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Construction and operation of transportation by rope – competence of the authorities and the rights of parties.

Abstract: This paper brings up issues of construction and operation of transportation by rope in the area of competence of the authorities and the rights of parties. Through a complex analysis of key regulations the role of the administrative proceedings is indicated, which is specific kind of denominator for a number of different regulations in the field of substantive law. The authors discuss the source of the competence of the authorities in the process of construction and operation of transportation by rope, as well as the rules applicable in determining these competencies. The rights of the parties arising from the administrative procedure are also analyzed, both during construction cableway and during operation.

Keywords: transportation by rope, competence of the authorities, rights of parties.

Construction and operation of cableways on the basis of substantive administrative law

An analysis of the problems connected with the construction and operation of cableways should be preceded by the definition of a rudimentary concept for the whole derivation - the cable railway. No legally binding definition exists at the statutory level. Only in the executive act, ie the Regulation of the Minister of Infrastructure of 11 December 2003 on the essential requirements for cableways intended for the carriage of persons (Journal of Laws 2004, No. 15, item 130), the term " "Rope-way", which refers to *a set of devices intended for the carriage of passengers by means of vehicles or lifting devices in which the ropes are routed along running track.*

The realization of the investment in the form of a cable railway is an extremely complex matter, and one may even say that it has a specific interdisciplinary character. The road to the finalization of this investment leads through a number of intricate regulations of a material nature, starting with the Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments (Journal of Laws of 2016 353), by the Law of July 7, 1994, Building Law (Journal of Laws of 2016, item 290) after the Law of 21 December 2000 on technical supervision (Journal of Laws No. of 2015, item 1125). One should mention here a

large number of executive acts aimed at the precise implementation of certain statutory provisions.

For example, in the area of the first formal activities in the field of investment in the form of cableway is to obtain a decision on environmental conditions. According to art. 59 above. Act on the provision of information on the environment and its protection, participation of the public in environmental protection and on environmental impact assessment of the undertaking's environmental impact assessment requires, among other things, implementation of planned projects that may potentially have a significant impact on the environment. On the other hand, in the decree of the Council of Ministers of 9 November 2010 on projects that may have significant effects on the environment (Journal of Laws 2016, item 71), as a project which may have significant impact on the environment are listed ski routes, bobsleigh tracks, ski lifts, including water ski jumps, ski jumps and accompanying equipment. In this case, the authorities before the proceedings may be the executive organs of local government units such as the village head, the mayor or the president of the city.

The next stage of fulfilling the requirements specified in the area of substantive law are the conditions set out in the above- Building Law Act. At this point, it seems reasonable to make an explication or cableways are building objects. Ropes - as a whole - are not constructions within the meaning of the Construction Law, and therefore are not subject to the regulation of the law. According to the explanations of the Main Building Supervision, *only building or construction equipment included in such an extract is subject to the building law*, i.e.: the construction parts of technical equipment and the foundations for machines and equipment, as separate technical parts of the objects constituting the whole usable. At this point, it is worth pointing out that the construction of parts of construction machinery and foundations for machines and equipment are not mentioned in art. 29 - 31 of the Construction Law Act as investment exempt from the obligation to obtain a construction permit. The authority competent to give a ruling in the proceedings for the purpose of this decision is the authority of the architectural and construction administration, in this case, the executive body of the local government unit, the district head. It evaluates the intended works based on the provisions of the Construction Law Act.

At the stage of having the character of the target apply the regulations contained by the legislator in the Act of 21 December 2000 on technical inspection. In this case, the ordinance of the Council of Ministers of 7 December 2012 on the types of technical equipment subject to technical supervision (Journal of Laws of 2012, item 1468) contains numerous clausus of equipment subject to technical supervision. In the regulation, it was mentioned, for example, rope hoists, rail vehicle draggers, personal and freight ropes. On the other hand, another executive act clearly states that *before allowing the rope transport device to operate, the operator shall report in writing to the Director of Transport Technical Inspection, hereinafter referred to as "TDT", to obtain a decision authorizing its operation*. Technicians are subject to technical equipment in progress i.a. operation. According to Art. Article 14 1 of the Technical Inspection Act, technical equipment covered by technical supervision may, in principle, be operated only on the basis of a decision permitting their operation, by the body of the competent technical inspection body. However, according to art. Article 18 (1) in the case of non-compliance by the operator of technical supervision, the body of the competent technical inspection body the decision to suspend the operation.

The role of administrative proceedings in the area of construction and operation of cableways

All issues related to administrative proceedings were comprehensively settled in the Act of 14 June 1960 - the Code of Administrative Procedure (Journal of Laws of 2016, item 23, as amended). To demonstrate the full coherence between administrative proceedings and precisely this multifaceted field of cableways in essence, it is necessary to define the framework and characteristics of the administrative procedure itself.

Legal norms that build the whole system of administrative law are not homogeneous. For further analysis, it is probably best to indicate a breakdown based on the criterion of the subject of regulation. By adopting this as a determinant, the norms of administrative law can be divided into: (a) system norms which govern public administration in the organizational sense; b) standards of substantive law that define the rights and obligations of entities in the area of administrative law, specify the competence of the authorities in matters of public administration and establish administrative sanctions; (c) rules of procedural law governing administrative law relations.

An administrative procedural relationship may be procedural or disputable. The procedural approach is to determine the totality of relations between an entity and a public administration body in the course of procedural proceedings aimed at determining the legal status of this entity in the area of administrative law by the legal authority. On the other hand, the process of litigation is to deal with the administrative court before which the body and the body are in dispute about the legality of the conduct of that body, which has been implemented in a particular legal form.

Further clarification, the procedural relationship arises at the time of initiation of the administrative proceedings in the individual case by the competent authority and ends when the administrative decision is addressed to the individual. Thus, the purpose of the relationship is, inevitably, to determine the rights or obligations arising from the substantive law, implying - the correct formation of the material relation. It must be mentioned that, as soon as the material-law relation is formed, the whole process connection ceases. In this case, it can be stated that administrative procedural law, also referred to as formal, is an instrumental function in the face of the substantive law. The material law will be properly formed only if the rules of procedural law establish a set of rules protecting the participants from the arbitrary and arbitrary nature of the public administration, ensuring that the participant is actively involved in activities aimed at establishing and clarifying the circumstances of the case. And as a result, they create a coherent system, mutually complementary elements, enabling effective verification of the authorities' decisions.

It should be emphasized that the formulation of rights and obligations by a public administration body takes place in the formalized form of an administrative act (administrative decision). Administrative act, which is one of the legal forms of public administration, is defined as a unilateral and authoritative statement of the will of an administrative body, based on generally applicable laws, addressed to a particular addressee in order to shape its legal position. In other words, the general administrative procedure referred to in the doctrine also as the administrative procedure of strict sense. It aims to resolve the individual case through an administrative decision, and the administrative decision establishes the binding consequences of the applicable standard for the individual addressee and the specific case.

So where is the correspondence between the construction and operation of cableways with a formal administrative law? By using simplification, administrative procedures are a kind of tool for achieving the key as if it were a part of the organ line - an administrative decision that allows the operation of the cableway. These regulations in the Code of Administrative Procedure provide for the investor or operator of the cable car to fulfill his or her rights as defined in the substantive administrative law, ie the Act on the provision of environmental information and its protection, public participation in environmental protection and environmental impact assessments. environmental projects, the Construction Law Act and the Technical Inspection Act. All the foreseen in the above mentioned. All actual rights may be assumed by way of proceedings in accordance with the provisions of the Code of Administrative Procedure. As a consequence, the investor must be able to build and operate the cableway and must act in accordance with the Code of Administrative Procedure. Importantly, The Code enables not only the possibility of granting or executing the right to build and then operate the cableway, but also the protection of the right itself.

There is in no way lessened the role of material legislation (the Law on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessment of the undertaking, the Construction Law, and the Technical Inspection Act). Because they define the subject of the request of the investor or the operator of the cableways. However, this administrative procedure is some kind of way leading the interested party to a satisfactory completion of activities related to the proper operation of cableways.

It is reasonable to assume that the administrative procedure is a common denominator of a procedural nature for the abovementioned. Laws containing material norms. It specifies in a clear way the powers of the authorities and the powers of the parties, which are provided on an administrative basis, which take the form of striving for a satisfactory solution for the investor.

Competence of public administration bodies and the construction and operation of cableways

The scope of the general administrative procedure is defined in Art. 1 point 1 and 2 of the Code of Administrative Procedure. It is defined by the notion of a public administration body. Notice that the concept of this code has given a specific content. Public administration bodies should be understood as: ministers, central governmental authorities, provinces, acting in their own or in their own name, local governmental bodies (united and non-self-government), organs of local government and other bodies and other entities when they are under the law or on the basis of agreements established to handle individual cases through an administrative decision.

On the other hand, according to Art. 1 (1) of the Code of Administrative Procedure in General Administrative Procedures, public administration bodies shall decide, by administrative decision, individual cases falling within their jurisdiction. The concept of competence of the body is a procedural aspect of the concept of competence. By the notion of competence, law education understands the ability of an administrative body to make a detailed update, by means of appropriate conduct, of a potential duty of action laid down by law. The characteristic feature of administrative competence is its complex character expressed in the fact that it is a coupling of authority and duty of the body. The competent authority is the body authorized to take specific actions and perform certain activities. But at the same time, it is also the body obliged to exercise its powers when the circumstances

provided for by law arise. Within the framework of such a competence, a public administration body, through the use of a wide range of legal forms of action, carries out the tasks entrusted to it by law. In addition to normative competence, competence to undertake non-controlling activities or control competence lies within the competence of the public administration authority to bring the general rules of law into line with individual recipients in the course of lawful, formal proceedings. This aspect of competence, both in judicature and doctrine, is referred to as procedural competence.

The competence of the public administration body is updated twofold: as a general competence and as a special competence. General procedural competence is the legal capacity of administrative bodies to handle administrative matters in a given case. Thus, the general procedural jurisdiction permits the separation of all administrative bodies from those administrative bodies which deal individually by way of an administrative decision on individual cases in the field of public administration. General procedural competence is determined by the rules contained in the Administrative Strengthening Code, which governs the subjective scope of general administrative proceedings. As a consequence, general procedural competence can be successfully identified with an explanation of the notion of public administration as indicated in the Code of Administrative Procedure.

On the other hand, procedural competence is the ability of a particular body, with general procedural competence, to deal with a specific individual case of a particular subject. The ability of a public authority to conduct a particular administrative case is determined by two criteria: one positive and one negative. A positive condition is that the administrative authority has the power to settle the case and the negative one - the absence of circumstances justifying the exclusion of the authority from the proceedings in the case.

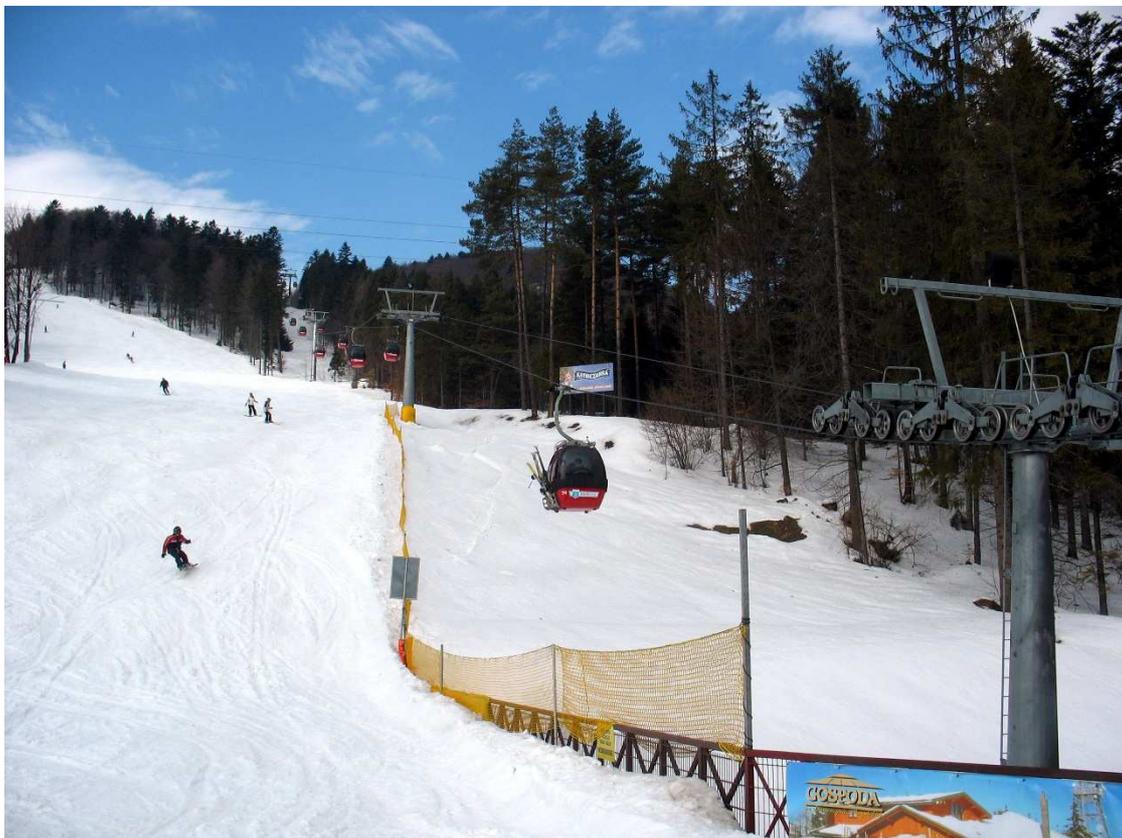
In terms of the construction and operation of cableways, the question of the very nature of the public administration body needs to be clarified. The statutory property of a public administration body consists of three elements: material property, local property, and institutional property. The property is the legal capacity of a public administration body to deal with individual matters of a particular nature. Material property should be determined on the basis of the legal provisions contained in the laws of substantive administrative law, taking also into account the systemic regulations which concern the competence of public administration bodies. In turn by local jurisdiction is meant the legal capacity of a public administration body to perform substantive jurisdiction only within the area of a particular territorial division unit. Article 21 of the Code of Administrative Procedure lays down rules to determine the jurisdiction of the authority in the individual case. In the case of the construction and operation of cableways, the rule applied in real estate matters is crucial - the locality of the public administration authority is determined by the location of the place of residence. If the property is located in the area of two or more bodies, the jurisdiction is within the authority of the greater part of the estate. On the other hand, jurisdiction, in a broad sense, means the ability of a public administration body to take specific actions in an administrative proceeding in view of the place of its authority in the administrative proceedings. In this sense, one can speak of bodies competent instinctively in I and II instances.

As far as the competence of public administration bodies is concerned, attention should be paid to the unequivocal position of the case law. Particular attention should be paid to the judgment of the Supreme Administrative Court of 4 December 2012 (Ref. II SA / Gd 335/00), according to which *the competence of the authorities to issue administrative*

decisions in individual cases cannot be assumed. It must result from a concrete and unambiguous provision of substantive law.

In view of the above-mentioned laws concerning the construction and operation of cableways, and using the above guidelines on the competence of the public administration, it is easy to point out clearly which specific authority is competent to issue an administrative decision on a specific subject in a particular case.

To issue a decision on environmental conditions is competent mayor, or city president, whose jurisdiction is determined in accordance with the location of the property. Appeal against the decision of the abovementioned authorities is referred to the Local Government Appeal Board. The decision on the building permit is issued by the local governor (according to the location of the real estate) and the local authority is the province. On the other hand, the TDT Director declares in the form of a decision authorizing the operation of the cableway. In this case, the competent authority of the second instance is the minister responsible for transport.



1. Gondola Railway, Jaworzyna Krynicka, source: own collection TDT

Construction and operation of cableways and rights of the parties

In this area, it is best to use the formal definition of the party indicated in the Code of Administrative Procedure. According to Art. Article 28 of the Code of Administrative Procedure a party is *anyone whose legal interest or obligation concerns the proceedings or who requests the authority's activities for the sake of his or her legal interest or duty*. It should be stressed here that the rules of administrative procedure allow a social organization to participate in the proceedings if this is justified by the statutory objectives of the organization and when the social interest is in favor.

The rights of the parties are inextricably correlated with the rules of administrative conduct, often in the form of their implications, although they are not always *expressis verbis*. The rights of the parties under the Code of Administrative Procedure include the right to make a decision in accordance with the law, the right to take into consideration the legitimate interests of the party, the right to participate actively in the procedure, the right to take evidence, the right to denounce on the subject matter of the evidence gathered, the right to settle the case within a reasonable time, the right to review the decision in the course of the case, the right to know the motives for the settlement.

The right of a party to demand a decision in accordance with law is derived from the principle of the rule of law, which in the Code of Administrative Procedure is constructed on the basis of art. 6 and Art. 7 in *principio*. It is clear from the principle of the rule of law that administrations can only act if they give rise to the norms laid down by generally applicable law. A public administration body cannot, by issuing a decision, impose on a party of duty, nor grant or refuse to grant it a power unless it demonstrates that it is authorized by that specific law. In addition, the public administration body is not only obliged to act on the basis and within the law in this regard, but also has the duty to guard the rule of law. The parties have the right to expect the body to ensure that all participants in the proceedings comply with the law.

Also from art. 7 in the *fine* of the Code of Administrative Proceedings the right of a party to take into account his or her social interest and the right to take into account the legitimate interests of citizens. The social interest in administrative proceedings is not a uniform and permanent concept. In every case, it should be established and specified. It is difficult to try to define the concept of social interest in *genere*; this is a variable category both temporally and differently in different areas of administrative law, in addition politically stained. It is only after a thorough consideration of all the determinants that one can try to determine the social interest in a particular case decided by an administrative decision and to assess whether the authority has correctly balanced both interests referred to in art. 7 of the Code of Administrative Procedure in *fine*. Importantly, the party has the right to expect the body conducting the proceedings to harmonize the public interest with the legitimate interests of the public. In literature it is accepted that only the interest of the individual is found to be based on the legal norm established for its protection, and that, by virtue of its content and value, it must be satisfied because of the general norms and moral and social orders, or because of the generally accepted rules of conduct in a democratic state.

The most extensive right of the party seems to be the right to actively participate in the proceedings. This entitlement is realized on several levels. First and foremost, public administration bodies are obliged to ensure that parties participate actively at every stage of the proceedings and, before issuing a decision, allow them to express their views on the evidence and materials collected and the requests made. The obligation on the body to serve.

Science as the realization of the right to active participation of the parties in administrative proceedings also indicates art. 49 of the Code of Administrative Procedure, according to which *the parties may be informed of decisions and other actions of public administration bodies by notice or an otherwise customary manner in the locality concerned, if the specific provision so provides; in such cases, notice or service shall be deemed to have been made after the expiration of fourteen days from the date of the public announcement.*

The right of a party to participate in proceedings is exercised by a number of behaviors as well as obligations of the authorities. The right of a party to participate in a proceeding should be considered only in terms of a procedural right that cannot derive the obligation of a party to participate in the procedural process of a public authority. The authority does not have any means to force the parties to actively participate in the activities undertaken. The refusal by a party to participate actively in the proceedings cannot lead to negative legal consequences, both in terms of the content of the legal relationship, formed by the decision issued in this proceeding, as well as by the parties entitled under the procedural law of the right to request verification by the body issuing the judgment. Entitlement to active participation at every stage of the proceedings - i.e. from the moment of initiation of such proceedings to the moment of its completion by issuing an administrative decision - a party may pursue both in the course of proceedings before the authority of the first instance and in the appeal proceedings. The scope of this right is governed by the ordinary procedure and all extraordinary administrative procedures. The public administration body is obliged to conduct the proceedings with the principle of active participation even if it decides acting on the basis of administrative recognition. At the stage of initiating an administrative proceeding, a party's right to be actively involved in the proceeding includes the right to initiate the request, to initiate proceedings ex officio or at the request of one of the parties, and the right to actively participate in the determination by the public administration of the actual content of the request, i.e. one that is consistent with the intention of the party.

It should be emphasized that the right of a party to participate actively in the proceedings is also exercised in the form of a right to participate in the investigation procedure, which allows it to influence the findings of fact which constitutes the basis for the decision of the authority. This possibility is specified by the right of the evidence initiative, the right to participate actively in the proceedings of the evidence, and the right to speak about the outcome of the inquiry and the right to denounce the outcome of the evidence and the evidence gathered and the material in question. With regard to the right of active participation of the parties in the evidence, the obligation of the body is correlated, i.e. the obligation to notify the party of the date and place of taking evidence of witnesses and experts or examination at least seven days before the deadline. On the other hand, the right to speak about the outcome of the evidence and the evidence in the case is clarified in Art. 81 of the Code of Administrative Procedure, according to which *the facts may be considered proven if the party has the opportunity to comment on the carried out evidence.* The active participation of the parties in the proceedings is also carried out through the right of the party to review the case file, which is correlated with the obligation of the public administration authority to enable the party at every stage of the proceedings to review files, make notes and write-offs. As has already been mentioned, the authorities before the decision on the matter are obliged to allow the party to comment on the evidence and materials collected and the requests made. The separate and self-righteous right of the party to demand that, after the investigation has been completed and before the decision has been issued, the authority has made it possible for the authority to take a position on all the evidence, materials, and demands contained in the

file. The Authority should instruct the party entitled to his or her entitlement, appoint an appropriate time limit for acquaintance with the case file and make a final declaration, and refrain from issuing the decision until the declaration is lodged within the prescribed period.

The right of the party to settle the case within a reasonable time is fully correlated with the speed of the proceedings. Art. 12 § 1 of the Code of Administrative Procedure. It is clear that the action of public administration bodies should be both quick and insightful. The above-mentioned entitlements were subject to the provisions on settling matters contained in Art. 35-38 of the Code of Administrative Procedure. According to Art. 35 § 1 of the Code of Administrative Procedure, public administration bodies are obliged to settle matters without undue delay. Administrative proceedings are governed by the specific deadlines set out in the Code of Administrative Procedure. These terms are of a maximal character and vary in their length due to the complexity of the matter being the subject of administrative proceedings. In case the body does not comply with the procedural deadlines, the party has the right to lodge an objection within the deadline.

Article 15 of the Code of Administrative Procedure lays down the general principle of two-stage administrative procedure. Based on Article 15 of the Code of Administrative Procedure and its concretized in Article 127 of the Code of Administrative Procedure, the substance of the principle of duality can be regarded as a procedural guarantee of a party to an administrative proceeding, expressing itself in the possibility of requesting it to reconsider an individual case settled by a decision of the first instance. The party has the right to have its case twice dealt with substantively, to review the evidence in a substantive and substantive way, to examine all arguments, opinions, and demands, and consequently to reach a settlement which best suits the law, the public interest and the legitimate interests of the party.

An important right of the parties is the right to know the motives of the decision, which is often identified with the principle of the duty of informing the parties, as well as the principle of persuasion. The authorities of the public administration should explain to the parties the reasonableness of the circumstances in which the case is handled so that the parties can, where possible, execute the decision without the need for coercive measures. It should be emphasized that the justification is one of the requirements of a correct decision. The content of the justification cannot substitute for a substantive decision. Interestingly, the reasoning of the decision may be the subject of an appeal against the decision of the first instance authority, where the party does not contest the substance of the decision, but expresses reservations about the motives on which the decision-making body is based or the contradiction between the substance of the decision and the findings contained in the statement of reasons. According to the position promoted by the Supreme Administrative Court, the administrative court's administrative decision is admissible because of the defect of the statements contained in the explanatory memorandum, although the basis of the decision is lawful.

In the course of administrative proceedings related to the construction and operation of cableways, all the above rights are vested in the parties to these proceedings. However, not in each of these proceedings (the procedure for adopting a decision on environmental conditions, the decision to issue a building permit or a decision authorizing the operation of a cableway), the same entity would be a party. According to the Act on the provision of information on the environment and its protection, public participation in environmental protection and environmental assessments in the course of proceedings on the issue of environmental conditions, the parties to the proceedings are not only the investor seeking to build the facilities constituting the cableway but also ecological organizations. More complex is the

situation in the case of the procedure for the implementation of substantive regulations in the law - building law, because under its provisions the investor, owners, as well as ecological organizations. On the other hand, in the case of proceedings concerning the decision authorizing the operation of the cableway, the site itself is operating.

In spite of the various types of entities indicated by the regulations of substantive law, all the parties' rights discussed above are entitled to the above-mentioned rights. The entities in the course of all administrative proceedings pending before various bodies during the construction and operation of cableways.

Summary

It would seem that formal administrative law regulations contained in the Code of Administrative Procedure have no reference to the whole process of construction and operation of cableways. However, due to process norms, it is possible to actually enter into the administrative and legal norms contained in the Act on the provision of environmental information and its protection, public participation in environmental protection and environmental impact assessments, the Construction Law Act, or the Law on Supervision technical and, consequently, efficient operation of cableways. The competence of the authorities and the rights of the parties, which can be determined by the rules contained in the Code of Administrative Procedure, are a guarantee of correctness of construction and operation of cableways. They clearly indicate which body is competent to take action, what behavior the parties have the right to, and what the authority's obligations are inextricably coherent with those rights. Therefore, it can be argued that the competence of the authorities and the parties' rights set out in the rules of procedure constitute an immoral part of the construction and operation of the cableway. They determine the route that leads to the efficient operation of the complex of technical equipment for cableways.

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