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# CONCEPTION OF A PARTY TO PROCEEDINGS IN POLISH GENERAL ADMINISTRATIVE PROCEDURE

## KONCEPT ÚČASTNÍKOV KONANIA V POĽSKOM VŠEOBECNOM SPRÁVNOM KONANÍ

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### ABSTRACT

*The authors characterizes the Polish concept of a party to administrative proceedings. The authors proves that a party to proceedings is a central institution of Polish general administrative procedure. The authors indicates that complete absence of a subject or absence of a subject that may be considered a party to administrative proceedings leads to a situation in which an administrative procedure may not proceed – it will not be initiated if this fact comes out prior to such initiation (as a result of preliminary check) or will be discontinued non-substantively (without any resolution in the case) if such fact comes out in the course of proceedings or if a given subject loses the status of a party to pending proceedings.*

### ABSTRAKT

*Autori charakterizujú koncept účastníkov konania v poľskom všeobecnom správnom konaní. Autori dokazujú, že účastník konania je ústrednou inštitúciou poľského všeobecného správneho konania. Autori naznačujú, že úplná neprítomnosť subjektu alebo neprítomnosť subjektu, ktorý môže byť považovaný za účastníka správneho konania, vedie k situácii, keď správne konanie nemusí pokračovať - nebude začaté, ak k tomu dôjde pred takýmto začatím (v dôsledku predbežnej kontroly) alebo bude zastavené bezdôvodne (bez prípadného rozhodnutia vo veci), ak takáto skutočnosť vyjde v priebehu konania alebo ak daný subjekt stratí postavenie účastníka v prebiehajúcom konaní.*

### I. GENERAL REMARKS

Specification of the range of the parties to proceedings is one of the first actions undertaken by the competent public administration authority.<sup>3</sup> Consequences of the findings made by the authority are essential to further existence of administrative proceedings. In effect, it is beyond doubt that the institution of a party to proceedings is an essential institution of administrative procedure and, as such, deserves extensive analysis both from theoretical and practical perspective. This study, with a view to fully discussing that procedural institution, is going to rely on the currently available literature in the field (output of the doctrine of administrative procedure) and the latest opinions of the judiciary, including predominantly case-law of administrative courts (Supreme Administrative Court<sup>4</sup>, Voivodeship Administrative Courts<sup>5</sup>)

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<sup>3</sup> C.f judgment of the Voivodeship Administrative Court in Poznań of 6 November 2019, file reference: IV SA/Po 276/19, Legalis no. 2246867.

<sup>4</sup> Hereinafter referred to as "SAC."

<sup>5</sup> Hereinafter referred to as "VAC." Since there are several Voivodeship Administrative Court in Poland, the seat of the court will also be indicated to distinguish between them.

and the Supreme Court.<sup>6</sup> Rulings delivered by ordinary courts may also be incidentally cited. The analysis was carried out predominantly using the formal dogmatic method, based on the Polish legislation applicable to the discussed subject matter, and, complementarily, using the empirical method, based on the abovementioned judicial practice.

## II. LEGISLATION ON POLISH ADMINISTRATIVE PROCEDURE

The principal legislative act on Polish general administrative procedure is the Act of 14 June 1960 – Code of Administrative Procedure.<sup>7</sup> CAP governs (Art. 1, Art. 2 and Art. 2a CAP):

- 1) proceedings before public administration authorities in cases that are within the jurisdiction of such authorities and individually decided by way of administrative decision or without notice;
- 2) proceedings before other state authorities and other entities appointed to decide matters specified in item 1 by operation of law or on the basis of agreement;
- 3) in disputes regarding jurisdiction between local government authorities and governmental authorities or between the authorities and entities referred to in paragraph 2;
- 4) proceedings in matters regarding the issuance of certificates;
- 5) imposition or meting out of administrative monetary penalties or granting relief in the enforcement of such penalties;
- 6) the procedure of European administrative cooperation;
- 7) procedure in matters of complaints and proposals (Part VIII) before state authorities, local government authorities or governing bodies of social organisations;
- 8) compliance with of the duty specified in Art. 13(1) and (2) of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)<sup>8</sup> in matters listed in items 1-7 above (in CAP, such scope has been provided for in Art. 1 CAP – in respect of items 1 to 6 and in Art. 2 CAP – in respect of item 7).<sup>9</sup>

Regardless of the above, the Polish legislator decided also to introduce an exhaustive catalogue of matters in which the CAP shall not apply. This catalogue was specified in Art. 3 CAP.<sup>10</sup>

In the Polish legal order, there is a principle presuming application of the CAP<sup>11</sup> (interpretative rule). Under Art. 5 § 1 CAP, if a provision of law mentions generally provisions

<sup>6</sup> Hereinafter referred to as the “SC.”

<sup>7</sup> I.e. Dz.U. 2020, item 256; hereinafter referred to as “CAP.”. As regards the last major amendment to the Act, c.f. K. Majewski, *General principles of Code of Administrative Procedure after amendment of 2017*, *Annals of the Administration and Law* no. 17 (1), Sosnowiec 2017, p. 165-182.

<sup>8</sup> OJ L 119 of 04.05.2016, p. 1, as amended.; hereinafter referred to as “GDPR.”

<sup>9</sup> At the same time, CAP stipulates that performance of the duty mentioned in Art. 13(1) and (2) GDPR shall be independent of the duties of public authorities as provided in the CAP and shall not affect the course and outcome of the proceedings (Art. 2a § 2 CAP).

<sup>10</sup> Regarding consequences of such an approach, c.f. judgment of the SAC of 12 March 2014, file reference: II OSK 2477/12, *Legalis* no. 1067705.

<sup>11</sup> Certain authors refer to that principle as “principle of exclusive application of the CAP’s provisions,” c.f. ADAMIAK B., *Komentarz do art. 5 Kodeksu postępowania administracyjnego*, In: ADAMIAK B., BORKOWSKI J., *Kodeks postępowania dministracyjnego. Komentarz*, Warszawa 2019, *Legalis*. However, such an approach to the provision of Art. 5 § 1 CAP is not accurate. Exclusive application of the CAP’s provisions would exclude the possibility of applying other provisions. In The Polish legal order, there are plenty procedural provisions contained in other statutory acts which not only apply directly but also modify the solutions adopted in the CAP. They may be referred to as *lex specialis* in relation to the provisions of the CAP. An example of such provision is Art. 11 of the Act of 21 July 2006 on financial market supervision (i.e. Dz.U. of 2020, item 180). As regards the abovementioned modifications, see the judgment of the SAC of 12 December 2016, file reference: II GSK 1924/15, *Legalis* no. 1591300, judgment of the SAC of 29 April 2014, file reference: II GSK 320/13, *Legalis* no. 1042396, judgment of the SAC of 27 January 2014, file reference: II GSK 1626/12, *Legalis* no. 909829, judgment of the SAC of 7 August 2013, file reference: II GSK 567/12, *Legalis* no. 737850, judgment of the VAC in Warsaw of 10 November 2009, file reference: VI SA/Wa 1092/09, *Legalis* no. 828525.

of administrative procedure, this shall be understood as the CAP provisions. As a result, it is beyond any doubt that the CAP shall apply to administrative proceedings held by public administration authorities.<sup>12</sup> The rule under Art. 5 § 1 CAP is subject to certain restrictions. In literature of the subject, it is accepted that “it does not refer to situations when legal provisions expressly invoke specific norms of the Code (most often citing specific article numbers) or provide for merely appropriate application of the CAP’s provisions.”<sup>13</sup> It must be emphasized, as P. Gołaszewski and K. Wąsowski did, that an (external) reference mentioned in Art. 5 § 1 CAP should be included in generally applicable legal provisions. The presumption of applicability of the CAP does not prevent the legislator from including procedural rules of administrative nature in other statutory acts. Such provisions, once enacted, are in principle *lex specialis* in relation to the norms of the CAP. In the light of the above, according to the principle *lex specialis derogat legi generali*, they will exclude application of the CAP’s provisions or result in their appropriate application. Introduction of the rule assuming application of the Code of Administrative Procedure (k.p.a.) should be considered positive. This principle fills in a possible gap in the legislation and, in consequence, makes the system consistent and complete. Therefore, the Polish legal order does not require supplementation in that area.

### III. CONCEPTION OF A PARTY TO PROCEEDINGS IN THE CAP

The definition of party to administrative proceedings was included in Art. 28 CAP. Under that provision, a party to proceedings (“a party”) is any person whose legal interests or obligations are the object of the proceedings or who requires the intervention of an authority in respect of their legal interests or obligations. The literal understanding of the above provision indicates that the precondition (criterion) of recognizing a given subject as party to the proceedings is the establishment (existence) of a legal interest<sup>14</sup> or obligation. None of the two concepts derive from procedural law provisions, but they relate to substantive law,<sup>15</sup> i.e. there is a need for a substantive law provision granting a legal interest or imposing an obligation.<sup>16</sup> Consequently, Art. 28 CAP does not include, in this regard, any self-sufficient legal norm<sup>17</sup> – instead, it must apply in conjunction with a substantive law rule.<sup>18</sup> Once again, this obviously refers to generally applicable legal provisions.<sup>19</sup>

Provisions of law, including norms of the CAP, do not contain any legal definition of legal interest. As a result, one can only rely on the literature of administrative procedure and judicial practice. In the opinion of the SAC, to have a legal interest means that “it is possible to find a generally applicable provision under which one may successfully (by participation in administrative proceedings) demand an action by an authority with a view to satisfying a certain need, or demand the authority to refrain from or limit actions contrary to the needs of the given person.”<sup>20</sup> It is also emphasized in case-law that a legal interest should have the following characteristics: objectivism, individualism, concreteness.<sup>21</sup> In addition, its existence, apart from being derived from substantive law provisions, should be legally protected.<sup>22</sup> In a specific case, the existence of a legal interest should be confirmed by facts of the case which are preconditions

<sup>12</sup> WĄSOWSKI K., *Komentarz do art. 5 Kodeksu postępowania administracyjnego*, In: WIERZBOWSKI, M. WIKTOROWSKA A. (eds.), *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2019, Legalis.

<sup>13</sup> C.f. GOŁASZEWSKI P., WĄSOWSKI K., *Komentarz do art. 5 Kodeksu postępowania administracyjnego*, In: HAUSER R., WIERZBOWSKI M. (eds.), *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2020, Legalis.

<sup>14</sup> C.f. judgment of the SAC of 6 March 2019, file reference: II OSK 967/17, Legalis no. 1893222.

<sup>15</sup> C.f. judgment of the SAC of 22 October 2019, file reference: I OSK 344/18, Legalis no. 2253634.

<sup>16</sup> C.f. judgment of the SAC of 10 December 2019, file reference: II OSK 263/18, Legalis no. 2268792.

<sup>17</sup> C.f. judgment of the SAC of 26 November 2019, file reference: II OSK 42/18, Legalis no. 2270647.

<sup>18</sup> C.f. judgment of the SAC of 26 November 2019, file reference: II OSK 191/18, Legalis no. 2262225.

<sup>19</sup> C.f. judgment of the SAC of 16 April 2019, file reference: I OSK 1711/17, Legalis no. 1899145.

<sup>20</sup> Judgment of the SAC of 10 July 2019, file reference: II GSK 2056/17, Legalis no. 2196440.

<sup>21</sup> Concreteness refers both to the legal interest itself and to the legal basis (legal provision) from which it derives, c.f. judgment of the SAC of 22 October 2019, file reference: I OSK 346/18, Legalis no. 2253631.

<sup>22</sup> C.f. judgment of the VAC in Kielce of 16 May 2019, file reference: II SA/Ke 165/19, Legalis no. 1941745.

to the application of the given substantive law norm.<sup>23</sup> Although it is undoubted that Art. 28 CAP is not a self-sufficient norm (requirement of a legal basis in substantive law), case-law is inconsistent as to the nature of the substantive law from which legal interests may derive. A view is voiced that the substantive law provisions from which legal interests derive do not necessarily have to be administrative law rules.<sup>24</sup> On the other hand, an opinion may be encountered that the concept of party, including the legal interest as an element predetermining the status of a party to proceedings in the understanding of Art. 28 CAP, may be derived only from administrative substantive law.<sup>25</sup>

The abovementioned objectivism means that the existence of a legal interest does not derive from an internal conviction of a given subject<sup>26</sup> but – as indicated above – from a specific legal provision. In other words, it is not sufficient that a given subject is internally convinced thereof<sup>27</sup> to conclude that in a given situation there is, indeed, a legal interest. Establishment of legal interests in specific situation boils down to determining a substantive law connection between an applicable substantive law norm and the legal situation of a particular legal subject, i.e. the act of applying such norm may affect the legal situation of such subject with regard to the subject's substantive law position (concretization of a given legal norm).<sup>28</sup>

It follows from the above considerations that the problems with application of Art. 28 k.p.a. may result from the lack of a legal definition of legal interest, which is an important element resolving whether or not a given subject has the status of a party. With the above in mind, to remove doubts, the said provision should be accordingly supplemented<sup>29</sup>. This view is unaffected even by the auxiliary role of abundant judicial practice. The views expressed in court rulings, although helpful in the practice of applying the law, are not the legal basis for the steps made. Judicial practice, especially that it already covers several decades, should be used in defining the concept of legal interest. So defined a term would fully address the practical needs relating to application of the law. From the legislative point of view, this could be done so that the current Art. 28 k.p.a. becomes § 1 of the said provision and § 2 contains the desired definition.

The CAP's provisions on the concept of a party to proceedings are not exhausted by the definition under Art. 28 CAP. According to Art. 29 CAP, both natural persons and legal persons may be parties, and as far as governmental or local government organisational units or social organisations are concerned, these can also be entities without legal personality. On the other hand, legal capacity and capacity to perform legal acts are assessed in accordance with the provisions of civil law, provided that there are no specific provisions to the contrary (Art. 30 § 1 CAP). Although the wording of Art. 30 § CAP mentions the provisions of civil law, that is of a legal branch (collective approach), in fact, it refers to the provisions of the CC, since these are the norms that actually govern both legal capacity and the capacity to perform legal acts.

<sup>23</sup> C.f. judgment of the SAC of 14 November 2019, file reference: I GSK 1679/18, Legalis no. 2262434.

<sup>24</sup> C.f. judgment of the SAC of 22 October 2019, file reference: I OSK 344/18, Legalis no. 2253634. As regards examples of such diversity and additional requirements that must be met, c.f. judgment of the SAC of 22 October 2019, file reference: I OSK 347/18, Legalis no. 2253632, judgment of the SAC of 17 October 2019, file reference: II OSK 2442/18, Legalis no. 263027, judgment of the SAC of 15 October 2019, file reference: II OSK 2879/17, Legalis no. 2247091.

<sup>25</sup> C.f. judgment of the SAC of 26 September 2019, file reference: I OSK 178/18, Legalis no. 2247417. In certain decisions, such opinion is less radical, i.e. it is not argued that those may be only provisions of substantive administrative law, but it is indicated that those may not be provisions of a specific statutory act, e.g. the Act of 23 April 1964 – Civil Code (i.e.: Dz.U. of 2019, item 1145; hereinafter referred to as "CC"), c.f. judgment of the SAC of 12 June 2019, file reference: II OSK 1617/18, Legalis no. 1977786.

<sup>26</sup> C.f. judgment of the SAC of 16 April 2019, file reference: I OSK 1711/17, Legalis no. 1899145.

<sup>27</sup> C.f. judgment of the SAC of 26 September 2019, file reference: I OSK 178/18, Legalis no. 2247417.

<sup>28</sup> C.f. judgment of the SAC of 3 July 2019, file reference: II OSK 2158/17, Legalis no. 2232820.

<sup>29</sup> In the scope of practical problems resulting from the lack of this regulation, c.f. K. MAJEWSKI, *Glosa do wyroku Wojewódzkiego Sądu Administracyjnego w Warszawie z dnia 21 lutego 2017 r., sygn. akt: VI SA/Wa 2550/16 (Prezes Zarządu SKOK/członek zarządu banku a strona postępowania prowadzonego przed KNF)*, Roczniki Administracji i Prawa XVIII (1), Sosnowiec 2018, p. 405-416.

However, the solution adopted in Art. 30 § 1 CAP should be evaluated positively because of its flexibility (no need for amendment in case of replacement of the CC by another instrument).

## 1. Natural persons

In the CC, the concepts of legal capacity and the capacity to perform legal acts were referred to natural persons.<sup>30</sup> Legal capacity is held by every individual since birth<sup>31</sup> (Art. 8 CC). The end to the legal capacity of a given natural person is set by their death or an event legally equivalent in terms of consequences.<sup>32</sup> Legal capacity means “the capacity to be (become) a subject of rights and obligations in the area of widely understood civil law”<sup>33</sup> – a party to civil law relationships.<sup>34</sup> The capacity to perform legal acts, just as legal capacity, has not been defined in Polish legislation. It is assumed in the doctrine that the concept refers to the capacity to perform such acts<sup>35</sup> through one’s own actions and on one’s own behalf,<sup>36</sup> including to incur obligations. The capacity to perform legal acts may assume two forms, i.e.:

- 1) full capacity to perform legal acts,
- 2) limited capacity to perform legal acts.

Full capacity to perform legal acts is acquired upon reaching the age of majority<sup>37</sup> (Art. 11 CC). Full capacity to perform legal acts may be forfeited also after attaining the required age, as a result of partial incapacitation (limited capacity) or full incapacitation (deprivation of capacity). Since incapacitation limits or deprives of the said capacity, it is undisputed that prior incapacitation leads to a situation in which reaching the age of maturity does not trigger acquisition of full capacity to perform legal acts by an incapacitated person.

Limited capacity to perform legal acts – as already signalled – is held by partially incapacitated persons and minors who have reached the age of thirteen (Art. 15 CC). Since, in

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<sup>30</sup> Both legal capacity and the capacity to perform legal acts were regulated in Section I entitled “Natural persons.” The provisions on legal persons was covered by Section II, entitled “Legal persons”. Doctrinal authors point out that the basic difference between natural persons and legal persons is that the former category has a physical (palpable) dimension whereas the other is a legal construct, c.f. KSIĘŻAK P., *Komentarz do art. 8 Kodeksu cywilnego* (in: Osajda K. (ed.), *Kodeks cywilny. Komentarz*, Warszawa 2020, Legalis.

<sup>31</sup> A specific case is that of so called *nasciturus*, that is conceived but yet unborn baby, c.f. judgment of the SC of 29 May 1996, file reference: III ARN 96/95, Legalis no. 30013, judgment of the VAC in Wrocław of 8 February 2006, file reference: IV SA/Wr 798/04, Legalis no. 375043, judgment of the VAC in Białystok of 27 October 2005, file reference: II SA/Bk 503/05, Legalis no. 72965, judgment of the VAC in Warszawa of 16 May 2005, file reference: V SA/Wa 363/05, Legalis no. 101952, judgment of the VAC in Lublin of 16 March 2005, file reference: II SA/Lu 102/05, Legalis no. 331594, judgment of the Court of Appeal in Rzeszów of 3 February 2011, file reference: I ACa 434/10, Legalis no. 526617, and regarding the opinion of civil law doctrine: Gniewek E. (ed.), *Kodeks cywilny. Komentarz*, Warszawa 2013, p. 34 and the literature cited therein.

<sup>32</sup> Under Art. 29 § 1 CC, A missing person can be declared dead when ten years have passed from the end of the calendar year in which, according to existing information, that person was still alive; however, if at the time he is declared dead, the missing person had attained seventy years of age, a period of five years is sufficient. A person cannot be declared dead before the end of the calendar year in which the missing person would have attained twenty three years of age (art. 29 § 2 CC). A missing person is presumed to have died at the time given in the decision declaring the person dead (Art. 31 § 1 CC). The time of the presumed death of a missing person is the time which, according to circumstances, is most probable and, in the absence of any available data, the first day of the period the passing of which makes it possible for the person to be declared dead (Art. 31 § 2 CC). Just as any legal presumption, also the one expressed in Art. 31 § 1 CC may be rebutted, c.f. judgment of the SC of 25 November 2004, file reference: III CK 611/03, Legalis no. 67730.

<sup>33</sup> GNIEWEK E. (ed.), *Kodeks cywilny. Komentarz*, Warszawa 2013, p. 32.

<sup>34</sup> KSIĘŻAK P., *Komentarz do art. 8 Kodeksu cywilnego*, In: Osajda K. (ed.), *Kodeks cywilny. Komentarz*, Warszawa 2020, Legalis; Strugała R., *Komentarz do art. 8 Kodeksu cywilnego*, In: Gniewek E. (ed.), *Kodeks cywilny. Komentarz*, Warszawa 2019, Legalis.

<sup>35</sup> GNIEWEK E. (ed.), *Kodeks cywilny. Komentarz*, Warszawa 2013, p. 40.

<sup>36</sup> KSIĘŻAK P., *Komentarz do art. 8 Kodeksu cywilnego* (in: Osajda K. (ed.), *Kodeks cywilny. Komentarz*, Warszawa 2020, Legalis.

<sup>37</sup> Terminological consistency is missing in the Polish legal order. At one place, the term “major” is used (Art. 11 CC) while at another one the legislator used the term “adult” (Art. 43 CAP). In case of the two cited expressions, they both mean the same, c.f. decision of the SAC of 9 September 2010, file reference: II OSK 1697/10, Legalis no. 709097. However, this is not a rule. In certain situations, the meaning of the terms used is different, c.f. judgment of the Court of Appeal in Lublin of 30 November 2000, file reference: II AKa 216/00, Legalis no. 52159.

accordance with Art. 12 CC, upon reaching the age of maturity a natural person, as long as they have not been incapacitated, acquires full capacity to perform legal acts, limited capacity refers, in principle, to the age span from thirteen to the eve of the eighteenth birthday.

The above is complemented by total lack of the capacity to perform legal acts, which refers to persons who have not reached the age of thirteen or persons who have been fully incapacitated (Art. 12 CC).

The legal situation of a party to proceedings being a natural person without the capacity to perform legal acts is decided by Art. 30 § 2 CAP, which provides that such persons shall act through their statutory representatives. In the absence of an analogical provision in the CAP with regard to partially incapacitated persons, bearing in mind the wording of Art. 30 § 1 CAP, it must be concluded that their legal situation as parties to proceedings is governed in administrative proceedings by the provisions of the CC in conjunction with Art. 30 § 1 CAP.<sup>38</sup>

## 2. Legal persons

Under Art. 33 CC, legal persons are the State Treasury and organisational units which are accorded legal personality by specific regulations. Against the background of that provision, it is justly argued in the literature of the subject that the existence and form of legal persons “depends on the legislator’s selective intention.”<sup>39</sup> It follows from the literal reading of Art. 33 CC that the catalogue of legal persons, based on the CC, is open. These are special provisions, i.e. provisions of other system-wide acts,<sup>40</sup> that decide what subjects (organisational units) are to be accorded legal personality (such provisions make legal persons).<sup>41</sup> This conclusion does not relate to the State Treasury which was recognized as legal person directly under Art. 33 CC.<sup>42</sup> The fact that a given organisational unit is granted legal personality implies at the same time that the unit is given both legal capacity and full capacity to perform legal acts.<sup>43</sup> An organisational unit acquires legal personality upon its entry in the appropriate register, unless otherwise provided in special provisions (Art. 37 § 1 CC), and loses such personality upon being stricken out of the same register.<sup>44</sup> Under Art. 38 CC, legal persons act through their bodies in the manner prescribed by the law and their articles of association based on the law<sup>45</sup> (so called organ theory of legal persons).<sup>46</sup> In the same way, acts performed by bodies of a legal person are considered to be acts performed by the legal person itself.<sup>47</sup> It must be emphasized that such scope of competence is also referred to in the CAP, which provides in Art. 30 § 3 CAP that parties other than natural persons (including predominantly legal persons) act through their statutory representatives empowered by statutory law or articles of association.

At this place, one should point to the specific status of the so-called Civil Code partnership, governed by the provisions of the CC. Under Art. 860 § 1 CC, by a contract of partnership, the partners commit to strive to achieve a common economic purpose by acting in a specified way,

<sup>38</sup> C.f. judgment of the VAC in Poznań of 7 May 2013, file reference: II SA/Po 229/13, Legalis no. 780829.

<sup>39</sup> GNIEWEK E. (ed.), *Kodeks cywilny. Komentarz*, Warszawa 2013, p. 83.

<sup>40</sup> Ibid.

<sup>41</sup> As a matter of example, c.f. judgment of the VAC in Gliwice of 10 February 2017, file reference: I SA/Gl 1166/16, Legalis o. 1597556.

<sup>42</sup> Regarding the nature of that legal person, c.f. judgment of the SC of 11 May 1999, file reference: I CKN 1148/97, Legalis no. 44463. Regarding the grant of personality by Art. 33 CC, c.f. judgment of the SAC of 22 June 1994, file reference: SA/Wr 104/94, Legalis no. 38659. As regards the need to properly specify and represent the State Treasury, c.f. decision of the SC of 8 January 2003, file reference: II CK 90/02, Legalis no. 56971.

<sup>43</sup> GNIEWEK E. (ed.), *Kodeks cywilny. Komentarz*, Warszawa 2013, p. 83.

<sup>44</sup> C.f. judgment of the VAC in Poznań of 23 June 2010, file reference: I SA/Po 226/10, Legalis no. 252845.

<sup>45</sup> The articles of association, as mentioned in Art. 38 CC, may assume different forms, c.f. judgment of the SC of 13 April 2012, file reference: I CSK 451/11, Legalis no. 490976.

<sup>46</sup> It should be remembered that a legal person is liable for acts of persons holding its managerial positions, c.f. judgment of the Court of Appeal in Łódź of 2 November 2017, file reference: I ACa 1622/16, Legalis no. 1743645.

<sup>47</sup> C.f. judgment of the SAC of 5 October 2010, file reference: I FSK 1657/09, Legalis no. 343526.

especially by making contributions.<sup>48</sup> As a result, a Civil Code partnership is not a separate entity (separate legal subject<sup>49</sup>), since it has neither legal personality<sup>50</sup> nor legal capacity – these are partners that act in commercial transactions.<sup>51</sup> In fact, a Civil Code partnership gives rise to consequences in the internal sphere (between partners),<sup>52</sup> understood as “an undertaking incurred by each of the partners vis-a-vis all other partners.”<sup>53</sup> As a result of the above, a Civil Code partnership will also not be an entrepreneur in the understanding of the CC’s provisions. That status is attributed to its partners.<sup>54</sup> Such conclusions follow also from other provisions of the CC, including in particular Art. 863 and Art. 875 CC, which refer to the joint property of partners and to shares in that property or its specific assets and, at the same time, do not indicate that the partnership has any assets.<sup>55</sup> In light of the above, according to the legislator’s assumption, parties to administrative proceedings in the understanding of the CAP’s provisions and a vast majority of substantive law rules, upon fulfilment of the requirements set out in those provisions and substantive law rules applicable to the given case, should be the partners of a Civil Code partnership, and they should be indicated as parties.<sup>56</sup> This conclusion is essential insofar as incorrect addressing of a decision may lead to a situation in which the decision is materially defective, and such defect should be remedied by way of extraordinary proceedings.<sup>57</sup>

#### IV. SUMMARY

A party to proceedings is a central institution of Polish general administrative procedure. Special significance of that institution boils down to the fact that recognition of a given subject as party to the proceedings is a precondition to the possibility of such proceedings being held. In other words, complete absence of a subject<sup>58</sup> or absence of a subject that may be considered a party to administrative proceedings<sup>59</sup> leads to a situation in which an administrative procedure may not proceed – it will not be initiated if this fact comes out prior to such initiation (as a result of preliminary check)<sup>60</sup> or will be discontinued non-substantively (without any resolution

<sup>48</sup> The construction of Civil Code partnership is derived from Roman law. In the doctrine of civil law, Civil Code partnerships are treated as a legal form of economic cooperation, c.f. GNIEWEK E. (ed.), *Kodeks cywilny. Komentarz*, Warszawa 2013, p.1425.

<sup>49</sup> C.f. GNIEWEK E. (ed.), *Kodeks cywilny. Komentarz*, Warszawa 2013, p. 1426.

<sup>50</sup> C.f. ULIASZ R., *Komentarz do art. 860 Kodeksu cywilnego*, In: Załucki M., *Kodeks cywilny. Komentarz*, Warszawa 2019, Legalis, and: judgment of the VAC in Warsaw of 5 May 2011, file reference: VIII SA/Wa 36/11, Legalis no. 372072, judgment of the Court of Appeal in Białystok of 26 October 2012, file reference: I ACa 484/12, Legalis no. 733714.

<sup>51</sup> Such legal situation brings consequences in many legal branches, including tax law, c.f. resolution of the panel of 7 judges of the SAC of 13 March 2017, file reference: II FPS 5/16, Legalis no. 1575484, judgment of the VAC in Gliwice of 6 February 2019, file reference: I SA/GI 1066/18, Legalis no. 1881948, judgment of the VAC in Olsztyn of 27 September 2017, file reference: I SA/OI 300/17, Legalis no.1730659, in labour law, c.f. judgment of the SC of 4 March 2015, file reference: I UK 255/14, Legalis no. 1242096, or even in banking law, c.f. judgment of the SAC of 4 June 2013, file reference: II FSK 1533/12, Legalis no. 763468. However, there are provisions in the Polish legal system which modify this general assumption so as to attribute legal consequences to the partnership rather than its partners, c.f. judgment of the SAC of 21 April 2017, file reference: I GSK 936/15, Legalis no. 1638128, otherwise: judgment of the SAC in Kielce of 27 June 2013, file reference: I SA/Ke 213/13, Legalis no. 1886185.

<sup>52</sup> C.f. judgment of the Court of Appeal in Poznań of 22 August 2012, file reference: I ACa 602/12, Legalis no. 737677.

<sup>53</sup> C.f. NOWACKI A., *Komentarz do art. 860 Kodeksu cywilnego*, In: Osajda K., *Kodeks cywilny. Komentarz*, Warszawa 2020, Legalis.

<sup>54</sup> C.f. GNIEWEK E. (ed.), *Kodeks cywilny. Komentarz*, Warszawa 2013, p. 1425.

<sup>55</sup> C.f. judgment of the Court of Appeal in Białystok of 26 October 2012, file reference: I ACa 484/12, Legalis no. 733714.

<sup>56</sup> C.f. judgment of the SAC of 18 October 2017, file reference: II OSK 2592/16, Legalis no. 1724635; otherwise: c.f. judgment of the SAC of 12 April 2000, file reference: V SA 1935/99, Legalis no. 48834.

<sup>57</sup> The SAC attaches such consequences to a decision being addressed to a Civil Code partnership, c.f. judgment of the SAC of 8 May 2014, file reference: II GSK 377/13, Legalis no. 951419.

<sup>58</sup> In relation to a deceased person, no administrative procedure may be initiated or conducted and no ruling (decision) may be delivered, c.f. judgment of the SAC of 1 December 2015, file reference: I OSK 626/14, Legalis no. 1400130.

<sup>59</sup> The lack of a party to administrative proceedings should be distinguished from the lack of a subject at all, c.f. judgment of the SAC of 1 October 2019, file reference: II OSK 2064/19, Legalis no. 2247318.

<sup>60</sup> C.f. judgment of the SAC of 20 February 2019, file reference: II OSK 812/17, Legalis no. 1898908, judgment of the VAC in Lublin of 17 May 2019, file reference: I SA/Lu 76/19, Legalis no. 1943467.



in the case) if such fact comes out in the course of proceedings<sup>61</sup> or if a given subject loses the status of a party to pending proceedings. Having the status of a party to proceedings predetermines also the possibility of exercising the rights under legal provisions.<sup>62</sup> Proper specification of the parties to proceedings is also essential from the point of view of the resolution delivered by the public administration authority. Defective addressing of a decision, i.e. its delivery to a subject other than a party may result in material defect of an administrative decision. Proper specification of the parties to proceedings (their existence or absence) requires that public administration authorities are familiar not only with the provisions of the CAP but also provisions of other acts of different nature, including especially provisions of the CC.

In the light of the importance of the institution of party to proceedings, as discussed above, the statutory regime should be complete and precise. The Polish Code of Administrative Procedure requires to be supplemented in that area by the definition of legal interest. It is postulated that such definition be introduced in Art. 28 k.p.a.

### KEY WORDS

Parties to proceedings, administrative procedure, legal situation of a party to proceedings, legal interests, legal obligations

### KLÚČOVÉ SLOVÁ

účastník správneho konania, správne konanie, právny stav účastníka konania, právny záujem, zákonná povinnosť

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<sup>61</sup> Regarding essential effects of continuing a procedure, including a decision being addressed, as a result of such procedure, to a deceased person, c.f. judgment of the SAC of 18 June 2019, file reference: I OSK 2215/17, *Legalis* no. 2194377.

<sup>62</sup> C.f. judgment of the VAC in Rzeszów of 19 November 2019, file reference: I SA/Rz 647/19, *Legalis* no. 2258187, judgment of the VAC in Rzeszów of 19 November 2019, file reference: I SA/Rz 646/19, *Legalis* no. 2258186.

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