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**Summary of the doctoral dissertation entitled
„The principle of active participation of the party
in the evidence proceedings in the general administrative
proceedings”**

field of science: **social science**, scientific discipline: **legal science**

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Ad I Description of the research problem and research objectives

This doctoral dissertation refers to a current legal problem concerning the participation of an individual in evidence proceedings in general administrative proceedings. The principle of active participation of the party in the general administrative proceedings expressed in Article 10 of the Act of 14 June 1960 – Administrative Proceedings Code (consolidated text: Journal of Laws of 2024, item 572 – hereinafter referred to as **the k.p.a.**) is a rule of momentous legal character, as can be seen from the fact that the legislature included it in the provisions of the k.p.a. According to its current content, administrative authorities are obliged to ensure active participation of the parties in each stage of the proceedings and shall allow the parties to express an opinion on the evidence and materials collected and the claims filed prior to the issuance of a decision (Article 10 § 1 of the k.p.a.). The aforementioned authorities may deviate from the principle specified in § 1 only in cases when the handling of the case is urgent due to endangerment of human life or health or due to the threat of an irreparable material damage.

Then this is the responsibility of these authorities to record the reasons of the deviation from the principle in the case file (Article 10 § 2 and § 3 of the k.p.a.).

The above means that the principle of active participation of the party in the general administrative proceedings is a directive pursuant to which the party should be ensured active participation in the proceedings and this in such a manner that the party could exercise the bunch of its powers with full freedom. In theory this fact is incontestable however, in practice the situation may often be stark different. Despite the fact that the legal institutions provided in the k.p.a. should aim at the implementation of the principle (of which the fullest implementation takes place in the evidence proceedings), the situations when the party cannot exercise its rights still happen. The entities interested in determining their administrative situation are often deprived of the real influence on the course of the administrative proceedings and in fact also on the content of issued decision. The parties – often oblivious of the rights they have – are not informed of the actions undertaken by the administrative authorities and the possibility to take part in them, which basically prevents them from actively participating in the entire proceedings. Due to the occurrence of these situations (which is confirmed by the need of challenging issued administrative decisions), in society's opinion the activities of the public administration seem to be defective. People become convinced that a human being – as an administered entity – has no impact on the course of the administrative proceedings, and yet Article 10 of the k.p.a. provides such an opportunity, equipping the party with a range of procedural possibilities.

For the above reason there was a need for evaluation of the construction of the Article 10 of the k.p.a. and its in-depth analysis at the selected stage of the general administrative proceedings. In the literature of the subject the principle's importance and the need to respect it at every single stage of the procedure is frequently highlighted, but none of the available sources indicated such an analysis which would give an overview of the whole powers connected with the Article 10 of the k.p.a. in the selected stage of the general administrative proceedings (the evidence proceedings). The stage of the evidence proceedings has proved to be particularly important in this case because at this stage the party of the proceedings through its action (procedural activity) may have a real impact on the findings of the administrative authorities and the way the case is handled. As a consequence, procedural activity of the party is of the greatest importance in the evidence proceedings. The principle therefore has an element of law application – its existence is particularly important for the second stage of the law application process (according to the model developed by J. Wróblewski) because, when properly implemented, it contributes to the establishment of the facts of a case

which consequently makes it possible to make a subsumption. A specific role of the described principle in the evidence proceeding had an impact on the title of the dissertation and allowed to specify the area of the analysis. It should be pointed out that due to the extensive nature of the subject of the dissertation (the scope of the principle), in the dissertation not one but numerous theses, focusing on the significant role of the principle of active participation of the party in the evidence proceedings in the general administrative proceedings have been posed. It would be not possible to put forward these theses in the absence of the in-depth analysis of the principle in a selected slice of the proceedings and of using proper research methods (dogmatic method and empirical method).

As a consequence of the above, the basic research objectives in the dissertation were:

- 1) determining present standards in the Polish and in the international legal order for the principle;
- 2) investigating a legal character of the principle of active participation in the general administrative proceedings (an analysis of its legal construction);
- 3) determining the procedural regulations applicable to the evidence proceedings and derived from the principle of active participation, including determining the relevance of the principle to the evidence proceedings;
- 4) determining powers (main and specific) arising under the principle of active participation in the evidence proceeding in the general administrative proceedings;
- 5) identifying the problems associated with the implementation of the principle in the evidence proceedings in the general administrative proceedings;
- 6) determining the legal effects of the infringement of the principle of active participation in the evidence proceeding in the general administrative proceedings;
- 7) presenting of the findings made and indicating the existing needs related to the described institution, considering the need to protect the rights of the individual in the proceedings.

Ad II Structure of the dissertation and overview of each chapter

The dissertation consists of a list of abbreviations, an introduction, six chapters, a conclusion and a bibliography. The stated chapters are subdivided into subchapters, in which

specific issues were listed and discussed. That makes the structure of the dissertation clear and ordered.

The chronological list of the chapters is as follows:

- 1) The list of abbreviations;
- 2) The introduction;
- 3) Preliminary issues;
- 4) Standards of the participation of the party in the general administrative proceedings;
- 5) Legal construction of the principle of active participation of the party in the general administrative proceedings;
- 6) Addressees of the principle of active participation of the party in the general administrative proceeding;
- 7) Procedural powers of the party in the evidence proceedings arising from the principle of active participation in the general administrative proceedings;
- 8) Legal effects of the infringement of the principle of active participation of the party in the evidence proceedings in the general administrative proceedings;
- 9) The conclusion;
- 10) The bibliography.

In the first chapter preliminary issues involving the main subject were presented, which encouraged further considerations. Given the fact that the principle of active participation of the party operates in the procedural space, it was necessary to clarify the essential concepts. First of all, the term of the administrative proceedings and the general administrative proceedings were explained. The starting point for the general administrative proceedings analysis was the administrative proceedings in the generally understood sense. Its definition became possible with the use of existing literature and after the analysis of dominating concepts of the administrative proceedings and current legal regulations (narrow and wide approach). The administrative proceedings in the narrow approach was combined with the law application process. Secondly, the definition of the general administrative proceedings was determined and it was reduced to the procedure used by the administrative authorities, regulated by the provisions of the k.p.a., concerning an individual case and ending with the issuance of an administrative decision forming the administrative and legal situation of its addressee (unless the case will be settled tacitly or under the simplified procedure in which the application of the provisions on tacit settlement is not excluded).

The objective of the second chapter was an analysis of the standards appropriate for the principle. The standards were considered both in an international context (among others, standards from the Convention for the Protection of Human Rights and Fundamental Freedoms, the Universal Declaration of Human Rights, as well as other standards, including sets of them, arising from the international law) and in a national context (Polish Constitution). During the work of this chapter a detailed analysis of legal regulations was carried out in order to find such legal rules, which might relate to the principle. For the purpose of a diligent investigation of the issue, the international regulations and the scientific literature were taken into account and each of the analysis made led to the certain conclusion (the possibility or impossibility of deriving standards for the principle from the regulations and the sets of standards under analysis).

The third chapter of this dissertation concerns the legal construction of the principle of active participation of the party in the general administrative proceedings. The essential point of developing this construction was to understand the nature of the principle. For this purpose, the terms of a principle in law and of the general principles of the k.p.a. were discussed in the chapter. Also, the review of the literature of the principle of active participation of the party and the analysis of the elements of its legal construction (subject and object elements) was made, which allowed to visualize this construction. In addition – with a view to the content and form of the principle of Article 10 of the k.p.a. – the third chapter justifies the choice of the evidence proceedings as an area of analysis of the principle of active participation of the party in the general administrative proceedings. During the analysis of the principles' definitions both the theory of law and next the normative content were used. Referring the principles' terms (also the principles arising from the k.p.a.) to their real role in a legal system as well as their functions in the specific field of law allowed making a reliable verification of the subject. The performed analysis was based on the achievement of the scientific literature, as well as on the own conclusions, which had the greatest expression while discussing the legal construction of the principle. Examining and reconstructing the legal construction of the principle turned out to be possible only after its content became unfolded into individual elements. Ultimately, the directive pursuant to which the administrative authorities shall ensure the parties active participation in the general administrative proceedings has been illustrated. The administrative authorities' obligation as direct addressees is correlated with the power of the parties as indirect addressees (correlation). Respectively, it was underlined that the parties can but do not have to exercise the described right. Altogether, the research and the conclusions made allowed to create a four-element legal construction

of the principle of active participation in the general administrative proceedings. This legal construction made it possible to build the rest of the dissertation.

The fourth chapter of this dissertation concerns the addressees of the principle, i.e. the administrative authority as the direct addressee and the party as the indirect addressee. The review of the administrative structures was made in order to separate a group of the administrative authorities which are the addressees of the principle. Consequently, it was considered that all of the administrative authorities who issue decisions forming the administrative and legal situation of the parties have been the direct addressees of the principle. Whereas when defining the term of the party, the objective concept has been approved. All of the findings made in this chapter allowed to analyze the powers arising from Article 10 of the k.p.a., which are available to the party in the evidence proceedings in the general administrative proceedings.

The fifth chapter is the main element of the dissertation. In this chapter a detailed analysis of the party's procedural powers in the evidence proceedings, which arise from Article 10 of the k.p.a was made. The typology made and carefully selected (based on the content criterion) allowed to separate a number of powers, namely: 1) a power of the party to submit evidence, 2) a power of the party to be notified of the actions in the evidence proceedings and to participate in the taking of evidence, 3) a power of the party to have an access to the case file, 4) a power of the party to obtain information on unfulfilled or unproven premises dependent on the party, 5) a power of the party to express an opinion on the evidence conducted in the case. Each of the powers analyzed in the doctoral thesis were connected with the adequate legal rule which specified the party's active participation right in the evidence proceedings. This approach made it possible to represent correlations existing between powers and obligations indirectly derived from the content of Article of the 10 k.p.a. In addition, a certain spectrum of procedural possibilities available to the party under the disposition of the described principle was indicated. The analysis of the regulations applicable at the selected stage of the general administrative proceedings became possible when reference was made to a group of such provisions which apply at the evidence proceedings and correspond with the Article 10 of the k.p.a. To sum up – the provisions are becoming a real specification of the principle (equipping the party with a certain range of procedural possibilities and creating obligations on the part of the administrative authority). As a result of the above, the party's power to submit evidence has been linked to Article 78 of the k.p.a. and Article 95 § 1 of the k.p.a., the party's power to be notified of the actions in the evidence proceedings and to participate in the taking of evidence has been linked to Article 79 of the

k.p.a., Article 90 of the k.p.a., Article 91 of the k.p.a., Article 92 of the k.p.a., Article 94 § 2 of the k.p.a. and Article 95 of the k.p.a., the party's power to have an access to the case file has been linked to Article 73 of the k.p.a. and Article 74 of the k.p.a., the party's power to obtain information on unfulfilled or unproven premises dependent on the party has been linked to Article 79a of the k.p.a. and the party's power to express the opinion on the evidence conducted in the case has been linked to Article 81 of the k.p.a. and Article 95 § 1 of the k.p.a. Finding elements of the described principle in the rest of the k.p.a.'s regulations gave a wider perspective of the analyzed issue. Ultimately, not only a thorough analysis of selected legal rules was made, but also the certain group of powers and obligations arising from these regulations and having a real connection with the principle was characterized. In the chapter the premises justifying the exclusion of the party's procedural powers in the evidence proceedings arising from the principle of active participation in the general administrative proceeding were discussed and also the problem of the party's power to testify as an element of the content of the principle of active participation in the evidence proceedings in the general administrative proceedings and the problem of implementation of the principle of active participation of the party in the evidence proceedings in the general administrative proceedings in cases settled tacitly and under the simplified procedure were outlined (noting the exclusion of the principle).

In the sixth chapter of the dissertation legal effects of the infringement of the principle of active participation of the party in the evidence proceedings in the general administrative proceedings were analyzed. In order to make a proper analysis, in this chapter the legal effects of the infringement of the principle qualified as a breach of the provisions of the administrative proceedings were separated, the legal effects of the infringement of the principle qualified as a resumption ground and the legal effects of the infringement of the principle qualified as a gross breach of law. Individual infringements (ordinary infringements of the procedural provisions, as well as infringements of a qualified nature) and their effects were discussed while recognizing that the effects of specific infringements depend on both on the gravity of the breach itself, as well as the stage at which it comes to light. It was also laid down that the same infringement changes its form depending on the stage at which it was detected (variability in the qualification of the infringements). It was indicated that broadly understood defectiveness is the effect of the infringements, causing (in the absence of the possibility of sanctioning the infringements before the decision is issued) the revocability or invalidity of the administrative decision. The infringements discussed in the chapter were illustrated by means of sample factual situations. Thus, the gross breach of law has been linked

to an omission of the investigation procedure by the administrative authority (including the failure to hold a hearing when it is prescribed by law) or to a grossly flawed conducting of the investigation procedure, detected after the decision becomes final. The infringements qualified as the resumption ground have been linked to situations in which the party is deprived of the ability to participate in all or part of the evidence proceedings (in case of a part of these proceedings, it is the participation in the activities that is essential to the decision) through no fault of the party and the infringement is detected after the administrative decision becomes final. Thereby, this was defined as the situations when the party would not be informed about the essential evidence proceedings activities, when the party through no fault would be excluded from the active participation in the essential evidence proceedings actions, when the party at whose request the proceedings were initiated would not be informed of the premises dependent on the party, relevant to its administrative and legal situation and when the party would not have an opportunity to express an opinion on the evidence taken and the whole gathered evidence through no fault of the party. On the other hand, the infringements of the procedural provisions detected after the decision at first instance was issued and before it became final, which result in the decision being revoked and the case being referred back to the first-instance authority for reconsideration have been linked to such situations when there would have been no investigation in any respect or when the proceedings before the first-instance authority would have had such defects which would have prevented case from being considered clarified.

The last chapter of this dissertation is the conclusion, which is a summary description of previous considerations. The chapter primarily refers to the results of the analysis which confirm the essential nature of the principle and its momentous importance in the evidence proceedings. It was concluded that the dissertation fully illustrated the principle of active participation of the party in the evidence proceedings in the general administrative proceedings and proved that this principle is concretized at the stage of the evidence proceedings by means of procedural institution from which specific rights of the parties and obligations of the administrative authorities arise. The principle itself was evaluated positively but the problems regarding its actual implementation and the troublesome wording of the provisions concretizing it were noted. Postulates *de lege ferenda* were also made, giving clear emphasis on current needs to preserve the essence and purpose of the principle of active participation of the party (protection of the individual's rights in the proceedings).

Ad III Conclusions

The analysis carried out in the dissertation provided a comprehensive illustration of the principle of active participation of the party in the evidence proceedings in the general administrative proceedings and proved that this principle is of key importance in the evidence proceedings. It was confirmed that the legislature has provided for the procedural institutions that concretize the principle of Article 10 of the k.p.a. at the stage of the evidence proceedings in the general administrative proceedings. It was also shown, that the infringements of the principles of active participation of the party at this stage of the jurisdictional proceedings entails multiple procedural consequences. Every of the powers analyzed in the dissertation arising under Article 10 of the k.p.a. has been combined with a specific bunch of the party's procedural possibilities, which turned out to be equivalent to the existence of the party's ability to influence the proces of establishing the facts of the case and as a consequence of the above, the content of the issued decision. The dissertation has achieved the reasearch objectives set, as reflected in its content. Particular attention was drawn to the need for strong protection of the rights of the parties in the course of jurisdictional proceedings (especially in the evidence proceedings) which would not only raise the standard of these proceedings, but could also affect the greater permanence of the administrative decisions issued by the administrative authorities. The analysis presented in the dissertation at the same time revealed that, despite the value of the principle its actual implementation sometimes may be difficult (failure to make changes in the administrative procedure in line with the time and with real procedural problems). In the light of these considerations, the dissertation concludes with a synthetic listing of the *de lege ferenda* postulates mentioned above (recommendation to amend specific provisions that concretize the principle in the evidence proceedings in the general administrative proceedings and to increase the activity of those who hold positions in the administrative authorities).