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THE CONCEPT OF *DÉTOURNEMENT DE POUVOIR*

Ph.D. thesis summary

I. SELECTION OF THE THEM AND THE OBJECTIVES OF THE WORK

1. All administrative activities should have adequate axiological and teleological justification. On the other hand, the breach by the administrative authorities of essential objectives and values should result in the recognition of such actions to be invalid and to lead to their elimination from the legal market. It must be assumed that the law, along with its letter, also contains values relevant to the democratic rule of law, certain axiological assumptions operating in society, and the aims that are to be attained through the regulation. All of the above elements should be taken into account when deciding the outcome, and the administrative courts, exercising control over the public administration, should investigate whether the action taken and the resolution takes account of these goals and values.

2. A mechanism which allows, on the one hand, the formulation of administrative actions to take into account the desired objectives and values, on the other hand, to monitor administrative actions, including judicial review of such activities in terms of axiological and expediency, is the design of the *détournement de pouvoir*.

3. The theme is "The concept of *détournement de pouvoir*".

The construction of the *détournement de pouvoir* is holistic. On the one hand, it sets the direction of administrative actions that should be in line with the purpose and "spirit" of the regulation. On the other hand, it makes it possible to evaluate and eliminate legal actions and decisions that are contradictory to such a pattern of control. The complaint for *détournement de pouvoir* is a typical case law established in France, based on the precedents of the French administrative courts, chiefly the case law of the Council of State. In the jurisprudence and doctrine of French law and administrative proceedings, a complaint

alleging infringement of the purpose of administrative action is referred to as *recours pour détournement de pouvoir*. As part of the cancellation basis, the public administration body takes action and makes a decision consistent with an objective legal order which fails to take into account the objectives and values for which the regulation is based and the basis for the decision. Administrative act should be issued in the interest set by the law, other legal regulations or in the interest not expressed *expressis verbis* in legal regulations. If the act complies with the standards of competence, formal and material, but has been issued for purposes other than those prescribed by statute or non-law, then the purpose may be circumvented or the statutory authorization (*détournement de pouvoir*) may be used. In the event of such a failure, the French administrative court repeals the contested act or act with retroactive effect.

4. In the field of administrative law, the issue of compliance of administrative actions and resolutions has not been thoroughly elaborated. Recent popular discussions and studies on the axiology of administrative law emphasize, above all, the need for public authorities to take into account their statutory and non-legislative purposes and values. On the other hand, the topics related to the control of actions and administrative decisions are overlooked by the prism of such a specific control pattern. Meanwhile, the construction of the *détournement de pouvoir* enables a holistic approach to the axiology and teleology of administrative activities, emphasizing both the need for the authorities to target the desired goals and values, as well as the ability to assess administrative activities through the prism of desired goals and values.

5. In the first part of the work, the *détournement de pouvoir* was characterized as one of the grounds for annulment in an action for misuse of power in the French legal order. The first but not the primary purpose of the work is therefore to present the pedigree of this design, to define its legal character, and to present the design elements *détournement de pouvoir*.

6. The presentation of the French complaint of the complaint to the *détournement de pouvoir* constitutes a contribution to further consideration of the place of this construction in administrative law in general and its use in the legal systems of other countries to protect the broad axiology and teleology of administrative law and public administration. On the one hand, it is about demonstrating that the practice and the teaching of French administrative law have diagnosed the problem of the existence of a wide range of administrative and legal decisions which are contrary to the aims and values which administrative law and public administration should serve. French practice has developed a mechanism to counteract these situations in the form of a complaint for *détournement de pouvoir*. On the other hand, in the order of many states where these abnormal situations take place, there are no institutionalized

constructions that counteract these situations. In the second part of the paper, it will be about identifying possible "ways of thinking" about the law so that these disadvantages can be eliminated from the legal market with the use of already existing legal solutions. 7. This work seeks to prove the thesis that the construction of the *détournement de pouvoir* is universal in law and administrative conduct and can therefore be applied in the legal systems of other states. The overriding aim of the work is therefore to place the construction of the *détournement de pouvoir* in the broader context of administrative law rather than simply characterizing it as "art for art."

II. RESEARCH METHOD

1. The theoretical considerations of the universality of the construction of the *détournement de pouvoir* have been set against the background of dogmatic law. The Polish legal regulations governing the activities of public administration and its control have been analyzed. Dogmatic and theoretical reflections were illustrated by examples taken from practice and administrative law. The theoretical consideration of the universal character of the *détournement de pouvoir* is complementary to the three ontologies of the law, which are formal, linguistic, axiological and psycho-sociological. On each of the distinguished planes I try to point out the features and elements that represent the universal character of the construction of the *détournement de pouvoir*. The law theory of individual ontological planes assigns the corresponding methodological layers of the study of law. The often-overlooked notion of ontological complexity or the law in question, that the various categories of subject matter belong to the law, leads to simple conclusions about methodological pluralism. Consequently, individual ontological levels of law should be assigned the corresponding methodological levels. In this paper we have applied, apart from the formal-dogmatic method, the axiological method, which is used to study the law by the prism of its values, and the psycho-sociological method, which examines how the law is perceived by particular individuals and social groups; What reactions do you make

2. The research material in this paper, besides the set of rules of administrative law *sensu largo*: the texts of normative acts and jurisprudence, has also become a legal doctrine. The first part was based mainly on the French-language literature on the issue of *détournement de pouvoir*. In the following sections the Polish law and administrative proceedings, as well as the achievements of the Polish theories of the law, were used.

III. CONSTRUCTION AND CONTENT OF WORK

The dissertation consists of six chapters, preceded by an introduction and concluded with a summary. The structure of work determines the accepted way of presenting the construction of the *détournement de pouvoir*, which influenced the order of presentation of particular issues. Discussing the issue of *détournement de pouvoir* begins with the statement that the French administrative thought has diagnosed the problem of the need for a broader audit of administrative activities than just compliance with positive law. Consequently, specific legal solutions have been introduced into French administrative law. Solutions of this type or similar also found expression in the legal orders of other European countries. It is only then that I go on to discuss the issue of *détournement de pouvoir* in Polish administrative thought and then place it in administrative law *in genere*. The main part of the work ends with a discussion of the manifestations of the *détournement de pouvoir* in administrative law, especially in Poland; In other words, a proper understanding of existing legal solutions can allow the control of whether the actions and decisions of public administration bodies are consistent with the broadly understood purpose and axiology of administrative law and public administration.

1. **In the first chapter, entitled "*Détournement de pouvoir* in French Administrative Thinking"**, the genesis and historical development of this legal structure is discussed. *Détournement de pouvoir* as a basis for repealing a defective administrative act that fails to achieve its stated purpose appears in court-administrative case-law in the 1960s. Essential in this respect are two decisions of the Council of State: the judgment of 24 February 1864 in *Lesbats* and the judgment of 26 September 1875 in *Pariset*.

At the initial stage of development the administrative courts did not use this concept but paid attention to the individual elements of the structure. The fundamental element is the divergence between the goal - set by the legislative act that forms the basis for the action and the resolution or non-enforcement - and the purpose actually pursued by the public administration body by taking action and by proposing a resolution.

Détournement de pouvoir as the basis for appeals and at the same time the basis for the repeal of a defective administrative act must be embedded in the context of other grounds. In an action for abuse of power, the applicant may rely on six grounds for cancellation. The first

three, entering the collective category of so-called. External legality is: 1) improperness of the body; 2) formal defects of the act; 3) procedural defects. The remaining three grounds of cancellation, within the framework of internal legality, consist of: 1) breach of legal norms; 2) violation of legal motives and motives; 3) abuse of authority or abuse of procedures.

For the first time, the term *"détournement de pouvoir"* was introduced by L. Aucoc in the terminology of court-administrative proceedings. He defines *détournement de pouvoir* as the use by officials of the public administration of the powers conferred on them in such a way that, by adopting an administrative act falling within their sphere of competence and in the form prescribed by the positive law, they issue it for reasons other than those for which the competence has been Entrusted to them.

Representatives of the doctrine in various ways understood the construction of the *détournement de pouvoir*. Some have linked it to an authority that is contrary to the norms set out in the authorizing norms and to the objectives of the legal norms that underpin and act upon them (L. Aucoc, M. Beurdeley, M. Hauriou, H. Welter). On the other hand, other authors presented *détournement de pouvoir* as a procedural measure aimed at controlling "administrative morality", under which morality understood the duty to subordinate the administrative activities of the good of public service and the illegitimate principles resulting from the substance of the public administration (M. Hauriou, H. Welter). Among the representatives of the French administrative law, there were also some who questioned the legitimacy of separating in the complaint the abuse of power of the cancellation basis in the form of a *détournement de pouvoir*, indicating that the action and decision contrary to the spirit of the law should be qualified as acting contrary to the law, *détournement de pouvoir* is exclusively a specific form of illegality (A. de Laubadère, M. Waline, J. Appleton, R. Alibert).

In the first chapter I also point to the difference between the complaint of misuse of power and the complaint based on *détournement de pouvoir*. The former is one of the four types of complaint available in court proceedings in France (next to a complaint of full jurisdiction, an application for recognition of the legality of an act and a complaint in criminal proceedings). Meanwhile, the *détournement de pouvoir* does not constitute a separate complaint, but is one of the grounds for cancellation in the context of an abuse of power.

2. The second chapter was entitled "*Détournement de pouvoir* in French Administrative Law". It was devoted to discussing how the theoretical design of

détournement de pouvoir was included in the French administrative law. So I pay attention to the basic construction elements.

First, a public administration body must take a specific action or act. The extent of the cognition of French administrative courts is much wider than that of their Polish counterparts. Consequently, in the French administrative judicial system virtually any unilateral act issued by a public administration body is challenged for its unlawfulness, and thus also due to the *détournement de pouvoir*.

Secondly, the act or act must comply with the objective legal order in the sense that it is taken by the competent authority in the correct application of the rules of a formal and substantive nature. Determine whether the act or act is consistent with objective legal order in principle by referring them to other grounds for repealing the administrative act. In other words, where an action or act does not contain any of the identified defects, it may be incorrect to pursue other objectives and values than those for which the authority has been provided with competence, action or act is affected by a defect in the form of *détournement de pouvoir*.

Thirdly, the action or act must be contrary to the purpose. In the scope of non-compliance with the purpose set by the law, there are 3 variations of such contradiction:

1. action contrary to the general interest, where the public administration acts in the interests of others other than the public interest: in the political, personal and particular interests;
2. action taken in the general interest but other than the interest prescribed by the provisions of the act;
3. action taken to circumvent the lawful procedural mode (so-called abusive procedures).

Within the boundaries of the *détournement de pouvoir*, three basic elements can be identified: 1) the presumption of legality of the aim pursued by the public administration; 2) extensive understanding of purpose; 3) seeking another basis for cancellation (*détournement de pouvoir* as *ultima ratio*). All of these affect the limited scope of use of the *détournement de pouvoir*.

At the end of the discussion in Chapter Two, I discuss the procedure for judicial review. Judicial review in the case of the appointment of *détournement de pouvoir* as the basis for a complaint of abuse of power is characterized by specific characteristics. To prove that the public administration was guided by improper goals and values has undergone fundamental evolution in the jurisprudence of the Council of State. At first the *détournement de pouvoir* could only be derived from an administrative act. Today, it may be from the whole

of the administrative case, from the related factions (*faisceau de présomptions*), and even from sufficiently serious assumptions undisputed by the public administration. The examination of the act or act by the court in terms of the *détournement de pouvoir* consists in an analysis of the aims and values that constituted their axiological and teleological basis. This treatment is an extremely delicate task, requiring the court to purely subjective assessment of administrative actions. It also carries with itself a psychological element consisting in the necessity of a specific entry into the inner beliefs and motives of the author of the act or act.

3. **In the third chapter, entitled "*Détournement de pouvoir* in other legal orders"**, I show that this structure also functions, in the same or similar form to the French designation *détournement de pouvoir*, in other legal orders. Her presentation is not a simple matter. First of all, in the legal systems of some states, especially in the Roman culture, there are solutions identical to the French complaint of *détournement de pouvoir*. On the other hand, in legal systems of some European countries, despite the lack of analogous construction, legal solutions can be found similar. Thirdly, although there are no similar or even similar French recruitment schemes due to the *détournement de pouvoir* in some normative regimes, the strong influence of the thought and achievements of French legal thought is evident; in other words, other constructions and legal solutions, such as the organization of the executive and the judiciary, are distinguished from those of the *détournement de pouvoir*.

4. **In Chapter Four, entitled "*Détournement de pouvoir* in Polish Administrative Thinking"**, I am referring to the views of representatives of Polish legal thought, showing how they understood and what role they attributed to this legal structure. During the discussion on the shape of the judicial-administrative system after the First World War, there were postulates of taking some French solutions. The transposition of French legal solutions in the area of administrative judiciary to the Polish ground was most explicitly advocated by J.S. Langrod, which was reflected in many of his works. One of his proposals was to introduce a complaint to the Polish administrative court on the complaint of *détournement de pouvoir*. His demands, however, were not limited to the removal of a complaint based on a plea of *détournement de pouvoir*. For J.S. Langrod the term *"détournement de pouvoir"* I interpret as "circumvention of authority" or "misuse of authority".

The issue of *détournement de pouvoir* was also addressed by J.S. Langrod's student - Z. Nowotarski. In particular, referring to the complaint of abuse of power, it did not exclude the possibility of basing in the Polish legal order a court-administrative complaint on a basis other than just a violation of the objective legal order.

In addition to the positive voices supporting the need and ability to build the Polish administrative judicial system after the First World War based on French models, critical voices were also presented. J. Panejko believed that it was not possible to transpose legal solutions in France into the legal systems of any other European country. In his opinion, some of the legal orders are characterized by specific characteristics, while French judicial-administrative institutions belong to such specific legal solutions.

5. In Chapter 5, entitled "Attempting to locate *détournement de pouvoir* in administrative law *in genere*", I refer this legal structure to administrative concepts and constructions in administrative law; I describe it in abstract terms, so as to conclude definitively the definition of *détournement de pouvoir*.

The term détournement de pouvoir has strong links with other theoretical concepts used to describe the relationships that exist between public administrations and addressees of administrative and legal actions.

First of all, the problem of controlling the appropriateness of actions and decisions taken by public administration bodies is related to the problem of decision-making. The education of the *détournement de pouvoir* as one of the foundations of a court-administrative complaint is historically linked with a construct of discretion. M. Hauriou pointed out that *détournement de pouvoir* is a sanction of "administrative morality", by which he understood the ban on crossing the internal limits of discretion.

Secondly, the axiological connotation holds legal norms when the law of the law they derive from uses unspecified concepts. Unspecified terms should be understood as not being formulated in a precise way, but they require the use of a law of fact to be assessed by the prism of values which are encoded in laws containing blurred terms.

Thirdly, describing the links existing between an entity and a public administration body serves the categories of interest: factual, legal, private, as well as the category of public subjective law. Referring to the common understanding of the concept of interest to the bonds that citizens may associate with the public administration, it must be stated that these ties can take many forms. In general, an interest can be defined as the relationship between an objectively existing, existing and verifiable state, and an objective or subjective assessment of

that state from the point of view of the benefit that it can bring - through the public administration - when this state is attained.

Next, I note that *détournement de pouvoir* is a heterogeneous concept that can be understood in at least several ways and can be understood differently depending on which entity it will be referred to.

For a public administration, *détournement de pouvoir* is, in the first instance, a situation in which an action or act conforming to a legitimate law is taken but violates the objectives and values that should be attained. It should further be pointed out that the sanction *détournement de pouvoir* is a retroactive repeal of the contested act or act. This means that a public administration body is undergoing a general ban on the admission of *détournement de pouvoir*. The breach of the ban, in the case of an action or a court-administrative complaint, leads to their elimination from the legal market with retrospective effect. With respect to the authorities, the ban *détournement de pouvoir* - but also other bases of the complaint - sets out therefore the minimum standards that should be followed when taking action and solving disputes.

On the other hand, for an administrative entity, a complaint based on a complaint of *détournement de pouvoir* constitutes a remedy for challenging the action or decision and for a court to challenge it. The complainant alleges misuse of powers by exploiting competencies for improper purposes and values.

Lastly, for an administrative court, a complaint against the *détournement de pouvoir* is an impulse to carry out a review of the contested measure or act and, possibly, to remove them from the legal market in the event of a finding of the breach.

Reflections on the importance of *détournement de pouvoir* for the public administration, the administrative body and the administrative court allow the thesis that the *détournement de pouvoir* can also be dealt with in a static and dynamic manner. Statically speaking, *détournement de pouvoir* is a state in which an act or act of an administrative nature is vitiated by a failure to take into account and not to realize the proper aims and values. On the other hand, the action or act implements other wrong objectives and values, but by taking action or resolving the authority does not violate any universally binding norms: competence, defining the form of action, material law and process. Such a state of affairs, from the moment the administrative body completes the act or issue of an act, is not subject to change. This state undergoes a specific crystallization by which it must be understood that it can no longer be changed. The public administration body has ended the proceedings or proceeding to issue an act. While the described state of affairs - *détournement*

de pouvoir in static terms - is not subject to any further change, it is subject to further development if the subject to whom the action is addressed or the resolution is filed with a court-administrative complaint. Dynamics of the static system is reduced to the occurrence of an external complaint by a third party, and is followed by a court reviewing the contested action or resolving its compliance with a broadly defined purpose.

The nature of the *détournement de pouvoir* can raise doubts.

First of all, *détournement de pouvoir* is a situation in which a public administration body, when taking action and making a decision, exercises the correct application of competency standards, defining legal forms of action, material law and procedural matters, but takes action or administrative action to achieve different objectives. And values than those for which they were provided with administrative competence. *Détournement de pouvoir* is therefore a situation consisting of legal and factual elements. In this sense, the concept of the situation will be characterized by the *détournement de pouvoir* in static terms.

Secondly, in dynamic terms, *détournement de pouvoir* is the institution of procedural law. It means a complaint addressed to an administrative court based on a plea based on the authority of the action taken or on the basis of improper purposes and values, while properly applying the standards of competence, defining the form of action, formal and material.

Thirdly, *détournement de pouvoir* in holistic (static-dynamic) terms can be referred to as a legal construct. This concept points to a complex set of interrelated legal and factual elements, which forms the basis for filing a court-administrative complaint. Thus, the concept of design indicates simultaneously a specific legal and factual situation and a complaint that is based on the above situation.

In the fifth chapter I also signal the issue of the so-areas of the *détournement de pouvoir*, distinguishing *détournement de pouvoir* in narrow and broad terms. The above division is inseparable from the sphere of public administration activity in which the citizen imposes obligations and the sphere in which he or she exercises the legally guaranteed capacity within the limits permitted by law. On the one hand, public administrations may impose on the public various obligations and prohibitions, interfering in the sphere of legally guaranteed viability; if the organ is ordering bans or prohibitions guided by inappropriate goals and values, *détournement de pouvoir* is allowed in a narrow way. On the other hand, in many situations, individuals may demand certain actions from the public administration and the authorities are obliged to act in accordance with the rules of law; If the body decides - in accordance with the positive law - ignores the desirable aims and values, it is permissible to *détournement de pouvoir* in broad terms; in essence, in order to protect itself from the

allegation of *détournement de pouvoir*, the broad body should, by taking into account the objectives and values, modify the content of the positive law in order to make a just, fair and rational decision.

The considerations in Chapter Five lead to the definition of the term *détournement de pouvoir*. It can be assumed that: *détournement de pouvoir* is a complex legal and factual situation whereby an act or act of an administrative nature, in accordance with an objective legal order, pursues other objectives and values than those resulting from laws or formulas extraterritorial, It is to be understood that the administrative court is obliged to carry out a formal investigation to review the contested act, act or act in terms of broadly understood Expediency and its elimination from the legal market.

6. **The sixth chapter of the work has been entitled "Appearances *détournement de pouvoir* in administrative law"**. For the purposes of this chapter, by law, I understand only a peculiar combination of ideal entities (meanings, meanings, psychic experiences under the influence of law, values, evaluations) and real beings (phenomena of legal signs, legal texts, phenomena of experiences and behavior under the influence of law, phenomena Evaluation and evaluation). *Détournement de pouvoir* shows strong connections with various objects that can be intuitively linked to the law. The consideration of the law, as the law was and is perceived in the theory of law, leads me to the conclusion that the law - *sensu largissimo* - also consists of objectives and values referring to legally determined administrative actions. When discussing the manifestations of *détournement de pouvoir* in administrative law on a static basis, I refer first of all to traditional areas.

When an individual requests that her case be investigated and resolved by a public administration body - basing its claim solely on its legal interest - the body may settle the case in the manner deemed to be the most optimal within the law. By taking action and issuing a decision, the body should be guided by goals and values, regardless of their legal or non-legal nature. As a consequence, the decision that has been taken - either with complete abandonment of goals and values, or for the pursuit of goals and values different from those of the legislator - has all the hallmarks of abuse of authority.

Traditional *détournement de pouvoir* can also be characterized by the prism of public subjective rights.

At the outset, I refer to public private rights of a libertarian nature - although they are generally negative, state authorities may interfere: (a) with the possibility of exercising a public private right of freedom, (b) and the extent and manner of exercising This law. By

interfering in the possibility, scope or manner of exercising the right of subject, public administrations shall take specific actions and decisions in this regard. By turning to the essence of *détournement de pouvoir sensu stricto* in relation to public subjective rights of a libertarian nature, one should emphasize two things:

- on the one hand the public administration body can:
  a) in the case of public body rights of a libertarian nature arising directly from a law generally applicable to prohibit, by means of an administrative act, the exercise of that right,
  b) in the case of public bodies of a libertarian nature, arising from an individual constitutive administrative act of a discretionary nature, define in that act the scope and manner of exercising that right and thereby limit the scope of freedom, possibly withdrawing the area of liberty,
- on the other hand, the public administration authority, in interfering in the exercise of public rights or in shaping or possibly withdrawing the scope of freedom, should pursue the goals and values that result from either legal acts or non-legal formulas and which form the legal order *sensu stricto*, *sensu largo* or *sensu largissimo*.

Next, I distinguish three categories of public subjective rights that show relationships. These are: (a) a public private right consisting in a claim for failure to intervene in the sphere of the previously granted legal status; b) public private right consisting of a claim for modification of the legal status; c) as well as the public private right consisting in claiming the proper formation of the legal status. The public administration body may derive goals and values that should guide legislative action not only from the substance of the mandate, but also: a) from a legislative act, b) its preamble, if it has a statute, c) from the titles of particular systematization units containing authorizations d) regulate the legal act in its entirety; e) as well as from the regulations of other systemically related acts with the authorizing act. I believe that goals and values can be expressed *expressis verbis* or derived from the above sources in an implicit manner. Many goals and values will also result from public interest categories that the authority is required to consider and balance not only in jurisdictional administrative proceedings, but also in other areas of its activity. In the context of the identified public rights, the body should not only find the right axiological and teleological layer to justify legislative action, but should also set the goals and values that are absolutely mandatory, which in turn directly affects the form of regulation.

Lastly, I refer to the public private right to the proper shaping of the internal structure of public administration. By shaping this structure, which should be understood broadly,

competent public administration authorities should take into account the axiological and teleological context of such activities, acts and acts. Activities, activities and acts of a systemic nature should guarantee the smooth functioning of the organs and offices serving them, the effective execution of public tasks and the fulfillment of social needs. Bypassing these determinants, taking actions, actions and acts that aggravate and even paralyze the functioning of organs, carrying out tasks and meeting social needs, motivating them with particular, morally low motives, should be regarded as *détournement de pouvoir sensu stricto*.

Moving on to a broader view of the areas of *détournement de pouvoir*, I point out that, in broad terms, the areas of this legal structure play a fundamentally different role from the classical approach. Although *détournement de pouvoir sensu largo* is inextricably linked to administrative law, it requires a specific view of the subject "on the other hand": on the part of the external actor in relations with the public administration. *Détournement de pouvoir* broadly covers the elimination of legal cases by public administrations of all situations in which administrators inappropriately conduct circumvention of the law or subject themselves to abuse of their subjective rights. The legislator does not always provide for instruments to eliminate the above situations. *Détournement de pouvoir* in a broad sense is therefore a material and process institution which serves to eliminate the situations identified as being unfavorable. If an administrative entity abuses a subjective right, an unauthorized circumvention of the applicable law is allowed, the authority should, based on the desired purposes and values, issue a different content than would be apparent from the purely legal content of the law.

The basis for construction of *détournemet de pouvoir* may be the general principles of law and administrative procedure.

The first principle, ie the principle of social accountability and the legitimate interest of the party, requires that, by conducting any proceeding, *sensu stricto* or *sensu largo*, the public administration body, in line with the content of this principle, balances between the public interest and the individual interest, Which one of them will be given the primacy, and what concessions will be made in favor of one of the interests to be made to the other. The very category of "public interest" takes on the most important character. In practice, a public administration body should carry out a tedious thought process: 1) first, the authority should establish the circumstances of the particular case; 2) secondly, on the basis of such realities, the body should set goals and values within the public interest category; 3) thirdly, the authority should adjust the content of the action taken or decide on the specific circumstances of the case as set out in the public interest objective and values.

The obligation to carry out a similar thought process also arises from the principle of trust. The nature of citizens' confidence in public authority is governed by such actions or administrative rulings, which ensure that the administrative matter of *sensu largo* or *sensu stricto* is settled in accordance with the law, fairly and promptly. At the same time, the duty of fair dealing and a fair settlement of the administrative matter is very strong axiological and teleological anchoring. The public administration body must take into account the objectives and values so that the action or decision taken is fair.

In Chapter Six, as a separate source from which public administrations derive the obligation to act in accordance with a specific system of goals and values, I indicate the European Code of Good Administrative Behavior. "Good administrative practice" is a broader concept than compliance with the law. "Good administration" or "good administrative practice" undoubtedly includes the obligation to act under the law and the obligation to comply with its provisions, as it is difficult to imagine that in a democratic and law-abiding state, actions and decisions that violate the law may be judged "good." On the other hand, the authorities are obliged to take into account and realize various goals and values. Thus observing the objective legal order is not sufficient to establish that the action or decision is "good", that we are dealing with "good administration" and with "good administrative practice". Consequently, good administration and good administrative practice should not only be characterized by purely literal application of the provisions of the generally applicable law, but also the enrichment of the activities undertaken and the resolution of the axiological and teleological layers.

Lastly, in chapter six - referring to the dynamic approach - I am discussing issues of judicial review of actions and resolutions of the *détournement de pouvoir* on a static basis. In the Polish system judicial-administrative control is performed in compliance with the law. The rules make it clear that the control of actions and acts taken by public administration bodies is legally valid. Likewise, the Polish administrative courts rule out any concessions in favor of other evaluation criteria. Courts generally exclude the possibility of controlling whether actions or acts fulfill socially important and socially desirable goals and values, whether they are right, fair, useful, common sense, etc. In this state of deeper reflection requires a way of understanding the criterion of legality, In fact, the way of understanding the term "law". Since court-administrative control is lawful, and this provision does not restrict the category of "law" to the law itself, but rather the law in general, the same concept of "law" From the legal regulations, the very essence of administrative law and public administration, as well as the principles of social coexistence and the formulas of justice, equity,

IV. SUMMARY

Détournement de pouvoir is heterogeneous and can be considered in several shots and several dimensions. *Détournement de pouvoir* in a static and dynamic manner crosses with the *détournement de pouvoir* considered within the scope of a public administration body, an administrative entity and an administrative court.

Each of the shots *détournement de pouvoir* occurs in the French administrative law system, where this construction has developed and developed.

In its present form, taking into account all its notions, the construction of the *détournement de pouvoir* also occurs in the legal orders of some other European countries. General assumptions remain unchanged and independent of the legal system *détournement de pouvoir* is a complex legal and factual situation whereby an act or act, consistent with objective legal order, pursues other objectives and values than those which are in the public interest and result: from the very essence of administrative law and public administration, as well as from the principles of social coexistence and the formulas of justice, equity, etc., the basis of the court-administrative complaint.

While the general assumptions of the construction of the *détournement de pouvoir* remain invariable both in the French legal system and in the legal systems of other European countries, the juridical bases of construction in different systems differ: construction law is the basis of the rule of law, positive. As a consequence, it can be stated that *détournement de pouvoir* can successfully operate both in legal systems in which legal constructs are based on judicial and judicial decisions, as well as in legal systems in which legal constructs result from positive legal provisions.

The design based on the French concept *détournement de pouvoir* is also applicable in legal orders, where it is not explicitly envisaged, whether in the court of law or in the positive law. Public administration bodies, when taking acts or acts of an administrative nature, are obliged to pursue goals and values falling within the category of public interest, while avoiding the grounds for violating this interest. The aims and values referred to in this place are the legal order of *sensu largissimo*. Consequently, regardless of how the reference standard was constructed - even if judicial review is exclusively lawful, the court is competent to assess whether the contested act or act is consistent with the broadly defined purpose.

14.06.2017