General principles of the Code of Administrative Procedure as guidelines for public administration authorities

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Abstract

In general terms, administrative law can be defined as the part of the legal system that regulates the structure and functioning of public administration authorities in specific forms (in terms of the entities concerned and subject matter). With regard to the nature of the functions of public administration authorities, administrative law consists of an orderly set of legal norms, the rationale for which is the direct observance of the values identified by public administration authorities as being in the common interest. The concept of the common interest refers to the axiological foundations of this branch of law, as it aggregates all values specified in the Constitution and statutes for the implementation of which the law is made[1].

By introducing uniform procedures for handling official cases, the administrative procedure ensures the protection of citizens from arbitrariness on the part of public administration authorities.

The purpose of this article is to present the general principles of the Code of Administrative Procedure, CAP (PL: *Kodeks postępowania administracyjnego*, k.p.a.) as a structured catalogue. These principles provide guidance for public administration authorities. An official conducts administrative proceedings to the extent specified by administrative law. In order to properly fulfil their statutory duties, an official should have relevant knowledge of law.

Keywords: code of administrative procedure, applicability of general rules, administrative proceedings, general rules of administrative proceedings.

1. Z. Cieślak, I. Lipowicz, Z. Niewiadomski, *Prawo administracyjne. Część ogólna*, Warszawa 2002, p. 56.

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Introduction

In order to properly fulfil their statutory duties, an official should have relevant knowledge of law. Undoubtedly, it is important to know the rules of administrative proceedings and the principles that govern them. One of the basic tasks of public administration authorities is to take action to promote the public interest. Issuing administrative decisions, certificates or rules for calculating procedural time limits are only some of the powers that public administration authorities enjoy. Every citizen has the right to file a complaint or request concerning the action of a specific public administration authority. General principles play a special role in administrative proceedings, since they set the framework for such proceedings, and also have an impact on the application of substantive-law norms. The issue of the scope of applicability of the general principles set out in Articles 6 to 16 of the CAP[2] is arguable and debatable. The only issue that is not arguable is that the general principles in the CAP are norms of law that have been set apart in jurisdictional administrative proceedings and apply to them to the full extent.

The Code of Administrative Procedure is applicable to several separate types of proceedings, regulated in separate sections of the code. These proceedings have a common feature, which is primarily that they are conducted by public administration authorities, and this encompasses, for example, issuance of certificates, processing complaints and requests, or special proceedings in social security cases. Furthermore, the Code includes provisions on excluded proceedings[3].

The subject of analysis in this article will be the applicability of general principles in jurisdictional proceedings as an orderly, normative catalogue of rules that provide guidance for public administration authorities.

2. Ustawa z 14 czerwca 1960 roku – Kodeks postępowania administracyjnego (CAP), t.j. Dz. U. 2023 poz. 775.
3. M. Szubiakowski, M. Wierzbowski, A. Wiktorowska, *Postępowanie administracyjne – ogólne, podatkowe i egzekucyjne i przed sądami administracyjnymi*, Warszawa 2012, p. 12.

Applicability of general principles in proceedings

Principles of law are among the most fundamental research subjects in sciences of law[4]. These issues are of interest in both legal theory and specific sciences of law, as well as legal practice. J. Wróblewski states explicitly that the issue of principles of law is a point of intersection of theoretical and legal issues and the practice of the various systems of existing law[5]. The category of principles of law in legal studies is not characterised unambiguously[6]. There is some confusion when considering this matter due to the related concepts[7]. The term "principle of law" "is attributed not one, but several fundamentally different meanings, and attempts are made to define it as if this was a question of only one, and always the same concept"[8].

It is also characteristic that different dogmatic disciplines formulate different catalogues of principles of law, and associate various characteristics with them. This does not make this complex matter any easier to understand. It is rightly pointed out that "the widespread belief expressed in jurisprudence that the principles of law are of supreme importance does not go hand in hand with either a theoretical-legal consensus, let alone an inter-dogmatic agreement, in the framework of which it would be necessary not only to establish the essence of the principles of law within a given branch or sub-branch and to apply these findings to related branches (...), but also to take into account, at least to some extent, the achievements of legal theory in a system-wide context"[9].

Literature rather does not stipulate that the structure itself of principles of law has to be used[10]. Studies of a monographic, systematic, as well as didactic nature commonly make reference to it. In the Polish legal system, the term "principle of

4. Cf. L. Leszczyński, *Zasady prawa – założenia podstawowe* [in:] *Zasady prawa w strukturze systemu prawa. Studium dogmatyczno-porównawcze*, red. L. Leszczyński, SIL 2016/1, p. 11.
5. J. Wróblewski, *Prawo obowiązujące a "ogólne zasady prawa"*, ZNUŁ Nauki Humanistyczno-Społeczne, seria I, 1965/42, p. 17.
6. Cf. L. Leszczyński, G. Maroń, *Pojęcie i treść zasad prawa oraz generalnych klauzul odsyłających. Uwagi porównawcze*, AUMCS, sectio G, Vol. LX, 2013/1, p. 81.
7. M. Zieliński, *Zasady i wartości konstytucyjne* [in:] *Zasady naczelne Konstytucji RP z 2 kwietnia 1997 roku. Materiały 52. Ogólnopolskiego Zjazdu Katedr Prawa Konstytucyjnego w Międzyzdrojach* (27–29 May 2010), red. A. Bałaban, P. Mijal, Szczecin 2011, p. 21.
8. M. Zieliński, *Konstytucyjne zasady prawa* [in:] *Charakter i struktura norm Konstytucji*, red. J. Trzciński, Warszawa 1997, p. 59.
9. L. Leszczyński, G. Maroń, *Zasady prawa. Ujęcie dogmatyczno-porównawcze* [in:] *Zasady prawa w strukturze systemu prawa. Studium dogmatyczno-porównawcze*, red. L. Leszczyński, SIL 2016/1, p. 318.
10. Cf. M. Safjan, *Zasady prawa prywatnego* [in:] *System Prawa Prywatnego*, *Prawo cywilne – część ogólna*, red. M. Safjan, Warszawa 2012, p. 319.

law" is most often reserved for the applicable legal norms, which are characterized by certain features that allow them to be distinguished and contrasted with those norms in the system that are not considered principles of law. At the same time, it is important that the belief that principles of law play an important role in legal discourse and practice is not supported by a consensus on the status of the principles contained in the provisions of law vis-a-vis statements made by the legislator. There is no doubt that the general principles regulated in Section I(2) of the CAP (Articles 6 to 16), like all other provisions in Section I, are primarily concerned with jurisdictional administrative proceedings and apply to the full extent within it. These proceedings are the foundation of the CAP and are regulated in Sections I, II, IV and IX. The purpose of these proceedings is to resolve an individual case by way of a decision. Most cases are resolved by way of an administrative decision (e.g., construction, water cases) subject to this procedure, or with slight deviations from it[11]. Article 1(1) and (2) of the CAP set out the prerequisites for the application of the rules on general administrative proceedings (prerequisites for admissibility of the administrative procedure). Determining whether these prerequisites exist determines whether provisions on jurisdictional administrative proceedings are applicable in the review and adjudication of a given administrative case. The prerequisites for the applicability of the provisions on general administrative proceedings are as follows: (1) the type of authority applying the law, (2) the type of law applied, (3) the type of law-applying decision, (4) the type of case that is the subject matter of a law-applying decision[12].

The first prerequisite is the type of authority applying the law. The authority conducting jurisdictional administrative proceedings (applying the law) is a public administration authority in the constitutional sense (Article 1.1 of the CAP) or a public administration authority in the functional sense (Article 1.2 of the CAP)[13]. In the constitutional sense, administration authorities are authorities established exclusively or primarily to carry out public administration tasks. Their creation and appointment, structure, scope of activity and mutual relationships are determined by the provisions of administrative system law (contained in the Constitution of the Republic of Poland, the Act on the Head of a Voivodship and Government Administration in a Voivodship, the local government acts and other legal acts)[14].

11. Z.R. Kmiecik, *Postępowanie administracyjne, postępowanie egzekucyjne w administracji i postępowanie sądowoadministracyjne*, Warszawa 2011, pp. 53, 61.
12. K. Chorąży, W. Taras, A. Wróbel, *Postępowanie administracyjne, egzekucyjne i sądowoadministracyjne*, Warszawa 2009, p. 27.
13. Ibidem.
14. Z.R. Kmiecik, op. cit., p. 75.

In the constitutional sense, administration authorities include government (state) administration authorities and local government authorities. The power of a given authority to conduct administrative proceedings, the purpose of which is achieved in issuing a decision, must be supported by the provisions of generally applicable substantive administrative law. Identifying the authority that conducts administrative proceedings should not cause major difficulties in the case of public administration bodies in the constitutional sense, since the provisions of constitutional administrative law distinguish this category of state authorities[15]. The authority conducting jurisdictional administrative proceedings can also be a public administration authority in the functional sense. These are entities which are not actually administration authorities but which conduct administrative proceedings and settle matters in the form of decisions when they are appointed ex lege or under agreements. In particular, other state authorities (i.e., other than administration authorities) need to be mentioned(e.g., the Inspector General for Personal Data Protection, the President of the National Bank of Poland), authorities of state and local government organisational units (e.g., establishments, agencies), bodies of social organisations (i.e., professional, local government, cooperative and other social organisations, especially associations and various professional chambers)[16]. The powers of the designated authorities to conduct proceedings must be stated expressly in statutory provisions or an agreement, and must concern the matters specified in Article 1.1 of the CAP. When considering the said authorities as public administration authorities in the functional sense, it is of primary importance to determine whether in a particular case they perform the so-called outsourced functions of public administration, or whether they perform their own functions of an organisational nature[17].

The second prerequisite for the application of the provisions on general administrative proceedings is the type of law applied. Public administration authorities conducting jurisdictional administrative proceedings apply substantive administrative law norms[18]. The basic stages in the application of substantive administrative law norms include: (1) clarification and determination of the facts on the basis of the collected material and the accepted theory of evidence, (2) determination of the legal status, i.e. the hypothesis of the legal norm on the basis of the recognized rules of interpretation of law, (3) subsumption, i.e. subsumption of the facts considered proven under the hypothesis of the applied norm (i.e., determining whether the facts correspond to the legal status), (4) binding determination of the legal consequences of

15. K. Chorąży, W. Taras, A. Wróbel, op. cit., p. 27.
16. Z.R. Kmiecik, op. cit., p. 81.
17. K. Chorąży, W. Taras, A. Wróbel, op. cit., p. 28.
18. Ibidem.

the proven facts on the basis of the accepted legal norm, which is reflected in the administrative decision that is the "final product" of the process of applying the norms of substantive administrative law[19]. Substantive administrative law determines not only the powers and duties of individuals and non-subordinate administration entities, but also the authority's powers to adjudicate an administrative case. The basis of an administrative decision is the norms of substantive administrative law, and therefore an administrative decision is an act of the process of applying the norms of this law. A public administration authority conducting general administrative proceedings also applies the relevant procedural norms that set out the conditions for issuing administrative decisions. Laws applied by public administration authorities are universally binding (Article 87 of the Constitution). The provisions of the act mentioned that Article 87 of the Constitution may provide a legal basis for a public administration authority to issue a decision imposing certain obligations on natural or legal persons and organisations that are not state organisational units. This principle applies accordingly to administrative decisions granting rights[20].

The third prerequisite for the application of the provisions on general administrative proceedings is the type of law applied. The provisions within the code that govern general administrative proceedings will apply when the substantive law provides that an administrative case is adjudicated in the form of a decision, or when the it follows from the adjudication made that it is a decision within the meaning of the CAP. In jurisdictional administrative proceedings, a law-applying decision is a "decision" or "administrative decision" within the meaning of Article 104 of the CAP. The rules of general administrative proceedings will not apply when the law provides that a case is adjudicated in a form other than a decision, or when certain obligations arise directly from a provision of law[21]. Pursuant to Article 104 § 2 of the CAP, decisions resolve the case on its merits in whole or in part, or otherwise terminate the case in a given instance. A distinction is made between substantive and non-substantive decisions. A substantive decision resolves the case on its merits. Substantive decisions include: (1) constitutive decisions (forming the legal situation of the addressee), and these may concern granting, denying, or revoking a right, or imposing or abolishing a certain obligation, (2) declaratory decisions (establishing the legal situation of the addressee in a binding manner), and these may concern declaration that a certain right has arisen or expired by operation of law, or a declaration that a certain obligation has arisen or expired by operation of law.

19. Z.R. Kmiecik, op. cit., p. 52.
20. K. Chorąży, W. Taras, A. Wróbel, op. cit., p. 29.
21. Ibidem.

Non-substantive decisions, on the other hand, do not resolve the case on its merits. A distinction can be made between a decision to discontinue proceedings and a cassation decision of the appellate authority[22]. An administrative decision is an act that terminates proceedings, not necessarily resolving the case on its merits. All decisions have procedural effects, terminating the case in a given instance. In addition, substantive decisions have substantive legal effects. As a general rule, constitutive decisions have effects from the moment they become final, while declaratory decisions have effects from the moment circumstances exist to which the law attributes legal effects[23]. The term "decision", as used in Article 104 et seq. of the CAP to designate an act that terminates jurisdictional administrative proceedings, is not the only name used in Polish law to designate such an act. The following names are also used[24]: permit, permission, consent, approval, order, etc. Iin a judgment of 18 October 1985[25], the Supreme Administrative Court held that it is the nature of an act, not its name, that determines whether it is considered a decision. The use of one name or another to designate the form of adjudication of a case has no bearing on the legal nature of the act in question as a decision, if it is an act issued by a public administration authority that rules on the rights or obligations of a specifically designated addressee or otherwise terminates jurisdictional proceedings in a given instance.

The fourth prerequisite for the application of provisions on general administrative proceedings is the type of case that to which a law-applying decision relates. In general administrative proceedings, a case to which the law is applicable is an individual case. Jurisdiction over a case derives from the fact that it is adjudicated in the form of an administrative decision that establishes the legal consequences of the applied norm of administrative law with respect to a specifically designated addressee and in a specifically defined case[26]. Under the CAP, the subject matter of a decision must be an individual case that falls within the jurisdiction of public administration authorities. An administration authority conducting jurisdictional administration proceedings may act only within the scope of its competence. "The competence of an authority is a statutory matter, and thus encompasses matters expressly specified by law as falling within the competence of individual authorities"[27]. The indicated prerequisites for the application of the provisions on general proceedings (i.e., a decision as a form of adjudication of a case and the individual case) are inextricably

22. Z.R. Kmiecik, op. cit., p. 126.
23. Ibidem, p. 127.
24. Ibidem.
25. II CR 320/85, OSNC 1986, nr 10, poz. 158.
26. K. Chorąży, W. Taras, A. Wróbel, op. cit., p. 30.
27. M. Szubiakowski, M. Wierzbowski, A. Wiktorowska, *Postępowanie administracyjne – ogólne, podatkowe i egzekucyjne i przed sądami administracyjnymi*, Warszawa 2012, p. 15.

linked due to the fact that only individual cases can be the subject matter of a decision within the meaning of Article 104 § 2 of the CAP[28].

In conclusion, the fundamental sphere regulated by the CAP is jurisdictional administrative proceedings[29]. For administrative proceedings to be admissible, these described prerequisites must exist cumulatively, as the basis for conducting these proceedings under the CAP, which is justified by the fact that they are closely interrelated and conditioned in a procedural and, above all, substantive sense[30]. The general principles of the CAP are norms of law that have been singled out only in general administrative proceedings and, for obvious reasons, apply to them at all stages and in all instances. Therefore, throughout the administrative proceedings, the authority has an obligation to apply the general principles of the CAP. Public administration authorities are also obliged to apply general principles jointly with other provisions of the CAP that have a substantive or functional relationship with one or more principles[31].

Principles of administrative procedure

Rule of law

Pursuant to Article 6 of the CAP, public administration authorities act on the basis of law. Literature points out that "administrative proceedings are an organised process of applying the law, and this comprises the following stages: (1) determining what norm applies in a sense sufficiently defined for the purposes of adjudication; (2) considering a fact proven on the basis of certain materials and accepted theories of evidence and the framing of that fact in the language of the applicable norm; (3) the subsumption of the fact, considered proven, under the applicable norm of law; (4) determining the legal consequences of the fact considered proven under the applicable norm in a binding manner"[32]. In turn, case law states that "according to the general principle of the rule of law (Article 6 of the CAP), which has the value of a constitutional principle (Article 7 of the Constitution of the Republic of

28. K. Chorąży, W. Taras, A. Wróbel, op. cit., p. 30.
29. E. Bojanowski, *Zakres mocy obowiązującej zasad ogólnych kodeksu postępowania administracyjnego*, "Prace i Materiały – Administracja i Zarządzanie" 1991, nr 12, p. 53.
30. M. Jaśkowska, A. Wróbel, *Kodeks postępowania administracyjnego. Komentarz*, Kraków 2000, p. 36.
31. K. Chorąży, W. Taras, A. Wróbel, op. cit., p. 36.
32. R. Hauser, M. Wierzbowski (red.), *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2017, p. 87 [citing:] *Sądowe stosowanie prawa*, J. Wróblewski, Warszawa 1972, p. 52.

Poland), administration authorities have an obligation to act on the basis and within the limits of law. This, in turn, implies, in particular, the duty of administrative authorities to examine and adjudicate cases as the law stands at that time (i.e., as of the date the authority issues a decision)"[33]. As can be seen from the above, the principle of the rule of law involves acting on the basis of the provisions of law – provisions of universally binding law within the meaning of Article 87 of the Constitution of the Republic of Poland, and within the limits of law.

The principle of objective truth

Pursuant to Article 7 of the CAP, public administration authorities uphold the rule of law, and take all necessary actions ex officio or at the request of the parties to investigate the facts thoroughly and to adjudicate the case, taking into account the public interest and the legitimate interest of citizens. This principle, unlike the principle of formal truth, means that an authority has an obligation to conduct evidentiary proceedings not only upon request, but also ex officio, so that facts can be thoroughly examined and the case can be adjudicated in a manner that serves the public interest and the legitimate interests of citizens. The declaration formulated in Article 7 of the CAP is reflected in the text of Article 77 of the CAP, which deals with the duties imposed on the authority with respect to collecting and evaluating evidence. The fact that the authority acts "ex officio" does not mean that the participating entities are not required to cooperate in this regard. As case law explains, "in implementing the principle of objective truth under Articles 7 and 77 § 1 of the CAP, although the authority is required to thoroughly gather and consider all the evidence, the party is not released from the obligation to cooperate in clarifying the facts of the case. This is because it should provide all the information necessary to establish the facts of the case, as well as make available the evidence in its possession"[34]. A similar position was taken by the Voivodeship Administrative Court in Szczecin in a judgment of 23 March 2017 – stating that "based on Article 7 of the CAP, a party to administrative proceedings also has the initiative to adduce evidence and, if it has information useful for clarifying the case, it should use this initiative – submit requests for evidence and submit documents to confirm its position. The authority conducts the proceedings, gathering evidence ex officio, as well as at the request of a party, which may demand that certain evidence be taken or the authority be provided with documents in its possession that may affect the outcome, or may indicate

33. Wyrok NSA z 26 października 2016 roku, II OSK 132/15, Legalis Nr 1554129.
34. Wyrok NSA z 24 maja 2017 roku, I OSK 1113/16, Legalis Nr 1627900.

where such documents are located, and the authority is required – pursuant to Article 78 § 1 of the CAP – to grant such a request"[35]. The obligation to make autonomous findings of fact is also binding on the appellate authority, which "is required to autonomously determine the facts relevant to the examination and outcome of the case, including those that were not considered by the first-instance authority, and regardless of the reason for the same".

The principle of the benefit of the doubt

Pursuant to the introduced Article 7a § 1 of the CAP: "if administrative proceedings are conducted to impose an obligation on a party or to limit or nullify a party's rights, and there are doubts regarding the nature of the legal norm, such doubts must be adjudicated upon in favour of the party, unless this is contrary to the conflicting interests of the parties or the interests of third parties directly affected by the outcome of the proceedings". This provision is applicable when administrative proceedings are conducted:

– to impose an obligation on a party,
– to limit a right,
– to nullify a right,

and doubts remain about the nature of the legal norm in the case. In such a situation, the law requires that doubts be interpreted in favour of a party, unless this is contrary to the conflicting interests of the parties or the interests of third parties directly affected by the outcome of the proceedings. In addition, this provision will not apply if an important public interest, including the vital public interest, and in particular security, defence or public order, as well as the personal affairs of officers and professional soldiers, so require (Article 7a § 2 of the CAP).

The principle of cooperation between public administration bodies

This principle, derived from Article 7b of the CAP, imposes an obligation on public administration authorities to cooperate with one another to the extent necessary to thoroughly investigate the facts of the case and thoroughly determine the legal circumstances in the case, taking into account the public interest, the legitimate interest of citizens, and the expediency of the proceedings, using resources appropriate for the nature, circumstances and complexity of the case. It is pointed out in literature that its meaning is "to raise to the status of a general principle the mandate

35. Wyrok WSA w Opolu z 6 kwietnia 2017 roku, II SA/Op 42/17, Legalis Nr 1600824.

of cooperation between administration authorities in connection with the need to determine the circumstances of the case in fact and in law, without formalizing the ways of this cooperation. Therefore, administration authorities have an obligation to cooperate with one another whenever this will help to resolve the case more quickly. The method of cooperation should be appropriate for the situation"[36]. Literature distinguishes between substantive cooperation (Article 106 § 1 of the CAP) and procedural cooperation (Articles 52 and 76a § 1 of the CAP)[37].

The principle of further inspiring citizens' trust

The principle of further inspiring citizens' trust formulated in Article 8 § 1 of the CAP is of particular importance in the context of stating reasons for decisions issued by public administration authorities. This provision, on the one hand, defines the manner in which proceedings are conducted (inspiring trust of its participants in the public authority), and on the other – the criteria for the proceedings (the principles of proportionality, impartiality and equal treatment). As indicated in a judgment of the Voivodeship Administrative Court in Opole of June 2016, "in the context of Article 8 of the CAP, a statement of reasons for a decision plays a significant role. It cannot be framed in general terms. The function of a statement of reasons is to convince a party that its position has been considered, and if a different decision has been reached, that the reasons for this are important. Decisions imposing certain legal obligations should be accompanied by a convincing and clear statement of reasons, both as to the facts and as to the law, so that there is no doubt that all circumstances relevant to the case have been comprehensively considered and evaluated, and that the final decision is the logical consequence thereof. Therefore, it must be apparent from the decision that the authority did not fail to consider the arguments put forward by the party, did not disregard evidence relevant to the outcome of the case, and that it evaluated this evidence"[38]. In addition, § 2 of the provision in question indicates the need to maintain what can be called jurisprudential stability. This provision does not prohibit a different approach to an issue even in view of the same factual and legal circumstances, but nevertheless allows such practice in justified cases. "Administration authorities may change their view as to the correct decision to be made in a given type of case, but must state the reasons for this change thoroughly, especially when it concerns the same addressee. Therefore, changes in

36. P.M. Przybysz, *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2017.
37. B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz*, Warszawa, Legalis, 2017.
38. 7 II SA/Op 10/16, Legalis Nr 1558039.

legal views expressed in the decisions of administration authorities – with respect to the same addressee, issued in the light of the same facts, and citing the same legal basis for the decision and without stating further reasons for the change – undoubtedly constitutes a violation of Article 8 of the CAP, as it may reasonably cause the citizens' trust in state authorities to be undermined and have a negative impact on the awareness and legal culture of citizens"[39].

The principle of provision of information to parties

Public administration authorities have an obligation to duly and fully inform the parties about the factual and legal circumstances that may affect the determination of their rights and obligations that are the subject matter of administrative proceedings. The authorities must ensure that parties and other persons participating in the proceedings are not harmed by ignorance of the law, and to this end provide them with the necessary explanations and guidance. This principle requires public administration authorities to apply a broad system of instructions on legal as well as factual circumstances that not only have, but also may have, an impact on the determination of the rights and obligations of the parties that are subject matter of the proceedings. Moreover, it requires the authorities to ensure that parties and other participants in the proceedings are not harmed by ignorance of the law. As the Supreme Administrative Court explained in its judgment of 27 April 2017, the principle of provision of information to parties is not absolute. Indeed, the judgment stated that "administration authorities cannot be a substitute for professional legal representation, and therefore comprehensively inform the parties about all aspects of their procedural actions, nor can they take action for the parties. They cannot give the parties advance notice of the content of a decision, especially in order to allow them to respond appropriately. The obligation of provision of information to the parties, as set out in Article 9 of the CAP, does not imply that a party must be provided with all of the legal information, including the consequences of all potential circumstances concerning its legal situation related to the proceedings. Also, a requirement derived from a legal norm, contained in Article 9 of the CAP, cannot be equated with the obligation to notify a party of generally applicable, published legal acts and the resulting obligations or consequences of failure to comply with specific provisions"[40]. On the other hand, case law points to certain special obligations of the authority with respect to participants who do not have professional legal representation. This issue

39. Wyrok WSA w Warszawie z 17 maja 2016 roku, VI SA/Wa 2083/15, Legalis Nr 1471747.
40. I OSK 770/16, Legalis Nr 1632441.

was addressed by the Supreme Administrative Court in a judgment of 9 March 2017, stating that "a party that does not have professional legal representation, advised only of the necessity of filing an appeal through the first-instance authority in due time, may have mistakenly believed that filing the appeal in question by posting it by mail at any operator would have procedural effect"[41]. The principle of provision of information to the parties cannot be equated with the authority's right to arbitrarily interpret the content of a party's request. In this regard it is pointed out that if that the position of a party is ambiguous, the authority should call on the party to clarify its position, as it does not have the power to autonomously determine the nature of the submission filed[42].

The principle of active participation of the parties in the proceedings

This principle imposes on the public administration authority an obligation to ensure active, and as such actual and real, participation of the parties at each stage of the proceedings, and furthermore mandates that before the case is examined on its merits, the parties be given the opportunity to comment on the evidence and materials collected. It is pointed out in literature that the principle of active participation of the parties in the proceedings implements the constitutional principle of the right to due process[43]. As stated above, an authority has an obligation to ensure that a party has a right to take an active part in the proceedings, which should be reflected in the case file[44]. However, the party is free to decide whether or not to exercise this right. In a judgment of 20 June 2017, the Voivodeship Administrative Court in Kraków stated that "the principle of active participation of a party in administrative proceedings creates a right, not an obligation, to participate in jurisdictional processes; Also, the actual participation of a party in jurisdictional processes is not a sine qua non condition for the procedure to be conducted correctly. The procedural right is vested in the party, and the party is free to decide whether or not to exercise its procedural right – with the proviso that, in order to make such a decision, the party has to be aware that the proceedings have been instigated and have knowledge of the relevant actions. Whenever the party is not provided with this, this by itself is a violation of the rules of procedure, but its severity is relative"[45]. Accord-

41. II OSK 1675/16, Legalis Nr 1579047.
42. See the judgment of the Supreme Administrative Court: wyrok NSA z 18 października 2016 roku, II GSK 905/15, Legalis Nr 1553585.
43. B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz*, op. cit.
44. Wyrok NSA z 27 czerwca 2017 roku, II GSK 2753/15, Legalis Nr 1624864.
45. II SA/Kr 152/17, Legalis Nr 1629803.

ing to Article 10 § 2 of the CAP, public administration authorities may deviate from the principle of active participation of the parties in the proceedings only in cases of severe urgency due to danger to human life or health or risk of irreparable property damage, while the public administration authority has an obligation to record in the case file, by way of annotation, the reasons for deviation from the principle of active participation in the proceedings (Article 10 § 3 of the CAP).

The principle of persuasive argument

Analysing the principle formulated in Article 11 of the CAP, it is pointed out in literature that that this principle can be observed through correct practice in implementing the principles of providing information and active participation of parties in the proceedings. In addition, this principle should be observed by providing a correct statement of reasons for the administrative decision[46]. A judgment of he Voivodeship Administrative Court in Warsaw of 11 September 2013 states that "in the statement of reasons the administration authority must explain to the parties the arguments that it considered when adjudicating the case. It is definitely a statement of reasons that is the element that causes a party to be convinced that the decision adopted is well founded and correct. The principle of persuasive argument, on the other hand, will not be properly observed if the authority omits certain assertions or fails to refer to facts relevant to the case. Furthermore, such action by the authority will run counter to the principle formulated in Article 8 of the CAP, i.e. the principle of further inspiring citizens' trust in state authorities"[47]. Violation of the principle of persuasive argument by providing an incorrect statement of reasons for a decision that does not inform a party of the motives that guided the authority when adjudicating the case, results in the decision being annulled[48].

The principle of expediency and simplicity of proceedings

This principle means that the process of adjudicating an administrative case, understood as establishing the facts, determining the legal status, making the correct subsumption and issuing a decision on the merits, is to take place expeditiously, i.e. without undue delay. In addition, this principle imposes on administration authorities an obligation to use the simplest possible means of adjudicating a case, and in

46. Wyrok WSA w Łodzi z 19 marca 2014 roku, III SA/Łd 532/13, Legalis Nr 976841.
47. IV SA/Wa 702/13, Legalis Nr 791601.
48. See the judgment of the Voivodeship Administrative Court in Warsaw: wyrok WSA w Warszawie z 8 sierpnia 2012 roku, VI SA/Wa 542/12, Legalis Nr 841910.

cases that do not require the collection of evidence, information or investigation – to settle them without undue delay. As legal scholars have noted, "observance of the general principle of expediency of proceedings is guaranteed by the provisions defining the time limits for handling cases (Article 35 of the CAP); the means of defence against excessive delay and failure to act on the part of public administration authorities (Article 37 § 1 of the CAP, Article 3 § 2.8 and 2.9 of the Act on Proceedings before Administrative Courts) and the liability of an employee of a public administration authority (Article 38 of the CAP)"[49]. The principle of expediency of proceedings is violated if they are protracted. A judgment of the Supreme Administrative Court of 9 May 2017 states that "excessive delay in conduct of proceedings by a public administration authority occurs when, within the time limit prescribed by law, the body has not taken the requested actions in the case or has been dilatory in conducting the proceedings and – despite the statutory obligation – has not concluded the proceedings by issuing a decision, order, or any other act in due time, or has not taken the appropriate action. It should be noted here that excessive delay in proceedings occurs when the authority takes actions not directly aimed at resolving the case (the authority should perform actions related to the subject matter of the case, and not all and any actions) or, although the authority takes actions in the case, it does so at significant intervals of time, or when the authority delays conclusion of the proceedings and regularly sets new deadlines for concluding the case without providing actual and legitimate reasons for such action – which leads to a significant postponement of adjudication of the case in the form of an administrative decision"[50]. In the context of the principle of expediency of proceedings, in addition, the authority, when seeking to adjudicate upon an administrative case, performs such and only such actions as are necessary in particular proceedings. "From the wording of Articles 7, 77 § 1 and 78 of the CAP, it should be concluded that the evidence the authority admits and examines should be sufficient to fairly examine the case. This means that the number of items of evidence should be in line with the circumstances of a particular case, so that they provide sufficient information to adjudicate the case on its merits. It is therefore unnecessary to employ multiple evidentiary measures designed to demonstrate an already plain argument that has been established by other means. Indeed, this would run counter to a fundamental principle of administrative procedure other than the obligation to duly examine the case formulated in Article 12 of the CAP"[51].

49. B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz*, op. cit.
50. 9 II OSK 951/16, Legalis Nr 1625231.
51. Wyrok WSA w Rzeszowie z 22 marca 2017 roku, II SA/Rz 1272/16, Legalis Nr 1601943.

The principle of amicable settlement of cases

This principle reflects the legislator's wish for administrative cases to be settled by consensus without the need to encroach on the rights and obligations of the individual by way of a sovereign act in the form of an administrative decision. This principle can be implemented in cases in which the nature of the case allows. In this type of proceedings, authorities are required by law to take steps to amicably resolve disputes and determine the rights and obligations that are the subject matter of the proceedings in cases falling within their jurisdiction (Article 13 § 1 of the CAP). In this regard, the authority takes actions to induce the parties to reach a settlement in cases involving parties with conflicting interests and requiring mediation. Moreover, public administration authorities take all actions that are reasonable at a given stage of the proceedings and that make mediation or settlement possible, and in particular advise on the possibilities and benefits of amicable settlement of the case (Article 13 § 2 of the CAP). It is stated in literature that "the requirement for amicable settlement of cases derived from Article 13 of the CAP is addressed to both the parties to the proceedings and the administrative authority before which the proceedings are pending. The administrative authority's obligation to convince the parties to settle or mediate, including by informing them of the possibilities and benefits of amicable settlement of the case, is a consequence of the adoption of other principles of administrative procedure as well, primarily the principle of protection of individual interests (Article 7 of the CAP), the principle of provision of information to the parties, known as the principle of professional advice (Article 9 of the CAP) and the principle of persuasive argument (Article 11 of the CAP)"[52]. This principle is illustrated by the insertion into the Code of Administrative Procedure of a chapter on mediation, as well as the institution of a settlement. As stated in case law, "in accordance with the general principle of amicable settlement of cases formulated in Article 13 of the CAP, a public administration authority is obliged to inform the parties of the admissibility of having a given administrative case resolved in the form of a settlement. However, it should do so in situations where, based on the circumstances of the case, the extent to which the parties are in dispute and the parties' approach to the subject matter, the authority sees genuine prospects of having the case settled amicably. As such, in this regard, it is also appropriate to refer to the life experience of employees of administration authorities. On the other hand, the authority cannot order the parties to conclude a settlement, and therefore, without

52. M. Wierzbowski, A. Wiktorowska (red.), *Kodeks postępowania administracyjnego. Komentarz*, Warszawa, Legalis, 2017.

the express will of the parties to the proceedings, cannot on its own initiative take actions aimed at reaching a settlement"[53].

The principle of written proceedings

This principle imposes on the authority an obligation to handle the case in writing or by means of an electronic document within the meaning of the Act of 17 February 2005 on Digitalisation of Activities of Public Authorities and Service by means of electronic communication[54]. An exception to this principle is settling a case orally when the following conditions are jointly met: the interest of the party so requires and this is not prevented by a provision of law . In such a situation, the content and significant motives of such a settlement should be recorded in the file in the form of a report or an annotation signed by the party. Different views have emerged in literature regarding the scope of the principle of written proceedings. Some legal scholars advocated its restriction only to the decision-making stage (W. Dawidowicz, S. Rozmaryn), while some advocated a broader understanding of it, stating that in the course of administrative proceedings even before the decision-making stage, many actions should take written form, e.g. reports[55]. In this regard, the Voivodeship Administrative Court in Szczecin, for instance, adopted a standpoint and stated in its judgment of 10 February 2011 that the principle of written proceedings mandates that administrative cases be handled in writing. The term "handling of cases" primarily refers to the adjudication of a case in the form of a decision, so administrative decisions (rulings) should be in writing. Also, in accordance with the provisions of the CAP, other procedural actions of the authority and the parties (participants) to the proceedings should be recorded in writing or take written form, such as summonses (Article 54), reports and annotations (Chapter 2 of the CAP), and applications (Article 63), especially since it is in the interest of the parties to "ensure that all circumstances relevant to the case are recorded in the case documents" (Article 69 § 1 in conjunction with Article 86 of the CAP). A deviation from the principle of handling a case in writing, and as such handling a case orally, is allowed only if the interests of the party so require, and this is not prevented by a provision of law (Article 14 § 2)"[56]. Regarding the oral pronouncement of the decision, it is incumbent on the authority to produce a relevant report or annotation signed by a party is. "As such, a party cannot bear the negative consequences of the failure of an

53. Wyrok WSA w Warszawie z 28 listopada 2005 roku, IV SA/Wa 1648/05, Legalis Nr 281278.
54. Consolidated text: t.j. Dz. U. 2017 poz. 570.
55. M. Wierzbowski, A. Wiktorowska (red.), *Kodeks postępowania administracyjnego. Komentarz*, op. cit.
56. I SA/Sz 932/10, Legalis Nr 377147.

authority to fulfil this obligation to prepare a report or annotation, provided that the decision was pronounced orally, and thus the absence of a report or annotation on the oral pronouncement of the decision does not determine that there was no such pronouncement"[57].

The principle of two-instance administrative proceedings

Pursuant to Article 78 of the Constitution of the Republic of Poland, "Each party shall have the right to appeal against judgments and decisions made in the first instance of proceedings. Exceptions to this principle and the procedure for such appeals shall be specified by statute". Therefore, the explicit wording of Article 15 of the CAP is the only confirmation of the general principle that judgments and decisions issued in the first instance of proceedings are appealable. "The essence of the principle of two-instance administrative proceedings (Article 15 of the CAP) is that the same case determined by the content of the contested decision is examined and ruled upon twice by two different authorities. An administrative case is examined and ruled upon twice, in the first and second instances. Dual review means that an investigation must be conducted twice, and appellate proceedings, which do not involve a review of the decision, but re-examination of the administrative case, are structured accordingly"[58]. The appellate authority is not just a review body; it also reviews the case on its merits[59]. The principle of two-instance proceedings is violated if a statement of reasons for the decision of the second-instance authority does not properly address the grounds for appeal, contains no reference or evaluation of all the circumstances of the case, and does not include evidence to assess whether the authority of first instance ruled correctly[60].

The principle of permanence of decisions

A final decision is a decision against which there is no appeal or request for re-examination (Article 16 § 1 of the CAP). No appeal is available against decisions issued in the second instance, issued in the first instance, which by way of exception

57. Wyrok WSA w Warszawie z 21 marca 2012 roku, II SA/Wa 32/12, Legalis Nr 458784.
58. B. Adamiak, *Odwołanie w polskim systemie postępowania administracyjnego*, Wrocław 1980, p. 144 et seq.; J. Wyporska-Frankiewicz, *Zasada dwuinstancyjności postępowania administracyjnego a zasada dwuinstancyjności postępowania sądowo administracyjnego* [in:] *Kodyfikacja postępowania administracyjnego. Na 50-lecie KPA*, red. J. Niczyporuk, Lublin 2010, p. 925.
59. Wyrok NSA z 25 maja 2017 roku, I OSK 2286/15, Legalis Nr 1627868.
60. See the judgment of the Voivodeship Administrative Court in Warsaw: wyrok WSA w Warszawie z 20 kwietnia 2017 roku, VII SA/Wa 1264/16, Legalis Nr 1603355.

are not subject to appeal, and for which a party has missed the time limit for filing an appeal and the time limit for its filing has not been reinstated[61]. The finality of a decision therefore means that a case has been finally handled at the administrative level. Violation of this principle, i.e., repeat review of the same administrative case, results in the invalidity of the later decision under Article 156 § 1.3 of the CAP. Limitation of the principle of permanence of an administrative decision may be provided for in the CAP, or special laws (second sentence of Article 16 §1 CAP). Legal scholars point out that this principle must be interpreted strictly, while under case law a final decision is subject to a presumption of legality, and as such "it is valid and should be enforced as long as it is not amended, cancelled or annulled by a competent authority and subject to the prescribed procedure"[62]. The Code of Administrative Procedure also contains a definition of a final decision, stating that it is a final decision that cannot be challenged in court. In the Polish legal system, there is also the principle of judicial review of administrative decisions, as they can be contested under this procedure on the grounds of illegality.

Conclusion

The article presents the general principles of the Code of Administrative Procedure as an orderly catalogue of principles which provide guidance for public administration authorities. The goal of the article has been achieved. In conclusion, literature rather does not formulate reservations regarding the need to use the very structure of principles of law[63]. Monographic, systematic, and didactic papers commonly refer to it. In the Polish legal system, the term "principle of law" is most often reserved for the applicable legal norms, which have certain features that allow them to be distinguished and contrasted with those norms in the system that are not considered principles of law. At the same time, importantly, the belief that principles of law play an important role in legal discourse and practice is not supported by a consensus on the status of the principles vis-a-vis the legislator's statements contained in the provisions of law. Provisions in the Code of Administrative Procedure relating to general administrative proceedings are the area in which the general principles operate to the full extent[64]. There is a consensus in literature and case law

61. B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz*, op. cit.
62. Wyrok NSA z 14 kwietnia 2017 roku, I OSK 1545/15, Legalis Nr 1605311.
63. Cf. M. Safjan, *Zasady prawa prywatnego* [in:] *System Prawa Prywatnego*, *Prawo cywilne – część ogólna*, red. M. Safjan, t. 1, Warszawa 2012, p. 319.
64. E. Bojanowski, op. cit., p. 51.

that they should be applied at all stages of administrative proceedings, including extraordinary procedures for reviewing final decisions. The scope and applicability of the general principles is not limited to jurisdictional administrative proceedings. Despite the lack of an appropriate reference, the Supreme Administrative Court has repeatedly stated, using a systemic interpretation, that certain general principles are also fully applicable in administrative simplified proceedings. The general principles should also be applied to proceedings not covered by the CAP, that are regulated in other acts governing administrative procedure. The article presents the general principles of the Code of Administrative Procedure as an orderly catalogue of principles that provide guidance for public administration authorities.

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