

Achieving Common Good by Public Administration and the Principle of Equality

Equality of citizens is one of the fundamental conditions of proper functioning of a democratic state under the rule of law. It gains particular significance in the context of tasks performed by public administration and is understood as the achievement of a common good.

Mutual interactions between the principle of equality and the principle of common good distinguished in the theory of administrative law reveal a very important axiological aspect of the functioning of public administration. Being at the interface of administrative law and the science of administration, it serves to analyze mutual relations between the administrative sciences.

The catalogue and the function of the principles of administrative law are closely related to the characteristics of this branch of law. In administrative law, like in other fields of law, general principles organize the norms making up the system. This function provides cohesion of the system by axiological justification in the ordered system of values¹.

In addition to the above function general principles satisfy the demand of uniformity of administration in its activities and provide the means to carry out administrative policy and standardize the results of interpretation of administrative law². The principle of equality of citizens is set out in Art. 32 of the Constitution of the Republic of Poland of 1997 (1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. 2. No one shall be discriminated against in political, social or economic life for any reason whatsoever)³.

¹ P. Wronkowska, Z. Ziemiński, *Zarys teorii prawa*, Ars boni et aequi, Poznań 2001, p. 186.

² E. Ura, E. Ura, *Prawo administracyjne*, Lexis Nexis, Warsaw 2009, p. 76.

³ Journal of Laws No. 78, item 483 as amended.



In administrative law the principle of equality before the law means that public authorities in making, in applying law, must ensure equal treatment of the addressees of their activities if they are in the same situation at law and in fact. Equality before the law does not mean that individual entities have the same rights and obligations but that differentiation is based on a statute and is duly justified⁴.

It means equality both in the law and in its application. Equality is understood as a requirement to ensure that the content of law is free of any discrimination against or in favor of specific groups of citizens. The issue was frequently pondered by the Constitutional Tribunal. It held that the principle of equality entails the obligation to treat equally the equal and similarly the similar, the admissibility of differences being related to the principle of justice⁵.

From the perspective of the doctrine of administrative law and administration, it can be said that Art. 32 sec. 1 of the Polish Constitution expresses the principle of equal treatment of individuals by public authorities⁶. Thus equality means a certain standard of legal relations between citizens and administrative apparatus.

In the sphere of social reception (from the sociological point of view) of the activities of administration, the implementation of this principle is a condition for the assessment of the access to public services and of regulatory activities of the administration. Consequently, it is a condition for a just and socially acceptable manner of operation of public administration.

The principle of equality is also reflected in the provisions of the European Code of Good Administrative Behavior (the Code)⁷. Its Art. 5 sec. 1 stipulates that in dealing with requests from the public and in decision-making, the officials must ensure that the principle of equality of treatment is respected and those who are in the same situation are treated in a similar manner. Differences in treatment must be justified by objective relevant features of the case.

According to Art. 5 sec. 3 of the Code the authorities must in particular avoid any unjustified discrimination between individuals based on

⁴ J. Zimmermann, *Prawo administracyjne*, Wolters Kluwer Polska, Cracow 2005, p. 102.

⁵ E. Olejniczak-Szałowska, *Zasada legalności, zasada równości wobec prawa i zasada sprawiedliwości społecznej*, in: M. Stahl (ed.), *Prawo administracyjne, pojęcia, instytucje, zasady w teorii i orzecznictwie*, Difin, Warsaw 2009, pp. 121–122.

⁶ Z. Leński, R. Hauser and A. Skoczylas, *Zarys prawa administracyjnego*, Lexis Nexis, Warsaw 2006, p. 42.

⁷ Adopted by the European Parliament on 6 September 2001, text quoted after: J. Świątkiewicz, *Europejski kodeks dobrej administracji (tekst i komentarz o zastosowaniu kodeksu w warunkach polskich procedur administracyjnych)*, Biuro Rzecznika Praw Obywatelskich, Warsaw 2002, pp. 11 et seq.



nationality, sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation. The said regulations relate the principle of equality to the principle of non-discrimination⁸. Thus equality before the law fulfils important functions in administrative law directly affecting application of law and achievability of its objectives.

The proper application of the principle of equality is reflected in substantive norms. Each administrative authority should respect the equality of citizens. This relation may be observed in regulating access to public information. Of fundamental importance is to provide the fullest possible access to it⁹ as well. It should be guided by the principle of equality¹⁰. Polish rules of access to it are regulated by Art. 61 of the Constitution¹¹ and on the Access to Public Information Act of 2001¹².

According to the Act public information is any information on public affairs. Under its Art. 2 everyone is entitled to information. As a result public authorities are obliged to provide information to everyone irrespective of citizenship, ethnic origin, nationality, occupation, education level, sexual orientation, gender or disability¹³.

The Act indicates a list of circumstances in which relevant authorities must provide information:

- ☒ Information concerns Polish internal and foreign policy, in particular legislative and executive actions including draft law, preparatory programs for the performance of public tasks.
- ☒ Information concerns such entities as public authorities, business and professional self-governments, local government legal

⁸ G. Krawiec, *Europejskie prawo administracyjne*, Wolters Kluwer Polska, Warsaw 2009, p. 105.

⁹ Recommendation No. R/81/19 of the Committee of Ministers of Member States of the Council of Europe on the access to information held by public authorities dated 25 November 1981, quoted after: G. Szpor, *System informacji publicznej*, in: Z. Niewiadomski, *Prawo administracyjne. Część materialna*, Warsaw 2004, p. 99.

¹⁰ *Ibidem*, p. 100.

¹¹ Art. 61.1. A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or professional organs and other persons or organisational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury.

2. The right to obtain information shall ensure access to documents and entry to sittings of collective organs of public authority formed by universal elections, with the opportunity to make sound and visual recordings.

3. Limitations upon the rights referred to in paras. 1 and 2 above, may be imposed by statute solely to protect freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the State.

4. The procedure for the provision of information, referred to in paras. 1 and 2 above shall be specified by statute, and regarding the Sejm and the Senate by their rules of procedure.

¹² Journal of Laws No. 112, item 1198 as amended.

¹³ J. Borek, *Prawo dostępu do informacji publicznej*, Open Society Institute, Cracow, January 2007, p. 5, www.opc.uj.edu.pl.



persons and other entities that perform public tasks or manage public property. These entities are particularly obliged to provide information on their legal status, organization, object of activity and competence in performance of public tasks as well as about the powers of their bodies.

- ☒ Information concerns the manner of operation of the above-mentioned entities, including: public and legal acts, performance of public tasks, public spending, accepting applications and making decisions, the status of cases pending and their order, information contained in official documents and, in particular information on the results of inspections carried out in these entities, post-inspection recommendations and breaches of law¹⁴.

Equal access to public information is a prerequisite of the rule of law, and, in particular, of transparency in public administration. Transparency should be understood as one of the most crucial features of administration, opening it to society and securing society's greater participation in public affairs¹⁵.

Scholars noted, however, that the protection of interests breached as a result of limitation of access to public information is weak. The right to bring an action before a court under Art. 22 of the Act on the grounds of inefficiency of the judiciary and the expiration of claims justify discussion on the means to ensure equal access to public information¹⁶.

The principle of equality before the law and the principle of common good are closely related. The common good is described in the Constitution as a fundamental concept of the political system. It is also referred to in its preamble. Under Art. 1. of the Constitution, the Republic of Poland is the common good of all citizens. The place of this principle indicates its particular importance for the description of the state system. According to this principle, each citizen may use all state instruments and institutions. At the same time each citizen should, as much as possible, contribute to the maintenance and development of these institutions. It strengthens the content of constitutional concepts (e.g. the

¹⁴ Ibidem, pp. 2–3.

¹⁵ P.A. Borowska, *Zasoby infrastruktury etycznej*, in: B. Kudrycka, B.G. Peters, P.J. Suwaj (eds.), *Nauka administracji*, Wolters Kluwer Polska, Warsaw 2009, p. 519.

¹⁶ J. Boć, *Prawo administracyjne normujące sytuacje prawne obywateli*, in: J. Boć (ed.), *Prawo administracyjne*, Kolonia Limited, Wrocław 2007, p. 448.



aforementioned principle of equality before the law) and is instrumental to creating new institutions enhancing the common good. The concept of common good is crucial for legal concepts where the state is embodied not only by public administration but also by associations of citizens participating in its achievement. This is a foundation of a civil society¹⁷.

Thus, the principle of common good is a prerequisite for understanding the systemic solutions and a basis for shaping civil freedoms, rights and obligations. In light of public law, its importance can be seen through its influence on the following spheres of public life:

- ☒ public administration system which is to ensure citizens' participation in the achievement of common good;
- ☒ establishment of administrative law allowing to identify the common good as the objective and a core value of law-making;
- ☒ performance of public tasks thereby achieving the public good.

The principle of common good was recognized by Z. Cieślak as a leading principle of administrative law and a praxeological directive ensuring the unity of the legal system¹⁸. It is one of the principles of administrative law related to the processes of making and applying administrative law. It should be understood as a point of reference for legal and factual actions of public administration and for the assessment of administrative law.

Achieving common good should pervade both the processes of establishing administrative law and its application stage. As an interpretation guidance for the legislators it requires unequivocal objectives of regulation to be set up. In applying law the principle requires to identify the legally protected values in reference to the circumstances of the case and to apply relevant administrative instruments consistent with so established values and objectives¹⁹. The catalogue of principles of administrative law should take into account concrete values in the normative context of performing public tasks. To limit considerations to the efficiency of implementation of law will not guarantee the axiological cohesion. A reference

¹⁷ K. Wojtyczek, *Ogólna charakterystyka państwowości w Konstytucji Rzeczypospolitej Polskiej*, in: P. Samecki (ed.), *Prawo konstytucyjne RP*, Wydawnictwo C.H. Beck, Warsaw 2005, pp. 70–71.

¹⁸ Z. Cieślak, *Istota i zakres prawa administracyjnego*, in: Z. Cieślak, J. Lipowicz, Z. Niewiadomski (eds.), *Prawo administracyjne. Część ogólna*, Lexis Nexis, Warsaw 2000, p. 65.

¹⁹ *Ibidem*, pp. 67–68.



to the concept of common good indicates the system of values guiding administrative activity. Abstract and neutral values, independent of any axiological system do not predetermine the law. On the contrary, the law always results from axiology adopted by the lawmaker.

The content and nature of public law is under the influence of the principles of domestic legal and political systems. Not only is the political system predetermined by the Constitution, the structure of power, and the separation of powers. So are the goals set in motion by governments in defining public interest²⁰.

The notion of the common good is rooted in the achievements of Catholic social science. It strictly links the principle of the common good to human rights. In the interpretation of the principles of Catholic social science (other principles being the primacy of person, solidarity, subsidiarity), the principle of the common good covers all conditions of material life instrumental to the improvement of human life, but at the same time it opens to other goods that make life truly human such as art, culture, education, spiritual and religious dimension²¹. The Catholic social science has always emphasized that common good encompasses the sum of conditions of social life in which people can achieve perfection faster and to a greater degree. It stems from a definition of the common good provided by the Teaching Authority of the Roman Catholic Church saying that it is about creating common values and, on the other hand, about a full development of personality. For this purpose people create various common goods to achieve complete humanity and their own objectives. Thus the common good is not a goal in itself. Its purpose is to serve human beings. In consequence, the common good is a set of conditions, institutions and means which enable men to develop their own personality to the fullest²².

The notion of the common good in the social science of the Roman Catholic Church directly affects the concept of state. According to this doctrine the purpose of state is the common good of human beings. Common good is considered both in ethical and legal terms. At the ethical level it is understood as a set of conditions of social life in which

²⁰ W. Łączkowski, *Ustrojowe podstawy prawa publicznego*, Studia z Prawa Publicznego, Vol. I, in: S. Fundowicz (ed.) *Współczesne problemy prawa publicznego*, Towarzystwo Naukowe Katolickiego Uniwersytetu Lubelskiego, Lublin 1999, pp. 14–15.

²¹ B. Sorge, *Wykłady z Katolickiej Nauki Społecznej*, WAM, Cracow 2001, text quoted after: www.opoka.org.pl.

²² W. Piwowarski, *Dobro wspólne*, *Słownik Katolickiej Nauki Społecznej*, www.kns.gower.pl.



a human being may achieve perfection. In law the common good is such social order which guarantees the implementation of the rights and freedoms resulting from the dignity of a human being. In this interpretation the good of human beings is the basic purpose of a state and different spheres of state activity provide the methods to achieve the common good²³.

Constitutionally, the common good is a state-based community which enables its citizens and social communities to achieve their goals. It is possible if freedoms, rights and obligations of citizens in relation to the common good are properly defined. In considering the content of the common good, it should be noted that it is a possibility to achieve the goals of individuals and communities through public institutions and civic movements as guaranteed by the state.

In administrative law theory the common good is one of the many blurred notions right next to public interest, social interest or public purpose. These general and hard to define clauses, allow administrative bodies a degree of discretion. It is left to them to axiologically identify the pertinent regulations of administrative law²⁴.

The axiology of administration is of interest to the doctrine of administrative law as well as of the science of administration²⁵. The presentation of properties of public administration in action as an element of social life, also includes axiological conditions of administrative reality²⁶. Administrative science takes into account both the legal grounds of administrative actions and non-legal aspects of its functioning.

It should be emphasized that the science of public administration deals with real administration in the context of social and legal sciences and in this meaning it has an introductory and supplementary nature in relation to theoretical considerations²⁷. Thus the science of administration should be of fundamental significance in evaluating the legal and administrative rules in their practical application.

The analysis of the above principles in light of administrative sciences can be conducted from the following points of view:

²³ J. Krukowski, *Wstęp do nauki o państwie i prawie*, TN KUL, Lublin 2002, p. 16.

²⁴ M. Stahl, *Pojęcie administracji, jej cechy i funkcje*, in: M. Stahl, op. cit.

²⁵ Z. Cieślak, *Podstawy aksjologiczne administracji publicznej w Polsce – Próba oceny*, *Studia Iuridica* 2000, Vol. XXXVIII, pp. 59 et seq.

²⁶ Z. Leński, *Nauka administracji*, Wydawnictwo C.H. Beck, Warsaw 2004, pp. 47 et seq.

²⁷ H. Izdebski, M. Kulesza, *Administracja publiczna. Zagadnienia ogólne*, Liber, Warsaw, pp. 12–13.



- ☒ The role of the above principles in the system of administrative law;
- ☒ The influence of the principles on the establishment of administrative law;
- ☒ The influence of the principles on performance of public tasks,
- ☒ Identification of the principles as guidelines for interpretation and indicators of performance of public tasks;
- ☒ Identification of the principles and of their impact on public administration in its relation with the social environment.

The above contexts offer a multi-layer analysis of how public administration operates. To put them in order various research methods should be used by administrative scholars such as sociology²⁸.

Representatives of the science of administration closely cooperate with other branches of science such as criminology, forensics, penitentiary science, logics, legal computer science, sociology and economy. It focuses on the properties of administrative process revealing themselves in the functioning of government structures. It cooperates with administrative law theory in its attempt to ensure the maximum efficiency of administrative authorities²⁹. Therefore its methods and achievements should be used to develop an efficient and properly working system of administrative law.

Proper identification of values and objectives of public administration is of particular importance in evaluating administration. Its lack results in seriously flawed standards. It can also be in the way of greater participation of the civic factor in achieving of the common good and may lead to a negative assessment of public administration.

The above issue comes to the fore in a debate on “good governance”. The defects of the Polish public administration are closely related to the lack of proper axiological identification³⁰.

According to *the Concept of good governance – reflections for discussion* (prepared by the Department of Structural Policy Coordination at the Ministry of Regional Development), negative factors preventing implementation of good governance include:

²⁸ E. Knosala, *Zarys nauki administracji*, Kantor Wydawniczy Zakamycze, Cracow 2005, p. 32.

²⁹ A. Redalbach, *Prolegomena do nauk o człowieku władzy i prawie*, TNOiK, Toruń 2005, p. 18.

³⁰ *Koncepcja good governance – refleksje do dyskusji*, Ministry of Regional Development, Department of Structural Policy Coordination, Warsaw, September 2008, pp. 3 et seq., www.mrr.gov.pl.



- ☒ corruption and lack of clear rules of responsibility,
- ☒ significant politicization of the administration,
- ☒ high rotation of staff and frequent institutional changes,
- ☒ low culture characterized by nepotism, excessive use of compulsory instruments against a customer and a formal attitude to obligations,
- ☒ mentality of staff, formed in the former political system, changing too slowly and still characterized by the “secrecy culture” – closed to cooperation with other administrative units and to a dialogue with the society³¹.

The above problems in conjunction with a slow adaptation of administrative structures to the changing environment and pathologies in the administrative processes require a detailed analysis by administrative sciences.

The proposals for normative improvements should respect basic rights and freedoms founded on human dignity. The common good and equality should serve as fundamental interpretation guidelines to be taken into account in evaluating the provisions of administrative law and the performance of public tasks. A value-based assessment of public administration, resulting from fundamental systemic principles allows for proper identification of risks and deficiencies of the functioning of the administrative apparatus. It certainly bears on the effectiveness of performance and on social perception of public administration. To get a comprehensive view requires cooperation between different fields of knowledge related to public administration. Such cooperation should facilitate the development of a system of law corresponding to the everchanging social conditions.

In a democratic state and under the rule of law subordination of administration to law is particularly important, and, defining core values behind public goals facilitates proper performance of such goals.

Proper interpretation of the fundamental principles and resulting provisions of law, where they affect organization and functioning of the state, conditions the success of reforming efforts. Reforms should aim at improving governance both in the context of the administrative *res interna* and – perhaps, the assessment of its activities by the society.

³¹ Ibidem, pp. 12–13.



The fundamental criterion of research in administrative law is legality. It concerns both of the activity of public authorities and the conduct of their officers. It should analyze the effectiveness of the provisions of administrative law, whereas in the science of administration the fundamental criterion is the efficiency of the supporting administrative apparatus, where efficiency cannot be isolated from legality. Legality determines the boundaries within which we can analyze administration as an organization and examine it from the point of view of systemic research or praxeology. Efficiency is defined as positively evaluated property of a structured activity characterized by one or more practical values important from the praxeological point of view³². Equality of citizens and the common good may certainly be accepted as such values.

The role of the science of administration, defined as a social science and based on empirical methods (placed at the crossroads of practical and theoretical sciences)³³ is to search for optimal organizational solutions. Under the rule of law equality of citizens is a fundamental element which should be taken into account in the organization of work in public administration. It is extremely important to actively form the attitude of civil servants to customers. Passing law is not sufficient. It is necessary to develop effective methods of training and retraining of the administrative staff. This is a fundamental challenge faced by the science of administration. Its aim is to identify problems and to react if they contribute to a negative assessment of administration and are in the way of accomplishment of its mission. The mission is to implement the political guidelines, obtained both from the supreme power which under Article 4 of the Constitution is the Nation acting through its representatives or directly and to implement the policies developed within administrative structures.

In jurisprudence, administration of a modern state goes beyond the simple application of law. The ties between politics and administration cannot be artificially severed. There will always be a divide between politics and administrating, although there is a general tendency to converge. What is viewed as administration is increasingly immersed in politics for those who in taking administrative decisions are driven by

³² Definition of W. Gabary in: *Encyklopedia organizacji i zarządzania*, PWE, Warsaw 1982, p. 484.

³³ Z. Leoriski, *Nauka administracji*, Wydawnictwo C.H. Beck, Warsaw 1999, p. 20.





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political reasons.³⁴ Therefore implementing the principles of equality of citizens and of the common good cannot be analyzed only by the science of administrative law, but also, and above all, by the science of administration.

³⁴ B.G. Peters: *Administracja publiczna w systemie politycznym*, Wydawnictwo Naukowe Scholar, Warsaw 1999, pp. 18 et seq.