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LEGAL SAFETY GUARANTEES FOR INDIVIDUALS IN POLISH ADMINISTRATIVE PROCEEDINGS – SELECTED ISSUES

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Abstract. This article discusses the issue of legal certainty guarantees for individuals in Polish administrative proceedings. We begin by looking at legal certainty guarantees for individuals in general terms. We present the general assumptions and views of the science accompanying the subject matter. This issue is further developed and detailed in the discussion of guarantees of legal security of individuals in Polish administrative proceedings. We show that the Polish legal system contains normative regulations, also in the form of principles, which are crucial for the implementation of the guarantees in question. We are guided by the assumption that such principles, even if they are extremely valid and sound just and proud, must be followed by specific legal provisions. This is to ensure that the postulates and principles are actually implemented, thus preventing them from becoming mere facades. Next, we present selected issues related to the legal security of individuals in the Polish Code of Administrative Procedure. We discuss the institution of waiver of the right of appeal and administrative mediation. Finally, we present the results of our own research on administrative mediation conducted on a research group of ten municipalities. We also present statistical data on administrative court mediation. We also propose some solutions of a *de lege ferenda* nature.

Keywords: law; administrative law; public law; legal security; administrative process; administrative mediation; legislation.

INTRODUCTION

In this text, we address the issue of legal certainty guarantees for individuals in Polish administrative proceedings. Clearly, this is a research area that is as broad as it is scientifically interesting, hence the necessary caveat, also mentioned in the title, that it concerns only selected issues. We adopt the

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traditional formula of presenting certain general views first. This is the purpose of the introductory section on legal security guarantees for individuals in general. In it, we explain, among other things, the general assumptions and views of the science accompanying the subject matter. This issue is further developed and detailed in the discussion of guarantees of legal security of individuals in the Polish administrative process. This is, an initial example – we show that the Polish legal system contains normative regulations, also in the form of principles, which are key to the implementation of the guarantees in question. We are guided by the basic assumption that such principles expressed in the regulations of a given legal system, even if they are extremely valid and sound just and proud, must be followed by specific legal provisions. This is to ensure that the postulates and principles are actually implemented, thus preventing them from becoming mere facades. Next, moving down the ladder of generality, we provide further examples by presenting selected problems in the field of legal security of individuals in the Polish Code of Administrative Procedure.[1] Here, we use a quantifier of a kind of exposure of legal institutions in the system. On the one hand, we show the institution of waiving the right to appeal, which in our opinion is not sufficiently highlighted, and on the other hand, we highlight administrative mediation, which is strongly promoted through many popularisation projects. Finally, we present the results of our own research on administrative mediation conducted on a research group of ten municipalities in the Lublin region. We also present statistical data on administrative court mediation, which, in our opinion, confirm the disturbing conclusions of the initial research. We also propose certain solutions of *a de lege ferenda* nature and consider the legitimacy of certain solutions in their current form.

1. ABOUT LEGAL SECURITY GUARANTEES FOR INDIVIDUALS IN GENERAL

In both Polish and foreign literature on the subject, considerations on the guarantees of legal security of individuals have been given due attention. Therefore, bearing in mind the main objectives of this text, which are primarily to present the results of our own research and to reflect on what these results may indicate and what should be done with them, we will only outline this topic. We refer to the recognised achievements in this field. Jadwiga Potrzeszcz, among others, discusses them in an extremely interesting and comprehensive manner, concluding that "when attempting to precisely define the concept of legal security, it is necessary to distinguish between:

[1] Act of 14 June 1960, the Code of Administrative Procedure, Journal of Laws of 2024, item 572 as amended [hereinafter: CAP].

1) the idea of legal security, which has its source in natural law (in the sense of , the law of reason), which encompasses all legal security demands at the highest level and represents a state of ideal harmony between the means leading to the achievement of legal security, and 2) the realisation of this idea by means of legal measures, which are inherently imperfect."[2] The author adds that "legal security in the latter sense can be understood in two ways: 1) legal security in the objective sense as a state achieved by means of positive law, in which the basic goods of human life and interests are secured at an appropriate level, and 2) legal security in the subjective sense (in other words, a sense of legal security)" [Potrzeszcz 2013, 277-78].

It is also worth noting that this issue is the subject of the case law of the Constitutional Tribunal. It is pointed out there that "one of the fundamental principles governing relations between the citizen and the state is the principle of protecting the citizen's trust in the state and the law it enacts" and further "the principle of citizens' trust in the state and the law it enacts is based on legal certainty, i.e. a set of characteristics of the law which guarantee legal security to individuals; they enable them to decide on their conduct based on full knowledge of the premises for the actions of state authorities and the legal consequences which their actions may entail. The individual should be able to determine both the consequences of particular behaviours and events under the legal status in force at a given moment and expect that the legislator will not change them arbitrarily. The legal security of the individual associated with legal certainty thus enables the predictability of the actions of state authorities and the projection of one's own actions."[3]Therefore, considerations on legal security in relation to individuals focus on issues concerning values associated with the individual, i.e. human beings ("human life and interests"), together with the mechanism for their proper guarantee ("adequate protection"). The wording used to describe this level is key: adequate, appropriate. Based on the case law of the Constitutional Tribunal, this can be compared to "legal certainty", predictability understood in such a way that, firstly, the individual functions in an environment in which there are , certain legal norms constituting the first pillar of this protection (formal aspect), and secondly, the individual can actually benefit from these legal norms (real aspect).

It can therefore be concluded that the principle of legal certainty, embedded in the idea of a democratic state governed by the rule of law, constituting an essential element of the rule of law, is axiologically rooted in the very dignity of the human person, while functionally linked to the principle of protection of trust in the state and the law it enacts. Therefore, the legal security

[2] See Potrzeszcz 2013, 277-78, as well as the literature cited therein.

[3] Judgment of the Constitutional Tribunal of 14 June 2000, ref. no. P.3/2000, Journal of Laws of 2000, No. 50, item 600.

of the individual requires, among other things, that the law be consistent, clear and understandable, and that it provide opportunities for real action and, for example, the use of legal remedies to resolve situations in which citizens find themselves. From the point of view of the citizen as the addressee of a legal norm, as Antoni Kość aptly points out , "legal security must be, above all, security of orientation. [...] As the addressee of a legal norm, a citizen must know how to behave in order to comply with the requirements of the law in specific life situations and social arrangements, and what behaviour they are entitled to expect from the other party. In other words, they must know what their rights and obligations are and what legal consequences they must expect from their behaviour" [Kość 2005, 191]. Individual guarantees are therefore legal measures that ensure the effective protection of the rights and interests of entitled entities. This is a very important issue. It seems that sometimes in scientific and popular scientific discourse, which secondarily shapes law-making practice, higher values do not always and fully translate into the tools for their implementation. Therefore, legal systems may face situations where, on the one hand, there are regulations assuring their recipients that certain values will be respected and placed on a kind of axiological pedestal, and on the other hand, there is a lack of measurable, real tools for their implementation. Or such tools prove to be insufficient or inappropriate. Then, in our opinion, we can discuss a certain facade of law; the facade or appearance of legal norms. We can also encounter a term that we find extremely appealing, "legislative placebo" [Stępień and Zomerski 2025, 1-32]. This problem has significant practical implications and is certainly worth addressing, as will be discussed later in this text.

2. GUARANTEES OF LEGAL SECURITY FOR INDIVIDUALS IN THE POLISH ADMINISTRATIVE PROCESS

In this part of the text, "descending the ladder of generality", in view of the above hypothesis that it is desirable in a legal system for individuals to have legal means (tools) that are real and therefore ensure effective protection of rights, we will analyse how this aspect is formalised in the Code of Administrative Procedure. We will analyse the principles expressed in this legal act that are key to this issue. As emphasised in the literature, "the basic principle of state administration should be understood as a legal rule according to which the state administration is to act", and "it should be – due to its 'fundamental' nature – derived from the fundamental assumptions of the socio-economic and political system defined by law" [Dawidowicz 1965, 201]. In other words, as Leszek Leszczyński points out, a "rule of law" can be treated as a kind of "legal norm characterised by particular axiological importance, consisting in the protection of values fundamental to the entire legal

system or a given branch of law" [Leszczyński 2016, 12-13]. The purpose of the creation and functioning of rules of law in legal systems is indicated as "legal principles can also serve to reveal the common ideological and doctrinal foundations on which normative decisions of one kind or another are based, not only of individual legal institutions, but also of groups of these institutions within a particular field of law, or even within the entire legal system" [Wronkowska, Zieliński, and Ziembiński 1974, 49]. Ensuring legal certainty for individuals is therefore one of the overriding objectives that should be pursued by legislation. In the Code of Administrative Procedure, these guarantees can be found in a number of general principles. The following principles can be considered particularly relevant to the issue at hand: objective truth (Article 7 CAP), trust in public authorities and established practice in resolving cases (Article 8 CAP), active participation of the parties in the proceedings (Article 10 CAP) but above all the principle of speed and simplicity of proceedings (Article 12 CAP). Of course, this list is not exhaustive, subjective and general. However, it is not our intention to repeat many different considerations on specific principles contained in multiple monographs, commentaries or articles [Kmieciak, Wegner, and Wojtuń 2023]. This does not diminish the importance of this topic, which fits into the context outlined in the previous part of the text, namely the context of the significance versus the facade of law. It is particularly important in the area of public law, especially in our Polish administrative procedural law. After all, as Zbigniew Kmieciak aptly points out, "already in the first publications devoted to the codification of administrative procedure, which was repeated in Poland in 1960, it was pointed out that the aforementioned principles (general principles, author's note) are not intended to be merely instructional recommendations for practice or guidelines for good administration, i.e. guidelines of an organisational, non-legal nature […]; from the outset, the authors of the code treated them as legal norms, the violation of which must be considered a violation of the rule of law" [Kmieciak 2014, 128]. Principles, which by their very nature are general in nature, should be able to have a real impact on the legal and factual situation of their recipients, whether directly or indirectly through lower-level regulations. We are therefore no longer discussing regulations that improve the comfort of ongoing administrative proceedings, such as their efficiency and speed [Olszanowski 2019, 115-29], but rather their possibility or lack thereof in essence. In our opinion, this is important from the perspective of the functioning of public administration *in the broad sense*, its efficiency and the realisation of the individual's right to good administration [Dolnicki 2020, 9-25]. It is also worth noting that "the issue of the scope of application of the general principles set out in Articles 6-16 CAP is controversial and debatable […] The doctrine presents different views on the binding force of general principles in the

proceedings indicated" [Majewska 2016, 147]. However, this remains outside the scope of our discussion, which is focused on the issues indicated above.

At the end of this section, however, we must attempt to explain to the reader what is meant by the concept of legal certainty. The Polish Language Dictionary contains an extremely interesting statement that a guarantee should be understood as "a promise that something will happen or that something is true." Applying this to the issue we are analyzing, we could say that the guarantee (or guarantees) of legal certainty for an individual, as it relates to the Polish administrative process, is a kind of "assurance" that this individual can feel secure in a legal sense. Of course, this implies a number of further questions, which are also extremely interesting, but to which we will not find answers – let alone a broad and satisfactory justification. For example, who would be the guarantor? Probably the state and the law, represented by the so-called rational legislator. Next, what does it mean to "feel safe"? The feeling of security, including legal security, may vary from person to person. We can therefore generalize that what is meant here is a situation in which the aforementioned guarantee is given that something we call legal security will apply. The literature on the subject explains that "legal security is certainty considered from the point of view of the protection of individual rights" [Wojciechowski 2014, 10-11]. In conclusion, we believe that guarantees of legal security for individuals – whether under administrative law or any other law – are a desirable value. One could say that they are a directional value, i.e., one that should be pursued. This means that individuals will know what legal solution they can expect in their situation. At the same time, that individual will be able to apply specific mechanisms provided for by law that will contribute to the realization of that value. These mechanisms are secondary to the "safeguards" themselves and can be compared to procedural rights. In other words, in a situation where the legal security of an individual, understood as a certain value related to certainty, stability, predictability, or even justice, is, in the opinion of the individual, violated, they may use their procedural rights to first demonstrate and then eliminate this violation.

3. SELECTED ISSUES RELATED TO THE LEGAL SECURITY OF INDIVIDUALS IN THE ADMINISTRATIVE PROCEDURE CODE

In conclusion, it can be reasonably argued that a number of principles, a kind of general rules of administrative procedure, constitute the titular guarantees of legal security of the individual. However, we are convinced that principles, even if they are extremely valid and sound just and proud, must be followed by legal institutions that will enable these principles and guarantees to be realised [Exeler 2019, 218-19]. If this is not the case,

we are likely to end up with superficial solutions. After all, and this is a deliberately exaggerated example, both the Soviet Union and the Third Reich had legalised principles of just law. What we want to convey is that guarantees of legal security for individuals in the legal system must, on the one hand, be guaranteed by general regulations (i.e. principles of law), but also by specific solutions that exemplify and implement these principles. Solutions that take the form of legal provisions regulating the functioning of various institutions.

Moving on to the next part of our text, we begin with the above assumption. On the one hand, we have a certain value in the form of a guarantee of legal security for the individual, which the aforementioned rational legislator should strive for, and on the other hand, certain rules or, in other words, solutions that contribute to this value. This can be described differently: solutions that make it possible for this value to materialize and be realized in some way. This materialization can be carried out in stages. It seems to us that this is the case in the Polish administrative process. The implementation of the postulate of legal security of the individual is served, on the one hand, by certain rules of a principled and general nature and, secondarily, by a number of procedural rules that we can assign to a lower order. In simple terms, this is a three-stage relationship: goal (value, legal security) – general principles – procedural rights. And this is the approach we take. Thus, at the risk of being accused of oversimplification, we will treat all three stages together for the purposes of this article. Our aim is to outline certain solutions that are interesting from our authorial perspective. This does not, of course, detract from what we have described above, namely the legitimacy and purposefulness of distinguishing between all these elements, especially in the field of administrative law theory. To justify this approach, we will begin with a brief reminder of the general principles of Polish administrative law. Since we have already attempted to explain the first element (purpose), the natural consequence is now the action we are taking.

Emanuel Iserzon, currently regarded as a classic of Polish administrative thought, when discussing the essence of general principles in the administrative process, emphasized that these are not "just declarations, recommendations, or desiderata. They are not a program. They are legal norms, binding norms – the foundation of the entire structure. They are norms whose observance is a prerequisite for the legality of individual rulings. These norms are subject to sanctions; their violation or disregard results in the proceedings being considered significantly flawed" [Iserzon 1968, 212].

This is of significant importance for the entire structure of administrative law and, in a way, justifies why we have proposed such a combined and simplified approach. Despite the fact that general principles are overarching, directional, and, on the one hand, directive, it is generally accepted that they

also apply directly. Thus, they should be treated like other rules applicable in the administrative procedural law system. This was perfectly captured by the Supreme Administrative Court,[4] which ruled that the general principles of administrative proceedings are an integral part of the provisions governing administrative procedure and are binding on authorities on an equal footing with other provisions of that procedure. Therefore, since we apply the general principles directly (just like the provisions), despite their superior nature in relation to other principles contained in the CAP provisions, it is reasonable to treat them collectively and assume that they serve the overriding objective, i.e., the legal security of the individual. We do not wish to dwell on the subject of general principles, as it has been covered extensively in the literature, which discusses their intricacies in great detail. We are focusing on a slightly different task.

That is why it is time to return to the subject of the title, i.e. the Polish administrative process, because it is in this area that we want to show these examples. At the same time, we would like to draw attention to a socially interesting problem. It boils down to the hypothesis that legal institutions that we can call "non-primary" play a very important guarantee role. And vice versa. Legal institutions of a "prominent" nature may, despite extensive regulation and significance in the linguistic sphere, prove to be completely useless. This is a somewhat perverse reference to an old Polish saying, or folk wisdom, that "all that glitters is not gold".

Therefore, we must make a very important clarification. The reader may (rightly) ask: but what do certain processes have to do with guaranteeing the legal security of the individual? And even more so in the Polish administrative process? Well, in our opinion, they do. As we indicated at the beginning, we do not want to repeat the considerations from the already extensive discussion on general principles or procedural rights serving to implement the postulate of legal security of the individual. We want to outline a certain problem that is of significant importance for legal science, and in the popular science layer, it fits into the aforementioned proverb about gold. Thus, without prejudice to the multitude of legal institutions that are of primary importance for the protection of individuals, we focus on outlining a somewhat perverse relationship that is also of such great importance. It is the problem of facadism in law. More precisely, the potential problem of facadism in solutions affecting the legal security of individuals.

As an example of a legal institution in the Polish administrative process that could be classified in the first group (i.e. not highlighted) but which is of significant importance for the guarantee of legal certainty (here: procedural security implementing a number of general principles), we can cite the institution

[4] Judgment of the Supreme Administrative Court of 7 November 2015, ref. no. II OSK 553/14.

of waiver of the right to appeal, expressed in Article 127a CAP. This provision was added to the Code and has been in force since 1 June 2017. It currently reads as follows: "**§ 1.** Before the expiry of the time limit for lodging an appeal, a party may waive its right to appeal to the public administration body which issued the decision. **§ 2. On** the date of delivery to the public administration body of a statement of waiver of the right to appeal by the last party to the proceedings, the decision becomes final and binding." This is a very important regulation with significant practical implications, translating into the realisation of legal guarantees for individuals. Despite doubts that arose in case law, mainly concerning the possibility of withdrawing a statement of waiver[5] and the period from which such a waiver may be made,[6] after these doubts were unequivocally dispelled by the Supreme Administrative Court, this institution is functioning perfectly. If a decision satisfactory to the party is issued, or if not satisfactory, then at least accepted by the party (which is, after all, the main objective of general principles, such as the principle of persuasion), it can significantly speed up the proceedings. It can therefore significantly reduce the time needed to benefit from the decision. It should be recalled that before 2017, i.e. before implementation, we were dealing with a pathological situation. Even in a situation where the decision was expected by the party, as a rule, it had to wait. A typical situation is one in which a party receives a decision on the determination of development conditions – it has a formally confirmed idea for its dream home, but the decision must still become final. The party must wait another 14 days. Even if it is the only party to the proceedings. This was a curiosity which, thanks to the appropriate actions of the legislator, has been efficiently eliminated. As we have already pointed out, the current regulation is widely used in legal transactions, contributing to the realisation of the guarantee of legal certainty for individuals.

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[5] See the judgment of the Supreme Administrative Court of 1 March 2023, ref. no. II OSK 56/22, CBOSA. The judgment states that the withdrawal of the statement referred to in Article 127a(1) CAP should take place within 14 days from the date of delivery of the decision to that party, and the appeal should also be submitted within that period. However, if there is only one party to the proceedings, its effective waiver of the right to lodge an appeal under Article 127a(1) CAP has the effect that the decision becomes final and binding immediately. Consequently, that party is not entitled to withdraw (within 14 days) the statement it has previously made.

[6] See the judgment of the Supreme Administrative Court of 5 July 2023, ref. no. III OSK 2396/21. The thesis indicates that a party may effectively waive its right to appeal or request a re-examination of the case after the decision has been delivered to it, but this rule cannot be understood in the manner in which it is interpreted by the court of first instance, which considers that such a statement may be submitted by a party only on the day following the day on which on which the decision was delivered to it. The position that such a procedural action may also be taken by a party on the day of delivery of the decision to it, and the only condition is that the statement must be chronologically subsequent to the delivery of the decision to the party, and therefore the statement cannot be submitted in relation to a decision that has been drawn up but not yet delivered to the party.

In this area, it is possible to outline some desirable directions for future action by the legislator, and thus propose some conclusions *de lege ferenda*. These include, *by analogy* with the institution in question, extending the possibility of waiving the right to appeal against a complaint (i.e. in the case of appealing against decisions) but also the possibility of waiving the right to appeal by the second instance authority (i.e. cassation appeal by the second instance authority). In our opinion, these measures would also contribute to streamlining the process and therefore to strengthening individual guarantees.

The choice of this legal institution as an example may raise some doubts, so the reader deserves an explanation. Let us remember that this is an illustration of a process, a situation in which an institution that may be described as inconspicuous is of great importance to the individual. In our opinion, this is exactly the case here. Although, at first glance, waiving the right to appeal may seem far removed from the realization of the guarantee of legal certainty for the individual, in our opinion, it does fulfill this assumption. It should be noted that one of the elements of the very rich and comprehensive concept of legal certainty for individuals and its guarantees is that administrative proceedings should enable the party to conduct the process in a quick, efficient, simple, understandable, and voluntary manner. At a time when this institution did not exist in legal practice, the implementation of the above was difficult. As we have shown in the example, the party could not expedite its case, even though there was no chance that anyone would threaten it (because it was the only participant with the rights of a party). The necessity to wait was absurd. The wise legislative solution illustrated by this example shows us how sometimes simple legal institutions can contribute to the implementation of proposals of great importance. This example also shows the praxeologically expected direction of activity for the future.

As a second example, from the group of "exposed" institutions which, however, do not bring the desired effect and therefore do not give effect to the legal guarantees of the individual's right to , we would like to point to the institution of mediation in the Code of Administrative Procedure. We put forward the hypothesis, which we will attempt to justify at least in part, that this is a facade institution, a dead letter. Of course, this may be considered too far-reaching, especially by supporters of administrative mediation. We respect this approach, but we believe that this issue requires considerable reflection, including through the formulation of bold hypotheses.

As in the case of the institution of waiver of the right to appeal, mediation was added to the Code of Administrative Procedure in 2017, during the so-called major reform of the Code. Mediation was placed in Section II CAP. "Proceedings", in Chapter 5a, entitled "Mediation". Article 96(a) CAP states, among other things, that mediation may be conducted during the proceedings if the nature of the case allows it. Mediation is voluntary. The purpose

of mediation is to clarify and consider the factual and legal circumstances of the case and to reach an agreement on its resolution within the limits of applicable law, including by issuing a decision or concluding a settlement (paras 1, 2, and 3). The provision of § 1 b) of the article in question, which appeared in the Polish legal system on July 13, 2025, should be considered particularly interesting. It proves, contrary to the hypothesis expressed, the development of the institution of mediation in Poland. In it, the legislator imposed very important obligations on the shoulders of public administration employees. Its content indicates that every administrative case should be examined in terms of the possible use of mediation. The provision reads as follows: A public administration body is required to prepare and record in the case file a note containing information on whether: 1) the nature of the case allows for mediation, and 2) there are circumstances for waiving the notification of the possibility of mediation, even though the nature of the case allows for mediation. This solution does not correspond to what we obtain as research results, as discussed below. It should also be noted, in the context of the "stages" mentioned earlier (goal-general principles-procedural solutions), that mediation is rooted in the principle expressed in Article 13 CAP. This provision, which establishes the principle of amicable settlement of disputes, stipulates that public administration bodies, in cases where the nature of the case allows it, shall strive to settle disputes amicably and to determine the rights and obligations that are the subject of proceedings within their jurisdiction, in particular by taking the following actions: 1) encouraging the parties to reach a settlement in cases involving parties with conflicting interests; 2) necessary to conduct mediation. Public administration bodies shall take all measures justified at a given stage of the proceedings to enable mediation or the conclusion of a settlement, and in particular shall provide explanations about the possibilities and benefits of amicable settlement of the case.

4. OWN RESEARCH ON ADMINISTRATIVE MEDIATION

We found it particularly interesting to verify the research hypothesis that "administrative mediation regulated in the Polish Code of Administrative Procedure is a dead institution." The year of publication of this text marks seven years since the implementation of this institution into the Polish administrative law system. It seems cautious to say that this has not been a "lucky seven" for this institution. At the beginning of our research, on 23 April 2024, we sent an email to ten randomly selected municipalities in the Lublin region (both rural and urban municipalities to ensure relative diversity of the research group) with the following question: "Dear Sirs, acting pursuant to the Act on Access to Public Information, I kindly ask you to provide information on whether, in the years 2021-2023, the municipal

authorities participated in administrative mediation referred to in Chapter 5a CAP. If so, please indicate the number of such proceedings broken down by year. The information obtained will be used for research purposes aimed at changes in the Code of Administrative Procedure. Please reply to the e-mail address from which this request was sent." To expand on the hypothesis outlined above, it should be noted that the aim of this study was to verify the research question of whether, in recent years, administrative mediation has been an active institution used to conduct administrative proceedings in municipalities. We assumed the hypothesis as above, i.e. that administrative mediation is a "dead" institution, a facade, and despite extensive regulation in the Code of Administrative Procedure, it does not fulfil its guarantee role. The results of the study verify the hypothesis positively. Of course, there may be comments about the need to expand the research, and of course, the research can be expanded for the sake of greater representativeness. Nevertheless, the results obtained so far send a serious warning to legislators that administrative mediation is a dead institution and, therefore, one could venture to say that it is unnecessary.

The research results lead to the following conclusions:

Municipality	Date of response	Number of proceedings
Milanów	26.04.2024	0
Puławy	30.04.2024	0
Biłgoraj	30.04.2024	0
Nałęczów	02.05.2024	0
Dębowa Kłoda	06.05.2024	0
Bychawa	06.05.2024	0
Włodawa	06.05.2024	0
Lublin	07.05.2024	0
Biała Podlaska	10.05.2024	0
Zamość	17.05.2024	0

Not a single administrative mediation procedure has been conducted in any (!) municipality over the last three years. Two municipalities failed to respond within the deadline, doing so only after receiving a reminder. It is significant that both urban and rural municipalities do not find practical application for administrative mediation. Therefore, it can undoubtedly be stated on the basis of the above that administrative mediation in local government units at the municipal level is not used and is therefore a dead institution. Of course, in response to possible objections, it should be noted that further research is necessary, including on a research group other than local government units. This is a task for the legislator. The results we have obtained provide a basis for such in-depth research and clearly signal a problem we have in the legislation.

Of course, we humbly accept any objections that may arise regarding the questionable applicability of this research. It may well be that in other regions of Poland, administrative mediation is extremely popular and is used in hundreds of administrative cases. Although we have not found such results in the literature, we do not rule them out entirely. The study has a different purpose. It should provide an impetus for in-depth analysis, which, in our opinion, is lacking. On the one hand, as a state acting through its legislature, we are developing the institution of mediation by requiring that every administrative case be examined from this perspective and that information about this fact be included in the files. On the other hand, this small study, conducted with private funds, shows that over the course of several years, in various municipalities (both small and large), this institution simply does not function. In our opinion, this gives pause for thought.

This problem is further corroborated by statistical data published by the Supreme Administrative Court. These data concern the area of administrative court mediation, not administrative mediation, but they nevertheless show conclusions consistent with those previously made. As a natural "extension" of the administrative process, the administrative court process is based in many areas on similar assumptions, and therefore some of the problems are common to both administrative and administrative court proceedings. It is therefore worth analysing both together. Following Jan Zimmermann, we believe that administrative court proceedings concern "in essence all administrative proceedings, they are their sure, contractual continuation and instrument of control, and on the other hand, being their extension, they take over many of their features, adding their own" [Zimmermann 2017, 249] . As indicated by the Supreme Administrative Court in its annual report for 2023, "the purpose of mediation is to enable the parties to a dispute, with the assistance of a mediator, to reach an agreement without going to court." The institution of mediation is regulated by Articles 115-118 of the Act of 30 August 2002 – Law on proceedings before administrative courts. Despite the amendment of the mediation procedure, as in previous years, this institution has not found wider application in administrative justice. In 2023, one request for mediation was submitted, mediation proceedings were initiated and the case was resolved. This can be explained by the speed and efficiency of ordinary proceedings. The current duration of 6-12 months for the examination of most cases means that conducting any mediation proceedings would not contribute to speeding up the proceedings, which is one of the key advantages of mediation. Detailed data on the impact and number of cases settled in mediation proceedings in 2011-2023 are presented in the table below.[7]

[7] See Naczelny Sąd Administracyjny, *Informacja o działalności sądów administracyjnych w 2023 roku*, Warszawa 2024, p. 19.

Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	20	2021	2022	2023
Proceedings initiated in cases	23	25	8	10	8	8	1	6	1	3	8	1	1
Case resolved	8	4	5	4	1	0	0	1	1	2	1	1	1

The report uses very accurate and concise wording to state that the institution of mediation "has not found wider application", which also applies, *by analogy*, to mediation under the Code of Administrative Procedure. There too, as we have indicated above, mediation has not found wider application. In summary, mediation has failed in both areas of proceedings. Regardless of how we describe this phenomenon – whether more diplomatically, using phrases such as "failure to gain application or popularity", or stating that it is a dead institution – we see a problem that should prompt the legislator to take action. In our opinion, it seems reasonable to consider abolishing this institution first. Due to the fact that, based on the results of empirical research, the institution and the regulations governing it remain dead at present, the legislator should abolish it. However, this is a final and minimalist solution. Nevertheless, it is strongly justified. If something does not work in the long term – and this is the case here – should we not proceed as above in order to achieve clarity of law and reduce unnecessary regulations in legal transactions? Secondly, it is also reasonable to consider the possibility of pursuing a more effective education policy aimed at raising awareness of the advantages of mediation. It seems that administrative mediation is not very widespread. Nevertheless, from the perspective of participants in legal transactions, voluntary forms of dispute resolution are optimal because they always give the parties the opportunity to work out a mutually acceptable solution. However, this raises at least three fundamental questions. Did it make sense to implement an institution typical of private law into the field of administrative law, and are there any areas where there is room for mediation [Kokoszkiewicz 2017, 89-10]? Are the multiple educational activities that have taken place over the years insufficient and is there a need to intensify them? Therefore, would such an action not be essentially an attempt to "convince the unconvinced"? The example of the right to waive an appeal shows that there is no need for promotional campaigns to convince participants in legal transactions of the need for a particular legal institution. Finally, from the perspective of procedural efficiency, which was highlighted by the Supreme Administrative Court, does it make sense to maintain this institution when administrative and administrative court cases are handled efficiently?

CONCLUSION

Summarising the content presented so far, we believe that we can first refer, in a somewhat popular scientific manner, to the message conveyed by William Shakespeare's "The Merchant of Venice", which is also rooted in Polish culture. It is contained in the statement "all that glitters is not gold". We can apply this conclusion, this statement, to legal systems, and in particular to Polish administrative law. It reveals institutions which, despite their significant axiological value, remain nothing more than slogans. Meanwhile, the legal security of individuals, which is closely linked to the highest values, is a special good. It is a good that the state has a duty to protect. This should be achieved through the presence of appropriate regulations in the legal system.

The key here is to understand the word "appropriate" correctly. There is no uniform and simple rule that can be applied to the entire legal system of a given country and which would allow for obtaining this "appropriate" law. There is therefore a need for a methodical approach in this area, limited to selected, partial areas. The Polish administrative process is an excellent area of this type. It reveals the presence of a number of general principles that are axiological in nature, which should be assessed positively. However, their application is debatable, which has led to certain discrepancies in doctrine. To put it simply, we can ask whether they should (and can) be applied directly or not. Although this is beyond the scope of this text, it may be difficult to answer this question in the affirmative. What we mean to say is that while the presence of general regulations in a given legal act – such as the general principles discussed here – is justified, specific regulations enabling the effective implementation of these principles should constitute a separate legal entity. In other words, being rooted in higher-order rules, they should specify them and enable their effective application in practice, which serves the measurable implementation of the values expressed in the principles. We express our concern that, if this is not the case, there is a considerable risk that the norms contained in the principles will be merely a facade (legislative placebo). Meanwhile, such facades are extremely undesirable in a legal system, leading to its weakening and, in extreme cases, even paralysis.

Among the proposals *de lege ferenda*, we see a need to revise the current content of the Code of Administrative Procedure, although this is not an exhaustive list. There is certainly a need for a broad, holistic approach to the area of administrative law, if only because of the close interconnection between its various institutions, which leads to mutual interactions. A model example here is the interface between administrative and administrative judicial control. Such a revision requires comprehensive research and, consequently, the elimination of unnecessary and obsolete institutions that do not serve the state and the law. At the same time, there is a need to simplify, speed

up and reduce the cost of procedures where this is reasonable and ensures respect for the principles of justice. We have shown examples of both types of measures on the basis of our own research and reflections on it. As we have pointed out several times, we do not presume to claim the right to indicate the only correct solutions. Such solutions can only arise as a result of thorough and long-term reflection, preceded by representative research. However, it seems that certain signals, which are relatively easy to observe, should prompt those responsible for the law to reflect, including critical reflection. Perhaps, in our search for complex solutions and in conducting extensive research, we are missing the point presented in the so-called dead horse theory.

REFERENCES

Dawidowicz, Wacław. 1965. *Nauka prawa administracyjnego: zarys wykładu. Vol. 1: Zagadnienia podstawowe*. Warszawa: Państwowe Wydawnictwo Naukowe.

Dolnicki, Bogdan. 2020. "Sprawność działania administracji samorządowej." *Samorząd Terytorialny* 3:9-25.

Exeler, Franziska. 2019. "Nazi Atrocities, International Criminal Law, and Soviet War Crimes Trials. The Soviet Union and the Global Moment of Post-Second World War Justice." In *The New Histories of International Criminal Law: Retrials*, edited by N. Bhuta, A. Pagden, and B. Straumann, 218-19. Oxford: Oxford University Press.

Iserzon, Emanuel. 1968. *Prawo administracyjne. Podstawowe instytucje*. Warszawa: Wydawnictwo Prawnicze.

Kmieciak, Zbigniew. 2014. *Zarys teorii postępowania administracyjnego*. Warszawa: Wolters Kluwer Polska.

Kmieciak, Zbigniew, Joanna Wegner, and Maciej Wojtuń. 2023. *Kodeks postępowania administracyjnego. Komentarz*. Warszawa: Wolters Kluwer Polska.

Kokoszkiewicz, Artur. 2017. "Implementacja instytucji prawa prywatnego do prawa publicznego na przykładzie mediacji w kodeksie postępowania administracyjnego – remedium czy placebo?" *Krytyka Prawa* 3:89-103.

Kość, Antoni. 2005. *Podstawy filozofii prawa*, ed. 3. Lublin: Wydawnictwo KUL.

Leszczyński, Leszek. 2016. "Zasady prawa – założenia podstawowe." *Studia Iuridica Lublinensia* XXV, no. 1:11-16.

Majewska, Aneta. 2016. "Zakres obowiązywania zasad ogólnych postępowania administracyjnego." *Studia Iuridica Lubliniensa* XXV, no. 4:147-70.

Olszanowski, Jan. 2019. "Zasada szybkości postępowania administracyjnego w wybranych krajach skandynawskich i Polsce." *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 3:115-29.

Potrzeszcz, Jadwiga. 2013. *Bezpieczeństwo prawne z perspektywy filozofii prawa*. Lublin: Wydawnictwo KUL.

Stępień, Mateusz, and Wojciech Zomerski. 2025. "Exploring legislative placebo: a new framework for understanding deliberate ineffective legislation." *The Theory and Practice of Legislation* 13:1-32.

Wojciechowski, Maciej. 2014. *Pewność prawa*. Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego.

Wronkowska, *Sławomira,* Maciej Zieliński, and Zbigniew Ziembiński. 1974. *Zasady prawa. Zagadnienia podstawowe*. Warszawa: Wydawnictwo prawnicze.

Zimmermann, Jan. 2017. *Aksjomaty postępowania administracyjnego*. Warszawa: Wolters Kluwer Polska.