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On Jurisdictional Proceedings and the Concept of a Party in the Code of Administrative Procedure¹

1. The Code of Administrative Procedure² provides for two different types of proceedings. The first, let us call it jurisdictional proceedings,³ concerns only the legal interests of ‘parties’, while the second, which can be called complaint proceedings for simplicity, regulates the filing of petitions and proposals in the ordinary interest of citizens or a community.

The subject-matter scope of the proceedings of the first type is defined by the general clause of CAP, Article 1, with Article 194 providing, however, for a separate type of proceedings for certain fields.

The general clause is, however, vague and gives rise to many doubts. Article 1 of the CAP states that the CAP regulates proceedings ‘in individual cases coming within the purview of state administration’. Are individual cases really the issue here? A ban on bathing in a specific place could be considered, for example, as an individual case. Is it

1 Translated from: M. Zimmermann, *Z rozważań nad postępowaniem jurysdykcyjnym i pojęciem strony w kodeksie postępowania administracyjnego*, in: *Księga pamiątkowa ku czci Kamila Stefki*, Warszawa 1967 by Tomasz Żebrowski and proofread by Stephen Dersley and Ryszard Reissner. Translation and proofreading was financed by the Ministry of Science and Higher Education under 848/2/P-DUN/2018.

2 Hereinafter: CAP.

3 M. Waligórski, *Polskie prawo procesowe cywilne. Funkcja i struktura procesu*, Warszawa 1947, p. 36: “The function related to the first objective of a case, i.e. the pursuit of a concrete norm, regulating a legal relation, can be called jurisdiction”. Since it can be seen from further definitions that the cited author construed the words “regulating a legal relation” to the said concrete norm, being the outcome of a case, broadly (definition encompasses constitutive claims as well), the present author believes that it perfectly defines the very nature of administrative proceedings as described in CAP, Divisions I-II.

rather the case of a specific entity that is meant here, or possibly both? The term ‘individual case’ is, after all, a relative concept.

Nor is the expression ‘within the purview of state administration’ clear. It is argued in our literature that this expression in itself does not exclude cases dealt with as part of the civil-law activity of state administration bodies. Since CAP, Article 1, does use the expression ‘within the scope of administrative law’ (as did the 1928 Decree of President of Republic⁴, Article 1), it does not exclude the acts of ‘gestio’ in the broad sense. Nor does it exclude cases belonging to separate legal systems (in particular all kinds of rules self-imposed on administration).

Thus Article 1 alone does not give us either the complete or clear scope of the CAP, in terms of subject matter. This can be obtained only by studying all the CAP provisions, in particular those that concern elements⁵ important for the construction of jurisdictional proceedings, i.e. the concepts of ‘party’, ‘legal interest’ and administrative ‘decision’.

2. The purpose of proceedings is to issue a decision that ‘disposes of the case’ of the party (CAP, Article 97 in connection with Article 99). If the decision is faultless and favourable to the party, it creates its ‘right’ and may be set aside or modified only with its consent. The right is permanent as, apart from the case of the party’s consent, it may be set aside or modified only in the cases of qualified defectiveness listed in the CAP or in special provisions (Article 142), or expropriated for a compensation (‘expropriation of right’). This reaffirms its permanence. It is a *res iudicata* which *ius facit inter omnes*. In particular, it binds state administration bodies that have issued it (CAP, Articles 12, 102, 137(1)(3)). Hence, it is issued by a state administration body as an act of ‘imperium’ in proceedings regulated by administrative law provi-

4 Hereinafter: DPR.

5 These are chiefly Articles 1, 25–26, 57, 61, 97–99, 135–137, 163–166. It is worth noting that the 1925 Austrian codification, which served as a model for our codification, as is well known, does not have an equivalent of the general clause included in our Article 1. Whereas provisions introducing Article I 1 limit this type of proceedings to ‘imperious’ administration and Article II 6 excludes service matters of officials.

sions and progressing in a specific case the purpose of which is an individual norm for a specific addressee.⁶ This allows us to exclude from the scope of the CAP application certain actions and acts. These are civil-law actions, acts of a general scope, acts of ‘gestio’ (non-imperious acts) and – since a decision is an external act, i.e. one that regulates, creates and abolishes the rights or responsibilities of individuals in the sphere of administrative ‘universally’ binding law – ‘internal’ acts of administration.⁷

3. One of the crucial concepts for the understanding of the construction of proceedings in the CAP is that of a ‘party’. Article 25 of the CAP states:

A party to proceedings is any person whose legal interest or responsibility is the object of the proceedings or who demands the intervention of a state administration body⁸ on account of his/her legal interest or responsibility.

The second sentence of this Article has given rise to fundamental disputes in our literature. Since individual views must, next to texts, be the foundations of this study, it shall be necessary to quote many important fragments verbatim.

6 This corresponds to the classic definition of an administrative act – e.g. O. Mayer, *Deutsches Verwaltungsrecht*, I, 93: „ein der Verwaltung zugehöriger, obrigkeitlicher Ausspruch, der dem Untertanen im Einzelfall bestimmt, was für ihn Rechtens sein soll“ (emphasis M. Z.). V. S. Kasznica, *Polskie prawo administracyjne – pojęcia i instytucje zasadnicze*, 4th ed., Poznań 1947, p. 112.

7 J. Starościak, *Prawo administracyjne*, Warszawa 1965, p. 248.

8 The 1928 DPR, Article 9(3), worded this differently: ‘The interested persons who take part in a case pursuant to a legal claim or a legally protected interest are parties’. Although comparing this wording with the wording of para.1 of the same Article (‘An interested person is anyone who requires an intervention of a body ... etc.), a certain similarity of this expression could be noticed to CAP, Article 25; that wording, after all, was no doubt less categorical.

The wording of Article 25 reminds one of Article 9 of the 1922 SAT Act and Article 49 of the 1932 SAT Regulation (the right to appeal from a decision ‘is enjoyed by any person who claims that his/her right has been infringed [...] unlawfully’ – Article 49). It seems, however, that in that case the assertion made by a party was indeed of such a kind that any answer to it called for holding proceedings first.

It shall be also necessary to reach back to history. As it is well known, the origins of our CAP, via the 1928 DPR, go back to the Austrian codification of 1925. Its theoretical foundation was the classic work by E. Bernatzik *Rechtsprechung und materielle Rechtskraft*, which has remained useful for the Austrian system to this very day. He founded his construction on the concepts of legal claim and legal interest (in the DPR: ‘legally protected interest’). The first gives the right to a decision of a specific content, while the second to a specific conduct, aimed at issuing a decision. In both cases, however,

Der Begriff, ‘der Partei’ bestimmt sich im Verwaltungsrecht nicht nach den Wünschen eines Einzelnen, sondern darnach, ob ein rechtliches Interesse vorliegt oder nicht.⁹

This stance was in principle taken also by the Austrian Administrative Tribunal and our Supreme Administrative Tribunal (SAT) (The definitions of the concept of a ‘party’ in § 8 of the Austrian Act and Article 9 of the DPR are identical).¹⁰

With respect to our DPR of 1928, the question was best discussed by Klonowiecki in his well-known monograph:

While defining a party, Article 9 uses, following the Austrian model, substantive criteria. [...] the use of substantive criteria to define a party allows only persons having these substantive qualifications to participate in administrative proceedings. [...] Both a legal claim and a legal protection of an interest must rely on the provisions of positive law and must exist objectively, not only in the opinion of the interested person (sub-

9 E. Bernatzik, *Rechtsprechung und materielle Rechtskraft*, Vienna 1886, p. 187; see also p. 65.

10 Cf. a judgement of the Austrian Administrative Tribunal going even further of 11 May 1935, no. 465: ‘Nicht dass ein Rechtsanspruch von einer Partei behauptet wird, sondern dass nach den betreffenden Verwaltungsvorschriften ein öffentlich – rechtlicher Anspruch überhaupt vorgesehen ist, entscheidet nach § 8 A.V.G. über die Parteistellung; diese bildet die begriffliche Voraussetzung für den Anspruch auf Beiziehung zum Verfahren und nicht ein Ergebnis des Verfahrens’ (emphasis M.Z.) quoted after F. Graefenstein, *Die Verwaltungsverfahrensgesetze*, 2nd ed. Graz 1937, p. 35). Cf. also the SAT judgment of 13 Feb. 1931 (coll. no. 349 A): ‘It is not the will of the interested person that is decisive, but the relevant provisions of substantive law’.

jectively). [...] Under a legally protected interest should be understood, according to the DPR, an interest that can be attained taking advantage of an administrative decision in accordance with the law. The legal protection of such an interest is the possibility to satisfy it both passively and actively in accordance with the law.¹¹

Hence, the Austrian system is not the only possible one. It is possible to design administrative proceedings modelled on civil proceedings. For the latter, in 1919, Stefko adopted the general rule that a claim is allowable when the claimant has a substantive legal interest to obtain protection in the form of a judgement. The answer to the question when the claimant has the legal interest can be easily left to the court to give it in reliance on substantive law. A judgement may be entered each time a party shows a legal interest in the granting of a judgement it demands. However, it can show the interest only in the course of proceedings.¹²

Finding it necessary, therefore, to ascertain the objective existence of a legal interest to enter a decision does not pre-determine in itself that this cannot happen in the course of proceedings.

It is this solution that was adopted by the codifications of administrative proceedings in Czechoslovakia in 1928 and Yugoslavia in 1930.

The reasons why we adopted the Austrian system back in 1928 in the version shaped by the practice of the Austrian Administrative Tribunal prior to the enactment of a relevant statute, and the literature, are convincingly set out by Klonowiecki.¹³

11 W. Klonowiecki, *Strona w postępowaniu administracyjnym*, Lublin 1938, pp. 39–41.

12 K. Stefko, *Główne zasady polskiej procedury cywilnej*, “Przegląd Prawa i Administracji” 1919 XLIV, pp. 159, 161, see also p. 157. Such a system may also contribute, under certain conditions, to the rise of certain new legal institutions. This account, e.g. in 1919, made the codifiers of the future CCP leave out from it a provision on right-creating (constitutive) judgments, whose existence was debatable at that time. *Ibidem*, p. 161).

13 W. Klonowiecki, *op.cit.*, pp. 36–39: ‘While defining the concept of a party to proceedings, it is possible to adopt formal or substantive criteria. The former make the rights of a party to proceedings dependent on the specific conduct of an individual vis-à-vis the authorities or vice versa. It does not matter if individuals have any rights or qualified interests. Anyone, if he/she wants to, may participate in a case as a party. Only as a result of proceedings

4. In 1959, the commission for drafting an administrative procedure bill published a draft bill for the purpose of opening it to public debate. It was the intention of the majority of commission members to use the 'subjective' definition of a party: Article 19(1) said that: "A party is any person whose lawful interest is the object of proceedings or who requests the intervention of a body, claiming that it bears on this interest". The 'subjectivity' of this definition was questioned in the course of debate by pointing to fundamental differences between administrative and civil proceedings, and to the nature of the connection of the trial situation of a party with a right and administrative proceedings.

In this respect, Bigo pointed out that in administrative proceedings it is not possible to follow the example of civil procedure law in which the litigation initiative is not formally connected to the substantive-law relation although causes of action must of course follow from the substantive-law legal order. [In administrative proceedings] litigation initiative of an individual, if any, is sanctioned. The sanction is based on a lawful interest, i.e. a substantive-law relation specified in a legal provision outside the CAP. This means that the litigation relation that arises upon the

will it be revealed if he/she had any rights or legal interests. This definition of a party suits best the character of a party as a strictly procedural or formal party. To define a party, Article 9 makes use, following the Austrian model, of substantive criteria. A formal definition would greatly extend the scope of persons entitled to participate in administrative proceedings. With as a rule, low costs of participating in such proceedings, poor knowledge of law among the general public and a certain inclination for litigiousness, the administrative authorities would be greatly overburdened and case processing would be complicated'. The first solution was adopted in the 1928 Czechoslovak Regulation, which does not define a party at all. Any legal person may act as a party, the authorities will verify its title to appear as party on their own motion. Reasons given for the legislation explain that defining the concept of a party is unnecessary because the questions whether certain persons are entitled to participate in a case are decided by individual provisions of administrative law and finding a definition that would cover all cases would not be easy. Czech scholarly comments on this codification maintain that prior to holding proceedings it cannot be ascertained if the applicant has a right or a legally protected interest and so the authorities are to apply to every applicant invoking such a right the rules of proceedings until it is ascertained otherwise. In turn, the Austrian codification adopted a different solution. Its interpretation is, however, an extension of long-standing judicial-administrative practice and years of scholarship, and rests on guidelines issued by the constitutional committee. In relation to our DPR, its provisions are a sufficient basis for explaining this concept. Ibidem.

institution of proceedings is not intrinsic, it is, so to speak, a secondary legal relation.

Bigo analyses the draft bill in great detail and arrives at the following conclusions: Article 43(2) sets out the integral elements of any application, including but not limited to:

[...] facts of the case and the demand, i.e. the description of the practical outcome of a case desired by the applicant. The facts of the case and the demand are enough for the body to determine the title of the applicant to appear. If the application does not meet these requirements, and if such deficiencies are not made up for within seven days, the body leaves the application untended (Article 45(2)). Hence, not every assertion ('I have a lawful interest') suffices to initiate proceedings. [...] The matter is unambiguously explained by Article 124 together with Articles 43 and 45. In Article 124, a body, preliminarily examining applications filed, segregates them into those whose authors have a title to appear (persons 'who may be a party') and others that come from other people (the latter applications are treated as complaints).¹⁴

A similar stance was taken by Langrod, who believes that unlike civil proceedings, in administrative proceedings:

Administration, performing its public task, is supposed to issue a decision [...] in compliance with the law. The initiative of a party out of necessity becomes an integral element of the administrative proceedings: to be able

14 T. Bigo, *Ochrona interesu indywidualnego w projekcie kodeksu postępowania administracyjnego*, "Państwo i Prawo" 1960, no. 3, pp. 466–467 and the literature quoted there. After a public discussion these articles were redrafted. Changes were made to Article 19 (Article 25 now). From Article 43(2) (Article 58(2) now) the words 'and facts in the case being the subject of an application' were struck out, while in Article 124 (Article 163 now) the phrase 'A complaint [...] initiates proceedings if it is filed by person who may be a party according to the Code' was replaced with '[...] if it was filed by a party'. The fact that individual articles of the Code oscillate between the 'objective' and 'subjective' conceptions makes for new interpretation difficulties.

to initiate it, the individual should at the very beginning, at the introductory stage of the proceedings, (emphasis M. Z.) prove the existence of its legal interest (active or passive) in reliance on substantive law. Only then will the individual be allowed to set in motion the public mechanism and participate in the proceedings. This is a consequence of a significant difference between private (liberal) law and administrative law. Par conséquent un droit subjectif public préalable conditionne l'admission à titre de 'partie en cause'.¹⁵

After the CAP was published, some authors elaborated on the views of Bigo and Langrod, with Dawidowicz being the most prominent among them. Opposing the reception of the concept of a party from a civil action, he highlights the fundamental differences between civil and administrative proceedings:

An administrative decision is a form of intrinsic and creative administrative activity. [The claim by a party that its interest is 'lawful' is to be sure a point of departure for 'demanding intervention of a body. Unlike a court of law, 'an organ of state administration'] verifies this claim before initiating administrative proceedings (emphasis M. Z.). This is seen in the fact that the CAP does not provide for the issuance of decisions refusing recognition as a party by state administration bodies [Article 163 ff. [Article 124 of the draft]. Under this Article, a body receiving complaints has to classify them according to legal interests involved, while Article 57(2) says that only a demand filed by a party initiates proceedings. Hence, it appears to be quite necessary for a state administration body to make a preliminary finding as to the kind of interest the demand is based on. If it is revealed that the demand is not based on any legal interest, there are no grounds for initiating proceedings (because the person who

15 G. Langrod, *La codification de la procédure administrative non contentieuse en Pologne*, "La Revue administrative" 1960, p. 538, footnote 64. Cf. E. Iserzon, J. Starościk eds, *Kodeks postępowania administracyjnego*, 2nd. ed., Warszawa 1964, p. 61.

has filed it is not a party to the case). This, however, does not mean that such a demand can be left untended at all. [...] It should be dealt with outside administrative proceedings.¹⁶

The same period, however, witnessed many publications defending the ‘subjective version’ of the concept of a party. A representative author for this line of thinking is Iserzon, who maintains:

The CAP defines the concept of a party in a simple, clear and logical manner, guaranteeing the people who, in their opinion, have an unsettled legal claim, a possibility of settling it. According to the initial intention of the CAP drafters, a party is a trial concept and not a category of substantive law; a party is any person who asserts vis-à-vis an administrative body that administrative proceedings affect his/her legal interest (responsibility or right) or who demands the intervention of a body, invoking his/her existing, in his/her opinion, legal interest or responsibility. This does not mean that a body has no competence to verify if the person who demands an act-in-law on account of his/her legal interest or responsibility (Article 25) actually relies on a legal interest or a responsibility [...]. The stance I support requires only that a body decide the question in regular proceedings in which the individual filing a claim enjoys all the rights of a party and not in a summary and unilateral assessment without initiating regular proceedings [...]. My stance is supported by Article 57(2), under which proceedings are automatically initiated on the day the party files a demand with the administrative body.¹⁷

Moreover, Brzeziński believes that a body verifies if the applicant has correctly assessed his/her interest to be a legal interest and that this can be done only in the course of explanatory proceedings. In this case, it must be presumed that the applicant is a party.¹⁸ Jendrońska writes:

16 W. Dawidowicz, *Ogólne postępowanie administracyjne. Zarys systemu*, Warszawa 1962, p. 71.

17 E. Iserzon, J. Starościk eds, op.cit., p. 13.

18 W. Brzeziński, *Review of W. Dawidowicz, Ogólne postępowanie administracyjne – Zarys systemu*, “Państwo i Prawo” 1963, no. 1, p. 122.

Article 25 alone justifies the conclusion that the Code has adopted the so-called subjective version of the party's title to appear. [...] Thus, the Code allows for establishing a litigation relation regardless of whether a lawful interest is actually present in a given case.¹⁹

As can be seen from these quotations, the dispute centred on the question whether in the light of CAP provisions, when proceedings are initiated on demand from the interested person (or a 'party'), the ascertainment of the presence of a 'legal interest' takes place only in the course of the proceedings or whether we are faced in this case with an 'objective' category which constitutes a prerequisite of proceedings in the opinion of the supporters of this solution.

The concept of a legal interest no doubt belongs to law as an objective concept, which is not questioned as a rule by the supporters of the 'subjective version'. If the literature draws a distinction between objective and subjective approaches to the concept, it is essentially done for the purpose of marking different functions out of regard for the applicant, where the concept is to have such in a trial. Is it to be therefore the qualified relation of the applicant in a given case to the law, with the existence of the relation to be proven only during the trial? Or is it to be a prerequisite of a trial per se?

An answer should be provided by the CAP itself. However, due to 'opposing trends' within the codification commission, the CAP is neither clear nor consistent on this matter. The dispute is thus about the 'objective' or 'subjective' understanding of a legal interest. Let us attempt to learn therefore how this is understood by the CAP provisions themselves.

6. The concept of a 'legal interest' is not expressly defined in the CAP. Nonetheless, the concept of a party pivots on it. If the concept of a party were to have a solely trial character (in this case 'legal interest'

19 J. Jendrośka, *Sytuacja prawna strony*, "Acta Universitatis Wratislaviensis" 1964 no. 19, XII, p. 33.

would be ascertained only in the course of trial), apart from proceedings initiated by an organ on its own motion, a party could be only ‘he/she who requests the intervention of an organ, on account of his/her legal interest’.

There are provisions in the CAP, however, in which the concept of a party has, as it seems, an objective character, independent of the will of the ‘party’.

[Article 57(2)] The date of initiating proceedings on demand from a party shall be the day of filing the demand with the state administration body.

[Article 57(3)] Of initiating proceedings by an organ on its own motion or on demand from a party, all persons being parties to the case shall be notified.

[Article 84(3)] If it is probable that besides the summoned parties participating in proceedings there may be other parties to the case, unknown to the state administration body, the date, place and subject matter of a hearing shall be announced by public notices or in a manner customarily used in a given locality.

[Article 163] A complaint in an individual case that has not been the subject of administrative proceedings, initiates proceedings, provided that it has been filed by a party. If the complaint is filed by another person, it may cause administrative proceedings to be initiated on the own motion of the body, unless the law makes a demand by a party necessary to initiate proceedings.

Article 57(2) could be – as was shown – interpreted in two ways: either ‘subjectively’ (the person who files a demand is thereby a party)²⁰ or such that even if proceedings are initiated on demand from a party – a party must already exist (thus, it must indeed have a legal interest).²¹

In the next paragraph of this Article, the wording tends to suggest an ‘objective’ interpretation more strongly. Article 84(3), in turn, treats

20 Cf. Iserzon, *op.cit.*

21 Cf. Dawidowicz, *op.cit.*

the concept of a party unequivocally in an objective manner as being independent of proceedings already under way on the motion of the body itself or of the filing of a 'demand'. An adjudicating organ therefore is only to search for already objectively existing – but unknown – 'parties'. An analogous situation is found in Article 163: objectively existing 'legal interest' is decisive; a person filing a 'complaint' is not even aware of the fact that he/she is a 'party', has a legal interest and enjoys the right to demand that jurisdictional proceedings be initiated.

7. All this, however, does not settle completely our question especially as the wording of the final sentence of Article 25 remains enigmatic ('on account of his/her legal interest'). The deliberate exclusion from the CAP of the former provision of the DPR, Article 71, is differently interpreted in the relevant literature.²² Furthermore, the fact CAP does not provide for the issuance of decisions refusing recognition as a party by state administration bodies provokes opposing conclusions.²³

Both interpretations, therefore, are or may be anchored more or less legitimately in the CAP wording that is insufficiently communicative and harmonised on this question. However, it is crucial for legal practice to arrive at a uniform interpretation of the CAP. In this context, the absence of the administrative judiciary is acutely felt as without it any attempts by juristic scholarship cannot be expected to make such an interpretation any time soon.

8. It still seems to be necessary to ponder the sense of the vital concept of a 'legal interest'. It was the desire of the liberal 'state ruled by law' to subject the interests of its citizens vis-à-vis state administration to legal protection. The interests were to be considered in the broadest

22 Cf. T. Bigo, *op.cit.*, p. 466: 'The omission from the draft of an equivalent of the 1928 DPR, Article 71, does not mean that the draft decrees some 'right to administrative protection' modelled on the right to civil protection in civil proceedings'. Iserzon, in turn, condemns 'unlawful use of the provision of the 1928 DPR, Article 71, which the CAP drafters deliberately did not embrace'.

23 E.g. W. Brzeziński, *op.cit.*, p. 122 and W Dawidowicz, *op.cit.*, p. 71, who believes that this fact 'shows that the verification if a given entity is a party takes place prior to the initiation of proceedings'.

possible sense as ‘rights’ and, thus, ‘judicialized’. Examples were drawn from civil law and procedure. Bernatzik’s construction of administrative trial, relying on distinguishing various forms of legally-protected interests, was actually motivated by the desire to extend the protection beyond the ‘claim’ as such. Since administrative law was chiefly about right-creating (‘constitutive’) decisions, whose existence in a civil action was debatable at that time,²⁴ the category of a ‘legal interest’ was established (‘legally protected’ in the DPR) alongside ‘legal claims’, giving the ‘right to specific conduct’.

A ‘legal interest’ gave the right to specific conduct, that is, conduct in which an interested person has a possibility to be granted a decision creating for him/her *Interessenverhältnisse* or legal relations.²⁵

Bernatzik – likewise the practice of the Austrian Administrative Tribunal – conceived of a legal interest as existing objectively and independently of the will of a party; this had to assume the existence of substantive-law grounds – apart from the very right to participate in proceedings – even if only in competence provisions.²⁶

Since, however, the concept of a ‘legal interest’ means only the possibility of being granted a decision, it can be conceived of as a purely procedural category. It is then reduced to the existence of a legal norm providing for the possibility of issuing and obtaining a decision in certain cases in administrative ‘jurisdictional’ proceedings. As regards the decision content, the centre of gravity moves to proceedings them-

24 Cf. K. Stefko, op.cit., p. 161. It must be remembered that in the authoritative juristic literature of those times state administration was believed to be chiefly ‘free and creative activity’ for which law was only the ‘bounds’. With this approach, E. Bernatzik, op.cit., p. 46 juxtaposes his theory of administration being bound by the hypothetical general norm binding every organ: *Tue, was Du glaubst, dass es durch das öffentliche Wohl bedingt ist.*

25 E. Bernatzik, op.cit., p. 186 ff. See also above p. 435 and footnotes 6–8 & 10. The reliance on the criterion of ‘interest’ in defining administrative proceedings, in agreement with the views of Ihering’s times, later to be criticised sometimes in the writings on administrative law as well (Herrnritt), suggests somehow the interested person’s perspective on this fundamental concept of administrative proceedings.

26 Otherwise a vicious circle would arise here – cf. for instance, the gloss by Wasiutyński quoted by W. Klonowiecki, op. cit., p. 18, footnote 2.

selves, which will consider the substantive-law and factual grounds of the decision.

The concept of a 'legal interest' would play then a double role from the perspective of the interested person. It would authorise him/her to participate in a specific procedure aimed at obtaining a favourable decision and it could be, being a competence provision at the same time, independent grounds for a decision in those very rare cases where the administrative organ is not bound by any other provision of law in issuing a decision ('absolute discretion').

A 'legal interest' thus conceived offers, however, further possibilities for the interpretation of the CAP.

9. It does not take long to see that the 'legal interest' in this formal sense actually means the possibility, provided for by a certain group of administrative regulations, of holding 'jurisdictional' administrative proceedings in certain categories of cases. A provision that says, for instance, that competent bodies may issue water, industrial or other permits is the provision that for this category of cases opens the doors to a 'jurisdictional' administrative proceeding. At this juncture a more general issue arises – if embarking on this path is admissible at all.

Administrative law is not such a uniform whole as civil law, *corpus iuris clausum*, pursuant to which every 'civil' interest may be satisfied and in which the road of a civil action is open to all. 'Jurisdictional' administrative proceedings is but one kind of administrative proceedings in a broad sense (generically different CAP 'complaint' proceedings are *sui generis* proceedings as well). Under these conditions, in favour of the 'jurisdictional' competence of administrative organs, no presumption argues. In each category of cases, an express provision of law is necessary that provides a possibility of taking the road of administrative procedure. Granted, CAP, Article 1, knows the general concept of 'cases coming within the purview of state administration', but as was shown above this concept covers only such case types in which administrative organs may issue decisions. Where this is possible it is decided

by provisions scattered across various statutes. Therefore, holding such proceedings depends on whether the individual case with which they are to be concerned belongs to such a category of cases for which the law provides the possibility of issuing an administrative decision.

If the law does not provide a means of jurisdictional administrative proceedings for a certain category of ‘administrative cases’, an administrative body cannot hold such proceedings at all, as they would be void *ab initio*.²⁷ A sensible CAP interpretation leads to the conclusion that the examination of whether in a given category of cases jurisdictional administrative proceedings are admissible, an administrative body receiving an application for initiating proceedings should preliminarily carry out on its own motion. What is meant here is a prerequisite for the possibility of holding such proceedings at all, an ‘argument’ in their favour – but *iura novit curia* after all!

If then an application is filed by a person who demands that a decision be issued in the matter of moving a bus stop closer to his/her residence, invoking in this individual case coming within the purview of state administration his/her vital interests, no administrative body will consider such an application as the initiation of proceedings. It will not, because no law provides for a possibility of issuing an administrative decision in such matters and, consequently, holding jurisdictional proceedings in their respect. Nevertheless, this type of interest is not deprived of some protection under the ‘complaint and proposal’ procedure. The law does not provide

27 K. Stefko, *Wadliwe akty sądu w postępowaniu cywilnym*, in: *Księga pamiątkowa dla uczczenia pracy naukowej K. Przybyłowskiego*, Kraków – Warszawa 1964, pp. 329, 332–333, assuming that ‘a significant task of a trial is entering a decision’, believes that ‘proceedings before a common court of law must be deemed nonexistent if they do not share the crucial characteristics of contentious judicial proceedings’. Among such characteristics, he counts the entering of a decision on the jurisdiction of a common court of law. Its absence results in a trial being non-existent. ‘Remedying these deficiencies is not possible, because the ‘trial is non-existent’. Moreover, he rightly believes that the institution of nullity of action may be transposed by analogy to an administrative trial. Bernatzik believes that since *jeder rechtliche Interessent von der Behörde “zur Partei” von Amtswegen gemacht werden soll*, the omission of this renders the decision null and void in their respect, *weil der Prozess hier inkorrekt, dem Übergangenen gegenüber nichtig ist*. E. Bernatzik, *op.cit.*, p. 188.

for such a possibility, because creating individual rights in this respect would be against a community interest. Thus, even if the application were accepted, it would not constitute a right of the interested person, restricting the discretion of disposition by administration, and the relevant body would be able to modify it any time.

The same is true for situations where a demand to initiate proceedings is filed in a matter which is actionable before a court of law or which has no character of ‘administrative matter’ at all.

10. Incidental to these questions is the determination of the date of the initiation of proceedings. If an application has been filed in a matter in which a body has found, in a preliminary examination, jurisdictional administrative proceedings to be appropriate and, thus, a legal interest in the above sense to exist and the applicant to enjoy the character of a ‘party’, the date of initiation of proceedings should, conceivably, be the date of the filing of the application. For in this case, the applicant was – on the strength of Article 25 – a party at that moment.

11. The discussion so far has shown CAP jurisdictional proceedings to have their subject-matter scope determined by ‘universal’ administrative law, providing for, in expressly specified categories of cases coming within the purview of this branch of law, the possibility of issuing administrative decisions by state administration bodies. Such decisions are individual norms regulating the individual rights or responsibilities of their addressees in this sphere. Exceptions are matters expressly excluded by virtue of CAP, Article 194.

Hence, the proceedings concern the realm of ‘universally binding’ law; they do not concern separate legal systems (i.e. all kinds of self-imposed internal rules of administration).

A party, in turn, under CAP, is an individual whose case may be disposed of in such proceedings by issuing a decision.

12. This short outline had to omit many relevant issues, especially one concerning the distinction between ‘external’ and ‘internal’ acts in the operation of some state organs, especially those of the institution

type, left out from the CAP, which must be left to the interpretation of relevant provisions of law.

The growth of administrative law, in particular in the areas of institution-type and business administration, creates new problems. These include new types of ‘sources of law’, new economic plans, which are in principle acts of ‘internal’ law, but affect even jurisdictional proceedings by deciding often the tenor of decisions or actually substituting them sometimes to a large extent (e.g. ‘flat allotment’ lists). All this calls for investigations on how to regulate them procedurally by either appropriately amending substantive law and extending the scope of the CAP or introducing special, adequate kinds of proceedings and separating them from jurisdictional proceedings. Now, diverse and fragmentary internal regulations are used in these areas, supplemented by complaint proceedings, at least as regards activities going outside to a degree (e.g. CAP, Articles 152 & 157).

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SUMMARY

On Jurisdictional Proceedings and the Concept of a Party in the Code of Administrative Procedure

The paper is an English translation of *Z rozważań nad postępowaniem jurysdykcyjnym i pojęciem strony w kodeksie postępowania administracyjnego* by Marian Zimmerman published originally in *Księga pamiątkowa ku czci Kamila Stefki* in 1967. The text is published as a part of a section of the Adam Mickiewicz University devoted to the achievements of the Professors of the Faculty of Law and Administration of the Adam Mickiewicz University, Poznań.

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