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CONSENT OF A PARTY IN GENERAL ADMINISTRATIVE PROCEEDINGS

Abstract

The consent of a party, which determines the admissibility of the administrative authority to take certain procedural actions, is one of the three most important instruments of his or her protection in administrative proceedings, next to the right to actively participate in the proceedings and the right to appeal against the decisions made. Actions requiring the consent of a party include: conducting the proceedings initiated *ex officio* in a matter requiring an application of a party, mediation, examining a party, stay or discontinuance of the proceedings despite the lack of objective reasons for it, the so-called self-control of the first instance authority, supplementation of evidence by the appellate authority and quashing or changing the final decision despite its compliance with the law. The paper analyzes, on the one hand, the considerations justifying the authority's taking the above actions; on the other hand, the reasons why the provisions of law provide the party with the opportunity to block such actions of the authority by not expressing consent, i.e. potential or actual adverse consequences for the party resulting from such actions.

Keywords: *administrative proceedings, consent, objection, interest of a party, public interest, the principle of prompt proceedings, the principle of two-instance proceedings, mediation*

Introduction

With respect to certain procedural actions undertaken by the authority conducting general administrative proceedings, the legislator has established the consent of the party as a *sine qua non* condition for undertaking them. Then, in such cases, it is up to the party whether the authority will be entitled to take the intended action. A party's consent is one of the three most important instruments of his or her protection in administrative proceedings, next to the right to actively participate in the proceedings and the right to appeal against the decisions made.

The consent of the party may take an active or passive form. The active form involves submitting a declaration of consent; the passive form manifests itself in the lack of expression of objection (so-called tacit consent). An objection related to the passive form of consent is, of course, the one resulting in a prohibition on the authority to perform the action to which the objection is expressed. Only in the case of such an objection, the consequences of not

submitting it are equal to the consequences of expressing consent. This circumstance requires emphasizing due to the fact that in Polish administrative law some appeal measures are also called objections, e.g. an objection to a cassation decision of an administrative authority (Articles 64a-64e of the Law on Administrative Courts Procedure), objection to the decisions of the administrative court referendary (Article 167a § 2–6 of the Law on Administrative Courts Procedure). Such objections should not be confused with objections constituting the opposite of consent, as their nature is different. Firstly, they concern actions (more precisely: decisions) already undertaken by the adjudicating authority (and therefore are challenging, not preventive); secondly, they may lead to the quashing of the decisions made, but the mere fact of filing an objection generally does not result in this (it is also necessary to meet substantive conditions, in particular the defectiveness of the decisions made against which the objection is raised).

The Code of Administrative Procedure (CAP) does not specify the legal form of expressing consent or objection by a party, so the party may do so in any form provided for submitting applications (Wróbel 2018, p. 658).

Consent to continue proceedings initiated *ex officio*

Introduced in 1980, Article 61 § 2 CAP allows exceptionally – due to a particularly important interest of a party – the possibility of initiating *ex officio* proceedings in such matter where, according to the provision of law, an application of a party is required. According to R. Hauser, *this should concern relatively few cases when, for example, it is known beyond any doubt that the party will not initiate the proceedings itself (either for health or social reasons), and there is no entity that would be entitled to act instead of a party* (Hauser 1998, p. 7). In order to continue proceedings initiated in this mode, the consent of the party is required.

The party's consent is intended to guarantee that the authority's right to initiate proceedings *ex officio* in a matter requiring a party's request will not be abused by the authority by using it for a purpose other than that provided

for in the substantive law. Despite the existence of such a solution, it is noted that *protective* interference by public administration authorities may serve the public interest, not the interest of the party (Dawidowicz 1989, p. 80; Adamiak 2022, p. 468; Zimmermann 1996, pp. 71-72). These fears are not unfounded, because treating a party's consent as a guarantor of the correct application of the provision in question assumes the party's proper orientation. This, in turn, may be contradicted by situations that this regulation – due to its purpose – is intended to solve, i.e. to counteract the helplessness of certain persons, which may result not only from physical disability, but also from ignorance of the law (Łaszczyca 2002, p. 67). Fortunately, the legislator introduced here the requirement of active, not passive, consent, which somewhat weakens the risk of this type of abuse of power, but does not eliminate it.

The consent of the party is a condition for continuing the proceedings and issuing a decision concluding the matter as to the merits. The initiation of the proceedings itself takes place regardless of the consent of the party. It is correct therefore to view the proceedings initiated under Article 61 § 2 CAP as proceedings initiated under a resolving condition, which is the party's *objection* to the proceedings, expressed in failure to consent to its continuation, and not as proceedings initiated under a suspensive condition, which is the party's consent to initiate the proceedings.

It should be emphasized that the condition of the party's consent is absolute. It is not the role of the authority to examine and evaluate the reasons given by the party for not consenting to continue the proceedings. The party does not have to provide reasons for its position. Both consent and, especially, refusal to consent do not require justification. The party's omission of the motives behind his or her position does not constitute a formal defect of *an application* within the meaning of Article 64 § 2 CAP, and therefore the authority cannot call on the party to complete his or her position with it (Łaszczyca 2002, p. 73).

The Code does not specify the deadline within which a party should express its position regarding the continuation of the proceedings. Nor does Article 61 § 2 CAP authorize the authority to impose such a deadline on a party. The basis for setting a deadline for a party to perform an action can be found in the general provisions of the Code of Administrative Procedure, but only in relation to summons made by the authority (Article 54 § 1 point 5).

However, such authority of the authority seems to be a necessary element of the structure established in Article 61 § 2 CAP. Setting a deadline for the party to consent to the continuation of the proceedings is necessary for the proceedings to be closed in a situation where a party remains silent after being informed by the authority about the initiation of proceedings in his or her interest with a request to express their will to continue the proceedings. The legal consequences of failure to meet such a deadline should be the same as the consequences of refusing consent to continue the proceedings, i.e. discontinuance of it. Assuming that in the period between the initiation of the proceedings and the taking of a position by the party, the authority may (or even should) undertake explanatory proceedings, there are no reasons to ignore such a period when calculating the time limit for disposing of the matter.

Consent to mediation

In 2017 the institution of mediation was introduced into administrative proceedings. Mediation may be conducted between parties with conflicting interests or between the party (parties) and the authority conducting the proceedings. In the first case, the aim of mediation is to reach an agreement between the parties, while in the second – to determine the content of the authority's future decision.

Mediation is voluntary, which means that the parties must agree to it. Mediation may be conducted *ex officio* or at the request of a party. In the event of multiple parties, the request may be submitted by one party, several of them or all parties. A party's request for mediation contains an implicit consent to mediation. The need to obtain the express consent of the party or parties to conduct mediation only applies when the initiator of the mediation is a public administration body or one of several (many) parties. Such consent should be expressed by the parties who did not request it to be conducted within 14 days of being notified by the authority about the possibility of mediation. In such a notification, the authority, in addition to asking for consent to mediation, should instruct the parties on the principles of mediation and the principles of incurring its costs. Informing the parties about the rules for incurring mediation

costs is an extremely important element of the notification, because reading these rules may influence the parties' decisions regarding consent to mediation.

The costs of the mediator's remuneration for conducting the mediation (unless he waived the remuneration) and the costs of covering the expenses incurred by him in connection with the mediation are covered by the parties in equal parts (unless they decide otherwise) if the mediation was conducted in a case in which a settlement may be reached. It is worth emphasizing that mediation does not have to ultimately lead to a settlement for the parties to be charged with the costs of its implementation; it is sufficient that the nature of the case in which mediation was conducted is such that an agreement can be reached. This circumstance may be an important factor preventing the parties from agreeing to mediation.

The need to familiarize the parties with the rules for incurring the costs of mediation suggests that notice of the possibility of conducting mediation should also be delivered to the party that submitted the request for mediation to enable him or her to withdraw the consent implicit in the request. Only if the party who requested the authority to conduct mediation is the only party to the proceedings (which means that the mediation would take place between him or her and the authority), serving him or her a notice about the possibility of conducting mediation and the rules for incurring its costs is unnecessary, as the costs in such a case are borne by the authority conducting the proceedings.

It is worth noting, for comparison, that in proceedings before administrative courts the parties are also charged with mediation costs, even though – unlike the Code of Administrative Procedure – no provision of the Law on Proceedings before Administrative Courts requires the consent of the parties to conduct mediation. So, in proceedings before administrative courts, it is theoretically possible that the parties must bear the costs of mediation conducted without their consent, although in practice it is difficult to imagine mediation being conducted against the will of the parties. Incidentally, the risk of such an absurd situation occurring is even smaller because mediation is, in practice, an almost dead institution. However, the lack of an express provision requiring the consent of the parties to conduct mediation is a serious legislative oversight in the act regulating the administrative courts procedure.

Consent to examination?

There is no consensus in the doctrine as to whether a party may refuse to testify. Only in tax proceedings does this issue raise any doubts due to the express regulation stating that *[t]ax authority may examine a party after the party has given its consent* (Article 199, first sentence of the Tax Code).

In other administrative jurisdictional proceedings, the issue of a party's obligation to submit to an examination is controversial. The Code of Administrative Procedure regulates the issue of the right to refuse to testify only in relation to witnesses, enumerating in Article 83 § 1 CAP persons close to the party who are entitled to such a right. Article 86 CAP states that *the provisions relating to witnesses shall apply to the examination of the parties*. Therefore, the question arises as to how to apply Article 83 § 1 CAP – directly or appropriately?

If this provision were applied directly to the parties, one would have to infer that a party cannot refuse to testify. That's because in the catalog of persons who are entitled to such a right under Article 83 § 1 CAP the parties are not included. There are only persons close to him or her. This was probably what J. Służewski was guided by when he claimed that *the party being examined is obliged to testify* (Służewski 1982, p. 96). J. Jendrośka was also of the opinion that in the light of the Code's solutions, *a party is obliged to testify in his or her own matter […] and cannot refuse to testify* (Jendrośka 2003, p. 27). This view would have to be accepted if, following J. Jendrośka, it was assumed that a party testifies in his or her own matter *as a witness* (Jendrośka 2003, p. 27). Only then could it be concluded that Article 83 § 1 CAP should be applied to parties directly.

However, assuming that a party testifies *as a witness* is unacceptable due to the contradiction with the established definition of a witness, one of the constitutive elements of which is participation *in someone else's* case. Therefore, Article 83 § 1 may be applied to the parties only appropriately, which should be understood to mean that the right of the persons mentioned therein who are summoned to appear as witnesses is also vested in the party in a similar situation (i.e. when the authority expressed its willingness to examine him or her). Since the right to refuse to testify belongs to persons close to the party,

this right should all the more be granted to the party itself. In other words: if you cannot force a witness to testify to the detriment of someone close to him, you cannot all the more force a party to testify to his or her own detriment. Only such a solution can be reconciled with the assumption of the legislator's rationality. The fact that in Article 83 § 1, the legislator did not list the party among the persons who may refuse to testify *as a witness*, is the result of the fact that the party does not testify *as a witness*. This fact cannot therefore be perceived as an argument in favor of the thesis that a party does not have the right to refuse to testify.

The party may also refuse to answer individual questions in any situation and without having to provide a reason for the refusal. It is obvious because if he or she can refuse to testify in full, he or she can all the more refuse to answer individual questions. (Incidentally, a similarly unlimited right to refuse to answer questions is held by persons close to the party, listed in Article 83 § 1 CAP, i.e.: spouse, ascendants, descendants, siblings, relatives by affinity of the first degree and persons being in an adoptive, wardship or guardian relationship with the party. Since they may refuse to testify in full, citing only the fact that they have a specific, objectively existing and verifiable relationship with the party, this circumstance is even more a sufficient ground for the right not to answer individual questions.) It can therefore be stated that in relation to the parties and persons close to the party, the right to refuse to answer particular questions does not, in fact, result from Article 83 § 2 CAP, but – on the basis of inference *a maiori ad minus* – from the provision contained in § 1 of this article. Article 83 § 2 CAP applies only to those witnesses who do not have the right to refuse to testify in full, i.e. witnesses who are not close relatives of the party. Therefore, appropriate application to the parties of Article 83 § 3 CAP means that the authority is obliged to instruct the party not only about criminal liability for false testimony, but also about the right to refuse to submit to examination and the right to refuse to answer questions.

Objection to the stay or discontinuance of the proceedings

Another action of the authority that requires the consent of the party or parties (in this case a passive consent, i.e. no objection) is making the proceedings stayed or discontinued when there are no objective reasons for doing so. Objection to the stay or discontinuance of the proceedings is the right of those parties to the proceedings who did not initiate the proceedings. These parties have the right to raise an objection when the party that initiated the proceedings applies for the stay or discontinuance of the proceedings. The Code does not specify the relationship between the interest of the party raising the objection and the interest of the party demanding the stay or discontinuance of the proceedings. The lack of such regulation leads us to assume that this issue is irrelevant in the analyzed case. Therefore, an objection may be raised not only by a party whose interest is contradictory to the interest of the party requesting the interruption of the proceedings, but also by a party whose interest is non-contradictory or even common (convergent) with the interest of the party making the request (Łaszczyca 2005, p. 132).

This does not change the fact that the importance of the requirement for the consent of other parties to interrupt the course of proceedings, seen from the point of view of protecting their interests, varies greatly from case to case. It depends primarily on the type of legal bonds that connect the parties involved in a given proceeding, or – in other words – on the type of co-participation. It is clear that in cases where the multiplicity of parties takes the form of the so-called competitive co-participation (i.e. when several parties are competing for the same rationed good), the requirement for the consent of all parties to discontinue or even stay the proceedings is fully justified and very important for protecting their interests. However, in the case of co-participation defined in the doctrine (Skóra 2009, p. 277) as *material co-participation in the situation of a so-called actual dispute* (e.g. in proceedings regarding a building permit initiated at the investor's request), discontinuance of the proceedings is generally in the interest of the other parties (i.e. owners, perpetual usufructuaries or managers of real estate located in the area of influence of the facility), therefore their right to object to the discontinuance of the proceedings is of little importance to them.

The stay or discontinuance of the proceedings at the request of the party that initiated the proceedings will be inadmissible if even one of the many parties to the proceedings raises an objection (Borkowski 2011, p. 413; Wróbel 2018, p. 658).

Neither party has the right to object to the stay or discontinuance of the proceedings if there are grounds for mandatory stay or discontinuance of the proceedings, specified in Article 97 § 1 and Article 105 § 1 CAP. However, the problem arises whether the public administration authority may not take into account the objection as violating the public interest, e.g. if it was submitted only to cause difficulties for the party applying for the stay or discontinuance (Wróbel 2018, p. 692). The question asked requires a negative answer. Contradiction with the public interest is a negative condition for granting an application to stay or discontinue the proceedings, and not for accepting an objection to the stay or discontinuance. The fact that the objection does not require justification also speaks against the thesis. The authority is therefore not entitled to examine and assess the validity of the objection or the motives underlying its expression.

Since the parties are allowed to raise an objection, the authority conducting the proceedings is obliged to notify them of the request to stay or discontinue the proceedings submitted by the entitled party and inform them about the right to express an objection. At the same time, the authority should set a deadline for the parties to exercise the right to perform such an action. The basis for this type of authority's obligations are the general principles of administrative proceedings, i.e. the principle of active participation of a party in the proceedings (Article 10 CAP) and the principle of informing the parties and other participants in the proceedings (Article 9 CAP) (Łaszczyca 2005, p. 133).

Consent to self-control by the first instance authority

In a broad sense, the term *self-control* (self-verification) in the doctrine of administrative law means the competence of an authority to quash or amend its own decision (Zimmermann 1996, pp. 211-212). Most often, however, this term refers only to the institution provided for in Article 132 CAP. It gives the first-instance authority that issued a non-final decision the opportunity to re-examine and resolve the matter resolved by that decision, after submitting an appeal and without taking it further (Zimmermann 1986, p. 100). This type of self-control is a specific structure of administrative proceedings, which has no equivalents in court procedures (Żukowski 2002, p. 133). As emphasized in the literature, it is an exception to the principle that an authority is bound by its decision from the moment of its delivery or announcement (Article 110 CAP).

The authority's right to conduct self-control becomes effective when two conditions occur simultaneously: a formal one and a substantive one. The first is the requirement for an appeal to be lodged by all parties or by one of them with the consent of the other parties to quash or amend the decision in accordance with the appeal request. This condition is, of course, also met when the appeal is filed by the only party to the proceedings. A substantive condition is the recognition by the first-instance authority that the appeal deserves to be accepted in its entirety. The consent of the party is therefore necessary for the authority to exercise the right to self-control when he or she has not appealed against its decision, but other parties in the case have done so.

Carrying out self-control by the first-instance authority does not deprive the parties of the right to have their case considered by a higher-level authority, because all parties have the right to appeal against a decision issued under self-control (Article 132 § 3 CAP). However, if an appeal is lodged again, the authority may again exercise the right to self-control if the conditions for exercising it are met. This creates the danger of a *vicious circle* in cases where the consent of the party(ies) to self-control of the authority is not required. In such cases, the first instance authority may prevent the case from being transferred to a higher instance, each time exercising the right to self-control, but in a manner contrary to the law, i.e. by issuing decisions that do not satisfy

the demands of the party(ies). Filing an appeal directly to an appellate authority is inadmissible and results in the appeal being transferred to the first instance authority that issued the decision, in accordance with Article 65 § 1 CAP (Wróbel 2018, p. 826). For this reason, it cannot be a remedy for such a *vicious circle*. Therefore, it would be advisable *de lege ferenda* to introduce one of the following two solutions: either limiting the possibility of self-control to only one time, or extending the requirement to obtain the consent of the party(ies) also to cases where the appeal is filed by only the party or by all parties together.

The Code does not decide who should take the initiative regarding the party's consent to self-control of the authority. According to the doctrine, *the principle of complaint*, on which the appeal proceedings are based, leads to the conclusion that the parties need to actively participate in this action and express their consent on their own initiative (Biernat, Zimmermann 1974, p. 76; Łaszczyca 2003, p. 733). However, it seems that there are no obstacles to the authority, when notifying the other parties about filing an appeal, to inform them at the same time about this possibility and the consequences of using it, especially when it considers that the appeal deserves to be accepted.

Consent to conduct supplementary evidentiary proceedings by the appellate authority

Generally, the second instance authority, when considering an appeal filed against a decision issued in the first instance, may conduct supplementary evidentiary proceedings only to a small (limited) extent. This conclusion results from the fact that the consideration of the matter by the appellate authority is to be a *reconsideration* of the matter, i.e. the consideration of the matter preceded by the same process carried out by the first-instance authority. The appellate authority, when considering the case, is therefore supposed to correct any faults made in this respect by the first-instance authority, and not to make up for its negligence and omission. The matter may be acknowledged as considered by the first-instance authority only if this authority had sufficient evidence to enable it to consider the matter. Therefore, if, in the opinion of the appellate authority,

considering the case requires conducting evidentiary proceedings in whole or in significant part, this means that the first-instance authority did not consider the matter, but only disposed of it. Therefore, if in such a situation the appellate authority itself conducted evidentiary proceedings to the required extent, its consideration of the matter could not be described as *reconsideration*, which would be contrary to the principle of two-instance proceedings.

Therefore, the appellate authority cannot take supplementary evidence to such an extent that would indicate that failure to conduct such evidence by the first-instance authority deprived it of the opportunity to consider the case in every aspect important for its resolution (cf. J.P. Tarno 1998, p. 77).

It should be emphasized that while the unjustified remand of the matter by the appellate authority to the first-instance authority for reconsideration does not prevent the case from being considered by the appellate authority, when the appellate authority *replaces* the first-instance authority in carrying out the explanatory proceedings by supplementing the evidence to a too broad extent, it permanently deprives the first-instance authority of the possibility of considering the case. This serious procedural shortcoming cannot be repaired even in the event of a possible reopening of the proceedings, as the authority competent to conduct the reopened proceedings is generally the authority that issued the decision in the matter at the last instance, and never the authority that ruled in the first instance. For the above reasons, it is impossible to share the position presented in the judicature, according to which in case of doubts whether additional (supplementary) evidence should be taken in the appeal proceedings (Article 136 CAP), or whether the decision of the first instance authority should be quashed and the matter remanded to it for reconsideration (Article 138 § 2 CAP), the appellate authority is obliged to apply the provision of Article 136 CAP.

It rather seems that in a situation where the evidence based on which the first-instance authority ruled is incomplete, the appellate authority should basically quash the decision of the first-instance authority and refer the matter to it for reconsideration, rather than supplement the missing evidence. The latter option should be used by the appellate authority in exceptional cases, especially when the supplementary evidence concerns circumstances that are less important from the point of view of the subject of the case or circumstances

already confirmed by other evidence, i.e. when the case files show that the supplementary evidentiary proceedings will confirm rather than question the factual state of affairs resulting from the material collected by the first instance authority. When choosing one of the above options, the appellate authority should take into account primarily the nature of the circumstances to be the subject of supplementary evidence, not the amount of this evidence, and should be guided by their importance for the matter, not procedural economy. However, the above circumstances are, of course, interconnected and the more evidence there is that could be obtained and was omitted by the first-instance authority, the greater the probability that their omission by the first-instance authority had an impact on its decision. For this reason, when determining the need to take a big amount of additional evidence, the appellate authority should exercise particular caution in using the power granted to it in Article 136 CAP.

The above comments refer to an initial, default situation. They lose their validity when the parties, when filing an appeal, ask or agree that the appellate authority will – if necessary – supplement the evidence itself, regardless of the scope and subject of the supplementary evidentiary proceedings (i.e. even when the circumstances necessary to be clarified have a significant impact on the resolution of the matter), instead of quashing the decision of the first-instance authority and remanding the matter to it for reconsideration (Article 136 § 2 and 3 CAP). The possibility for the appellate authority to use such an option, with the consent of the parties, was introduced into the Code of Administrative Procedure in 2017. A party's consent to such an option is currently one of three manifestations of the party's right to resign from two-instance consideration of the case, in addition to not challenging the decision with an appeal and waiver of the right to appeal (Adamiak 2022, p. 857).

Consent to quash or change the decision for expediency reasons

Administrative decisions, unlike court judgments, may sometimes be deprived of legal force, even if they are fully correct. This also applies to final decisions: Articles 154 and 155 CAP provide for the possibility of quashing or changing the final decision if this is justified by the public interest or just interest of the party. Article 154 concerns situations where, under the decision, neither party has acquired a right; Article 155 – when the decision was a source of right for at least one party. In the first case, the admissibility of quashing or changing the decision is not subject to any additional conditions, and therefore a sufficient ground for it is the public interest or just interest of the party. In the second case, quashing or changing the decision also requires the consent of the party that acquired the right under the decision being revised.

Consent to quash or change the final decision cannot be equated with an application to quash or change the decision. This approach leads to the incorrect conclusion that proceedings under Article 154 CAP *is initiated only at the request of the party that consents to the quashing or changing the final decision of the administrative authority* (Jodkowska 1996, p. 126). Of course, a party's submission of an application to quash or change a decision is tantamount to his or her consent to such a consequence of the decision verification, but this is not the only acceptable form of expressing consent by a party. Such a case should rather be treated as special because in the event of its occurrence, separate consent is not required, as it is included in the application to quash or change the decision. The classic case of a party expressing consent refers to a situation where the authority initiated *ex officio* proceedings to quash or change the final decision.

The controversial position is that the party's consent must be primary in relation to other conditions for the application of Article 155, i.e. it is *necessary for the conduct of the proceedings itself*, and only leads *to the assessment by the authority in the administrative proceedings whether it is a sufficiently serious reason to verify the final decision in the light of the social interest or the legitimate interest of the party* (Żukowski 1986, p. 54). It should rather be recognized that when the proceedings have been initiated *ex officio*, before giving consent, the party should be familiarized by the authority with the motives

and manner of the planned revision of the decision. The consent of the party is only a formal condition for quashing or changing the decision, and each change in the individual legal situation must be justified primarily on the merits. Such a substantive premise bearing on the merits of the matter is the interest of the party or the public interest.

W. Dawidowicz criticizes the requirement to obtain the consent of the party, claiming that if the authority were to revise the decision due to the interest of the party, its consent is unnecessary, and if the public interest was to quash or change the decision – *it is difficult to assume that the party could express consent against his or her own interest* (Dawidowicz 1983, p. 231). This view, despite its appearance of validity, does not take into account certain eventualities, not only hypothetical ones, and therefore cannot be shared. Namely, if the justification for revising the decision is the party's interest, its consent to quash or change the decision cannot be considered unnecessary, because the concept of a party's interest in the opinion of the administrative authority and in the opinion of the party itself does not have to be the same. And – as Dawidowicz himself notes – *who (…), apart from the party, can decide what is 'right' for him or her and what is in their interest?* (Dawidowicz 1989, p. 211). In turn, in the second case, it cannot be assumed in advance that the public interest – for the sake of which the authority would like to quash or change the decision – must always be contrary to the interest of the party. It may be neutral towards it and in such a situation it is possible to obtain the party's consent to quash or change the decision, despite the lack of benefits for him or her. One can even imagine a situation where a change in the decision dictated by the public interest will also be beneficial for the party (e.g. a change of the place of exercising the right).

Therefore, it is left to the party to assess the advisability of revising the decision under which the party acquired the right, regardless of whether this revising would aim at extending the party's rights or limiting them. The authority should not force the party to accept a change in the decision. If a party takes a negative position, they do not have to justify why they refuse to give consent. If the initiator of the proceedings under Article 155 is a party, then they do not have to additionally consent to the quashing or changing the decision under which they acquired the right. Such consent is included in their application to initiate proceedings.

As stated by the Supreme Administrative Court in its judgment of 25 June 1985 (SA/Wr 351/85, ONSA 1985/1/36), the limit of permitted changes in the decision issued pursuant to Article 155 CAP determines the content of the consent expressed.

Acquisition of rights resulting from an administrative decision, which is a positive condition for the application of Article 155, and a negative one for the application of Article 154, is understood in this procedural context very broadly: as any benefit that a party obtains from disposing of his or her case with the decision. Therefore, a favorable decision for the party is not only granting him or her a specific right, but also a binding determination that they have a given right *ex lege* – because only from the moment of issuance of such an act they can, in controversial situations, effectively invoke their right. A party also derives a legal benefit from disposing of a matter by abolishing an obligation previously imposed on him or her or confirming its expiry. Finally, a benefit to a party may result from a decision imposing an obligation on him or her. Changing such a decision may result in the imposition of a greater obligation or on less favorable terms (e.g. changing the deadline for fulfilling the obligation), and thus worsen the legal situation of the party. Therefore, a party may derive benefits from both constitutive and declaratory decisions, both from decisions issued at his or her request and *ex officio*.

Then, the consent of the party to quash or change the final decision in the manner discussed herein is not required only in the case of a negative decision (rejecting the party's demand), a decision withdrawing the previously granted right in its entirety or declaring the expiry of the right, and a decision imposing a maximum obligation on the party (Iserzon 1970, p. 260). Only such decisions do not bring any benefits to the party, and their changing or quashing cannot worsen the party's legal situation. However, the decisions mentioned above are not subject to the revision under Article 154 CAP if there were parties with conflicting interests in the matter, because then one of the parties may derive his or her right from the decision.

Conclusion

The considerations justifying the authority to take actions conditional on the consent of the party include: particularly important interest of the party (in case of initiating *ex officio* proceedings in such matter where the provision of law requires an application of a party), striving for an amicable settlement of the matter (in case of mediation), the need to establish the facts (in case of examination of a party), lack of interest of the party who initiated the proceedings in continuing it (in case of stay or discontinuance of proceedings), procedural economy (in case of self-control by the first-instance authority and in case of supplementation of evidence by the appellate authority), and the public interest or just interest of the party (in case of quashing or changing the final decision).

In turn, the disadvantages for the party that are associated or could be associated with performing an action for which the party's consent or lack of objection is required are, respectively: the risk of abuse of power for purposes other than those intended by the legislator, extension of the duration of the proceedings and costs, risk of criminal liability or disclosure of facts inconvenient for the party, postponement or closing the way to concluding the matter as to the merits, preventing the matter from being considered by two instances, deterioration of the party's legal situation resulting from the already issued decision.

Thus, the consent of the party is provided for such activities of the authority which are supported by considerations other than the legal order and which may but do not have to be contrary to the interest of the party. Where the legal order is at stake (e.g. the need to implement a norm of substantive law or to remove a decision violating the law), the authority does not, of course, have to obtain the party's consent to take action. This confirms the primacy of the principle of legality (Article 6 and Article 7 *in initio* CAP) over the principle of taking into account the public interest and just interests of citizens *ex officio* (Article 7 *in fine* CAP).

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