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## GENERAL PRINCIPLES OF CODE OF ADMINISTRATIVE PROCEDURE AFTER AMENDMENT OF 2017

### INTRODUCTION

The Code of Administrative Procedure<sup>1</sup>, starting with its passing in 1960, contains a unique solution compared to other procedural laws of the Polish legal system, including the Code of Civil Procedure<sup>2</sup> and the Code of Criminal Procedure<sup>3</sup>. The essence of this uniqueness comes down to the fact that the Code of Administrative Procedure provides for general principles of conduct, extracting them at the same

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<sup>1</sup> Act of 14 June 1960 on the Code of Administrative Procedure (uniform text: Journal of Laws of 2016, item 23, as amended); further as the Code of Administrative Procedure.

<sup>2</sup> Act of 17 November 1964 on the Code of Administrative Procedure (uniform text: Journal of Laws of 2016, item 1822, as amended); further as the Code of Administrative Procedure.

<sup>3</sup> Act of 6 June 1997 on the Code of Criminal Procedure (uniform text: Journal of Laws of 2016, item 1749, as amended); further as the Code of Criminal Procedure.

time in Chapter 2 entitled 'General Principles', Section 1 'General Provisions' of the Act and gives them the status of legal norms, which in practice, results in the violation being treated in the same way as any other violation of legal normative status.

The catalog of rules and their shape was not drastically modified so far. This situation changed with the appearance of the Act of 7 April 2017 amending the Act - Code of Administrative Procedure and some other acts<sup>4</sup>. Amendments introduced by this act take two forms:

1. either modify the contents of hitherto general rules Code of Administrative Procedure,
2. or introduce new solutions, unknown to both doctrines and the practice of applying the law.

However, the legislator invariably assigns them the character of legal norms of the statutory rank common to all institutions of administrative procedures regulated by the provisions of the Code of Administrative Procedure.

According to the view in the literature of the subject and the judicature they will be applicable to each of the provisions of the Code of Administrative Procedure. The public administration authorities issuing the administrative decision should be guided by the whole of the rules of procedure, including the provisions governing the general principles of the Code of Administrative Procedure (Articles 6-16 of the CAP)<sup>5</sup>. Moreover, recent jurisprudence states that 'the general principles define the desired pattern of action of the authority conducting the proceedings and must be used in conjunction with other specific provisions of the Code of Administrative Procedure which give them a concrete form.'<sup>6</sup>

The changes introduced by the 2017 Act modify not only the general principles, but also introduce new liberal procedural institutions. Both solutions in accordance with the above assumptions are closely related. In this work however, only the changes to the general principles have been presented with the discussion, and their impact on the practice of law has been pointed out.

<sup>4</sup> Journal of Laws of 2017 item 935; further: Law of 2017.

<sup>5</sup> See G. Łaszczycza, A. Matan, C. Martysz, *Kodeks postępowania administracyjnego. Komentarz*, vol. 1, Warsaw 2010; R. Hauser (ed.), *Prawo procesowe administracyjne. System prawa administracyjnego*, vol. 9, Warsaw 2014; B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz*, Warsaw 2014; K. Majewski, *Trwałość decyzji administracyjnej na tle orzecznictwa sądowego* [in:] D. Fleszer, A. Rogacka-Łukasik (ed.), *Studia administracyjne i cywilne. Księga jubileuszowa dedykowana Profesorowi Stanisławowi Malarskiemu w 85. rocznicę urodzin*, Sosnowiec 2016, p. 164 and next; the judgement of the Provincial Administrative Court (hereinafter referred to as the WSA) in Warsaw of 19 January 2007, ref. no. II / Wa 1911/06, Legalis No. 89688.

<sup>6</sup> See the judgment of the Supreme Administrative Court (hereinafter referred to as NSA) of 13 June 2017, ref. Act I OSK 2202/15, LEX No. 2331253.

## THE PRINCIPLE OF RESOLVING INTERPRETATION DOUBTS<sup>7</sup>

This rule has been introduced in the content of the Code of Administrative Procedure by adding Article 7a which consists of two elements. On the one hand, the provision introduces a general principle and, on the other, it indicates at the same time the cases in which it may be waived. According to Article 7a § 1 the Code of Administrative Procedure if the subject matter of an administrative proceeding is to impose on a party the obligation or to restrict or remove the right of the party, and the matter remains uncertain as to the content of the legal norm, those doubts shall be settled in favor of the party.

Reasons to withdraw the application of the above norms are objective in nature (relate to the effects that occur with the use of this provision) or subjective (refer to a particular category of parties and their interests or interests of third parties) and cover the following cases:

1. the opposing interests of the parties or the interests of third parties are directly affected by the outcome of the proceedings (Article 7a § 1 *in fine*);
2. if the matter relates to an important public interest, including the essential interests of the State, and in particular its security, defense or public order (Article 7a § 2 point 1);
3. in personal matters of officers and professional soldiers (Article 7 § 2 point 2).

In the justification of the Act of 2017 it was pointed out that the principle of resolving interpretation doubts refers to the provisions of substantive law. On the other hand, from the analysis of the content of Article 7a the Code of Administrative Procedure one can see that the situation is slightly different, as it applies both to the substantive law and to the rules governing the administrative procedure<sup>8</sup> (first and foremost, the Code of Administrative Procedure). There are two arguments for this. First of all, the content of the norm 7a the Code of Administrative Procedure does not indicate that the application of this provision is limited to substantive law. Secondly, it is a procedural provision introduced to the Code of Administrative Procedure as a general rule, which taking into account the nature and status of the general rules, will have the effect that it will, as already mentioned, be applicable to each of the provisions of the Code, so that it is primarily dedicated to the procedure. The justification of the Act of 2017 does not envisage all aspects and consequences of the change.

For the correct application of the norm contained in Article 7a the Code of Administrative Procedure it is important to clarify the meaning of 'doubts about the

<sup>7</sup> In the literature of the subject it was named the principle of friendly interpretation of provisions; see R. Hauser, M. Wierzbowski (ed.), *Kodeks postępowania administracyjnego. Komentarz*, komentarz do art. 7a, Legalis [access: 07.07.2017].

<sup>8</sup> This view is also gaining recognition of the doctrine; see R. Hauser, M. Wierzbowski (ed.), *Kodeks postępowania administracyjnego. Komentarz*, komentarz do art. 7a, Legalis [access: 07.07.2017].

content of a legal norm.' The entry of this provision into force on 1 June 2017<sup>9</sup> causes that there is no judiciary position in this area, whereby the problem of interpretation doubts have been dealt with by the administrative court on the basis of other provisions of the Code of Administrative Procedure. In the view expressed by the Supreme Administrative Court (NSA) in 2009 in the background of the gross violation of the law referred to in Article 156 § 1 point 2 of the Code, the court stated that 'significant interpretative doubts' can be indicated when, on the basis of linguistic and systemic rules (which are at the same level of the interpretation process) there are acceptable and equally justifiable contrasting results of the interpretation and when the purposeful, functional and axiological verification refers to such important purposes, effects or social values (overwhelming results of linguistic and systemic interpretation) that the failure to take them into account would violate the state of the rule of law<sup>10</sup>.

In view of the above, it can be assumed that interpretative doubt arises when the content of a provision allows two or more interpretations understood as equivalent results of the interpretation of its content, i.e. justified with equal force<sup>11</sup>. The proceedings in the context of the emergence of interpretative doubts were already known to another procedure related to administrative proceedings. The principle *in dubio pro tributario* (if in doubt do in favor of the taxpayer) was known by the tax procedure, although it was not included in the text of the Tax Ordinance<sup>12</sup>. This situation has changed with the introduction of the Article 2a of 1 February 2017, which expresses it explicitly. Even before this date in the judicature, the widespread use of this principle in tax matters has been emphasized<sup>13</sup>. In addition, the case-law also mentions that the principle of *in dubio pro tributario* may also be applied in other proceedings based on the law, including the Code of Administrative Procedure. According to the court, this principle can be derived from the principle of deepening the citizens' trust and the principle of the settlement of the case by taking into account the legitimate interests of the citizen regulated by Article 7 the Code of Administrative Procedure<sup>14</sup>.

Thus, it should be recognized that it is not an institution unknown to the Polish legal order. It was not directly expressed in the text of the Act (the Code of Administrative Procedure and the Tax Code). The introduction of these provisions into both of these acts in 2017 should be assessed positively, as they thus have the status of legal regulations generally applicable to the statutory rank (and not just the postulate

<sup>9</sup> Article 7a the Code of Administrative Procedure is applied for proceedings brought after 1 June.

<sup>10</sup> See the judgment of Supreme Administrative Court (NSA), of 1 July 2009 ref. no.: I OSK 1442/08, Legalis no 238188.

<sup>11</sup> Also the Voivodeship Administrative Court (WSA) in Wrocław; see the judgment of 25 November 2009 r., ref. no. I / Wr 1536/09, Legalis No. 223199.

<sup>12</sup> Act of 29 August 1997 on the Tax Code (unified text: Journal of Laws 2017, item 201, hereinafter referred to as the Tax Code.

<sup>13</sup> See the judgment of WSA in Krakow of 1 July 2016, ref. no.: VII SA / Wa 1698/15, Legalis No. 1513406.

<sup>14</sup> Ibidem.

or assumptions) and, in the absence of their application, a public administration or tax authority is commits infringement of a specific legal provision, and the party is entitled to appropriate remedies.

## THE PRINCIPLE OF COOPERATION BETWEEN BODIES AND THE APPROPRIATENESS OF MEASURES

According to the Article 7b the Code of Administrative Procedure, in the course of proceedings, public administration bodies cooperate with each other to the extent necessary for a thorough explanation of the facts and the legal situation of the case, with a view to the social the legitimate interest of the public and the efficiency of the proceedings, by measures appropriate to the nature, circumstances and complexity of the case. Introducing the principle of cooperation of the authorities is in fact complementary to the previously functioning institution governed by Article 106 the Code of Administrative Procedure, according to which the administration body conducting the proceedings before issuing of the decision on the matter is obliged to obtain the position of another body (opinion, consent or position in another form) if required by law (Article 106 § 1 of the Act).

At the same time the Law of 2017 expanded the catalog of general principles by Article 106a the Code of Administrative Procedure granting the authority responsible for resolving the matter competence to confer the power to convene a sitting if it could contribute to the acceleration of adopting the position. This can happen both *ex officio* and on request (of party or body).

In view of the above mentioned circumstances, it is necessary to conclude that the introduction of the principle of cooperation between the authorities and the appropriateness of the measures has two main effects. First, it reorganizes and complements the existing regulation, above all in the scope of the rules on which the cooperation of public administration bodies should be based. At this point the fact is that the content of Article 7b the Code of Administrative Procedure stresses the need for a quick resolution of the case (adequate measures, efficiency of proceedings), i.e. the value already resulting from other general principles of the Code of Administrative Procedure. Secondly, by granting the status of the general rule of the Code of Administrative Procedure there is an extension of application of this institution.

Consequently, one should agree with the presented in the doctrine view, according to which 'the principle should be applied in all other situations where, in administrative proceedings, there is any cooperation between the authorities, whether in the form of legal assistance as provided for in Article 52 of the Code of Administrative Procedure or the aforementioned adoption of the position and in situations legally not requiring such a form'<sup>15</sup>.

<sup>15</sup> See R. Hauser, M. Wierzbowski (ed.), *Kodeks postępowania administracyjnego. Komentarz*, komentarz do art. 7b, Legalis [access: 10.07.2017].



The regulation of Article 7b the Code of Administrative Procedure (in particular the words ‘to the extent necessary to clarify factual and legal matters’) also takes into account the assumptions of the other general principles of the Code of Administrative Procedure, including in particular the principle of the objective truth expressed in Article 7 the Code of Administrative Procedure.

## THE PRINCIPLE OF STRENGTHENING THE TRUST

The principle of strengthening the trust was, in contrast to the previous ones, only modified (extended). So far, according to Article 8 the Code of Administrative Procedure, the public administration body was obliged to conduct the proceedings in a manner that would give the public confidence in its participants. With the entry into force of the Act of 2017, this obligation has been extended to indicate the rules by which compliance with this principle is to be pursued, i.e. guided by the principles of proportionality, impartiality and equal treatment that is principles recognized in a democratic state of law. The principle of strengthening the trust also consists of informing the parties of the factual and legal circumstances that may affect the determination of its rights and obligations. The non-validity of the principle of *ignorantia iuris nocet*<sup>16</sup> and the imposition of a number of obligations on the authority result in the fact that building the confidence in the participants in the proceedings to the public authority will also depend on the fulfillment of these obligations.

## THE PRINCIPLE OF UNIFORMITY OF JUDICIAL SOLUTIONS

In Article 8 § 2 the Code of Administrative Procedure the legislator introduced a principle unknown so far to the administrative procedure of uniform ruling practice, indicating that public administration without a justified reason does not depart from the settled practice in the same factual and legal context. The uniformity of judicial solutions is a principle known to judicial practice, however it was not expressed in a regulation of statutory ranking in the scope of administrative procedure, although its major importance had been stressed in Supreme Administrative Court, Supreme Court<sup>17</sup> (SN) and Voivodeship Administrative Court by among others indication, that aiming at the uniformity of judicial practice results in strengthening legal stability<sup>18</sup>. In the opinion of the Supreme Court, the principle of uniformity of decisions can not be absolute. As stated in one of the judgments,

<sup>16</sup> See judgment of the Voivodeship Administrative Court Krakow of 1 June 2017, Ref. No.: 222/17, LEX no. 309036.

<sup>17</sup> See judgment of the Supreme Court of 2 June 2010 ref. no.: III CSK 204/09, Legalis no. 385375; Judgment of the Supreme Administrative Court of 29 May 2014, Ref. no.: II GSK 677/13, Legalis No. 989916; NSA Order of the Supreme Administrative Court of 29 May 2014, Ref. no.: II GSK 727/13, Legalis No. 989919; judgment of the Supreme Court of 9 March 2006, Ref. no.: I CSK 147/05, Legalis No. 100262.

<sup>18</sup> See judgment of the Supreme Court of 18 June 2009 ref. no.: II SA/Kr 468/09, Legalisnr 162784.

‘uniformity of views and coherence of legal judgments is an important value, but it can not lead to the nullity of *res judicata* of the appealed judgments’<sup>19</sup>. The view of the SN seems to be shared by the legislator, as indicated by the adoption in the wording of Article 8 § 2 the Code of Administrative Procedure that it is possible to derogate from the principle of uniformity of decisions, if there is a justified reason.

It should also be emphasized that in Article 8 § 2 the Code of Administrative Procedure the legislator used the term ‘in the same factual and legal situation’, which causes that rule to be binding on the public administration only in the same circumstances of factual and legal nature. Similarity between them can not be a sufficient reason. So far, the concept has not been dealt with by judicial jurisdiction. In judicature only the meaning of the concept of identity of the subject matter of the case was determined by which, according to the Supreme Administrative Court (NSA), one should understand the preservation of the identity of the concretized rights and obligations<sup>20</sup> and the identity of the subject matter of which the following characteristics are attributed: the identical subject matter of the new case to the case ultimately settled and to the identity of the legal status of the case in the unchanged factual circumstances of the case<sup>21</sup>.

Only that the *acquis* in this field can not be directly used in the scope of application of Article 8 § 2 the Code of Administrative Procedure, because the quoted views refer to the designation of the border of an administrative matter from the point of view of judicial review of decisions of public administration bodies. In essence, it will be about the same administrative matter, and specifically – determining the limits in which the administrative court can settle<sup>22</sup>. On the other hand, the regulation of Article 8 § 2 is a ‘postulate’ which refers to various matters, i.e. matters involving different subjects (parties of the proceedings). Consequently, both the

<sup>19</sup> Judgment of the Supreme Court of 2 June 2010, Ref. no.: III CSK 204/09, Legalis No. 385375.

<sup>20</sup> See judgment of the Supreme Administrative Court of 27 January 2017, Ref. no.: II GSK 1452/15, LEX No 2268864.

<sup>21</sup> See judgment of the Voivodeship Administrative Court in Poznań of 20 August 2014, ref. no. IV SA/Po 530/14, LEX no. 1502858; judgement of WSA in Poznań of 8 June 2016, ref. no.: III SA/Po 890/15, LEX no. 2087541.

<sup>22</sup> See judgment of the Voivodeship Administrative Court in Gliwice of February 8, 2017, Ref. no.: III SA / Gl 1477/16, LEX no 2261534. the Voivodeship Administrative Court (WSA) indicates the obligation resulting from Article 134 § 1 Law on proceedings before administrative courts (p.p.s.a), according to which the court decides within the scope of the case, which sets the limits of the administrative case in which the complaint was lodged and that it can not make the object of settling another act or action. On the other hand, the ‘administrative matter’ consists of subjective and objective elements, and in determining the identity of the case these elements should be subjected to examination. Identity of subject matter is the identity of the subject of rights or obligations, identity is the identity of the content of those rights and obligations and their legal and factual basis. See also the order of the Supreme Administrative Court of 30 November 2012, ref. no. I GSK 1500/12, LEX No 1239312, where the Supreme Administrative Court NSA is of the opinion that ‘reimbursement <within the scope of a case> concerns a matter in material terms, and therefore the proceedings are conducted within the boundaries of the case when the subject matter of these cases will be matters of the same subject and object identity. Such situation will occur when the acts or activities will concern the same subjects, identical object, factual status and the legal base’.



above-mentioned and other views of judicature in this field may be merely ancillary material. Interesting interpretative guidance arises from the jurisdiction of common courts, which defines the concept of the identity of factual events in the context of civil procedure provisions concerning participation in a dispute (Article 72 § 1 (1) the Code of Civil Procedure). In the opinion of the Court of Appeal in Poznań, this term should be understood as the identity of the events, the occurrence of which determines the creation of a particular legal relationship, which is the source of the rights from which the claims are later brought<sup>23</sup>.

## THE PRINCIPLE OF AMICABLE SETTLEMENT OF CASES

The principle of amicable settlement of cases has been regulated in Article 13 the Code of Administrative Procedure. Prior to the entry into force of the Act of 2017, Article 13 § 1 the Code of Administrative Procedure provided for the possibility of terminating the case by way of a settlement made before the authority conducting the proceedings, provided that the parties of conflicting interests were involved in the case. In turn, in § 2 of this provision, the legislator indicated that the public administration body should, in these cases, take actions that would induce the parties to settle the matter in this form. It can therefore be said that this was the principle of amicable settlement. Starting from 1 June 2017, the provisions of Article 13 the Code of Administrative Procedure have been substantially modified. In the first place it should be noted that the duty of the authority was replaced by an obligation. The body pursuing the proceeding seeks to resolve the disputes in an amicable way and to determine the rights and obligations which are the subject of the proceedings in their own jurisdiction, and the actions they undertake in that regard have been merely referred to in Article 13 § 1 point 1 and 2 of the Act ('in particular') and the authority shall take all reasonable steps to mediate or conclude a settlement at a particular stage and, in particular, provide explanations of the possibilities and benefits of the amicable settlement of the case (Article 13 § 2 of the Code of Administrative Procedure). Such a literal interpretation of this regulation indicates that the administration has an absolute obligation in this regard, including the relation to a number of informational activities. In turn, the use in Article 13 § 2 the Code of Administrative Procedure of the phrase 'at a given stage of the proceedings' indicates that it may not be sufficient to fulfill the obligation once to create the conditions for mediation or settlement. If the possibility for another stage of the proceedings (even in the absence of such possibility or the resignation of the party) will take place, the obligation to undertake such actions and re-give explanations will be born on the authority. In the previous legal state, in principle, the

<sup>23</sup> See judgment of the Administrative Court in Poznań of 16 January 2013, Ref. no.: ACz 2285/12, LEX No 1264417.

body conducting the proceedings, pursuant to Article 13 the Code of Administrative Procedure in the scope of information was only obliged to inform about the admissibility of settling the administrative case in the form of an agreement<sup>24</sup>. In addition, through the provision of Article 13 the Code of Administrative Procedure the legislator introduces a mediation institution, which is not yet known to the administrative procedure. Detailed regulations in this area were introduced by adding Chapter 5a. Mediation, that means Article 96a-96n.

## THE PRINCIPLE OF TWO INSTANCES

As regards the modification of the content of the codified rule in Article 15 the Code of Administrative Procedure, i.e. the principle of two-state constituencies, by means of the 2017 amendment, the legislature confined itself to pointing out that a special provision might provide for a derogation ('unless special provision provides otherwise'). This provision 'in itself' does not violate the constitutional principle of two instances, as Article 78 of the Constitution of the Republic of Poland<sup>25</sup> introduced such a situation. Nevertheless, it should be borne in mind that the Constitution of the Republic of Poland adopts a two-instance procedure as the rule, and the exceptions are introduced by the law as a unique situation, which in turn necessitates a detailed justification for the introduction of such a solution in ordinary legislation. In other words, the one-instance procedure in the administrative procedure governed by the law, as well as the provisions of other laws, should be treated as a justified (special), not a standard circumstance. This view was commonly expressed in the doctrine as well as jurisprudence on various legal disciplines<sup>26</sup> including constitutional protection of the two-state procedure<sup>27</sup>. The importance of functioning of the two-instance process of the court is also reflected in the provisions of the Code of Administrative Procedure and the highlighted in the judicature duties of an appeal body, i.e. two-fold substantive settlement of the same case, understood as a full re-examination of the case, on the basis of the findings of the appeal body,

<sup>24</sup> In judiciary, see judgment of the Voivodeship Administrative Court (WSA) in Warsaw of 8 November 2005, Ref. no.: IV SA / Wa 1648/05, Legalis No. 271630.

<sup>25</sup> Act of 2 April 1997 on the Constitution of the Republic of Poland (Journal of Laws No. 78 item 483); further as the Constitution of the Republic of Poland.

<sup>26</sup> See judgment of the Supreme Administrative Court (NSA) of 14 March 2014, ref. no.: II OSK 2536/12, Legalis No. 908768. In this judgment the NSA points out that the courts have been defending the guarantee provided for in Article 78 of the Constitution of the Republic of Poland to challenge the decision issued at first instance. See also judgment of the Supreme Administrative Court (WSA) in Warsaw of 29 April 2014, ref. no.: II SA/Wa 2083/13, Legalis no. 1065375 in which the WSA indicates that in the regulation of Article 78 of the Constitution of the Republic of Poland refutes the possibility of a change of the decision issued by the body in the appeal proceedings as a result of the request for reconsideration of the case. See also the judgment of the Administrative Court in Katowice of December 11, 2013, Ref. no.: AKZ 714/13, Legalis No. 758138.

<sup>27</sup> See decision of SN of 23 January 2015, ref. no. V CZ 98/14, Legalis no. 1231849.

both as regards the facts and the legal status of the case, together with an indication of the argument which was the basis for issuing a ruling on specific content, and referring to the objections raised in the appeal<sup>28</sup>. New wording of Article 15 the Code of Administrative Procedure does not raise any objections and at the same time does not dispel doubts as to the correctness of a particular solution adopted (one-instance procedure). Accordingly, it is necessary to carry out an analysis of the provisions which introduce one-instance administrative procedure, i.e. the special provisions referred to in Article 15 the Code of Administrative Procedure.

Referring to the content of Article 15 of the Code of Administrative Procedure it should also be pointed out that it is necessary to assess the validity of the change in the shape in which it was made.

Taking into account the principle of *lex specialis derogat legi generali*, in principle the addition of the words 'unless provided otherwise' is unnecessary. Even if the Code of Administrative Procedure did not contain this reservation and the special rule (*lex specialis*) introduced a one-instance rule, the practice of applying the law in this respect would not be different. Such a solution was in effect until the amendment of 2017. Article 15 of the Code of Administrative Procedure was limited to the indication that administrative proceedings are two-instance proceedings. Among the special provisions there were also those which modified this principle. An example of such a regulation is Article 33 Section 3 of the Act of 29 December 1992 on Radio and Television Broadcasting<sup>29</sup>, pursuant to which the decision of the President of the National Broadcasting Council to issue concessions for the broadcasting of radio and television programs is final. In view of these circumstances, it should be noted that the modification of the content of Article 15 of the Code of Administrative Procedure is complementary, but does not affect the practice of applying the law.

## THE PRINCIPLE OF PERMANENCE OF FINAL ADMINISTRATIVE DECISIONS

The principle of permanence of final administrative decisions by the Act of 2017 was only supplemented. Article 16 § 1 of the Code, according to which decisions which are not appealed in the administrative proceedings of the instance or the request for re-examination of the case are final and the revocation or amendment of

<sup>28</sup> See judgment of the WSA in Szczecin of 30 November 2016, Ref. no.: II / Sz. 999/16, Legalis No. 1547836; Judgment of the Voivodeship Administrative Court in Warsaw of 6 July 2016, Ref. no.: VII SA / Wa 1895/15, Legalis No. 1513554; Judgment of the PAC in Warsaw of 23 March 2015, Ref. no. I / Wa 3358/14, Legalis No. 1245144; judgment of the Voivodeship Administrative Court in Lublin, 4 September 2014, ref. no. III / Lu 223/14, Legalis No. 1119147; Judgment of the WSA in Gdańsk of 25 June 2014, Ref. no.: I SA / Gd 318/14, Legalis No. 1058458; Judgment of the WSA in Kielce of May 15, 2014, Ref. No. II / Ke 272/14, Legalis No. 963882.

<sup>29</sup> Uniform text, Journal of Laws of 2016, item 639.

such decisions, their annulment and the resumption of proceedings may take place only in cases provided for in the code or special laws, has not changed. Accordingly, both the views presented in the jurisprudence and the literature of the subject remain valid<sup>30</sup>. The permanence that the final decision imposes on Article 16 § 1 of the Code of Administrative Procedure primarily serves to ensure legal certainty. The fundamental importance of sustainability consists in stabilizing decision-based legal relationships<sup>31</sup>, implementing and protecting certain values of the legal order<sup>32</sup>, including: stability and legal security, trust in the authorities, confidence in the law<sup>33</sup>, and the protection of legitimate rights<sup>34</sup>. All of these functions are also implemented by assuming that the final decision is based on the presumption of legality and adequacy<sup>35</sup> and remains in the legal process (and therefore has legal effects<sup>36</sup> and should be exercised<sup>37</sup>) until it is eliminated<sup>38</sup> in compliance with the law, even if it is affected by defect, and is *res judicata* of the case in which it was issued<sup>39</sup>.

Completion of the principle of permanence of final administrative decisions consists of adding in Article 16 § 3, by which the legislature defines the concept of final decision, in the sense that it is understood as a final decision, which can not be challenged in court. Article 16 § 3 of the Code of Administrative Procedure is as correct and true as possible, while a detailed analysis of this provision indicates that its presence in the content of the Act, in fact changes nothing in practical terms. In the explanatory memorandum of the bill, it was pointed out that for the introduction of this provision there is a need to define the validity of the decision because of the often misused use of this term as a synonym for the concept of final decision<sup>40</sup>. In the 80s of the 20<sup>th</sup> century it was argued in literature that the final decision should distinguish its legal validity, which is referred to as indivisible or in two forms i.e.

<sup>30</sup> Collating the views of judiciary and doctrine – see K. Majewski, *Trwałość decyzji...*, op. cit., p. 164 and next.

<sup>31</sup> W. Dawidowicz, *Ogólne postępowanie administracyjne. Zarys systemu*, Warsaw 1962, p. 123.

<sup>32</sup> A. Matan [in:] G. Łaszczyca, C. Martysz, A. Matan, *Kodeks...*, op. cit., p. 168.

<sup>33</sup> M. Zdyb, J. Stelmasiak, *Zasady ogólne Kodeksu postępowania administracyjnego. Orzecznictwo Naczelnego Sądu Administracyjnego z komentarzem*, Lublin 1992, p. 116.

<sup>34</sup> A. Matan (in): G. Łaszczyca, C. Martysz, A. Matan, *Kodeks...*, op. cit., p. 168.

<sup>35</sup> See judgment of 13 January 2016, ref. no.: I OSK 994/14, LEX no. 2032863; judgment of the Supreme Administrative Court of 26 August 2016, ref. no.: I OSK 3284/15, LEX no. 2142168.

<sup>36</sup> See judgment of the Supreme Administrative Court of 24 May 2016, ref. no.: I OSK 1790/14, LEX no. 2082463.

<sup>37</sup> See judgment of the Supreme Administrative Court of 14 April 2017, ref. no.: I OSK 1545/15, LEX no. 2289679.

<sup>38</sup> See judgment of the Voivodeship Administrative Court in Bydgoszcz of 10 August 2016, ref. no.: II SA/Bd 935/15, LEX no. 2152101.

<sup>39</sup> See judgment of the Supreme Administrative Court of 9 December 2015, ref. no.: II OSK 926/14, LEX no 2000046; judgment of Supreme Administrative Court of 30 September 2016, ref. no.: I OSK 1152/16, LEX no 2241225; judgment of the Voivodeship Administrative Court in Poznań of 31 August 2016, ref. no.: II SA/Po 179/16, LEX no 2122955.

<sup>40</sup> See text No. 1183, p. 21.

formal validity and substantive validity<sup>41</sup>. The issue of legality was also dealt with by the Supreme Court, while the judicial practice of the Supreme Court does not settle the above-mentioned doubts<sup>42</sup>. There is a view in favor of both the first approach<sup>43</sup> and the other<sup>44</sup>.

The mutual relation of the finality and the validity of the administrative decision was different throughout the period of duration of the Code of Administrative Procedure. This situation is dictated by changes in the legal status. In the period from the entry into force of the Code of Administrative Procedure to its amendment in 1980 (the appointment of the administrative judiciary) the final decisions were at the same time valid.

After 1980 with the introduction of a legal measure in the form of an appeal to a court initiating judicial review of an administrative decision, this state has changed and the administrative decisions did not acquire these qualities of 'at the same time', i.e. because of the possibility of using this remedy, the decision does not become valid once the final decision is reached (so in the Supreme Administrative Court<sup>45</sup>). Accordingly, it is aptly stated in the judicature that 'legally binding decisions are decisions that have been upheld in court proceedings, and therefore in which the appeal was dismissed or rejected and those which were not challenged in this proceeding due to expiry of the period for lodging an appeal'<sup>46</sup>. According to Article 53 § 1 of the Act of 30 August 2002 on the procedure before administrative courts<sup>47</sup>, the appeal shall be lodged to the court within 30 days of the date of delivery of the decision to the applicant<sup>48</sup>, and for the effective lodging of the appeal against a decision of the administrative authority, it should be done through the intermediary of the body of which the decision is appealed, within the time provided by law<sup>49</sup>. On the other hand, if a party acts through an attorney in the administrative proceedings, the time limit for lodging an appeal to the administrative court starts from the date of service of the decision to the plenipotentiary, even if it was previously served to the party<sup>50</sup>.

<sup>41</sup> A. Matan [in:] G. Łaszczycza, C. Martysz, A. Matan, *Kodeks...*, op. cit., pp. 169-170.

<sup>42</sup> More on the subject: K. Majewski, *Trwałość decyzji...*, op. cit., p. 164 and following.

<sup>43</sup> The resolution of the Supreme Court of 21 October 2003, ref. no.: I KZP 31/03, Legalis no. 59213.

<sup>44</sup> The resolution of the Supreme Court of 29 October 2004 ref. no.: III CZP 63/04, Legalis no. 65438.

<sup>45</sup> See judgment of the Supreme Administrative Court of 30 September 2016, ref. no.: I OSK 1152/16, LEX No. 2241225.

<sup>46</sup> Judgment of the Voivodeship Administrative Court in Krakow of March 23, 2017, Ref. no.: II SA / Kr 1419/16, LEX no. 2273166. Also the Supreme Administrative Court of 30 September 2016, ref. no.: I OSK 1152/16, LEX No. 2241225.

<sup>47</sup> Uniform text: Journal of Laws of 2016 item 718 as amended.

<sup>48</sup> As regards the importance of the institution of service in the administrative procedure and the bind of the administration by the issued decision: K. Majewski, A. Kościeszka, *Głosa do wyroku Naczelnego Sądu Administracyjnego z dnia 30 września 2010 r.*, sygn. akt: II OSK 1417/09, "Annals of the Administration and Law". Year 16. Issue 2, Sosnowiec 2016, p. 439 and following.

<sup>49</sup> See decision of the Supreme Administrative Court of 11 June 2013, ref. no.: II GSK 937/13, Legalis no. 916555.

<sup>50</sup> See decision of the Supreme Administrative Court of 6 March 2013, ref. no.: II GSK 222/13, Legalis no. 919092.

The decision on the correctness of the service of a decision to the party or the attorney acting for them in the proceedings concerning the deadlines to file a legal remedy can be made at the initial stage of judicial review of the brought action<sup>51</sup>. When referring to the events that result in period within which proceedings must be commenced one must indicate the fictitiousness of service. It has the legal effect equivalent to 'traditional' delivery. Where there is a fictitiousness of service, it is irrelevant to keep the 30 days period to lodge an appeal to the court if the party was provided for the settlement on the premises of the body<sup>52</sup>. The effect of service has already taken place and the time limit for lodging an appeal starts from the date on which the mail was delivered (the 14 day deadline for receipt of the mail).

In conclusion, it should be pointed out that since 1980 there has been a separation between the finality and the validity of an administrative decision. Changes introduced by the Act of 2017 also do not make modifications in this respect. Consequently, the addition of Article 16 § 3 of the Code of Administrative Procedure is only supplementary but does not affect the practice of applying the law.

## THE CONCLUSION

The above demonstration leads to the conclusion that the amendment of the Code of Administrative Procedure of 2017 in the scope of general principles does not introduce significant modifications (no change in the main assumptions of the procedure). Most of the changes introduced are complementary (indicating the rules of building trust for public service proceedings or the definition of a final decision) or are solutions that were already known but not reflected in the text of the law (principle of uniformity of decisions). Granting the character of legal norms of the statutory rank to 'solutions' of the second category should be assessed positively. This eliminates voluntary use by imposing a specific obligation on the body conducting the proceedings. This, in turn, has the effect that it gives the parties the ability to enforce this obligation, and in the case of failure to use the legal protection measures provided for by law.

As regards the other changes introduced by the Act of 2017 (other than the general rules of the Code of Administrative Procedure), the mediation institution, which aim according to Article 96a § 2 the Code of Administrative Procedure is to clarify and consider the factual and legal circumstances of the case and make arrangements for its settlement within the limits of the applicable law, including issuing a decision or concluding a settlement. In addition, the parties to the mediation

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<sup>51</sup> See decision of the Supreme Administrative Court of 13 September 2012, ref. no.: I FZ 284/12, Legalis no. 541273.

<sup>52</sup> See decision of the Supreme Administrative Court of 12 October 2011, ref. no.: II FSK 2422/11, Legalis no. 413767.



may be either parties to the proceedings or the body conducting the proceedings (Article 96a § 4 of the Code of Administrative Procedure). The institution of mediation in the form presented above should be analyzed in the perspective of equipping the public administration with administrative authority, manifested among others by issuing administrative decisions. It is difficult to talk about the issuance of ruling decisions in a situation where the body becomes a participant in mediation, while the mediation itself also relies on making arrangements for settling the case.

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**Summary:** This article refers to the amendment of general principles of the Code of Administrative Procedure. The author has presented the scope of modifications made in the Act, including the indication whether it is the introduction of a new legal institution, or complementing the already known solution. Finally, the impact of the changes made or lack thereof on the practice of applying the law has also been indicated.

**Keywords:** general principles of the Code of Administrative Procedure, the Code of Administrative Procedure Amendment of 2017, importance of general principles the Code of Administrative Procedure

## ZASADY OGÓLNE K.P.A. PO JEGO NOWELIZACJI Z 2017 R.

**Streszczenie:** Niniejszy artykuł porusza problematykę nowelizacji k.p.a. w zakresie zasad ogólnych. Przedstawiono zakres modyfikacji, jakich dokonano w treści ustawy wraz ze wskazaniem, czy jest to wprowadzenie nowej instytucji prawnej, czy też uzupełnienie znanego już rozwiązania. I wreszcie wskazano także wpływ dokonanych zmian bądź jego brak na praktykę stosowania prawa.

**Słowa kluczowe:** zasady ogólne k.p.a., nowelizacja k.p.a. 2017, znaczenie zasad ogólnych k.p.a.