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Zofia Duniewska, Małgorzata Stahl, Artur Krakąła (eds.)

Zasady w prawie administracyjnym.

Teoria, praktyka, orzecznictwo.

[Principles in Administrative Law. Theory, Practice, Judicature]

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The institution of legal rules and principles is of fundamental importance to the process of law interpretation as well as to its application. Due to the very wide and complex scope of administrative law (regulated issues) and the frequent interchangeability of administrative law norms, presenting and discussing the rules and principles of administrative law fully deserves recognition and approval. The reviewed scientific monograph “*Principles in administrative law. Theory, practice, judicature*” is an important voice in the theoretical legal debate regarding the concept, substance and type of law principles, including the principles of administrative law. At the same time, due to the specific and contemporary scientific problems it addresses, the monograph has practical value and is a useful tool for both representatives of science, as well as employees of public administration and people functioning in the broadly understood judicial affairs. The editors of the reviewed publication are researchers from the University of Lodz, who undertook the difficult challenge of scientific and editorial elaboration of the original studies that make up the subject publication. The monograph consists of eight parts. They concern general issues, principles in constitutional law and principles in social welfare law. One part is devoted to the issues of principles in spatial development law, construction law and the law of real estate management, another discusses the principles of environmental law. The principles functioning in significantly different areas of administrative law are

analysed in part VI. The monograph also considers the principles in administrative proceedings and in proceedings before administrative courts.

Part I, "*Principles of law – general issues*", covers issues concerning, above all, the concept, character and verification of legal principles. The chapter, written by Małgorzata Stahl, gives attention to the multiplicity of ways of understanding the concept and meaning of the principles (rules) of law and resulting difficulties in interpretation. According to this researcher, such a circumstance does not exclude the possibility of reaching a consensus by the representatives of the legal doctrine with regard to the principles of law. This author, as the basic functions of legal principles, considers: 1. the function of filling legislation gaps, 2. the interpretative function, 3. the corrective function and the creative function. Zofia Duniewska, in the chapter "On reflection on the concept and character of the principles of law", draws attention to the fact that nowadays the basic source and the building block of the rules of law is the law itself (legal texts). The author of this text emphasizes, that during discovering the content of legal principles, it is valuable to refer to non-legal axiology, for example, ethical or economic values. The statement, that legal principles do not form a homogeneous category, but constantly expand their catalogue, should be fully shared. In the chapter entitled "The character and role (importance) of the administrative law principles", its author Eliza Komierzyńska-Orlińska, based on the analysis of the views of numerous legal doctrine, presents the non-uniform character of the concept of the principles of law itself, which makes it difficult to clearly answer the question of their importance in administrative law. Marcin Kamiński, in the chapter "Norms – rules of administrative law and their concretization" draws attention to the need to distinguish norms-rules and norms-principles in the general theory of law. This researcher also distinguishes norms of a closed nature and norms-rules of an open nature. This fragment of the monograph also emphasises the importance and legal consequences of the issue of openness and closure of content and scope norms and their relationship to mandatory and facultative competences. Piotr Ruczkowski, discusses "*The principle of supremacy of international law over national law in the system of administrative law*". Due to the numerous interpretative doubts that arise in the process (in practice) of the application of international law, including EU and national law, it is very important to discuss this issue. In conclusion, this author states that the general principle of international law primacy over national law (at least in relation to national ordinary legislation) should be included in the rules of administrative law. "The construction of the abuse of law in the context of general principles" is discussed by Jerzy Parchomiuk. The indicated construction is presented by this author in relation to the principle of a democratic state ruled by law, principles of legal certainty, equality and justice. The problem of verifying the principles of administrative law is analyzed by Krystian Ziemiński. For the insufficiency of legislation, this author recognizes the lack of explicitly pointing out in legal acts an axiological justification and the general definition of the content of principles by the

legislator. This situation results in many shortcomings in the area of law enforcement, in the sphere of making supervision acts, and even in the field of judicial control of the administration. According to Krystian Ziemiński, this situation requires quick and comprehensive action in the sphere of legislation and in law sciences.

Part II begins with the chapter entitled “The rules of system of the Polish public administration” by Iwona Niżnik-Dobosz. The conducted analysis shows a constant and close relationship between the systemic administrative and legal regulations and constitutional regulations. The object of Michał Kasiński’s considerations is trust in public authorities in the light of the principle of a democratic state ruled by law. This author notes, that nowadays trust in the public authorities has been replaced with widespread distrust, which makes it difficult to build a culture of trust. The instruments of implementing the idea of good administration on the basis of the parliamentary system of government, are analyzed by Łukasz Buczkowski. According to this researcher, despite the fact that the principle of good administration is not explicitly stated in the Constitution of the Republic of Poland, control instruments which exist in Polish law, ensure the principle of good administration in the sphere of the parliamentary system of government. The principle of administrative efficiency on Tadeusz Kotarbiński’s comparison of praxeological evaluation and directive is addressed by Ewa Olejniczak-Szałowska. Extending *stricte* legal considerations with the threads of efficient organization and good performance is of great value, because these aspects shall not be ignored in the practical activities of public administration. The problem of efficiency is also taken up by Rafał Budzisz, who analyses it in the operation of local government constitutive bodies. In the view of this researcher the applications of *de lege ferenda*, shall have a positive impact on the efficiency of local government constitutive bodies. The principles of efficiency and effectiveness of public administration activities in the market are assessed by Agnieszka Żywicka. This author analyses these principles with reference to the contemporary model of non-combined (non-unified) administration structures. Anna Gross, takes up the issue of the principles of social consultations in administrative law. It is pointed out, that consultations are a specific and an approved form of influencing citizens in the domain of public authority. This monograph also deals with the issue of transparency. Michał Ulasiewicz, analyses the functioning of transparency in local government units, in turn Mateusz Karciarz analyses transparency in the activity of local government constitutive bodies. Part II also includes a chapter written by Dominik Kościuk, concerning the issue of information policy in the context of E-government law (E-administration). The considerations tendered are more than valid given the development of ICT tools in public administration. Part II ends with a chapter written by Konrad Kędzierski, entitled “Hierarchity as the basic principle of organization in the Police”. In it, the author states that the centralisation of tasks within the centralised system employed does not change the hierarchical structure of the Police.

Part III “*The rules in the social welfare law*” begins with the considerations of Artur Krakąła regarding the concept, genesis and protection of human dignity, as one of the most important categories of law. Mirosław Wincenciak, stresses the importance of respecting the principles of law on the example of care benefits. These considerations are carried out from two perspectives. Firstly, the indication of legislative imperfections, secondly the indication of interpretations in accordance with the standards of the democratic state ruled by law, which are applied by entities applying the law. In turn, Ryszarda Michalska-Badziak presents the importance of the principle of subsidiarity in the social assistance law and its role in shaping relations between public administration, the local community and individuals. The good of human beings as a rule of administrative legal regulations for counteracting of alcohol addiction and its effects, is analysed by Przemysław Wilczyński. This researcher discusses state interference in the sphere of alcohol problems in the context of, among others, human and economic freedom.

In Part IV, Marta Woźniak draws attention to the need of valuing in planning and spatial development. This author, in the *de lege ferenda* comments, refers to the valuation of the project of the *Urban and Construction Code* (from 2016). The problems of spatial planning are also addressed in the chapter written by Jacek Jaworski, who emphasises the need to include in this kind of activity the principle of protection of individual interests. The obligation to respect the legitimate interests of third parties in the construction process is the subject of Anna Ostrowska’s considerations. In her opinion, the mentioned principle is not only an ornament, but it is an important interpretive tool, among others, to fill gaps in the law. The issue of construction law is also taken up by Maciej Kruś, in the chapter “Rules in Construction Law”. Here it is pointed out, *inter alia*, that the legislator endeavors to eliminate under-defined standards and discretion in constructing regulations. Ewelina Dziuban and Mariusz Kotulski, comment on the “good neighbourhood” as a norm-rule. In their opinion, the principle of good neighbourliness shall be applied in an “all or nothing” manner, as its partial application is excluded. The monograph contains also an analysis of the principle of efficiency (effectiveness) of the administration’s activities in the area of public infrastructure investments. Łukasz Stelmaszczyk, points out standards and special legal procedural instruments for the practical implementation of the principles he mentions. Sławomir Pawłowski, discusses the principle of citizens’ trust in the state in substantive administrative law on the example of Article 98 of the Law on Real Estate Management. In this chapter, among other things, he analyses and assesses court case law regarding the possibility of using the institution to return expropriated property back to real estate, property divided pursuant to Article 98. The considerations of Part IV, are concluded in the chapter written by Łukasz Kamiński, regarding the constitutional principle of property protection and the administrative and legal protection of spa areas. It states that restrictions on the right to ownership in such designated areas do not violate constitutional principles.

Part V, contains considerations about the principles of environmental law. Anna Haładyj, draws attention to the problem of the disintegration of general principles of environmental law in the context of its effectiveness. In the monograph the basic principles of environmental law, such as the principle of proportionality in the collection and processing of waste, is discussed in the chapter written by Anna Barczak and Adrianna Ogonowska. The principle of *ne bis in idem* in the context of the postulate of recourse to the principle of administrative sanctions and the concurrence of criminal and administrative liability appears in the chapter written by Agnieszka Jaworowicz-Rudolf, while the “polluter pays” principle with regard to radioactive waste as municipal waste is the subject of the chapter written by Artur K. Modrzejewski. The problem of the principle of prevention as the basis for the interpretation of the concept of undertaking in the procedure of an individual environmental impact assessment, is presented by Piotr Korzeniowski, while comments on the direction of the proposed systemic reforms in the field of integration on the example of environmental protection services are expressed by Elżbieta Wituska.

The principles of law in other areas of administrative law are discussed in Part VI. Agnieszka Wilczyńska referring to the axiology of the principle of stabilizing surnames, discusses the surname as a personal value, family value and a general social value. Principles of food law, including the principle of responsibility for food and feed safety and the principle of traceability and risk, are discussed by Małgorzata Korzycka and Paweł Wojciechowski. The principle of universal protection of monuments and its significance for the protection of non-historical cultural property, is discussed by Anna Fogel. Monika Majak, presents the principle of economic freedom in the aspect of activities related to trade in medicinal products. The chapter written by Anna Lichosik, concerns the rules of administrative supervision over the capital market (subjective and objective aspect of supervision). Adrian Misiejko, discusses the principle of organizing public mass transport in road transport by local government units (including the principle of sustainable development of public transport and non-discriminatory principles). Principles in administrative proceedings are presented in the publication in a broad and interesting way. Jan Olszanowski, when analysing judicial decisions, refers to the principle of the rule of law from the constitutional perspective. Implementation of the principle of persuasion is the subject of analysis in the chapter written by Paulina Ura and Ewa Kubas. Here, the authors draw attention, among others, to the importance of the principle of persuasion in the conditions of administrative recognition and discretionary powers. Katarzyna Celińska-Grzegorzczak, also refers to the problem of the implementation of the principle of persuasion in general administration proceedings. The consequences of incorrect instructions of the party in administrative proceedings and legal instruments for the protection of the party's rights with regard to the principle of trust in state authorities is taken up by

Anna Ważbińska-Dudzińska. Martyna Wilbrandt-Gotowicz, analyses the principle of decisions durability in administrative proceedings integrated with European Union law. Paulina Bieś-Srokosz, draws attention to the specificity of implementing the principles of *the Code of Administrative Procedure* in proceedings conducted by organs of government agencies. Her considerations relate mainly to The Agency for Restructuring and Modernisation of Agriculture (ARMA). The reviewed monograph also refers to the validity and significance of general principles in selected acts in the field of substantive administrative law and on the basis of enforcement proceedings in administration. The principle of insight, speed and simplicity in matters related to social assistance is analysed by Alina Miruć. This author indicates that the implementation of principles mentioned in the chapter, is the timely consideration (handling) of public administration matters. The importance of general principles of administrative proceedings regarding provision of selected administrative laws is also analysed by Wojciech Piątek. The author refers to proceedings for granting social assistance benefits, proceedings for granting a building permit and the principles of administrative enforcement proceedings. Legal principles applied in the enforcement proceedings in the administration are discussed by Magdalena Strożek-Kucharska. This chapter points to the principles contained in the Constitution of the Republic of Poland, the Code of Administrative Procedure, the Law on enforcement proceedings in administration and special legal acts.

Part VIII, contains considerations about the rules in proceedings before administrative courts. Renata S. Lewicka and Marek Lewicki, draw attention to the constitutional aspects of uniformity in administrative court decisions. In the opinion of the authors, such uniformity is an instrumental value serving to ensure implementation of the principle of equality before the law and the factor serving the implementation of judges' independence. Konrad Łuczak referring, among others, to theses of American legal realism, discusses the principles of applying the law by administrative courts and legal pragmatism. Magdalena Sieniuc, analyses the validity of the principle of openness and the consequences of its violation in court and administrative proceedings. Although this principle is not absolute, it has a special procedural role that ensures access to information and guarantees impartiality of the judge. Jakub Polanowski, also addresses the principle of openness by discussing the anonymisation of administrative court decisions. The author points out the need to maintain a balance between keeping disclosure requirements and the protection of personal data. Deleting personal data "*just in case*" is a mistake. Ewa Wójcicka, recognizes the principle of procedural information as a manifestation of fair court and administrative proceedings. This principle strengthens the adversariality of proceedings, the equal rights of parties and contributes to increasing the legal awareness of citizens.

The scientific value of the reviewed publication is enhanced by the inclusion of issues concerning the principles of administrative penalty in the legislation of the Slovak Republic submitted by Matej Horvat, Maria Srebalova and Maria Havelkova.

To summarise, the reviewed publication is a very important addition to the publishing market and its presence fully deserves to be recognised. The monograph provides a valuable voice, a “milestone” in the discussion on the essence and importance of principles in administrative law. The work presents a comprehensive and significantly different set of logically systematised considerations regarding the theory, practice and judicature in administrative processes. Equally important is the extensive and up-to-date bibliography it provides. Due to its multi-faceted presentation and timeliness of considerations, the monograph is perfectly recommendable for theoreticians as well as for legal practitioners. The editorial board does not raise any negative comments. On the contrary, the aesthetics combined with the clear and understandable layout of this work encourages one to read it. Therefore, the great amount of effort that has gone into producing this monumental publication of more than 800 pages is to be applauded. Moreover, as a scientific work it will almost certainly hold a permanent position in the canon of obligatory literature on administrative law. The “*Principles in Administrative Law. Theory, Practice, Judicature*” is a masterpiece definitely worth reading.

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