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Abstract:

Civil liability of public authorities – as regulated in the Polish Civil Code of 1964 – has undergone important changes in the year 2004. The new wording of art. 417 ff. of the Code was meant to align the old statutory solutions with art. 77 of the Polish Constitution of 1997, which proclaims the right of individuals to get compensation for any damage inflicted by an unlawful exercise of public authority. Thus, it is unlawfulness that has become the key prerequisite to establish public authority’s liability. Interestingly, this holds true also in cases where an erroneous judicial ruling or administrative decision is the source of damage, provided that such ruling/decision is final and cannot be challenged in the usual way (art. 417¹ §2 of the Civil Code). Still, to start the compensation case the plaintiff needs to have previously established the unlawfulness of the ruling/decision in special proceedings, which – at least with regard to judicial rulings – takes place in front of the Supreme Court.

The above scheme imputes the abandonment of the qualified fault of the ‘author’ of the incriminated ruling/decision (i.e. the judge or the administrative organ) as a precondition to apply for civil compensation. It marks an important difference with the original wording of art. 418 of the Civil Code (now repealed), which – in case of juridical delicts – required that such qualified fault was established. According to the provision in question, compensation could be sought only if the giving of the ruling/decision constituted a criminal or disciplinary offence confirmed in separate proceedings (before initiating the case for damages).

While presenting the evolution of the Polish regulations concerning juridical delicts, the authors of the article try to demonstrate that the apparent shift from qualified fault (art. 418 of the Civil Code in the original wording) to purely objective unlawfulness (art. 417¹ §2)

is only superficial if not fictitious. According to prevailing case law, the 'unlawfulness' of the ruling/decision concerns exclusively these juridical errors that are obvious, indisputable and which can be spotted without complicated legal analysis. In this light the authors point out that making such errors cannot happen without the clear fault of the judge or the administrative organ. This means that the subjective element, although hidden, is still present in the construction of the liability.