is necessary to take into account the specific nature of the violation, the type of business conducted, the behaviour of an entrepreneur, the time and nature of the violation, and the assessment of the importance of the good protected by law. In the justification for a draft of the law, it was indicated that an example of such a violation may be 'a violation of the obligation to pay the electronic fee referred to in Article 13 sec. 1 point 3 of the Act of 21 March 1985 on public roads.[33] This fee was introduced in order to provide funds for the implementation of road construction projects. Since the construction of roads in the Republic of Poland is treated by the national legislator and the Constitutional Tribunal as a goal subject to constitutional protection'.[34]

[32] Justification of the Law, printed matter No. 3622, p. 50.

[33] Consolidated text: Journal of Laws of 2022, item 1693, as amended.

[34] Justification of the Law, printed matter No. 3622, p. 54.

Running a business without a license, permit, or entry in the register of regulated activities is considered a distinct type of gross violation of the law.

It is also worth noting that 'there may be instances where the removal of violations of the law is not possible or where these violations have caused irreversible consequences'.[35] Imposing an obligation on the competent authority to request an entrepreneur to remove the identified breaches of the law and the effects of these violations when it is not objectively possible to meet these requests, is pointless.[36]

The right to make a mistake also does not apply when there is a need to impose a fine by way of a penalty ticket or imposing or levying an administrative fine arising from a ratified international agreement or directly applicable provisions of European Union law. This exclusion stems from the system of sources of law adopted in the Constitution of the Republic of Poland, in which ratified international agreements or directly applicable provisions of European Union law take precedence over the Act.

The drafter also explained that the 'right to make a mistake' will not apply in situations where the provisions of other acts provide for imposing a fine by way of a penalty ticket or imposing, or levying an administrative fine for a failure to comply with post-audit recommendations. Procedures provided for in such separate regulations are already implementing the primary intention of the 'right to make a mistake', i.e., punishing an entrepreneur only if he fails to rectify irregularities indicated by the competent authority.[37]

The right to make a mistake also does not apply if a fine by way of a penalty ticket is imposed as a result of a road check. In matters linked with the SENT system,[38] the Ombudsman for Small and Medium-Sized Enterprises pointed out that the so-called rational punishment, which means that one should refrain from punishment when circumstances of the case lead to the belief that the non-observance of law: was of a formal nature; was a consequence of an error or unawareness of an entrepreneur; did not result in depletion of the state budget and the premises of public interest; or would be possible if an entrepreneur submitted the corresponding notification vital interest of an entrepreneur – did not occur.[39] The subject of the Ombudsman's critical position were such instances of applying the provisions of the SENT Act by customs and tax officers, heads of customs and tax offices, and directors of tax administration chambers which led to the violations of the entrepreneurs' rights in the SME sector and are contrary to the objective of adopting the SENT Act. In the Ombudsman's opinion, the provision of Art. 22 sec. 3

[35] *Idem,* p. 55.

[36] After: justification of the Law, printed matter No. 3622, p. 54.

[37] Justification of the Law, printed matter No. 3622, p. 56.

[38] Act of 9 March 2017 on the monitoring system for the road and rail transport of goods and trading in heating fuels, consolidated text Journal of Laws of 2023 item 104 – SENT Act.

[39] SME Ombudsman, SENT system report. Issue of imposing fines on entrepreneurs, 9 December 2020.

of the SENT Act, stipulating the possibility of refraining from the imposition of a fine, is not applied in practice.[40]

In its judgment of 20 June 2020, the Voivodship Administrative Court in Warsaw decided that it was wrong to deem the SENT notification incomplete without a road permit (license) number. Since this deficiency was supplemented by the carrier in the notification already in the course of a road check, during which the driver also presented an extract from his transport license. The Voivodship Administrative Court did not share the opinion of the authorities of both instances, according to which refraining from imposing a penalty should be treated as a special institution and granting this type of relief would put the carrier in a privileged position in relation to other entities performing transport that fulfil the obligations arising from the SENT Act or pay fines for non-compliance.

In its judgment of 13 January 2023, the Supreme Administrative Court asked a very important question – 'Is it in the public interest to impose fines of several thousand zlotys on entities only for formal defects related to the violation of obligations provided for in the SENT Act, or has there been a depletion of tax in this case; or whether the identified defect posed a real threat of depleting the tax revenue of the state budget by an entity in question (including, in particular, by making arrangements regarding this specific vehicle whose registration number was entered in the notification); whether it was committed as part of fraud or other crimes; whether or not this non-compliance bears the hallmarks of intentional action and is a sign of the carrier's disrespectful attitude as a professional to fulfil the obligations imposed by the Act; whether it happened once (occasionally) or the non-compliances occur so often with that carrier that they indicate at least undue diligence in conducting business; whether the imposition of a fine on the complainant was of a preventive nature with regard to subsequent transports; whether in the circumstances of the case the complainant meets the purpose of the SENT Act; whether the fine imposed on it does not violate the principle of proportionality provided for in Art. 31 sec. 3 of the Constitution of the Republic of Poland, which requires state authorities to apply only such measures which are necessary to achieve a specific purpose; what is the ratio of penalties imposed for transports performed at the same time by the same transport to the complaining party's income from these transports?'.[41]

At this point, it is worth referring to the applicable French regulation, as Polish solutions broadly refer to it. J. Chevallier rightly points out that the very term the 'right to make a mistake' can be misleading since it is rather about the right

[40] Using a sledgehammer to crack a nut. SME Ombudsman's report https://www.truck.pl/pl/article/1343/z-armat%C4%85-na-much%C4%99-czyli-przesadne-kary-w-systemie-sent-raport-rzecznika-ma%C5%82ych-i-%C5%9Brednich-przedsi%C4%99biorc%C3%B3w,9 (accessed: 20 March 2023).

[41] Judgment of the Supreme Administrative Court of 13 January 2023, II GSK 684/22, https://orzeczenia.nsa.gov.pl/doc/723CA5F300 (accessed: 20 March 2023).

to correct mistakes committed in good faith in order to avoid punishment.[42] In French law (LOI n° 2018-727 du 10 août 2018 *pour un Etat au service d'une société de confiance*),[43] the legislator assumed that it is necessary to transform the relationship between administrative authorities and citizens, in which administration authorities should act prudently and support any initiatives communicated by citizens. The idea of the *pour un Etat au service d'une société de confiance* Act is about creating a new model of relations between administrative authorities and citizens, which should be based on mutual trust. The adopted solutions allow citizens, thus not only entrepreneurs, to correct 'correctable' mistakes in mandatory tax declarations and filings (ESFP) and in the social security system (PMSS), provided that they do so before the expiry of the relevant deadline (if there is such a deadline), which, if not corrected, might result in penalties. This right covers material errors and errors emerging from not knowing the applicable law. It is also subject to certain conditions. Firstly, citizens may claim they do not know specific provisions only once. Secondly, they must not act in bad faith or commit fraud. In this case, the burden of proof is on the government (authority). Therefore, the Act establishes a new principle under which 'the government (administrative authority), as a rule, trusts natural and legal persons acting in good faith'.[44]

The Act specifies two ways of correcting mistakes by citizens: in a 'proactive' mode ('proactively' when a citizen corrects a mistake without a reminder) and in a 'reactive mode ('reactively' when an authority notifies a citizen of the mistake and asks them to correct it). As long as the provided information is correct, a citizen will not be punished for the original mistake.[45]

4. PRINCIPLE OF TRUST OF ENTREPRENEURS IN ADMINISTRATION BODIES

Referring to the principle of trust, it should be stressed that the Entrepreneurs' Act, as one of the few legal acts in Poland, was preceded by a preamble, the doctrine of which makes it essential in the context of principles and values in the science of public economic law.[46] The content of the preamble includes principles that are not *ad hoc*; their amalgamation creates not only a model of

[42] J. Chevallier, *Trust and the right to make mistakes,* https://www.economie.gouv.fr/igp-de-editions-publications/thearticle_n6, (accessed: 20 March 2023)

[43] https://www.legifrance.gouv.fr/loda/id/JORFTEXT000037307624 (accessed: 20 March 2023).

[44] *Idem*.

[45] *Idem*.

[46] K. Kokocińska, *Podstawowe wartości i zasady porządku gospodarczego*, (in:) M. Wierzbowski (ed.), *Konstytucja biznesu. Komentarz*, Warszawa 2019, p. 29 *et seq*.

prevailing economic relations but also stresses the importance of an entrepreneur as an administered entity, which is supposed to have a sense of legal certainty.[47] The legislator acknowledges the principle of legal certainty in the provision of Article 14 of the Entrepreneurs' Act and in the provision of Article 12 of this Act introduces the principle of entrepreneurs' trust in public authorities. Both of these principles are closely interrelated. 'The principle of citizen's trust in the state and the law enacted by it is based on legal certainty, understood in the jurisprudence of the Constitutional Tribunal as a certain set of features vested in the law, which ensure legal security for an individual'.[48]

The Constitutional Tribunal points out that the principle of trust is a manifestation of the principle of the rule of law, from which arises the need to: protect citizens' trust in the state and the law enacted by it; provide legal security; maintain appropriate *vacatio legis*, certainty and specificity of law; maintain the principles of decent legislation and respect for the sustainability of court judgments and final administrative decisions; use the principle of non-retroactivity.[49] In the jurisprudence of the Constitutional Tribunal, Article 2 of the Constitution is of fundamental importance for the legal situation of citizens and state authorities and must be considered as the foundation of the constitutional and legal order of the Polish State.[50] The principle of protecting the citizen's trust in the state and the law enacted by it is also defined in the jurisprudence of the Tribunal as the principle of loyalty of the state towards the citizen. 'It is expressed in such making and applying the law to prevent it from becoming a kind of trap for a citizen who should be able to sort his things out in confidence that he does not expose himself to legal consequences that are unforeseeable at the time of making a decision and that his actions, undertaken in compliance with applicable law, will also be recognized by the legal order in the future. New regulations adopted by the legislator must not surprise their addressees. They should have time to adapt to the amended regulations and calmly decide how to proceed.[51]

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[47] J. Jagielski, P. Gołaszewski, *O zasadzie zaufania administracji publicznej do jednostki w prawie administracyjnym,* (in:) J. Jagielski, D. Kijowski, M. Grzywacz (ed.), *Prawo administracyjne wobec współczesnych wyzwań. Księga jubileuszowa dedykowana Profesorowi Markowi Wierzbowskiemu*, Warszawa 2018, p. 37.

[48] Speech by Dr. J. Kochanowski, the Human Rights Defender at the scientific conference 'The language of Polish legislation, or comprehensibility of the message and the application of law', https://bip.brpo.gov.pl/pliki/1165502902.pdf (accessed: 20 March 2023).

[49] Judgment of the Constitutional Tribunal of 5 January 1999, K. 27/98. Journal of Laws of 1999 No. 1, item 5.

[50] See judgment of the Constitutional Tribunal of 21 March 2001, K. 24/00, M.P. 2001 No. 10, item 160.

[51] Judgment of the Constitutional Tribunal of 15 September 1998, K 10/98, OTK ZU 1998, No. 5, item 64.

5. CONCLUSIONS

The consequence of implementing the principle of entrepreneurs' trust in public authorities is the introduction of the institution of the right to make a mistake. Based on the assumption that there is a specific catalogue of apparent mistakes that emerging entrepreneurs make,[52] and correction of which is more desirable from the perspective of public interest than punishing an entrepreneur, this solution is most certainly justified. The cited judgment of the Supreme Administrative Court of 13 January 2023 contains all the essential elements that should be at the heart of applying the institution of the right to make a mistake. The public interest, which is based on constitutional principles – a democratic state ruled by law and the principle of proportionality – when granting an entrepreneur the right to make a mistake, requires to consider several circumstances, including the purpose of this institution, the type of culpability, the entrepreneur's conduct, the consequences of the entrepreneur's mistake and taking into account whether the benefits of applying the institution are more favorable from the perspective of the entrepreneur's trust in the authorities than sanctioning violations that are of marginal importance. Acting on the basis of the principle of trust creates a new type of relationship between entrepreneurs and state authorities and this right direction is acknowledged by solutions adopted in the Entrepreneurs' Act – established interpretation or resolving legal and factual doubts in favor of entrepreneurs.

REFERENCES

Arystoteles, *Polityka*, Book III, Part 4

Bielecki L., *Pojęcie „interesu publicznego" (społecznego)*, (in:) Zdyb M., Stelmasiak J. (ed.), Prawo administracyjne, Warszawa 2016

Blicharz J., *Kategoria interesu publicznego jako przedmiot działania administracji publicznej*, Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji 2004, Vol. 40

Blicharz R., *Wartości w publicznym prawie gospodarczym*, (in:) Powałowski A. (ed.), *Aksjologia publicznego prawa gospodarczego*, Warszawa 2022

Borkowski A., *Interes publiczny a partnerstwo publiczno – prywatne*, (in:) Blicharz J. (ed.), *Prawne aspekty prywatyzacji*, Prace Naukowe Wydziału Prawa, Administracji i Ekonomii UWr, Wrocław 2012

Brodecki Z., Kowalczyk B.J., *Podstawowe wartości jurysprudencji rzymskiej*, Gdańskie Studia Prawnicze, Vol. XXXV 2016

[52] https://www.ifrancja.fr/5-podstawowych-bledow-popaelnionych-micro-entrepreneurs/ (accessed: 20 March 2023).

Chełmoński A., *Realizacja dobra publicznego a ochrona interesów jednostki*, (in:) Borkowski A., Chełmoński A., Guziński M., Kiczka K., Kieres L., Kocowski T., *Administracyjne prawo gospodarcze*, Kolonia Limited 2005

Duniewska Z., *Cel publiczny, interes publiczny i dobro wspólne*, (in:) Stahl M. (ed.), *Prawo administracyjne. Pojęcia instytucje, zasady w teorii i orzecznictwie*, Warszawa 2019

Ellul J., *Exégèse des nouveaux lieux communs*, Paris, Calmann – Lévy, 1966

Etel M., *Prawo do popełnienia błędu według przepisów ustawy – Prawo przedsiębiorców*, Przegląd Ustawodawstwa Gospodarczego, 2021, No. 10

Hołda-Wydrzyńska A., *„Prawo do popełnienia błędu" w świetle nowelizacji Prawa przedsiębiorców*, Acta Universitatis Wratislaviensis, Prawo CCCXXIX, No. 3977, 2019

Jagielski J., Gołaszewski P., *O zasadzie zaufania administracji publicznej do jednostki w prawie administracyjnym*, (in:) Jagielski J., Kijowski D., Grzywacz M. (ed.), *Prawo administracyjne wobec współczesnych wyzwań. Księga jubileuszowa dedykowana Profesorowi Markowi Wierzbowskiemu*, Warszawa 2018

Jakimowicz W., *Publiczne prawa podmiotowe*, Zakamycze 2002

Jaroszyński K., *Klasyfikacja funkcji administracji gospodarczej*, (in:) Gronkiewicz-Waltz H., Wierzbowski W. (ed.), *Prawo gospodarcze. Zagadnienia administracyjnoprawne*, Warszawa 2009

Kieres L., *Konstytucyjne publiczne prawo gospodarcze*, Ruch Prawniczy Ekonomiczny i Socjologiczny 2014, No. 2

Komierzyńska E., Zdyb M., *Klauzula interesu publicznego w działaniach administracji publicznej*, Annales Universitatis Mariae Curie-Skłodowska Lublin – Polonia, 2016, Vol. LXIII, 2

Kokocińska K., *Podstawowe wartości i zasady porządku gospodarczego*, (in:) Wierzbowski M. (ed.), Konstytucja biznesu. Komentarz, Warszawa 2019

Longchamps F., *Osobiste świadczenia wojenne*, Lwów 1936

Rabska T., *Refleksje nad nauką publicznego prawa gospodarczego*, Roczniki Nauk Prawnych, Vol. XXI, No. 1, 2011

Rangeon F., *Idéologie d'intérêt général*, Paryż, Éditions Economica, 1986

Rozwadowski W., *Prawo rzymskie. Zarys wykładu wraz z wyborem źródeł*, Poznań 1992

Schmidt-Aβmann E., *Ogólne prawo administracyjne jako idea porządku. Założenia i zadania tworzenia systemu prawnoadministracyjnego*, Warszawa 2011

Żurawik A., *„Interes publiczny", „interes społeczny i „interes społecznie uzasadniony". Próba dookreślenia pojęć*, Ruch Prawniczy Ekonomiczny i Socjologiczny, 2013, Vol. 2

Żurawik A., *Interes publiczny w prawie gospodarczym*, Warszawa 2013

Żurawik A., *Pojęcie interesu publicznego*, (in:) Hauser R., Niewiadomski Z., Wróbel A. (ed.), *System prawa administracyjnego. Publiczne prawo gospodarcze*, Vol. 8A, Warszawa 2013

Zdyb M., *Interes publiczny w orzecznictwie Trybunału Konstytucyjnego*, (in:) Korybski A., Kostyckij M.W., Leszczyński L. (ed.), *Pojęcie interesu w naukach prawnych, prawie stanowionym i orzecznictwie sądowym Polski i Ukrainy*, Lublin 2006

Zdyb M., *Publiczne prawo gospodarcze*, Kraków – Lublin 1997

Zimmermann J., *Prawo administracyjne*, Zakamycze 2006

Case law

Judgment of the Constitutional Tribunal of 5 January 1999, K. 27/98. Journal of Laws of 1999 No. 1, item 5

Judgment of the Constitutional Tribunal of 21 March 2001, K. 24/00, M.P. 2001 No. 10, item 160

Judgment of the Constitutional Tribunal of 15 September 1998, K 10/98, OTK ZU 1998, No. 5, item 64

Judgment of the Supreme Administrative Court of 13 January 2023, II GSK 684/22, https://orzeczenia.nsa.gov.pl/doc/723CA5F300

Other sources

https://www.ifrancja.fr/5-podstawowych-bledow-popaelnionych-micro-entrepreneurs/ (accessed: 20 March 2023)

https://www.economie.gouv.fr/igpde-editions-publications/thearticle_n6, (accessed: 20 March 2023)

https://www.truck.pl/pl/article/1343/z-armat%C4%85-na-much%C4%99-czyli-przesadne-kary-w-systemie-sent-raport-rzecznika-ma%C5%82ych-i-%C5%9Brednich-przedsi%C4%99biorc%C3%B3w,9 (accessed: 20 March 2023)

https://www.legifrance.gouv.fr/loda/id/JORFTEXT000037307624 (accessed: 20 March 2023)

https://bip.brpo.gov.pl/pliki/1165502902.pdf (accessed: 20 March 2023)