

# IS AWARDING A MEDAL AN ADMINISTRATIVE DECISION?

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## Abstract

In this article I tried to show that the public administration agency in Poland should use the regulations of the Code of Administrative Proceedings in the procedure of awarding a medal. This question is not clear in doctrine's opinions. Some of authors think that decorating with a medal is not an administrative decision especially due to the absence of a legal matter on the interested person in result of the case. They think that the law of holding a medal is not a law, but rather a reward for deeds (for example a deed of heroism, act of courage). The main aim of this article is to show the procedure rights of the person interested (of awarding a medal) in each stage of the procedure (which is of on administrative character) and try to consider whether the person interested can change the result of their case by appealing against it.

## Key words

Administrative decision, awarding a medal, a medal, procedure of awarding a medal, procedure rights of person interested of awarding a medal.

Awarding citizens for virtues, civic attitudes and outstanding achievements is a national tradition in the Third Republic of Poland (as in many other countries in the world). Under the today's legal conditions, the implementation of this custom is ensured by the legal regulations of the Act of 16th October 1992. - On medals and decorations (hereinafter referred to as: A.M.D.). Pursuant to its article 1 section 2 medals and decorations are the highest status distinctions for civic and military merits given in the time of peace or war for the sake of Poland's glory and development. Like in the Czech Republic, they are awarded by the head of the state (the President of the Republic of Poland). Awards are given to Polish citizens as well as foreigners for the merits they have given to the Republic of Poland or its citizens, and in accordance with international customs. A detailed procedure of the proceedings regarding the award of medals and decorations was regulated, except for the regulations mentioned above, with the Resolution by the President of Poland as of 15th December 2004.<sup>1</sup> (hereinafter referred to as: The Resolution of 15th December 2004), which is the Act's executive tool. As per the title of the foregoing paper, the answer regarding the form in which the head of the state makes a declaration of will on awarding a medal, as well as the consequences this produces will be the main issues presented herein.

Giving a positive answer to this basic question raised in the title hereof, the procedure of awarding medals should be deemed as one of the legislative administrative procedures, with the regulations of the Code of Administrative Procedure applying (hereinafter referred to as C.A.P.). The person concerned (to be awarded a medal) and other participants of the

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<sup>1</sup> The Resolution by the President of Poland of 15th December 2004 on a detailed procedure of awarding medals and decorations as well as forms of appropriate documents (Journal of Laws of 2004., no 277, item 2743). The last amendment to this act took place on 10th October 2008 with the Resolution by the President of Poland of 31st July 2007 amending the resolution on a detailed procedure of awarding medals and decorations as well as forms of appropriate documents (Journal of Laws of 2007, no 151, item 1076).

proceedings would hold legal rights as results from the Act's regulations. Using these rights, they could influence the course of the proceedings from the moment of their commencement till they are accomplished with an administrative act, including, which is important, the questioning of the very act in the course of an appeal (within the framework of the institution for the reviewing of the case by the body that has issued the decision under the Act. 127 § 3 C.A.P.).

At the same time, it is worth examining what entities would be entitled to appeal against the decision of the President of Poland as regards these issues (following the appeal in by means of administrative proceeding)? Assuming that the President's decision is not an administrative one, awarding a medal will be a special declaration of President's will, which results from the general prerogatives of President (as regulated by the Constitution). It could be altered only by President himself in the course of the proceedings commenced by virtue of his office. The change to the decision could be made only by means of another decision: on depriving a person a medal and only if the medal was awarded on error grounds or the person awarded committed a deed that made them unworthy of the medal or decoration. The act of awarding a medal could be subject to the examination conducted by the administrative court for decisions other than the administrative ones.

In accordance with the definition commonly accepted in administrative law, an administrative decision is an act undertaken based on the norms of the administrative law by the competent public administration authority upon completing legally defined (by C.A.P. regulations) proceedings (defined as general or legislative proceedings) stipulated by the law. As a decisive and unilateral declaration of will, it decides on the rights and obligations of the particular addressee in their individual case. It differs from other forms of public administration authorities' activity as it is an external act – its addressee cannot be an entity that is subordinated, officially or organizationally, to the authority that decides on its rights and obligations (in other words, that does not decide on the rights and obligations that result from these relations). Analyzing the problem of classifying the act of awarding a medal as an administrative decision, first of all, one should define the following:

1. Whether the legal grounds for awarding a medal are administrative law regulations and whether it is an act addressed to the outside of the public administration structures?
2. Whether awarding a medal is accompanied by defining the rights and obligations of this decision's addressee?
3. Whether the addressee of the medal awarding decision will always be an individually defined entity?

The answer to the above questions will enable us to resolve another one that refers to defining the rights of the participants in this procedure (in their course or upon their completion).

Ad 1

The regulations that give the President of Poland the right to award medals and decorations are contained in the Constitution of Poland of 2nd April 1997.<sup>2</sup> Pursuant to art. 138 and 144, section 3 item 16 of the Constitution, this right is a special prerogative of the head of the state,

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<sup>2</sup> Journal of Laws of 1997, No. 78, item 483 and Journal of Laws of 2001, No. 28, item. 319.

the execution of which takes the form of a decision that does not need to be countersigned by the Prime Minister. The relation between the individual (a Polish citizen or a foreigner, including also a military formation or a place in the case of some medals and decoration) and the authority acting on behalf of the state is defined by the Act on medals and decorations. The regulations are the norms of the commonly applied administrative law, because it is on their basis that a typical administrative and legal relation is established. Its fundamental features include the following: the authority of one of the parties (to this relation), and what follows – no equality between the parties that participate in it.

A person to be awarded a medal is every Polish citizen (as well as a foreigner), whose merits and outstanding achievements justify this award. Thus, it cannot be said that the act of awarding a medal is an act of the internal nature. Outstanding achievements in the service for the country within the framework of the function performed in the public administration are not rewarded here. The decision made in relation to an official will be of external character towards them, as their civic behaviour is rewarded and not their services to their employer. The latest amendments to A.M.D. reflect this opinion. As results from art. 3 section 1 and 2 of the Act (as per the content of 10th October 2007), medals cannot be awarded to officials in managerial positions while they hold the position, as well as to the members of Parliament and senators during their seat. Of course, the amendment should be read as an example of the correctly understood medal awarding policy, with this term having been used by prof. Szreniawski. It is an important factor in establishing the correct interpersonal relations, which influences the activation of citizens and groups of citizens in the right direction, the effective and supported by the society activities of the state authorities, particularly of the public administration apparatus. According to the author, the principles of awarding medals (medal awarding policy) should be closely related to the actual achievements and accomplishments of the persons awarded in their service to the state and society, and not to their performance of the tasks within their regular obligations resulting from their professional work, or to their various connections, e.g. political or social ones, with the applicants. Undoubtedly, the change is to strengthen the social belief in the existence of objective criteria for awarding medals. It is also an execution of the constitutional principle of citizens' equality as regards access to medals.

## Ad 2

Decorating with the majority of medals (and decorations) takes the form of a decision, which is then published in "Monitor Polski"- the Official Journal of the Republic of Poland. The publication of the President's decision may be abandoned in cases of important state interest. Therefore, it should be considered whether the publishing of this act brings more rights and obligations to its addressee.

The opponents of the view that assumes the decision of the President of Poland to change the legal situation of the person awarded think that when the decision is published, it is only a confirmation of some factual state of civil or military merits, civic virtues, outstanding achievements, or the fact of having been married for fifty years. A recognized Polish constitutionalist, prof. Piotr Winczorek states that: "being awarded a medal or decoration is not an individual's subjective right, but an honourable reward"<sup>3</sup>. This is confirmed by another great authority on constitutional law, prof. Paweł Sarnecki. He claims that „awarding a medal

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<sup>3</sup> P. Winczorek: Komentarz do Konstytucji z dnia 2 kwietnia 1997 roku, Warszawa: Liber, 2000, 321, ISBN: 83-7206-048-7, page: 183.

or decoration is not an administrative decision, even though legal regulations associated some privileges to being awarded a medal (e.g. retirement allowances)<sup>4</sup>. A more liberal view is presented by prof. Banaszak (also a representative of the constitutional law doctrine). He states that awarding a medal, despite being not an administrative decision, refers also to the sphere of the awarded person's entitlements<sup>5</sup>. Therefore, it is worth defining these entitlements and obligations that will be imposed on the person once they have been awarded a medal.

Pursuant to § 8 section 2 and 3 of the Resolution of 15th December 2004, a medal along with the identity card is presented to the person rewarded within six months following the decision of the President of Poland on awarding a medal or decoration Both of the items are free of any charge. Once presented with the medal and card, the person becomes the only holder of these items. Such person also acquires the right to bear the medal in situations that are closely defined. The situations are indicated in the regulations of the Resolution by the President of Poland of 10th November 1992 on the description, material, dimensions, drawing models, and the manner and circumstances of wearing medals and decorations (hereinafter referred to as the Resolution of 10th November 1992). Pursuant to § 18 of the Act, "medals and decorations are worn mostly during:

- 1) national celebrations with the participation of the President of Poland, Parliament Chairman, or the Prime Minister,
- 2) official ceremonies during national and military holidays,
- 3) presenting medals and decorations,
- 4) other national ceremonies, according to the recommendations included in the invitation".

The content of § 19 of the Resolution imposes on the holder the obligations of wearing a full distinction of the medal held (at least the oldest one) in the above situations. What is more, this obligation was defined in detail by other regulations of the Resolution, which describe the manner medals should be worn, as well as oblige the holder to dress suitably to the grandeur of presenting the medal. The decision on awarding a medal will also oblige the holder to abandon any activities disreputable for people honoured with this distinction (committing a deed that qualifies for taking up proceedings to deprive the person of the medal). Moreover, it is worth noticing that (pursuant to art. 61 § 1 of the Act of 20th May 1971. Petty Offences Code) unauthorized wearing of the medal in public places qualifies as an offence (with a fine up to PLN 1000 or a punishment of reprimand). It follows that the decision of the President of Poland on awarding a medal grants the person awarded the right to hold the medal, wear it in defined situations (obeying the obligation to adjust the outfit to the grandeur due to wearing a medal), and what is more, it cancels the possibility to punish the person holding a medal for the offence (due to no grounds for applying it).

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<sup>4</sup> P. Sarnecki in: L. Garlicki (red.): *Konstytucja Rzeczypospolitej Polskiej. Komentarz I*, Warszawa: Wydawnictwo Sejmowe, 1999, 530, ISBN: 83-7059-450-6, page: 268.

<sup>5</sup> B. Banaszak: *Prawo konstytucyjne*, Warszawa: Wydawnictwo C. H. Beck, 2004, 760, ISBN: 83-7387-567-0 page: 608.

One cannot accept the opinion of prof. Winczorek, as well as prof. Sarnecki, who claim that awarding a medal is not equivalent to awarding them specific rights and obligations. I cannot agree with the view presented by prof. Banaszak either. He refuses the resolution by the President of Poland the character of an administrative decision (as regards awarding a medal) due to the fact that the criteria for awarding medals and decorations are not clear, and the head of the state himself has much discretion in the scope of granting medals<sup>6</sup>. The author also claims that it is not possible for the person concerned to use any legal measures in order to question the decisions of the head of the state. He accepts, however, that awarding a medal refers to the sphere of rights of the person concerned and that this person may decide whether they will accept the award and whether and when they want to bear an external symbol of the distinction awarded to them (the right to refuse the medal is also granted to relatives of the person receiving the distinction posthumously). In spite of the fact that this declaration of will has not been defined in legal categories, it may, according to the author, bring a result of losing the effect of the President's Resolution towards the person awarded a medal.

Since the President's resolution on awarding a medal grants entitlements in the sphere of the rights and obligations of the person awarded a medal, cannot it have an influence on the shape of these entitlements in the course of the proceedings that awards the entitlements? This is about the right to make such a declaration of will with a legal effect that will result in public administration authorities' obligation to abandon the proceedings (before making a decision on the issue). Assuming that the above decision by the head of the state is an administrative one, and the regulations of A.M.D. that define the procedure of awarding medals are special regulations (*lex specialis*) to the general procedure regulations (stipulated by C.A.P.), such entitlement could be inferred from art. 105 § 1 C.A.P., which obliges the authority conducting the procedure to discontinue it, if it has become aimless. It needs emphasizing that there is a relation between the decisive authority and the beneficiary of the rights resulting from the future decision that is defined under the laws regulating the course of proceeding in a given case. The unclear criteria applied to state whether the merits of a citizen (as well as the achievements or civic virtues) are so outstanding as to award this person a medal are such for the person concerned as well. For various reasons, this person may not be interested in being awarded a medal. This person, presenting their standpoint while the proceedings are in progress, expresses their refusal to accept the entitlements awarded to them under the decision of the head of the state, and thus continuing the procedure will be pointless. Such petition should be treated as a request to discontinue the proceedings officially.

One needs to agree with prof. Banaszak that the person concerned has no entitlements to request to be awarded a medal. The proceedings are always initiated by the President of Poland. This does not involve the expression of will of the authority itself (the will to undertake the proceedings of its own accord), but the absence of legal interest on the part of the entities applying for initiating the procedure). However, assuming that the medal awarding decision is an administrative one, the person concerned will have the right to apply for reviewing their case (pursuant to art. 127 § 3 C.A.P.) and to complain about the decision of the administrative court. A consequence of this assumption will be the possibility of moving this act, also in case when the person concerned is willing to change the decision of the President of Poland refusing them to a medal.

Ad 3

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<sup>6</sup> Ibidem, page: 607.

When deeming the medal awarding act to be an administrative decision, one should consider whether its addressee will always be an individually defined entity. As mentioned before, the addressees of the decisions by the President of Poland may be both Polish citizens and foreigners. What will decide on a given person acquiring the rights and obligations resulting from holding a medal is their legal capacity, which lasts from birth to death. The regulations of A.M.D. stipulate some exceptions to this rule:

- 1) Pursuant to art. 7 medals and decorations can be awarded posthumously (the medal is received by the relatives of the deceased),
- 2) in case of one medal - the Silver Cross of the Virtuti Militari Order – it can be awarded to a military formation or place (pursuant to art. 11 section 4 A.M.D.).

The above situations may lead to the conclusion that a medal awarding decision is not the administrative one, as it is given in relation to: A physical person that has a legal interest and capacity to be awarded the rights and obligations under administrative law regulations, so the person has to be alive at the moment of issuing the act. Otherwise, the decision will be made invalid because taken with a violation of law regulations (art. 156 § 1 item 2 C.A.P.)<sup>7</sup>. However, it is worth considering the possibility of the relatives of the deceased, to whom the medal awarding decision is to refer, holding a legal interest in this case. I believe that it is possible to infer it from the law regulations, which are termed as the basic human rights in science. Pursuant to article 17 section 1 of the International Covenant on Civil and Political Rights of 1966,<sup>8</sup>: „no person should be prone to unauthorized or illegal interference in their private or family life, home or correspondence, or to illegal attempts on their honour and good reputation". The initiative of conducting the procedure in the case of awarding a medal to a deceased citizen should be conducted upon the consent from this person's family members. Having no such consent, the persons in charge of the proceedings interferes with the family life of the surviving relatives of the person to whom the decision is to refer. Furthermore, as claimed by prof. Piasecki in his comment to art. 23 of the Civil Code, among the rights that has not been listed in the content of the article and that make so called personal good, one should mention also the emotional sphere associated to the commemoration of the deceased<sup>9</sup>, which as stated by the Supreme Court in its sentence of 12th June 1968<sup>10</sup> may be subject to legal protection based upon art. 23 and 24 of the Civil Code. Therefore, the participation of the nearest family in the proceedings aiming to award a medal to the deceased and the right to express their will in this matter seem justified due to their personal legal interest related to the protection of the cult of the deceased and law regulations regarding the protection of family life.

Certain human community cannot be the address of an administrative decision either. The addressee may be only a physical person, who is the representative of this community.

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<sup>7</sup> The thesis was expressed in the judgment by the SAC in Warsaw on 27th April 1983 (File record no: II SA 261/83, published in: „Orzecznictwo Sądów Polskich” z 1984 r., zeszyt 5, poz.108).

<sup>8</sup> Journal of Laws of 1977r., no 38, item 167.

<sup>9</sup> K. Piasecki: Kodeks cywilny. Księga pierwsza. Część ogólna. Komentarz, Warszawa: Wydawnictwo Zakamycze, 2003, 484, ISBN: 8373332847, page: 56.

<sup>10</sup> File record no.: I CR 252/68, published in : „Orzecznictwo Sądu Najwyższego Izby Cywilnej” z 1970r., zeszyt 1, poz. 18.

The Supreme Administrative Court in Warsaw, in its sentence of 27th May 1988,<sup>11</sup> stated that an administrative decision resolves in each case the rights or obligations of the parties, and not of the people who are directly interested in resolving the matter. Mentioning a place or a fighting formation as the addressee in the administrative act makes it impossible to qualify it as a resolution that is a result of a general administrative procedure. As regards the possibility of issuing an administrative decision on awarding a medal to a place, one should consider how the term "place" should be understood. If it is a commune (rural or municipal), it is also a legal entity (as stipulated by the law). It may be regarded as a local government unit, which is not such an entity (on the condition that this is a result of the commune council's resolution). The entities defined in this way, as stipulated by art. 29 C.A.P., may be parties to administrative proceedings, and at the same time the addressees of administrative decisions.

Making an attempt to define the legal status of a „fighting formation”, one should reach to the law of the Act of 21st November 1967 on common obligation to defend the Republic of Poland. Despite the absence of the definition of the term itself: „a fighting formation” can be understood as „a military unit”, and thus such organizational unit, which makes part of the Armed Forces and functions based on the post granted by the Minister of National Defence. Moreover, it has a defined internal structure and appropriate equipment. It has the right to use its official seal with the national emblem of Poland and the name (number) of the unit. Hence, it is a state organizational unit, which does not hold legal personality, and as such can, in accordance with art 29 C.A.P., be a party to an administrative procedure.

The supporters of the opinion that refuses the medal awarding decision the character of an administrative decision could point out that there can be a situation in which the proceedings will regard a place being neither a commune nor commune assistance unit (so such that is not a local government unit without legal personality). Then, the addressee of the proceedings becomes their subject. Taking „a fighting formation” for a military unit may be, according to them, pointless, because the legal regulations on medals and decorations do not specify this term by recalling to General regulations that could be used for defining this term. Yet, will such a definition of the entities mentioned here improve the understanding of what actually are the medal awarding proceedings? Their administrative nature is beyond any doubt. Why should it not be deemed as one of the special administrative proceedings, which characterize with special solutions due to the result, with the regulations of C.A.P. to be applied?

The Resolution by the President of Poland on awarding a medal bears all the features of an administrative decision. It is a decisive and unilateral declaration of will, which defines the legal situation of a specific addressee in their administrative case. The addressee acquires the right to hold the medal, wear it particularly during important national ceremonies. At the same time, the addressee is obliged to behave in the manner that is proper for a person awarded a medal. The acquisition of this right discharges the person from the legally defined ban on bearing a medal without a legal title as this person has acquired this title by means of a decision. No definition of the means to verify a medal awarding decision (particularly a refusal to award a medal) can be reconciled with the content of art. 78 of the Constitution of Poland of 2nd April 1997, which stipulates that „each of the parties has the right to appeal against the judgements and decisions of the first instance The exceptions to this principle and

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<sup>11</sup> File record no: IV SA 164/88, published in: Smoktunowicz E., Kijowski D., Mieszkowski J.: Postępowanie administracyjne, podatkowe i administracyjnosądowe, Warszawa: Wydawnictwo Prawo i Praktyka Gospodarcza, 2001, 944, ISBN: 83-87611-14-X, pages: 203-204.

the course of appeal are defined by the act." It should be added that the regulations of A.M.D. do not even define exceptions this general rule (none of the regulations mentions that the resolutions awarding a medal are final). The gap could be filled by classifying the discussed resolutions of the President of Poland as administrative decisions, which would allow the person concerned to use the right of petitioning for reviewing the case (due to the fact that there is no higher authority over the President of Poland) and it would ensure the person appealing to the administrative court. It seems that the regulations of the Act on medals and decorations should include a regulation that would provide the possibility of applying C.A.P. to the proceedings conducted on its basis. Such a construction is predicted for example in art. 29 section 1 of the Act of 14th March 2003 on scientific degrees and scientific titles as well as on degrees and titles in art. Awarding a scientific title is also a distinction for scientific and didactic achievements. Hence, comparing these two acts and the suggestion to consolidate the proceedings of granting awards within the framework of administrative proceedings seems justified. The proposal seems just as the editing of the act on medals and decorations is very general, particularly when it comes to defining the boundaries of the President's discretion, both in awarding medals and decorations.

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