COMPARATIVE LEGAL STUDIES

edited by Zbigniew Kmieciak

Contemporary Concepts of Administrative Procedure

Between Legalism and Pragmatism

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Introduction: The Evolvement and the Current Condition of Administrative Procedure Law in European Countries

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The assumption of the first codifications of administrative proceedings was to ensure protection of public subjective rights and proper legal instruments fulfilling due process standards. These commonly recognized principles express the rights of the party to: 1) be heard, including active participation in procedural actions aimed at clarifying a case, 2) be represented in administrative proceedings and provided with legal assistance, 3) obtain all relevant, official information about a case, 4) be subject to impartial (objective) adjudication, 5) learn reasons for decision, 6) bring legal remedies, including an access to judicial protection. These qualities are specified in the acts of international and EU law, national legislation, European soft law, especially in the form of recommendations of the Council of Europe and also in the European and national case law. They converge with the rules contained in Resolution (77) 31 of the Committee of Ministers to member states on the protection of the individual in relation to acts of administrative authorities, adopted on 28 September 1977 and the judgements of the European Court of Human Rights on "the Principle of Good Governance".[1]

Aside from the procedure before administrative authorities in individual cases, which was based on judicial model, at some point the so-called notice-and-comment

1 See U. Stelkens, A. Andrijauskaitė, *Sources and Content of the Pan-European General Principles of Good Administration*, [in:] *Good Administration and the Council of Europe. Law, Principles and Effectiveness*, eds. U. Stelkens, A. Andrijauskaitė, Oxford 2020, pp. 28 and following, p. 43.

proceedings have begun to appear. We can describe them as aimed at the participation of a wide range of stakeholders. The goal of these proceedings is not only to protect individual interests, but above all the interests of certain communities and dispersed interests (supra-individual interests).[2] In this case, participants' legal standing may be determined not by substantive rules, but by certain formal premises. Thus, apart from individual administrative acts, we have the general acts, sometimes with a complex content. Consequently, the concept of adjudication is supplemented with an element "rule-making". In some legal systems that kind of activity is also associated with issuing administrative acts in a broad sense.[3] The next stage in evolution of the law on administrative proceedings is related to the third generation of procedures, intended to implement public policy in more flexible forms, breaking the existing adjudication and rule-making scheme.

One may wonder whether there is a variety of models or types of administrative procedure: the historically earlier one – firmly rooted in the Austrian codification tradition, and more modern ones – less formalized, combining different procedural elements, still *in statu nascendi* in some legal systems. The latter are determined, inter alia, by postulates of cooperation and participation,[4] and on the

2 See for example G. Rossi, *Diritto amministrativo. Principi*, Padova 2011, p. 75 and F. Lemetre, R. Miranda, *Diritto amministrativo*, Napoli 2011, pp. 204–206.

3 See considerations about the notion of *actes administratifs* containing general rules under French law – S. Braconnier, *France*, [in:] *Codifications of Administrative Procedure*, ed. J.-B. Auby, Bruxelles 2014, p. 189 and J.-B. Auby, *Foreword*, [in:] *Administrative Proceedings in the Habsburg Succession Countries*, ed. Z. Kmieciak, Łódź–Warszawa 2021, p. 8. As the latter Author notes, according to the Germanic legal tradition, "regulatory acts issued by the administration do not have the nature of administrative acts". See also S. Detterbeck, *Allgemeines Verwaltungsrecht mit Verwaltungsprozessrecht*, München 2010, p. 162; L.K. Adamovich, B.-Ch. Koja, *Allgemeines Verwaltungsrecht*, Wien–New York 1987, p. 266 and F. Gygi, *Verwaltungsrecht*, Bern 1986, p. 90. Overview of the European and American literature on this subject is presented by E. Szewczyk, M. Szewczyk, *Generalny akt administracyjny*, Warszawa 2014, pp. 40–90.

4 As regards the public participation in rule-making proceedings in France – D. Custos, *The 2015 French Code of Administrative Procedure: an Assessment*, [in:] *Comparative Administrative Law*, eds. S. Rose-Ackerman, P.L. Lindseth, B. Emerson, Cheltenham–Northampton 2017, pp. 292 and following. See also regulations on jurisdictional type of administrative procedure, for instance Section 41 of the Finnish Administrative Procedure Act of 2003 on participation of others than the parties in policy-making, or general principles of the Portuguese Code of Administrative Procedure of 2015 on cooperation with the administration and the participation of individual in shaping decision (Article 11 – *principio da colaboração* and Article 12 – *principio da participação*). As to the specific Finnish legislation on participatory rights – O. Suviranta, *Finland*, [in:] *Codification of Administrative*…, p. 183. Generally about the right of civil society/individual to participate in proceedings and cooperation between private parties and public authorities – F. Bignami, *Three Generations of Participation Rights Before the European Commission*, "Law and Contemporary Problems", winter 2004, vol. 68, no. 1, pp. 62 and following; J. Mendes, *Administrative Procedure, Administrative Democracy*, [in:] *Droit comparé de la procédure administrative/Comparative Law of Administrative Procedure*, ed. J.-B. Auby, Bruxelles 2016, pp. 235–243 and G. della Cananea, *Due Process of Law Beyond the State. Requirements of Administrative Procedure*, Oxford 2016, pp. 110 and following.

other hand, postulates of procedural pragmatism[5] and administrative efficiency, also in terms of economic calculus.[6] The second and the third generations of administrative procedures (the *quasi*-legislative and the collaborative model) display attributes of this heterogeneous set – according to the Javier Barnes' theory.[7] Good examples of such solutions are appropriately: the planning procedures within local government and the procedures treated as a tool for implementing European operational or development programmes.

As Javier Barnes underlines, administrative procedures of the first generation are formed on "judicial model and on hierarchical and command administrations". They "promote outcomes that are consistent with legal mandates and within the limits of authority granted to those exercising power".[8] These procedures are mainly focused on various protection forms of public subjective rights.[9]

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5 The word "pragmatism" has many meanings. In the law, we frequently operate it as "the test of a good policy". Such a policy is viewed as having "beneficial real-world outcomes. It can be helpful to contrast pragmatism with formalism and various ideological driven approach: the pragmatism tends to mistrust positions that people take »on principle« if those advocates do not take account of how their positions work out in practice" – R.M. Levin, *Administrative Law Pragmatism*, "Washington University Journal of Law and Policy", January 2011, vol. 37, p. 229. As concerns procedural pragmatism in administrative law – Z. Kmieciak, *Pragmatyzm postępowania administracyjnego*, [in:] *Fenomen prawa administracyjnego. Księga jubileuszowa Profesora Jana Zimmermanna*, eds. W. Jakimowicz, M. Krawczyk, I. Niżnik-Dobosz, Warszawa 2019, pp. 498 and following.

6 Nowadays efficiency of administrative operation is also one of the basic process requirements in individual cases (administrative adjudication). See in particular remarks of M. Bernatt, *Administrative Sanctions: Between Efficiency and Procedural Fairness*, "Review of European Administrative Law" 2016, vol. 9, issue 1, pp. 5 and following, and assessments of changes to the Slovenian Act on General Administrative Procedure, which were made taking into account "technical rationality" on the Weberian basis rather than the need to protect constitutional safeguards of the individual – P. Kovač, *Changing the General Administrative Procedure Codification in Slovenia: Between Austrian Tradition, EU Convergence and Future Social Challenges*, [in:] *New Challenges for Administrative Procedure in Europe. A Comparative Perspective*, eds. P. Duret, G. Ligugnana, Napoli 2021, pp. 203–204. Similarly P. Duret, *Thirty Years of the Italian General Administrative Procedure Act: Evolution and Emerging Issues (with a Look Beyond Borders)*, [in:] *New Challenges*…, p. 86. He indicates, invoking the view of prominent Italian scholars, the existence of "two intertwining lines in the original text of law no. 241: the line of guarantees (democracy) and the line of simplification/efficiency (result)".

7 Further J. Barnes in works: *Towards a Third Generation of Administrative Procedure*, [in:] *Comparative Administrative Law*, eds. S. Rose-Ackerman, P.L. Lindseth, Cheltenham–Northampton 2010, pp. 336 and following; *Three Generations of Administrative Procedures*, [in:] *Comparative Administrative Law* (2017), pp. 302 and following, as well as *Administrative Procedure*, [in:] *The Oxford Handbook of Comparative Administrative Law*, eds. P. Cane, H.C.H. Hofmann, E.C. Ip, P.L. Lindseth, Oxford 2020, pp. 843 and following.

8 J. Barnes, *Towards a Third*…, p. 343.

9 See U. Ramsauer, [in:] U. Ramsauer, C. Tegethoff, P. Wysk, *Verwaltungsverfahrensgesetz. Kommentar*, München 2020, p. 35 and E. Schmidt-Aßmann, *Verwaltungsrechtliche Dogmatik*, Tübingen 2013, p. 109.

He indicates that second-generation procedures, in turn, pursue pure standards of executive regulations, acquired from hierarchical administration. The Author continues that procedures of the first and the second generation take a formal, linear or staggered structure. Meanwhile "third-generation procedures conceive of public policy as a process, not a product. They do not aim to extract solutions or decisions embedded in the law, as in first-generation procedures, but rather to discover the solution".[10] This model is steered by two crucial principles: "collaboration and creativity".[11] Javier Barnes points the difficulty of a comparison due to the large diversity of procedure functions – often tailored to the form of public administration governance in a given policy sector. The Author completes his considerations with a simple conclusion that under the umbrella of administrative procedure we can find three different decision-making models: "the *quasi*-judicial model, the *quasi*-legislative model, and the joint-work administrative process model". Each one necessitates a separate legal regime.[12]

The complexity and high changeability of administrative tasks cause some problems with the selection of operational tools. Nowadays, a lack of clear assumptions of certain procedures and at the same time – generality and fragmentation of their regulations are visible. There are efforts to compensate for these deficiencies by the technique of referring to law sources recognized as basic (hybrid procedure model). Additionally, it is proposed – as an *ultima ratio* – to adopt arrangements determining a manner of behavior within a sphere of organization and management. It opens a new field for research and imposes the need to develop a methodology adequate to the analysis' purpose and subject.

The aim of this collective monographic work is to compare various types of administrative procedure and show their similarities and differences in national, European and global dimensions. The Authors' intention is also to capture the regularities governing the development of law on administrative proceedings, including answering to the following questions:

1) is there a genetic relationship between the three generations of procedures, or do they derive from the separate ideas of national legislatives (genetic peculiarities)?
2) to what extent did modern types of procedure become the subject of national codifications?
3) what are the characteristics of national participatory procedures (the question of their features)?
4) what are the national experiences in the field of "coexistence" of the three generations of administrative procedures?

10 J. Barnes, *Towards a Third*…, p. 343.
11 J. Barnes, *Administrative Procedure*, p. 847.
12 *Ibidem*, p. 843.

5) where is the boundary between pragmatism and legalism of administrative procedures, for example in the case of urgent or simplified, automated and mass procedures (*Massenverfahren*)?
6) does the increasing complexity of social life make us search for new solutions to integrate standards of Rule of Law (traditional procedural values) with requirements of procedural pragmatism and efficiency?
7) are the new solutions in contradiction with the idea of multi-aspect protection of interests in administrative procedure?

The very notion of the Rule of Law is ambiguous. Using this phrase with the omission of a concrete situation and its cultural context (solutions that are applied) may therefore lead to misunderstanding.[13] However, one thing is clear: regardless of the type of administrative procedure, the assessment of regulations in place should not abstract from requirements resulting from the Rule of Law, and – in the case of administrative adjudication – due process.[14] The separate issue is whether these factors will be treated as the main, or just complementary criteria for analysis. At that point a question can be raised concerning the relationship between the Rule of Law and standards of Good Governance and Good Administration.[15] As Giacinto della Cananea argues,

> avoiding arbitrariness is not the only rationale for procedural due process requirements. Another one is sound governance, which is important not only for the richer countries of the world which administer our lives from the cradle to the grave but also in other countries where traditional essential functions […] are carried out. There is still another rationale for procedural requirements, namely the achievement of political control over administrative action.[16]

*

The reflections presented in the book let us draw several general conclusions about the ways of evolution and the current condition of law on administrative procedure in European countries. First of all, it should be noted that principles derived

13 See particularly G. della Cananea, *Due Process*…, pp. 86–87; C. Harlow, *Administrative Procedure and the Rule of Law*, [in:] *Droit comparé de la procedure*…, pp. 211–217 and Å. Frändberg, *From Rechtsstaat to Universal Law-State*, Cham 2014, pp. 1–8.

14 Regarding the due process as a central component of American administrative law – see J.L. Mashaw, *Due Process in the Administrative State*, New Haven 1985; E. Gellhorn, R.M. Levin, *Administrative Law and Process in a Nutshell*, Saint Paul 2006, pp. 200 and following and K. Werhan, *Principles of Administrative Law*, Saint Paul 2008, pp. 107 and following. Further on the variety of rationales for due process requirements, and administrative due process as a general and global principle of public law – G. della Cananea, *Due Process*…, pp. 85–101, 155–206.

15 See for example J. Ponce Solé, *Good Administration in European Public Law. The Fight for Quality in the Field of Administrative Decisions*, "European Review of Public Law" 2002, vol. 14, issue 4, pp. 1503 and following; H. Addink, *Good Governance – Concept and Context*, Oxford 2019 and U. Stelkens, A. Andrijauskaitė, *Introduction – Setting the Scene for a "True European Administrative Law"*, [in:] *Good Administration*…, pp. 1 and following.

16 G. della Cananea, *Due Process*…, pp. 88–89.

from the concept of public subjective rights and, more broadly – the Rule of Law, which were foundations for the first codifications of administrative proceedings, still remain a directive for the legislature; as Jean-Bernard Auby points out, "currently, it is also within the mechanisms of administrative proceedings that individual rights have flourished". Moreover, the concept of individual rights is still used in European case law "both for protecting individuals and for ensuring the effectiveness of EU law" (Herwig C.H. Hofmann and Catherine Warin). The result of law-making is therefore evaluated mainly through the prism of due process standards and ensuring elementary rights for the party. However, the above protection along with balancing individual good and public interest in matters covered by jurisdictional procedure based on judicial model, has recently taken new forms, unknown to classic codifications. They include, among others: electronic communication between the party and the authority, simplified and automatic decision-making modes, mechanisms for verifying statements given by the parties and exercising their rights and obligations, alternative measures to administrative decisions, and traditional, rigorous forms of fact-findings and conclusions (administrative/public-law contract, settlement between the parties, silent dealing with a case and provisional/conditional decision, services conference, administrative audit regime, "proceedings on site" or mediation).[17] Further *de lege ferenda* postulates are also constantly put forward regarding modernization of the recently developed process instrumentarium, for example increasing the effectiveness of Alternative Dispute Resolution techniques (see Bruna Žuber).

The forms mentioned above do not in any way reduce authority's responsibility for an outcome of proceedings.[18] An interesting phenomenon is described by Ymre Schuurmans and Joyce Esser. The Authors note that the

> development of Dutch law coincides with a transformation from the formal *Rechtsstaat*, protecting civilians against state infringement, to a »responsive« or »social« *Rechtsstaat*, requiring the government to effectively safeguard the basic conditions of human life. Next to legality, legal certainty and formal equality, this conception of the Rule of Law focuses on the active fulfillment of substantive rights, values and principles such as reasonableness and fairness. Within that narrative, sound administration becomes a matter of constitutional importance.

17 Purely procedural regime is also beginning to be suplemented with another type of regulation, bodly entering the sphere of substantial and structural law – Z. Kmieciak, *In the Circle of the Austrian Codification Ideas*, [in:] *Administrative Proceedings*…, p. 28.

18 See for example theses of the Italian Council of State on the consequences of issuing an algorithmic decision (*la decisione amministrativa algoritmica*). According to the judgement of 13 December 2019, it is always necessary to check the correctness of a resolution made in this mode. Therefore, it seems to be only a "proposal" for a decision (*"proposta" di provvedimento*). This means that the competent body (official) is responsible for its final content. Further S. Vernile, *L'adozione delle decisioni amministrative tramite formule algoritmiche*, [in:] *Dialoghi di diritto amministrativo*, eds. F. Aperio Bella, A. Carbone, E. Zampetti, Roma 2020, p. 122.

The function of the acts on general administrative procedure is also changing. As the "main statute […] in national legal systems", they "may be passed to establish the basic, common components of administrative procedure, principles, and possibly a typology" (Javier Barnes).

The structure of interests protected in administrative proceedings is also becoming more complicated, as a result of which the model of participation in decision-making process, known to us until recently, is gradually changing. Irrespectively, two successive generations of administrative proceedings are proof for the claim that the idea of multi-aspect protection is well-established. Quite consistent findings regarding *locus standi*, previously accepted by theoreticians without reservations, were corrected, taking into account, inter alia, such values as procedural efficiency and pragmatism. In this context, we can distinguish the rights protected more strongly (paradigmatic structure of a claim brought under procedural mode) and the rights protected less (structure of purely procedural claims or "procedural and substantive interests") – first and foremost: Marcin Kamiński and Joanna Wegner; also Philipp Reimer, Marek and Ewa Szewczyk. Guarantees of respect for the rights of individual result not only from national law, but also from Union law, in the context of the EU Member States' obligation to assure "real and effective judicial protection". They should be provided where legislative, administrative or judicial practice could weaken the effectiveness of Union law or make it impossible or excessively difficult to exercise the rights conferred by that law (Herwig C.H. Hofmann and Catherine Warin, also Jean-Bernard Auby).

The tendency to ease a procedural rigour in certain areas of administration is justified mainly by the need to deal with individual cases on a mass scale, in the shortest possible time, without excessive costs and inconvenience for the parties and administration. Importantly, these instrumental values have become the hallmark of new administrative procedure types – the second and the third generation. They are – as should be inferred from the considerations presented in the book – a combination of many elements, only some of which originate from rules and institutions specific for the *quasi*-judicial model of administrative procedure. Therefore, a thesis about genetic relationship between the three generations of administrative proceedings seems quite risky. However, we can talk about a common phenomenon of adopting certain process structures by the ordinary borrowing technique, often with use of foreign patterns.

Differences in the manner and degree of detail in regulating new types of procedures can be easily explained on the grounds of tradition. These proceedings are especially perceived "as a channel for participation by the citizenry in decision-making" (Eduardo Gamero Casado; as for the deficiencies of public consultation in the rulemaking activity of regulatory authorities in Hungary – Csaba Molnár). Of course, participation in any procedure "is not necessarily an end in itself". As Roberto Caranta points out, it "is instrumental into potentially consensual management of administrative tasks".

Interesting observations related to Germany are formulated by Philipp Reimer. He emphasizes, that participatory procedures are not "a recent addition to the standard procedure but rather form a second, parallel track of legal development". In his opinion "no trend is visible to sacrifice formal rigour for the sake of efficiency". The legislative changes triggered by the need to speed up the proceedings only highlighted "the already limited relevance that procedural errors already had". In some states, various types of participatory procedures were codified long time ago, as exemplified by Spain, Norway or the Federal Republic of Germany. In other legal systems, for instance in Poland, they are under the regime of separate were regulations. This begs the question: does this circumstance have no impact on the legal consistency? However, more important is how the provisions on administrative proceedings are understood and applied, do they meet the needs of practice and are they a useful tool for fulfilling administrative tasks, and finally – are there effective compliance mechanisms, including judicial remedies? The adequacy of remedies to the subject of review may sometimes be questionable. Due to imperfections and errors in legislation there are, for example, doubts as to the legal qualification of results of administrative action, and thereby – the admissibility of their judicial review as administrative acts (Dario Đerđa). Particularly in some legal systems the question of the nature and legal form of acts issued under rulemaking procedures is the subject of disputes and discussions. As Marek and Ewa Szewczyk argue, both Polish legal theory and practice cannot cope with this problem. The notions of "general administrative acts" and "administrative regulations" sometimes have completely contradictory connotations there.

Depending on the formula of judicial review (restricted, purely cassation or full jurisdiction) we evaluate the effectiveness of judicial protection according to different criteria.[19] Various forms of merits review followed by ordinary or specialized courts in the European legal systems (for instance in the Netherlands, Switzerland, Sweden or Austria), generally relate to cases considered in administrative procedures of the first generation.[20] Regardless of the model of judicial protection, the "corrective" role of interpretation of the law by courts does not raise any doubts. An interesting example of this kind of interpretation in relation to algorithmic decisions in matters regarding to the Italian teachers is given by Giacinto della

19 It should be stressed that even in France the distinction between *recours objectif* and *recours subjectif* and between *recours pour excès de pouvoir* and *recours de pleine juridiction*, has not been directly upheld – see A.J. Bok, *Judicial Review of Administrative Decisions by the Dutch Administrative Courts: Recours Objectif or Recours Subjectif? A Survey Including French and German Law*, [in:] *Judicial Lawmaking and Administrative Law*, eds. F. Stroink, E. van der Linden, Antwerpen–Oxford 2005, p. 156.

20 As for the diversification of forms – see Z. Kmieciak, *In Search of an Effective Model of Judicial Review (Comments Based on Polish and European Experiences)*, [in:] *Administrative Dispute in the Central and Eastern European States*, eds. D. Đerđa, A. Galić, D. Dobrić Jambrović, J. Wegner, Rijeka 2021, pp. 25 and following.

Cananea and Angela Ferrari Zumbini. A more general thesis is formulated by Zdeněk Kühn, who states that nowadays people

> live in a world full of unbelievably complex legal regulations. Moreover, if these legal regulations are further complicated by randomly changing (authoritative) interpretations, administrative courts should interfere and not approve arbitrary changes in those administrative interpretations.

The question of where a boundary between standards of Rule of Law (resulting from the constitution, EU and international law, ordinary legislation and case law), and pragmatism with procedural efficiency should be, is not always easy to answer. Dejan Vučetić analyzes this problem using the metaphor of "red, green, or forever amber?" and term of the "third way" which respects "sector-specific administrative procedures, in conjunction with the umbrella position of the GAPA". The Author states "that pragmatism should be given priority not only in case of simplified, urgent and mass procedures but also in case of procedural communication between the administrative authorities and parties in the proceedings". One thing is for sure: the indicated types of values must be in the state of relative equilibrium for achieving the procedural objectives without a prejudice to rights and interests of the individual and, as well as to public interest or good of community. Potential disturbances of this balance inevitably lead to excessive formalism of proceedings, which is a denial of rational behavior, or on the contrary, to exposing the individual to the risk of arbitrariness. The postulate of equilibrium directly corresponds with the ideas of Good Governance and Good Administration. Therefore, it is not surprising that the order to satisfy the balance postulate is formulated in general principles of the European code regulations, for example in Bosnia, Croatia, the Czech Republic, Finland, Italy, Portugal or Serbia (in particular: Kateřina Frumarová, Giacinto della Cananea and Angela Ferrari Zumbini). In a way, it is a programme directive for modern administrative proceedings, although its realization – depending on the type of procedure, traditions of a given legal system and historical conditions – takes many forms. Interestingly, the Italian Act of 1990 does not provide any definition of general principles. Giacinto della Cananea and Angela Ferrari Zumbini explain that this is coherent with the Italian

> legal tradition (*omnis definitio in jure periculosa est*) and, institutionally, with the fact that these principles had previously been fashioned by the courts in accord with the values of justice and the Rule of Law and the courts will continue to decide on the appropriate standards of procedural justice which should apply to public authorities and some private bodies which discharge administrative functions and powers.

In light of these comments, it is logical to conclude that we are not faced with the necessity of a choice: legality or efficiency. It should rather be said: efficiency, but within the limits of law. It is tantamount to maintaining the standards of Rule of Law and principles that are a permanent element of the European legal culture.[21]

21 The gist of the matter is well expressed by the words of P. Kovač, *Changing the General*…, p. 207, concerning the codification of administrative procedure in Slovenia: "it would be

The meaning of the two types of values is not – as evidenced by disputes over the Rule of Law taking place on the European forum with the participation of some countries from the former Eastern Bloc (including Poland) – free from controversy.[22] It has already caused serious tensions, the consequences of which are difficult to quantify.

The essence of changes we are witnessing is well reflected in the explicitly or tacitly approved assumption that "decision quality is modulated by the principle of simplified procedure" (the concept of transition from "due administrative procedure" to "proper administrative procedure") – this issue is discussed extensively by Eduardo Gamero Casado; similarly Dejan Vučetić. Of course, there are many voices that some attempts to "rationalize", and especially – simplify various procedures (by resignation from certain sets of procedural guarantees or departure from universal principles applied so far), justified by the nature of administrative cases or procedural economy, ultimately weaken the legal position of the individual.[23] As a consequence, the declared protection is sometimes becoming illusory or incomplete. Although procedural shortcuts do not always bring expected results, in certain situations (for example under threat from pandemic or natural disaster) they are generally acceptable. The issue has to be faced not only by the legislature, but also by the practice – courts, public administration bodies, other entities performing public tasks, for example ombudsmen or social organizations (associations).[24] The jurisprudence has also a specific task, as it has expert knowledge to help identify the condition of law and measures for its repair or improvement. However, the discussion on procedural rationality in the sphere of public administration has grown with many stereotypes. The concept adopted in the Serbian Act of 2021 on the Registry of Administrative Procedures can be safely considered an attempt to break them (Dejan Vučetić).

Quo vadit processus administrativus? It is difficult to find a clear and complete answer for that. We can just reflect on the likelihood of the fourth generation of administrative procedures and a possible transformation of the procedure based on

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time for a new GAPA which, given the *Rechtsstaat* administrative culture, should be based on sound traditional foundations, but also promote development rather than sometimes excessive legalism".

22 See U. Stelkens, A. Andrijauskaitė, *Sources and Content*…, pp. 63–66.

23 Simplification of administrative procedures is usually understood as reducing the administrative burdens for citizens and business and rationalizing the management of such procedures to make them more efficient – see E. Gamero Casado, *Policies of Administrative Simplification: General Introduction and Spain*, [in:] *Droit comparé de la procedure*…, pp. 345–346.

24 See for example observations by V. Parisio, *Italy: The Nature of Interests as a Boundary to Simplification of the Administrative Procedure*, [in:] *Droit comparé de la procedure*…, p. 419; similarly P. Gonod, *France – Fonctions et buts de la procédure administrative: nouveaux problèmes et nouvelles solutions*, [in:] *Lisbon Meeting on Administrative Procedure. Functions and Purposes of the Administrative Procedure: New Problems and New Solutions*, eds. V. Pereira da Silva, D. Duarte, Lisboa 2011 (e-book), pp. 56 and following.

judicial model what would undermine its original assumptions. The latter problem refers, inter alia, to automatic procedures (an algoritmic decision) or silent dealing with a case. Computer programmes, databases and praxeology indications are not substitute for the letter and interpretation of the law. However, they can change the techniques of "operating the law". The Danish experience in digital administration and the use of artificial intelligence is interestingly described by Bent O. Gram Mortensen and Frederik Waage. They directly state: "Digitalization has pushed an agenda which recognizes the great advantages of IT-technology and at the same time seeks to protect citizens against unwanted outcomes of this process". In the opinion of the Authors, this fact makes it clear, that "general principles of administrative law continue to have a special place within the Danish *Rechtsstaat*". In the light of these comments and observations, the thesis formulated by Javier Barnes takes on particular importance. As he notes, the "»codifying ideal« in the field of administrative procedure" needs to be rethought, "considering that this field's relevance grows exponentially in an uncertain world, one in which legislature is not able to anticipate reality, but can indicate how to confront it".

My excellent colleagues have taken a great challenge of showing the complexity, nuances and paradoxes of modern law on administrative proceedings. Deliberations thereof draw a general picture of the regularities and factors that determine the development of this law.

Zbigniew Kmieciak, Ph.D., full professor. Head of the Department of Comparative Administrative Procedure – Institute of Comparative and Interdisciplinary Research in Law, Faculty of Law and Administration, University of Łódź; retired justice of the Supreme Administrative Court. Author of over three hundred scientific publications and many legal opinions developed for the legislative process and practice needs. Leader of the expert group on the reform of Law of Administrative Procedure in the years 2012–2016. Group's activities contributed to the essential modernization of the Polish Code of Administrative Procedure of 2017.