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**A postulate of “good administration”
in the Constitution of the Republic of Poland of 2 April 1997**

Keywords: good administration, the right to good administration

Słowa kluczowe: dobra administracja, prawo do dobrej administracji

Summary

The Constitution of the Republic of Poland of 2 April 1997, similarly as constitutions of some other contemporary states, expresses a postulate of “good administration”. It can be perceived both in the preamble as in many detailed provisions of the fundamental act, regulating particular institutions related to the legal system. The article describes frames of organisation and functioning of good administration determined by the Constitution and adduces opinions of the doctrine on the subject of the notion and features of good administration.

A carried out analysis leads to a conclusion that the Legislator expressed the postulate of good administration in a sufficiently unambiguous way, however an unambiguous constitutionalisation of the right to good administration is required.

Streszczenie

**Postulat „dobrej administracji”
w Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 r.**

Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 r., podobnie jak konstytucje niektórych innych współczesnych państw, wyraża postulat „dobrej administracji”. Od-

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czytać go można zarówno z preambuły, jaki z wielu szczegółowych przepisów ustawy zasadniczej regulujących poszczególne instytucje prawnoustrojowe. Artykuł opisuje wyznaczone przez Konstytucję ramy organizacji i funkcjonowania dobrej administracji oraz przytacza poglądy doktryny na temat pojęcia i cech dobrej administracji.

Przeprowadzona analiza prowadzi do wniosku, iż ustrojodawca wystarczająco wyraził postulat dobrej administracji, pożądana jest natomiast jednoznaczna konstytucjonalizacja prawa do dobrej administracji.

I.

A postulate of “good administration”, “good governance” is incessantly present in a public debate. It is the most strongly exposed at an occasion of every election, both at an all-Polish and local level². In programme documents of political parties, in electoral campaigns there constantly occur announcements of making activities of public administration more efficient. There is nothing strange in this because one cannot agree with a statement that: “There does not exist a state, whose politicians and also employees of public administration would not see a need of improving administration”³.

Every aspiration for a better state is the aspiration for a good, efficiently acting administration. Under such banners, among others, the Great French Revolution took place with its message to subject public administration to statutory law by the legislative authority⁴.

A postulate of “good authority”, “good administration” is always written down in a specified institutional order established by the *Constitution*. The

² M. Kasiński, *Considerations on good administration*, “Annales – Ethics in economic life”, vol. 10, fas. 1, Łódź 2007, p. 353.

³ Z. Niewiadomski, *Is the right to good administration a normative notion?*, [in:] *The right to good administration. Materials from the Conference of Chairs of Law and Administrative Procedure*, eds. Z. Niewiadomski, Z. Cieślak, Warsaw–Dębe 23–25 September 2002, Warsaw 2003, p. 15.

⁴ E. Bojanowski, *The principle of good administration– the right to good administration: Polish references (several notes)*, [in:] *Contemporary problems of law and administrative procedure. A jubilee book dedicated to Prof. zw. dr. hab. Jacek M. Lang*, eds. M. Wierzbowski, J. Jagielski, A. Wiktorowska, E. Stefańska, Warsaw 2009, p. 37.

legislator constructs certain constitutional institutions, i.e. "concrete relations among various subjects, such or another distribution of rights and obligations in the scope of constitutionally set up legal relations, clearly specified aspects of a citizen's situation, etc."⁵ A certain institutional order comes into being, which is based on defined institutional values. One can also include to them guarantying a specified (considered as appropriate by the legislator) character of the institution managing the state and administering public matters⁶. This means guarantying such functioning of administration, which is evaluated as good by the legislator, i.e. establishing "good administration".

Writing on good administration I think about public administration, this is a set of organising and executive actions, activities and undertakings carried out on behalf of realisation of public interest by various subjects, organs and institutions, on grounds of act and in forms specified by the law⁷. From the subjective point of view "public administration is a system of institutions (organs and organisational units) acting according to adopted organisational and functional assumptions (principles of activity) in the sphere of facts and social phenomena"⁸. The entirety of the public service is also concerned when public tasks are performed by private subjects and self-government not only territorial but also professional⁹. From the point of view of its structure administration belongs indirectly or directly to the executive authority of the State¹⁰ and is identified with it¹¹, which is an evident consequence of adopting the principle of separation of the state authority¹².

⁵ P. Sarnecki, *Foreword*, [in:] *Constitutionalisation of principles and the system institutions*, ed. P. Sarnecki, Warsaw 1997, p. 8.

⁶ Z. Ziemiński, *Constitutional values*, Warsaw 1993, p. 59.

⁷ H. Izdebski, M. Kulesza, *Public administration, general problems*, Warsaw 1999, p. 79.

⁸ M. Grzybowski, *Public administration versus constitutional order*, [in:] *Public administration*, ed. J. Hausner, Warsaw 2012, p. 27.

⁹ A. Malanowski, *Principles of good administration in the light of practice of Polish Ombudsman*, "Bulletin of the Information Office of the Council of Europe" 2003, no. 4, p. 71.

¹⁰ P. Delvolve, *The final report*, "Bulletin of the Information Office of the Council of Europe" 2003, no. 4, p. 123.

¹¹ An opinion in discussion of E. Smoktunowicz, [in:] *The right to good administration. Materials*, op.cit., p. 26.

¹² M. Grzybowski, *Public administration*, op.cit., p. 36.

II.

Public administration is subject to analysis and verification from various points of view (e.g. theory of organisation, praxeology, the theory of state and state systems)¹³ and it can be assessed from various points of view as good or bad.

In the doctrine on the one hand one can meet opinions questioning a possibility of *a priori* establishment of features of good administration, because: “determinants of good administration can be decoded *ex post*, after considering facts of a case of a given public administration”¹⁴. Whereas on the other hand, a real existence of good administration is questioned¹⁵, because administration is too differentiated that one would be able overcome axiological pluralism and bring its evaluation to one superior value¹⁶.

The notion of “good administration” is an ambiguous, insufficiently defined notion¹⁷. For citizens good administration is administration, “reliable, efficient and effective, acting according to appropriate legal grounds and in forms provided by the law, observing the administrative procedure and simultaneously elastic and not bureaucratised”¹⁸.

“Individual” understanding of “good administration” is searching “positive elements of behaviour of employees and functionaries of the executive authority apparatus, motivated by adopted and socially accepted official duties (...). «A general» understanding of «good administration» transfers considerations to a plane of evaluations of a realisation degree of normatively defined aims by administering subjects, accepted by citizens and commonly considered to be socially useful”¹⁹.

¹³ Ibidem, p. 27.

¹⁴ An opinion in discussion of W. Taras, [in:] *The right to good administration. Materials*, op.cit., p. 178.

¹⁵ An opinion in discussion of R. Sowiński, [in:] *The right to good administration. Materials*, op.cit., p. 25.

¹⁶ W. Taras, *In search of good administration*, [in:] *The right to good administration. Materials*, op.cit., p. 170.

¹⁷ An opinion in discussion of Z. Leoński, [in:] *The right to good administration. Materials*, op.cit., pp. 20–21.

¹⁸ I. Lipowicz, *The right of a citizen to good administration*, [in:] *State in service for citizens. A Jubilee Book of Jerzy Świątkiewicz*, eds. R. Hauser, L. Nowacki, Warsaw 2005, p. 111.

¹⁹ Z. Cieślak, *The right to good administration (theses of talk)*, [in:] *The right to good administration. Materials*, op.cit., p. 19.

From the formal point of view good administration is administration acting according to specified procedural standards recognised as good. Whereas from the material point of view the concern is to answer the question "whether administration performs tasks, which have been provided for it and if these tasks and instruments of their realisation have been adequately selected"²⁰.

Many efforts have been undertaken to appoint principles (rules, canons, features) of good administration.

Jan Zimmermann formulating requirements of good administration, indicated "expressed in positive law in a form of legal principles"²¹ a rule of legality (lawfulness), fastness and objectivity and other rules "the use of which is a necessity, and which automatically have influence on the fact of making and content of administrative decisions"²², i.e. a rule of justice, certainty, fairness, efficiency, objectivity and rationality²³.

Jerzy Supernat distinguished "four basic principles of good use of instruments of public administration's activity"²⁴: rationality, expediency, ethics, economic management²⁵.

Authors of a document formulated in 1999 aimed to determine standards, with which countries applying to the European Union should compare themselves, separated the following groups of principles of good administration: reliability and predictability, openness and transparency, liability, efficiency and effectiveness²⁶.

A commission appointed in 1994 by initiative of Prime Minister of Great Britain John Major under chairmanship of Lord Nolan, formulated seven principles of administrative activities in public life: impartiality, uprightness, objectivity, responsibility, openness, honesty, good example²⁷.

²⁰ An opinion in discussion of T. Rabska, [in:] *The right to good administration. Materials*, op.cit., p. 67.

²¹ *Motives of administrative decision and its reasons*, Warsaw 1981, p. 39.

²² Ibidem.

²³ Ibidem, pp. 39–43.

²⁴ *Principles of good administration*, [in:] *The right to good administration. Materials*, op.cit., p. 599.

²⁵ Ibidem, p. 603.

²⁶ A.I. Jackiewicz, *The right to good administration as an European standard*, Toruń 2008, p. 119.

²⁷ M. Opaliński, *European standards of good administration*, "Scientific Fascicles of the Higher Banking School in Wrocław" 2011, no. 26, pp. 170–173.

In the final report summing up a conference titled *The right to good administration* organised in 2003 by the Council of Europe, in cooperation with the Ministry of Internal Affairs and Administration, the Office of the Commissioner for Civil Rights and Information Office of the Council of Europe in Poland there were enumerated principles of: equality, impartiality, neutrality, objectivity, making public, commensurability and efficiency²⁸. In a lecture opening this conference characterising “good administration” as “a component of protection of a citizen” there were indicated principles of: equality of citizens before state offices, useful administration, good functioning of administration, appointment of the course of initial hearing of a citizen and informing him/her, appointment of Ombudsman, motivation of administrative acts, access to administrative documents, instituting independent administrative agents, instituting court protection²⁹.

Most often one talks about what good administration should be when “the right to good administration” is characterised, which thanks to measures undertaken at a level of European institutions was transformed from a doctrinal conception of 1 December 2009 to the law formally binding. It is formulated by art. 41 of the Charter of Fundamental Rights, which thanks to coming into force of the Treaty Reforming the European Union was embodied into the primary law of the Union³⁰.

Concluding from the way of formulation of the right to good administration in the Charter of Fundamental Rights³¹ one should consider that “good” administration in understanding of its authors is such which “is just, impar-

²⁸ P. Delvolve, *Report*, op.cit., pp. 131–132.

²⁹ T. Fortsakis, *Principles governing good administration*, “Bulletin of the Information Office of the Council of Europe” 2003, no. 4, pp. 59–61.

³⁰ D. Szcześciło, *The right to good administration – a tool of protection of an individual against abuse of authority*, [in:] D. Szcześciło, A. Mendis, M. Niziołek, J. Jakubek-Lalik, *Administration and public management. Theory of contemporary administration*, Warsaw 2014, pp. 95–100.

³¹ On the subject of the scope of the right to good administration in the Charter of Fundamental Rights, e.g. I. Lipowicz, *The right of a citizen*, op.cit., pp. 113–119, A. Skóra, *Administration in the European constitutional order: protection of fundamental rights in the Constitution for Europe on an example of the right to good administration*, [in:] B. Dolnicki, J. Jagoda, *Administration under influence of European law*, Bydgoszcz-Katowice 2006, pp. 69–73, D. Szcześciło, *The right to good*, op.cit., pp. 97–98, T. Fortsakis, *Principles governing*, op.cit., pp. 66–68, M. Szweczyk, *The right to good administration in the light of international legal*

tial and fair, acts in a timely, efficient and polite way – in such a way solves administrative matters”³².

The European Code of Good Administration³³, passed on 6 September 2001 by the European Parliament, deals with a procedural aspect of good administration “containing exemplification of desired and prohibited conduct of administration”³⁴. It proclaims the following principles: “rule of law, non-discrimination, commensurability, prohibition to misuse powers, impartiality and independence, objectivity, consistent with the right to expect a consequential activity and consultancy, honesty, including rightful interest of an individual, politeness, replying to letters in a citizen’s language, certification of receipt of letters, transferring a matter to an appropriate organ, hearing an individual before undertaking an adjudication, punctuality, instruction on a possibility of appeal, delivery of the adjudication, data protection, reasons for the decision, giving information, keeping registers of mail, lodging complaints to the European Ombudsman”³⁵.

III.

A postulate of good administration was included in the constitutional provisions of some contemporary states³⁶. It is also expressed by the Constitution of the Republic of Poland of 2 April 1997³⁷.

acts, [in:] *Prawo do dobrej administracji. Materiały*, op.cit., pp. 58–61, A.I. Jackiewicz, *Prawo do dobrej*, op.cit., pp. 56–60.

³² I. Lipowicz, *Prawo obywatela*, op.cit., p. 113.

³³ J. Świątkiewicz, *The European Code of Good Administration (text and comments on application of the code in conditions of Polish administrative procedure)*, Warsaw 2002.

³⁴ E. Bojanowski, *The principle of good administration*, op.cit., p. 38.

³⁵ M. Kasiński, *Considerations on good*, op.cit., pp. 355–356.

³⁶ P. Delvolve, *Report*, op.cit., p. 124. On an example art. 103 item 1 of the Constitution of Spain provides: “Public administration serves impartially to general interest and acts in accordance with principles of efficiency, hierarchy, decentralisation, deconcentration and coordination, with entire subordination to act and law” (cit. per the *Constitution of Spain of 27 December 1978 novelised on 27 August 1992*, Translation and introduction T. Mołdawa, Warsaw 2008).

³⁷ Dz.U. (the Journal of Laws) 1997, no. 78 item 483 as amended.

In this context in the doctrine one turns attention to a fragment of the preamble of the fundamental act containing the expression: “wishing to guarantee civic rights for ever and ensure reliability and efficiency of activities of public institutions”³⁸. In Kazimierz Działocha’s opinion it expresses an autonomous constitutional principle, not appearing in further parts of the Constitution³⁹.

A normative meaning of the introduction to the Constitution is a controversial matter⁴⁰. If one considers that contents included in it have a normative character, then this principle is not only an indication of precious value in the domain of functioning of public institutions, thus administration, but it can also be a criterion in research of constitutionality of provisions of law. K. Działocha turns attention to an adjudication of the Constitutional Tribunal in the matter of NFZ, in which evidently the Tribunal declared for a normative meaning of the principle of reliability and efficiency of activity of the public institutions⁴¹. Since in reasons for the adjudication of 7 January 2004 (file no. K 14/03) it is stated that: “Reliability and efficiency of acting of the public institutions, in particular these institutions, which were established in order to realise and protect the rights guaranteed by the Constitution, belong to values having a constitutional rank. It clearly results from the introduction text to the Constitution (preamble), in which as two main aims of establishing the Constitution were mentioned: guarantying civic rights and ensuring reliability and efficiency of acting of the public institutions. Research of this activity does not belong to competence of the Constitutional Tribunal. However, it can in the scope of competence based on art. 188 item 1 to 3 of the Constitution, evaluate whether provisions regulating activity of these institutions were formed in a way enabling their reliable and efficient actions. Provisions, whose contents do not promote reliability or efficiency of acting of the institutions, which are aimed to serve protection of constitutional rights at the same time constitute infringement of these rights, and simultaneously considering them as incom-

³⁸ E.g. opinion in discussion of T. Rabska, [in:] *The right to good administration. Materials*, op.cit., p. 68, or A. Malanowski, *Principles of good administration*, op.cit., p. 70.

³⁹ A statement inserted in publication of the Constitutional Tribunal *Preamble to the Constitution of the Republic of Poland*, Warsaw 2009, p. 71.

⁴⁰ Ibidem, pp. 69–70.

⁴¹ Ibidem, p. 71.

patible with the Constitution is justified⁴². One can also see grounds for constitutionalisation of the principle of good administration in art. 1 of the *Constitution* stipulating that the “Republic of Poland is the common good of all citizens”⁴³. Obligation to efficiency of acting of public administration results from art. 15 item 2 of the *Constitution*, which contains an order of such formulation of the fundamental territorial division of the state, so it would ensure territorial units “the ability to perform public tasks”⁴⁴.

A postulate of good administration should be joined with art. 153 of the Fundamental Act determining features of a corpus of civil service, which is to be reliable, impartial and politically neutral⁴⁵.

The order to good administration also results from public tasks mentioned in the Constitution, which are to be realised by a widely understood public authority⁴⁶. They include for example: carrying out policy intending to entire employment (art. 65 item 5), ensuring equal access to benefits of health care financed from public means (art. 68 item 2), granting aid to disabled people in securing their existence, adopting to work and social communication (art. 69), ensuring common and equal access to education to citizens (art. 70 ust. 4), ensuring aid to families existing in a difficult material and social situation (art. 71 item 1), carrying out policy ensuring ecological safety (art. 74 item 1), performing policy promoting satisfaction of citizens’ housing needs (art. 75 item 1).

These elements scattered in various provisions of the *Constitution*, can give grounds for formulation of the constitutional principle of good admin-

⁴² OTK ZU 2004 1A/1.

⁴³ J. Zimmermann recognises the principle of realisation of common good a one of principles creating “the core of what is called good administration – *On axiology of administrative law*, Warsaw 2013, p. 87, also A. Malanowski, *Principles of good administration*, op.cit., p. 70.

⁴⁴ An opinion in a discussion of T. Rabska, [in:] *The right to good administration. Materials*, op.cit., p. 68.

⁴⁵ D. Szcześciło, *The right to good*, op.cit., p. 101, J. Świątkiewicz, *The constitutional right to good administration. (Expectations and reality)*, “Państwo i Prawo” 2004, no. 4, p. 21, M. Zdyb, *General principles of the Code of administrative procedure as the foundation of establishing contemporary constitutional order*, [in:] *Codification of administrative proceedings. For the 50years anniversary of K.P.A.* ed. J. Niczyporuk, Lublin 2010, pp. 953–955.

⁴⁶ A.J. Dębicka, *An efficient state. Contemporary concepts and instruments of public management versus public administration*, Warsaw 2008, p. 93.

istration (analogically to the principle of a civic society)⁴⁷, though it is not expressed *expressis verbis*. A constitutional principle need not be declared directly, it can “constitute a consequence of many detailed constitutional provisions regulating particular institutions related to the legal system”⁴⁸. Texts of the constitution can omit many assumptively adopted rules of constitutional law characteristic to a given legal culture⁴⁹. Various meanings are attributed to the term “a constitutional principle”⁵⁰. A charter of particular principles is also different⁵¹. Some are in force on the grounds of a legal system, others constitute postulates towards organs of state. The principle of good administration belongs to the second category.

“The right of good administration” is not also anchored directly in the Constitution. It can be worked out from the entirety of provisions of the Constitution of *RP* similarly as it can be done in relation to many other European Constitutions⁵². The right to good administration is an element of the right to good state⁵³. It is connected with the right to good legislation and right to good judicature.

IV.

Analysis of the *Constitution of the Republic of Poland* of 2 April 1997 leads to a conclusion that the legislator in provisions of the fundamental act in a sufficiently unambiguous way expressed a postulate of good administration and satisfactorily appointed the system framework of its organisation and functioning. Being directed by supreme principles of the *Constitution*, organs of

⁴⁷ A. Małanowski, *Principles of good administration*, op.cit., pp. 69–70.

⁴⁸ K. Wojtyczek, *Forms of constitutionalisation of constitutional principles*, [in:] *Constitutionalisation of principles and the system institutions*, ed. P. Sarnecki, Warszawa 1997, p. 29.

⁴⁹ Z. Ziemiński, *On enacting and binding force of law. Fundamental problems*. Warszawa 1994, p. 71.

⁵⁰ P. Tuleja, *Constitutional principles*, [in:] *Constitutionalisation of principles*, op.cit., pp. 11–27.

⁵¹ Z. Ziemiński, *On enacting*, op.cit., p. 71.

⁵² Z. Niewiadomski, *Is the right to good administration*, op.cit., p. 15.

⁵³ An opinion in a discussion of M. Wyrzykowski, [in:] *The right to good administration. Materials*, op.cit., p. 24.

administration can act in a way which not only does not infringe credibility of citizens towards the state but also shapes it and strengthens.

However, it seems that the fundamental act should ensure citizens a possibility of efficient demand towards administration to "be good". It requires constitutionalisation of the "right to good administration". Raising the right to good administration to a rank of fundamental rights will give grounds for claims of individuals towards the state to realise it in the whole and will bind the legislator to develop this right in ordinary legislation⁵⁴.

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⁵⁴ Z. Niewiadomski, *Is the right to good*, op.cit., pp. 15–16.

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