

THE PRINCIPLE OF EQUAL TREATMENT AS A REFLECTION OF ENHANCING CITIZENS' TRUST IN PUBLIC AUTHORITIES

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Summary. The principle of equal treatment is one of the fundamental principles of the democratic *Rechtsstaat*. In administrative law, it is expressed as equal treatment of parties to proceedings that have the same status. This is intended to enhance citizens' trust in public authorities and decisions they issue. The author presents: the principle of equal treatment in the Polish legal order, enhancing trust in public authorities, the principles of proportionality and impartiality as reflections of equal treatment of participants in administrative proceedings. The analysis is based on the doctrinal and judicature positions.

Key words: administrative proceedings, general principles of administrative proceedings, equality before the law, impartiality, justice

INTRODUCTION

The principle of equal treatment is classified as one of the fundamental principles of administrative proceedings. It meets standards of administrative proceedings set by the European Code of Good Administrative Behaviour. It is intended to enhance citizens' trust in public authorities and decisions they issue. It is important that all participants in proceedings be guaranteed the same rights and imposed identical duties. Analysis of legal regulations that guarantee equal rights to parties to administrative proceedings is the objective of this paper.

The dogmatic-exegetic method is primarily employed in this study. It will serve a detailed analysis of current legal regulations, as well as interpretation and classification of concepts used to define the particular institutions described in this article. The functional theory of law will also be utilised by referring to rulings of the Constitutional Tribunal and administrative courts. This method plays an important role as instances of judicial decisions illustrate legal norms in practical action.

1. THE PRINCIPLE OF EQUAL TREATMENT IN THE POLISH LEGAL ORDER

The principle of equality has been one of the most important principles of the democratic *Rechtsstaat*. The writer of the Constitution of the Republic of Poland¹ has incorporated the principle: “All shall be equal before the law” in its Art. 32. Accordingly, equality applies to rights and liberties of all legal entities. “Equality” is not defined under Art. 32, sect. 1 of the Polish Constitution, however.¹ A definition is not supplied by other constitutional regulations using the term (for instance, the preamble, which states citizens “are equal in their rights and obligations to the commonwealth — Poland,” or Art. 64, sect. 2, which stipulates “ownership, other property rights, and the right to inheritance shall be subject to legal protection that shall be equal to all” [Podkowiak 2016, 232].

The dictionary definition says equality is a total similarity, identity, sameness (with regard to quantity, quality, size, etc.), as well as equal rights, absence of a division into the (socially) privileged and the exploited [Szymczak 1994, 304]. Equality differs from non-discrimination with the type of duties binding the public authority. In the former case, they are positive and involve certain actions for the sake of equality (e.g. granting privileges to a social group). In the latter, the duties are negative and consist in refraining from certain actions that violate the principle of equal treatment. Characteristically, the principle of non-discrimination binds also private entities (e.g. employers, service providers), although scopes of their duties are regulated in special legal provisions [Śledzińska-Simon 2011, 42].

“Equality” is a legal and juridical term as well. Its essence lies not in identity or absence of any differentiation in legal positions of entities, that is, of favouring of or discrimination against them. Equality is not absolute – it admits diversity of entities’ positions. This is only allowed, though, where the criteria of differentiation are non-discriminatory, reasonable, and just [Behr 2018, 175].

Interpretation of the principle based on a range of views expressed in the doctrine [Granat 2019, 133; Garlicki 2019, 98ff; Górecki 2015, 75ff; Sarnecki 2013, 156] indicates equality means the same protection of any legal entity by state-instituted legal norms and a prohibition against unauthorised privileges or discrimination by force of law, whereas the principle of equality before the law means equal treatment of entities in the process of application of legal norms. As M. Masterniak–Kubiak notes, *equality* before the law is universally regarded as a foundation of the democratic legal order and refers to both institution and application of law. Thus, the idea is a major part of the theory of human and civic rights, freedoms, and obligations. It is also seen as one of the fundamental *principles* of *Rechtsstaat* [Masterniak–Kubiak 2002, 119].

¹ Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 2009, No. 114, item 946 [henceforth cited as: Polish Constitution].

The Constitutional Tribunal is right to assume the right to equal treatment arising from Art. 32, sect. 1 of the Polish Constitution is “a «second-degree» law («meta-law»), i.e. it accrues in connection with specific legal norms or other actions of public authorities, not in abstraction, «solely».”² The principle of equality thus presumes – in line with the Constitutional Tribunal’s position – different treatment of different entities, that is, those without an essential characteristic in common, as well. The principle of equality does not exclude differentiation in legal situation of addressees of a given norm, therefore, yet assumes a rational choice of a differentiation criterion, or finding a characteristic distinguishing similar entities reasonable in an area under regulation. When evaluating a legal regulation from the perspective of the equality principle, the Constitutional Tribunal states, it needs to be considered whether an essential characteristic can be established that substantiates equal treatment of certain legal entities, viz. if entities under comparison are similar in an essential respect. This requires analysis of objective and contents of a normative act containing a legal norm under examination. If legislation differentiates positions of some categories of legal entities, it needs to be established if the different treatment is reasonable.³

In line with the Constitutional Tribunal’s position, a departure from the principle of equality does not necessarily mean breach of Art. 32 of the Polish Constitution. Differentiation of similar entities is allowed if it is based on a criterion meeting the following conditions: first, it must be relevant, in direct connection with the objective and principal content of regulations including a norm being reviewed, and must serve realisation of its objective and content; any differentiation must be reasonable; second, it must be proportional; weight of the interest served by differentiation in positions of a norm’s addressees must be in an appropriate proportion to the weight of interests breached by unequal treatment of similar entities; third, it must relate to principles, values, and constitutional norms substantiating unequal treatment of similar entities [Karp 2004, 198].

According to the principle of equal treatment, all parties in the same situation should be treated in a comparable manner without any signs of discrimination. The Regional Administrative Court in Warsaw was right to note the right to equal treatment by public authorities in the area of administrative law is expressed by the fact entities of the same legal status can expect the same decisions awarding or refusing to award entitlements based on and arising from the same regulations.⁴

Transfer of the constitutional standards of public authorities’ actions to legal regulations of the Code of Administrative Procedure⁵ fulfils the general principle of enhancing trust in public authorities with the values it institutes. These princi-

² Decision of the Constitutional Tribunal of 24 October 2001, SK 10/01, OTK–ZU 2001, No. 7, item 225, p. II, point 2.

³ Judgement of the Constitutional Tribunal of 5 April 2011, P6/10, OTK–A 2011, No. 3, item 19.

⁴ Judgement of the Regional Administrative Court in Warsaw of 5 October 2004, II SA 3196/03, CBOSA.

⁵ Act of 14 June 1960, the Code of Administrative Procedure, Journal of Laws of 2020, item 256 [henceforth cited as: CAP].

ples of proportionality, impartiality, and equal treatment should be attributed a fundamental importance for consideration and resolution of individual cases by way of decisions as part of administrative proceedings in both material and processual terms [Adamiak and Borkowski 2017].

2. ENHANCING OF CITIZENS' TRUST IN PUBLIC AUTHORITIES

The principle of enhancing citizens' trust in state authorities introduced to administrative proceedings [Idem 2016, 42ff; Woś 2015, 120; Chrościelewski and Tarno 2015, 42; Kmiecik 2013, 46ff; Chorąży, Taras, and Wróbel 2009, 36ff; Kędziora 2015, 112–17; Wróbel, Hauser, and Niewiadomski 2017, 167ff], incorporated in Art. 8 CAP, explicitly defines what is fully contained in the principle of legality. This principle implies first of all a requirement of legal and just conduct of proceedings and case resolution by a public administration authority. Only proceedings meeting such requirements and decisions resulting from proceedings conducted in such a manner are capable of inspiring citizens' trust in public administration authorities even where administrative decisions fail to admit parties' demands. The obligation set out in Art. 8 CAP is addressed not only to public administration authorities as "state authorities" but also other authorities and entities that realise public duties (exercising public authority), in particular, by resolving individual cases by way of administrative decisions. The subjective scope of the duty of inspiring trust covers not only "citizens" but all "participants in proceedings" [Kędziora 2017].

Citizens whose legal and material situation in relation to administrative authorities is comparable are entitled to expect decisions of similar, if not identical contents will be issued in relation to them. Realisation of the directive of equal treatment of citizens to a large extent decides reliability of administrative authorities and influences the sense of justice in citizens [Idem 2015, 111]. The principle of trust presumes a maximum humanisation of the individual–public authority relationship. This humanisation is to be the opposite of bureaucracy and serve mutual trust of the citizen in the authority and of the authority in the citizen [Hauser and Wierzbowski 2018].

M. Kasiński is correct in pointing to diverse views concerning values protected by the principle of trust. Diverse conceptions of a connection between trust in public authorities and justice of their actions appears the central source of these differences of opinion. Not the relation between these values itself but requirements the government must fulfil to meet citizens' expectation of just treatment are disputed. M. Kasiński distinguishes three views on the matter. According to the first, trust in public authorities is associated with the expectation of their legal actions and respect for rules of formal justice in the process of instituting and applying the law. The second position holds trust in public authorities is associated with the expectation they will fulfil requirements of not only formal but also material (social) justice, that is, they will be in compliance with laws instituted

in line with prevailing formal rules of law-making whose contents meet requirements of the just law: guaranteeing equality of legal positions of all addressees sharing the same essential characteristics, respecting material truth and protection of basic human freedoms and rights recognised by fundamental acts of international law, conventions, and other acts of European law, as well as the Polish Constitution. The third view associates trust in public authorities with the expectation they will act in conformity with norms of the extra-legal axiological (religious, ethical, praxeological, economic, etc.) system regardless of whether relevant material and formal requirements fulfil the rules of statutory law [Kasiński 2015, 948–49].

Administrative court decisions clearly imply the principle of enhancing trust is a kind of framework, set of other principles governing administrative proceedings and overarching rules characteristic of the democratic *Rechtsstaat*. Assurances of legality, equality before the law, protection of entities acting in good faith, impartiality of proceedings, the duty of providing reasons for decisions or deciding in favour of parties if in doubt are just some of the obligations arising from this principle and binding public administrative authorities. The essence of Art. 8 CAP is well expressed by the Regional Administrative Court in Warsaw, saying in the statement of reasons for its judgement of 22 October 2008: “In order to realise this principle, it is above all necessary to closely abide by law, particularly with regard to precise clarification of circumstances of a case, specific response to claims and demands of parties, and addressing both the public interest and fair interests of citizens in a decision, on the assumption all citizens are equal before the law.”⁶ As the Supreme Administrative Court of Poland notes in its judgement of 20 November 2012, “actions of an authority conducting proceedings that enforce discharge of an obligation binding on a party where administrative authorities themselves have prevented such party from discharging the obligation in compliance with the prevailing law are contrary to Art. 8 CAP.”⁷

An authority should explicitly and exhaustively indicate motivations it sees make a party’s claim unreasonable. A party cannot be left to their own conjectures in this respect. An administrative authority should attempt to convince a party the resolution in the case is reasonable. Only such behaviour will realise the principle of conducting proceedings in a way inspiring trust in state authorities, so that each participant is convinced they take part in a reliably conducted process and their position has been seriously considered, and a possible negative resolution has been reached for important reasons.⁸ Only actions in conformity with Art. 8 CAP can meet positive responses of participants in proceedings and thus with all citi-

⁶ Judgement of the Regional Administrative Court in Warsaw of 14 December 2005, VII SA/Wa 859/05, Lex no. 196282.

⁷ Judgement of the Supreme Administrative Court of Poland of 20 November 2012, II GSK 1627/11, Lex no. 1291748.

⁸ Judgement of the Regional Administrative Court in Kielce of 5 April 2018 I SA/Ke 30/18, Lex no. 2482457.

zens' approval of the way public administration authorities function [Śwital 2019, 271]. An authority cannot take advantage of a party's errors or incapability without allowing them to explain doubts in their case and is bound to take all necessary steps in order to precisely clarify the state of affairs and settle a case with regard not only to the public interest but, above all else, with reference to the principle of enhancing citizens' trust in public administrative authorities and the principle that these authorities guard interests of a party and other entities taking part in proceedings, the equitable interest of an appealing citizen.⁹

Lack of citizens' trust in state authorities is as a rule a result of law violations by state authorities, in particular, breaches of some values the law expresses, such as equality of justice. The Supreme Administrative Court of Poland stresses in its judgement of 7 December 1984¹⁰ that, in order to realise this principle, it is "above all necessary to closely abide by law, particularly with regard to precise clarification of circumstances of a case, specific response to claims and demands of parties, and addressing both the public interest and fair interests of citizens in a decision, on the assumption all citizens are equal before the law." Administrative proceedings with contradictory interests of parties, where authorities conducting proceedings fail to clarify circumstances of the case in a comprehensive manner and take into account only one of the interests at play without responding to claims and petitions raised as part of the proceedings by parties representing other interests do not correspond to such principles. It should be emphasised providing reasons for an administrative decision plays a particularly important role from the viewpoint of the above principle in cases where participants in the proceedings represent divergent or contradictory interests.¹¹ R. Kędziora states this role consists in convincing a party their position has been taken into serious consideration and if another resolution is reached, this is so for other reasons [Kędziora 2015, 112].

The principle of trust stipulates that, in any case of doubts as to real intentions of a party, a public administrative authority attempts to explain such doubts at its own initiative. A party is the only entity that has the right to define and interpret their demands addressed to a public administrative authority. Especially where a party formulate their demands, postulates or positions in an imprecise or clumsy manner, an authority cannot impose its own interpretation and should do its best to clarify real intentions of a party [Wierzbowski and Wiktorowska 2019].

⁹ Judgement of the Regional Administrative Court in Warsaw of 4 April 2014, IV SA/Wa 2988/13, Lex no. 1486439.

¹⁰ Judgement of the Supreme Administrative Court of Poland of 7 December 1984, III SA 729/84 ONSA 1984, No. 2, item 117.

¹¹ Judgement of the Supreme Court of Poland of 16 February 1994, III ARN 2/94, OSNAPiUS 1994, No. 1, item 2.

3. THE PRINCIPLES OF PROPORTIONALITY AND IMPARTIALITY AS REFLECTIONS OF EQUAL TREATMENT OF PARTICIPANTS IN ADMINISTRATIVE PROCEEDINGS

Initiation of administrative proceedings opens the way for consideration of merits of a case that should – as required by general principles – be handled efficiently, reliably, and impartially [Chmielewski 2018, 111]. Impartiality of an authority deciding a case means its objectivity and is a fundamental assumption of the concept of procedural justice and standards of administrative proceedings in connection with the right to a fair trial and good administration [Kmieciak 2014, 36].

In compliance with Art. 6 of the European Code of Good Administrative Behaviour,¹² the principle of proportionality (adequacy) ensures an official in the decision-making process makes sure any steps taken will be in proportion to a designated aim. In particular, an official avoids restrictions of civic rights or imposition of civic charges if such restriction or imposition are not commensurate to the aim of the steps taken. As part of the decision-making process, an official gives regard to a fair balancing of private individuals' interests and the general public interest. As A. Duda notes, in the *Rechtsstaat* citizens and their individual interests are never absolutely identified with the state and the question only arises of statutory sanctions of citizens' rights and duties towards the state and of the state towards citizens [Duda 2008, 24–25].

Art. 6 ECGAP also implies the principle of non-discrimination (equal treatment), according to which an official assures obedience to the principle of equal treatment when considering petitions of individuals and making decisions. Individuals in the same situation are treated in a comparable manner. If differences of treatment occur, an official makes sure such unequal treatment is justified with objective properties of a given case. In particular, officials refrain from any unjustified unequal treatment of individuals due to their nationality, gender, race, skin colour, ethnic or social background, genetic features, language, religion or confession, political or other convictions, membership of a national minority, property, birth, disability, age or sexual orientation. Multiple discrimination in the strict sense of the term is the type of discrimination most often experienced by individuals. It occurs where an individual is discriminated against: a) due to more than one criterion b) that operate at different times, each fulfilling a role different to others [Domańska 2019, 130]. Discrimination arises not only where objective reasons for different treatment of persons in the same situation are absent but also where apparently neutral conditions, criteria or practices are applied equally to everybody but have particular effect on a certain social group.¹³

Art. 8 ECGAP incorporates the principles of impartiality and independence of officials. An official refrains from any arbitrary actions that may adversely affect

¹² Decision concerning the Code of Good Administrative Behaviour, EU OJ C 2011, No. 285, item 3 [henceforth cited as: ECGAP].

¹³ Judgement of the Court of Appeals in Warsaw of 28 September 2011, I ACa 300/11, Legalis.

an individual's situation and from any forms of privileged treatment, regardless of reasons for such behaviour. In their conduct, officials are never guided by their personal, family or national interests or by any political pressures. An official is not involved in making decisions in which s/he or their family members might have financial interests. Judicial decisions point out these exclusions are intended to rule out any doubts as to impartiality and to entrench trust in actions of public administration authorities.¹⁴ By force of Art. 24, para. 1, part 1 CAP, public administration officials are excluded from cases they are parties to or where they remain in such a legal relationship with a party that results of the case may affect their rights or obligations. Thus, this provision refers to an employee of the authority conducting and deciding a case.¹⁵

The principles of impartiality and equal treatment should be of particular importance in cases involving a number of parties. This means conduct of administrative authorities and their staff should not be guided by any other than legal interests or motivations that may violate interests of parties.

CONCLUSION

The amendments to Art. 8 CAP do not constitute fundamental modifications to the principle of citizens' trust in public administrative authorities and thus of equal treatment of participants in administrative proceedings. The principle is founded in and substantiated by the Polish Constitution and its applicability is indubitable. In addition, its contents relate to other general principles of administrative proceedings, which undoubtedly reinforces equality of treatment of participants in administrative proceedings. It should be remembered Art. 8 CAP declares only law-abiding and just conduct of proceedings that fulfils requirements can give rise to citizens' trust in public administrative authorities, even where administrative decisions fail to accept their claims.

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¹⁴ Judgement of the Supreme Administrative Court of 10 November 2015, IFSK260/05, CBOSA.

¹⁵ Judgement of the Supreme Administrative Court of 25 November 2011, II OSK 1981/11, Lex no. 1152121.

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ZASADA RÓWNEGO TRAKTOWANIA JAKO PRZEJAW POGŁĘBIANIA ZAUFANIA OBYWATELI DO ORGANÓW WŁADZY PUBLICZNEJ

Streszczenie. Zasada równego traktowania jest jedną z podstawowych zasad demokratycznego państwa prawnego. Przejawia się ona w sferze prawa administracyjnego poprzez równe traktowanie stron postępowania o tym samym statusie. Ma to na celu zwiększenie zaufania obywateli do organów władzy publicznej, a także do wydawanych przez te organy rozstrzygnięć. Autor w artykule

przedstawił: zasadę równego traktowania w polskim porządku prawnym, pogłębianie zaufania do organów władzy publicznej, zasadę proporcjonalności i bezstronności i jako przejawy równego traktowania uczestników postępowania administracyjnego. Analiza została przeprowadzona na podstawie stanowiska doktryny oraz judykatury.

Słowa kluczowe: postępowanie administracyjne, zasady ogólne postępowania administracyjnego, równość w prawie, bezstronność, sprawiedliwość

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