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The Principle of *in dubio pro libertate* in Administrative Proceedings and Its Function: A Step Forward or a Step Back?²

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Abstract

The aim of the publication is to establish the function of the legal regulation of the principle of resolving legal doubts in favour of the citizen (*in dubio pro libertate*), introduced by the amendment of 2017 to the Code of Administrative Procedure. The purpose of the article is also to compare the state of the regulation in force at the time of its entry into force with the legal state created after the introduction of the amendment. This principle has been discussed and it has been established that it has a protective function. First and foremost, to ensure the security and stability of the law when the legislator has failed to fulfil its duty to legislate correctly and fairly. This function is of particular importance in cases where an administrative body unilaterally determines constitutional rights and freedoms. As a result of the comparison of the state of regulation before 2017, it was established that as long as the principle of *in dubio pro libertate* was a postulate of the doctrine, court judgments, interpreted from other principles of administrative proceedings, it did not suffer such significant limitations and could serve more fully to protect an entity. In the current state of law, administrative bodies can make use of it in a limited way only to several proceedings. Nor does it apply if there is – as is common in administrative proceedings – an important social interest or conflicting legal or factual interests of the parties concerned.

Keywords: principle of resolving legal doubts in favour of the citizen, administrative proceedings, administrative proceeding rules.

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Zasada *in dubio pro libertate* w postępowaniu administracyjnym i jej działanie: krok w przód czy w tył?

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Streszczenie

Celem publikacji jest ustalenie zakresu działania zasady rozstrzygnięcia wątpliwości na korzyść strony (*in dubio pro libertate*), którą wprowadziła do Kodeksu postępowania administracyjnego zmiana z 2017 r. Celem artykułu jest także porównanie stanu regulacji obowiązującej w momencie wejścia poprawki w życie ze stanem prawnym po jej wprowadzeniu. Praca zawiera krótką prezentację funkcji prawa, w tym prawa procesowego. Omówiono też wyżej wspomnianą zasadę i stwierdzono, że pełni ona funkcję ochronną – przede wszystkim po to, by zapewnić bezpieczeństwo i stabilność prawa w sytuacji, gdy ustawodawca nie wypełnia swojego obowiązku w sposób należyty i sprawiedliwy. Funkcja ta nabiera szczególnego znaczenia w przypadku, gdy organ administracyjny jednostronnie określa prawa i swobody konstytucyjne. W wyniku porównania stanu regulacji sprzed 2017 r. stwierdzono, że tak długo, jak zasada *in dubio pro libertate* była postulatem doktryny, wyroków sądowych, interpretowanym na podstawie innych zasad postępowania administracyjnego, nie miała ona znaczących ograniczeń i mogła lepiej służyć ochronie podmiotu. W obecnym stanie prawnym organy administracyjne mogą korzystać z tej zasady w ograniczony sposób jedynie przy kilku postępowaniach. Nie ma ona również zastosowania w przypadku wystąpienia – jak to się nierzadko zdarza – ważnego interesu społecznego albo konfliktu prawnych lub faktycznych interesów stron.

Słowa kluczowe: zasada rozstrzygnięcia wątpliwości na korzyść strony, postępowanie administracyjne, zasady postępowania administracyjnego.

Introduction

The amendment of 2017 to the Code of Administrative Procedure introduced the principle of resolving legal doubts in favour of the citizen. In the article, I will explain what legal functions are performed by the aforementioned principle. Does the normative regulation in the Polish Code of Administrative Procedure give rise to the assignment of a specific function to it? During the analysis, I will take into account the fact that when the amendment came into force, the principle of resolving legal doubts in favour of the citizen was formulated from the constitutional principle of proper legislation and the principle of taking into account the social interest and the legitimate interest of citizens in the Code of Administrative Procedure. A comparison of these regulations (the previous one and the amendment) will show whether the 'new' principle constitutes a broader understanding than that of its predecessor or whether it is a 'step back' from the previous interpretation in Polish law and judicial decisions. Such comparisons and establishing the current function of this principle requires a discussion of its legal form and a comparison with the state at the time of its adoption. It should also be pointed out that the principle itself is of significant importance in administrative law, which encourages the emergence of a so-called interpretative stalemate. The social function of the law is to regulate (and thus consolidate and stabilise) existing socio-economic relations. The stabilisation of the functions of the law should be achieved through clear, unambiguous regulations. This stabilising effect is particularly important in the administrative law. This law is a scattered law, frequently defined negatively as everything that is not already covered within the more established laws (civil law, criminal law, etc.), referred to as the so-called: 'great rest'.³ The administrative law is also a very dynamic area (inflation and atomisation of this law), which is specialised (e.g. technical conditions of development) and complex due to the existence of various hierarchies of the sources of law (constitution, statutes, and secondary legislation, including local laws). The introduction of the principle that legal doubts arising from the regulation of administrative law are to be resolved in favour of the citizen into the Code of Administrative Procedure is therefore to remove doubts characteristic of the 'environment' of the administrative law. When determining the functions of the new principle and its current scope, it should also be noted that

³ Everything that is not justice or legislation is ascribed to the concept of administration.

the decision of the legislator is an act of particularly significant legal importance. The introduction of this principle into the legal system and its normative regulation as a general rule of this proceeding (unlike in other proceedings) take place in a specific proceeding where an authority imperiously, unilaterally regulates the rights, (sometimes constitutional) freedoms, and obligations of citizens.

The study uses primarily the formal and dogmatic method by evaluating regulations, jurisprudence and doctrine views.

A Brief Overview of Administrative Law Functions

The criterion for the division of the functions of the law is based on: the direction of impact, the types of impact and the modes of that impact. The first criterion distinguishes the stabilisation function of the law, and in opposition to it, the function that dynamises the law. Accordingly, they mean the existence of an effect of law in society by perpetuating the existing socio-economic system or, on the contrary, by fostering changes in the areas concerned, even by directly transforming these relations (introducing regulations that create new legal institutions). In turn, due to the types of influence, the protective function can be distinguished, which is to counteract (and eliminate) behaviours that threaten the protected values and encourage actions that implement the values in question while safeguarding the rights and freedoms of the citizen (the so-called 'guarantee function'). The organisational function means to co-ordinate the activities of the structure and participants of the socio-economic systems, to indicate the forms of their co-operation and to determine the required competencies for their activities. On the contrary, due to the manner of influence, one needs to distinguish between the repressive function and the educational function. In the first case, the law is influenced either through a sanction (state coercive measures), which is applied to the addressee during the violation of the norms, or through the development of permanent desired beliefs in the addressees of these norms. The educational function is preventive by nature by spreading public disapproval of violations of norms (committing acts of a certain kind) and consequently reducing the frequency of their occurrence.

Procedural law is of an auxiliary nature to the regulation of substantive administrative law, described as a servant role towards substantive law. The value of the procedural law includes a protective function, modulating function, and instrumental function.⁴ According to B. Adamiak (2019), the protective function of the procedural law is expressed in the introduction of procedural institutions in administrative

⁴ B. Adamiak, J. Borkowski, *Postępowanie administracyjne i sądowoadministracyjne*, Warszawa 2019, p. 32.

procedural law, which are to serve the right of an entity to effective protection on a given course of proceedings, and protection of the rules of law. However, the functions and guarantees of the procedural law include the institutions and rules of the procedural law. They only regulate the basis for the application of the relevant norm of the substantive law and the stage of the decision from the formal side (decision structure).⁵ Furthermore, the introduced principle mainly concerns legal doubts in the application of the substantive administrative law. Nevertheless, its scope may include the procedural norms included in the Code of Administrative Procedure and in non-code provisions of the procedural law.⁶

The Shape and Functions of the *in dubio pro libertate* Principle

By virtue of the amendment of 7 April 2017,⁷ as of 1 June 2017, the *in dubio pro libertate* principle, i.e. the principle of friendly interpretation of provisions, was introduced to the administrative proceedings. The introduction of the new principle was recognised as a good side of the amendment.⁸ Reference should be made to the new regulation of Article 81a of the Code of Administrative Procedure, according to which the irremovable doubts as to the facts are resolved in favour of the party. This regulation has no relation to the principle in question unless it is practical when, in a given case, one is faced with doubts as to the legal norm the facts.⁹ Their convergence results only from the use of identical normative concepts, which may be important when interpreting and determining their meaning.

The Latin phrase *in dubio pro libertate* itself means ‘in case of doubt in favour of freedom (against restrictions)’ or ‘in case of doubt for the benefit of freedom’.

⁵ Ibidem, p. 30; B. Adamiak, *Rozgraniczenie regulacji prawa procesowego administracyjnego od regulacji prawa procesowego sądowego*, [in:] R. Hauser, Z. Niewiadomski, A. Wróbel (eds.), *Prawo procesowe administracyjne. System Prawa Administracyjnego*, Warszawa 2020, pp. 27–29.

⁶ See also: R. Kędziora, *Kodeks postępowania administracyjnego. Komentarz*, 5th ed., Warszawa 2017, System Legalis; Judgment of the SAC of 20 June 2018, II OSK 3200/17, LEX No. 2530088; The limits of the application of Article 7a of the Code of Administrative Procedure – Judgment of VAC in Warsaw of 4 March 2020, IV SA/Wa 2958/19, LEX No. 3034207.

⁷ Act of 7 April 2017 Amending the Code of Administrative Procedure and Certain Other Acts – Journal of Laws of 2017, item 935. – hereinafter referred to as ‘the amendment’.

⁸ J. Zimmermann, *Kilka refleksji o nowelizacji kodeksu postępowania administracyjnego*, “Państwo i Prawo” 2017, 8, p. 21.

⁹ See also: K. Samulska, *Ochrona praw jednostki w świetle zmian kodeksu postępowania administracyjnego z 7 kwietnia 2017 r.*, “Administracja. Teoria-Dydaktyka-Praktyka” 2018, 1, pp. 84–85.

The amendment to the Code of Administrative Procedure resulted in the normative regulation of this principle directly in the Code of Administrative Procedure. As a result, both entities participating in administrative proceedings, public administration bodies and administrative courts have obtained a specific normative basis for its application, without the need to decode it from many provisions, constitutional principles or other general rules of the administrative law.¹⁰

According to the added Article 7a of the Code of Administrative Procedure, if the subject matter of the administrative proceedings is the imposition of an obligation on a party or the limitation or removal of a party's right, and if doubts remain as to the content of the legal norm, those doubts shall be resolved in favour of the party unless the disputed interests of the parties or the interests of third parties directly affected by the outcome of the proceedings preclude it. At the same time, further regulations were introduced to control the application of the principle. It shall also not apply where an important public interest, including important interests of the state, and particularly its security, defence or public order, so requires, and in personal matters of officers and professional soldiers.

However, the question remains at what stage the principle applies. When applying the law every time, doubts arise as to the meaning of the provisions to be interpreted. These doubts, however, are usually removed in the process of interpreting the law through the use of specific methods by the interpreter. Starting with the method, they are related to the language of the legal text or the axiology of the law (systemic interpretation), or to the function of legal institutions or the purpose of specific provisions (purposeful and functional interpretation).¹¹ On the basis of tax law, it was decided that the doubts arising in the process of interpreting tax law provisions, which cannot be removed with the use of basic methods of interpretation (i.e. linguistic, systemic or teleological), justify referring to the principle *in dubio pro tributario* and adopting such an understanding of the interpreted provision a law that is favourable to the taxpayer.¹² The application of provisions and their interpretation should first take place within the possible meaning of the words contained in the provision, and then, after decoding their meaning, it is necessary to combine the linguistic interpretation with constitutional principles and the principles of EU law. In R. Masztalski's opinion, however, it is only after all such interpretations (linguistic, constitutional and EU law principles) that one has a credible

¹⁰ Ł. Folak, *Zasada in dubio pro libertate w prawie administracyjnym i orzecznictwie sądów administracyjnych*. "Internetowy Przegląd Prawniczy" 2017, 4, p. 132.

¹¹ B. Brzeziński, *O wątpliwościach wokół zasady rozstrzygnięcia wątpliwości na korzyść podatnika*, "Przegląd Podatkowy" 2015, 4, p. 17.

¹² Judgment of the SAC of 29 November 2017, II FSK 3280/15.

legal basis to establish any doubts about the legal norm at all, and further to seek a way to remove them by means of non-linguistic – systemic and purposeful – interpretations, and even by using legal reasoning (e.g. uses of analogies).¹³ The *in dubio pro libertate* principle is only applied at the last stage of the process of interpreting the law. This principle is not directive in overriding other rules of interpretation. It plays a complementary role because it applies only when the (grammatical, functional and systemic) rules of interpretation do not give an unambiguous result.¹⁴ In Article 7a § 1 of the Code, it is not about the emergence of any doubt in interpretation, but about cases where – despite the use of different methods of interpretation – there are still at least two equally legitimate ways of understanding a given provision (the so-called ‘interpretation stalemate’).¹⁵ Although there are views that this principle is a rule of interpretation. This is related to civil liberties, which are to be taken into account already in the interpretation process. Consequently, a broad interpretation of the provisions authorising and conferring rights on a citizen is permissible.¹⁶

The principle introduced into the Code of Administrative Procedure undoubtedly has a protective function. It is supposed to protect the values indicated therein (important public interest), but at the same time, it aims at protection not explicitly stated in the content of the provision – the so-called legal security interest. It is generally accepted that legislation must be formulated in a precise, clear and correct manner, which is particularly important in the case of legislation restricting the constitutional rights and freedoms of entities.¹⁷

At the stage of creating legislation by the state authorities, the constitutional principle of correct, decent legislation is binding. An ambiguity of a legal provision

¹³ R. Masztalski, *Glosa* – Judgment of the SAC of 29 November 2017, II FSK 3280/15, “Orzecznictwo Sądów Polskich” 2018, 5, pp. 150–151.

¹⁴ F. Elżanowski, [in:] R. Hauser, M. Wierzbowski (eds.), *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2020. System Legalis and K. Samulska, *Zmiany administracyjnego prawa proceduralnego z perspektywy praktyki i teorii*, [in:] P. Kledzik, K. Samulska, P.J. Suwaj (eds.), *Współdziałanie w administracji*, Gorzów Wielkopolski 2019, p. 93.

¹⁵ Application of the principle or resolving irremovable doubts in favour of a party – Judgment of the VAC in Warsaw of 4 March 2020, IV SA/Wa 2956/19, LEX No. 3034222.

¹⁶ L. Morawski, *Wstęp do prawoznawstwa*, Toruń 2008, p. 169; W. Jakimowicz, *Wykładnia w prawie administracyjnym*, Kraków 2006, p. 541; see also: Judgment of the VAC in Wrocław of 18 September 2018, II SA/Wr 391/18, LEX No. 2571233; cf. Judgment of the CT of 13 December 2017, SK 48/15, LEX No. 2406906, and P. Marek, *Art. 7(a)*, [in:] *Kodeks postępowania administracyjnego. Komentarz aktualizowany* [online], System Informacji Prawnej LEX, <https://sip.lex.pl/#/commentary/587751056/597471> (access: 18.08.2020).

¹⁷ Judgment of the CT of 11 January 2000, K 7/99, OTK 2000, No. 1, item 2, LEX No. 39281; Judgment of the CT of 31 May 1996 K 9/95, OTK ZU No. 1/1996, item 2, p. 57, LEX No. 25517.

and unclear legal regulations cannot be interpreted to the detriment of a citizen.¹⁸ The introduction of the new rule is based on the assumption of state responsibility for any undesirable circumstances derived from legal uncertainty. The behaviour of a party (as the addressee of an obligation) in a state of legal uncertainty must not have negative legal consequences.¹⁹ Thus, resolving legal doubts for the benefit of the citizen means ensuring the stability of the law, which is a condition for implementing the principle of trust in public administrative bodies.²⁰ The essence of such trust is legal certainty, i.e. a set of features of the law ensuring legal security for citizens.²¹ The legal certainty is recognised in the case law of the Court of Justice of the European Union as a general principle of European Union law, falling within the scope of the *acquis communautaire* and included in EU primary law.²²

In recapitulating the function of the principle contained in Article 7a of the Code, it is therefore to increase the protection of a party's rights by reducing the negative effects of the legislator's imprecise formulation of legal provisions. The function of this regulation is to increase protection by eliminating the effects of imprecise legal wording and ensuring legal certainty. The principle becomes a kind of protection against a state of unlawfulness of law, for which the legislator is responsible.²³

The Regulation of the Principle of *in dubio pro libertate*

Legal security – in the light of the principle introduced to the Code of Administrative Procedure – is not an absolute value. The legal security of the entity is in conflict

¹⁸ Judgment of the CT of 18 July 2013, SK 18/09, OTK-A 2013/6/80, LEX No. 1353497.

¹⁹ Judgment of the CT of 13 April 1999, K 36/98, OTK ZU No. 3/1999, item 10, p. 241, LEX No. 36398; Judgment of the VAC in Cracow of 8 October 2018, II SA/Kr 852/18, LEX No. 2567070; Judgment of the CT of 5 January 1999, K 27/98, OTK ZU No. 1/1999, item 1, pp. 7–8, LEX No. 36154; Judgment of the CT of 31 May 1996, K 9/95, OTK ZU No. 1/1996, item 2, p. 57, LEX No. 25517; Projekt ustawy (draft act), www.sejm.gov.pl, see bill No. 1183 – hereinafter referred to as 'the draft'; D. Gregorczyk, *O rozstrzygnięciu wątpliwości prawnych na korzyść strony w postępowaniu administracyjnym*, "Państwo i Prawo" 2019, 8, p. 47; see A. Gomułowicz, R. Koc, S. Kowalik, M. Zirk-Sadowski, *Sędzia sądu administracyjnego a idea prawa*, "Zeszyty Naukowe Sądownictwa Administracyjnego" 2010, 2, p. 30. – In their survey, judges of administrative courts pointed to the poor quality of administrative law as the main dilemma of their work: the incompatibility of the law with common sense, the lack of internal consistency of the legal provisions and their insufficient definition.

²⁰ A. Gomułowicz, *Zasady podatkowe*, [in:] L. Etel (ed.), *Prawo daninowe*, Vol. 3, Warszawa 2010, p. 111.

²¹ Judgment of the CT of 19 March 2007, K 47/05, LEX No. 257769.

²² P. Ostojski, *Zasady uzasadnionych oczekiwań i pewności prawa a zmiany prawodawstwa unijnego i krajowego*, „Ius Novum” 2020, 2, pp. 176–177 and J. Lemańska, *Uzasadnione oczekiwania w perspektywie prawa krajowego i regulacji europejskich*, Warszawa 2016, p. 41.

²³ Resolution of the SAC of 19 December 2016, II FPS 4/16, ONSA WSA 2017/2, item 19, LEX No. 2166635.

with other values. The application of the principle has been limited by a number of specific conditions, i.e. the subject matter of the proceedings (imposition of obligations), the existence of an important public interest and, finally, the existence of a conflict of interests between the various entities. It does not apply when it is necessary to include general clauses and undefined concepts, e.g. security and public order.²⁴ The operation of public administration by issuing administrative decisions usually involves acting in the public interest (*ius publicum*), which, in the light of the above-mentioned reservations (not applicable if there is an important public interest), may render it ineffective.²⁵ H. Knysiak-Sudyka rightly points out that the principle does not apply to proceedings which have as their object the granting of a right to a party, including the abolition or limitation of an obligation.²⁶

The restrictions on the application of the principle raise the question as to why the previous state of regulation did not allow for the application of the principle to a wider extent, and so, would the implementation of the protective function not be more effective? Before the introduction of the *in dubio libertate* principle, the Constitutional Tribunal, administrative courts, and the doctrine of law frequently derived the principle from the constitutional principles and general principles already included in the Code of Administrative Procedure. Recognising that it should be broadly applicable, in particular in situations where public administrations have the power to interfere in the exercise of so-called freedom rights.²⁷ Article 8 § 1 of the Code of Administrative Procedure provides for the principle of inspiring trust, i.e. public administrative bodies conduct the proceedings in a manner which inspires confidence in its participants in the public authority. In turn, in Article 7 of the Code of Administrative Proceedings, *in fine*, it was pointed out that in the course of the procedure, public administration bodies, when clarifying the facts and settling the case, have regard to the social interest and the legitimate interest of citizens. The judgment of the Supreme Administrative Court of 23 September 1982 was pioneering (and representative), whereby it indicated that the powers of an administrative body cannot be interpreted as meaning that, in case of doubt, the case should be resolved to the detriment of the citizen. On the contrary, all doubts should be settled to the benefit of the citizen. If this is not hindered by any important social interest,

²⁴ Also rightly notes Ł. Folak, *op. cit.*, p. 132.

²⁵ Similarly, *ibidem*, pp. 124–126 and J. Zimmermann, *Prawo administracyjne*, Warszawa 2014, pp. 349–350.

²⁶ Rightly notes H. Knysiak-Sudyka, *Ocena regulacji art. 7a, 7b i 8 Kodeksu postępowania administracyjnego – czy ustawodawca stworzył nowe zasady ogólne postępowania administracyjnego?*, "Casus" 2019, 2, pp. 6–11.

²⁷ Resolution of the CT of 6 September 1995, W 20/94, Dz.U. 1995/114/555, LEX No. 25555; Judgment of the CT of 11 January 2012, II GSK 1365/10, LEX No. 1124037; cf. B. Brzeziński, *Wstęp do nauki prawa podatkowego*, Toruń 2001, p. 166 and W. Jakimowicz, *Wykładnia w prawie administracyjnym*, Kraków 2006, p. 541.

it can only serve to increase citizens' trust in the state's bodies (Article 8 of the Code). The above principle also derives from the above-mentioned principle of taking into account (balancing) the social interest and the legitimate interest of citizens (Article 7 of the Code).²⁸ Both principles also had a protective function related to legal security, as they were supposed to unify the practice of applying administrative law and thus fill the gaps in the administrative law.²⁹ The Constitutional Tribunal, on the other hand, held that the principle of *in dubio pro libertate* applies in the case of an irremovable ambiguity of a legal provision, and ordered that the legal norm which takes into account the interest of the citizen be reconstituted from it – Article 2 of the Constitution of the Republic of Poland.³⁰ There are positions in the doctrine that interpretation in accordance with the general principle laid down in Article 7a of the Code of Administrative Procedure still does not call into question the importance of the general principle of taking into account the social interest and the legitimate interest of citizens, which further covers the whole range of substantive law regulations.³¹ The view goes on to state that if Article 7a of the Code does not apply, then – as before – the principle of balancing the public interest with the legitimate interest of citizens (parties) under Article 7 of the Code should be applied. This is a universal directional directive limiting the freedom of administration and does not assume the *a priori* primacy of the public interest.³² In view of the above, it can be said that the *in dubio pro libertate* principle is only a certain modification of the principle of taking into account the social interest and

²⁸ Judgment of the SAC of 8 March 2000, V SA 1482/99, ONSA 2001/3, item 109, LEX No. 48879; Judgment of the SAC of 23 September 1982, II SA 1031/82, ONSA 1982/2, item 91, LEX No. 9701 and Ł. Folak, *op. cit.*, pp. 127–128.

²⁹ J. Smarż, *Zasada in dubio pro libertate w przepisach kodeksu postępowania administracyjnego*, *Studia Prawnicze*, Iss. 4 (212) 2017, p. 59; J.P. Tarno, *Zasady ogólne KPA w orzecznictwie Naczelnego Sądu Administracyjnego*, "Studia Prawno-Ekonomiczne" 1986, 36, p. 63.

³⁰ Judgment of the CT of 18 July 2013, SK 18/09, Journal of Laws item 985, LEX No. 1353497; see also e.g. Judgments of the SAC: of 6 October 2017, I OSK 3209/15, LEX No. 2401642, of 18 October 2017, I OSK 492/17, LEX No. 2440366, of 22 August 2017, II OSK 2695/16, LEX No. 2412725, of 22 August 2017, II OSK 2810/16, LEX No. 2412726.

³¹ Judgment of the SAC of 20 June 2018, II OSK 3200/17, CBOSA and IV SA/Wa 2958/19, LEX No. 2530088; Judgment of the VAC in Warsaw of 4 March 2020, LEX No. 3034207; For the limits of the application of Article 7a of the Code of Administrative Procedure, see B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz*, 16th ed., Warszawa 2019, Nb 3 to Article 7a.

³² D. Gregorczyk, *op. cit.*, pp. 56–60. The author states, however, that since the public interest has proved to be important (qualified) enough to outweigh the principle of friendly interpretation, the legitimate interest of the party, based on the principle of taking into account the non-qualified public interest, should prevail.

the legitimate interest of the party expressed in Article 7 of the Code of Administrative Procedure.³³

It should be clearly stressed that the scope of these two principles, before the introduction of the amendments to the Code of Administrative Procedure in 2017, was not limited in subject matter. Consequently, they were applicable in all cases and not only when they concerned the imposition of an obligation on the addressee of the decision. The principle of taking into account the social interest and the legitimate interest of citizens when settling a matter concerns only discretionary decision, that is, where an administrative authority is empowered to choose one of several possible legal solutions.³⁴ Previous rules were in force even during the existence of the factual interests now referred to in Article 7a of the Code. The exclusion of the principle of *in dubio pro libertate* already takes place when a broadly defined factual interest of one of the entities has been violated, i.e. a condition in which the entity may benefit directly from the acts or omissions of the administration.³⁵ This interest is broadly understood, which limits the application of this principle, and is also a vague and ambiguous concept. This is the interest of third parties whose factual interest will be directly affected by the outcome of the proceedings (in fact, the execution of such an administrative act) and not by the outcome (legal) of the proceedings prior to its issuance.³⁶ Since doubts as to the content of a legal norm are not resolved in favour of a given party, when they object to, *inter alia*, the interests of third parties, this principle, in fact, strengthens the protection of interests in question. This requires separate factual findings beyond the merits of the case, which means that the practice of applying Article 7a of the Code may be limited.³⁷

Also, the term 'conflicting interests of the parties', used in Article 7a of the Code of Administrative Procedure, is unclear. It is to be understood as referring to an objectively existing situation where the outcome of the case in favour of one of the parties will be to the detriment of the interests of another party. The subjective belief of the parties as to the disputed or undisputed nature of their interests is irrelevant in this situation.³⁸ However, the interpretation of certain provisions may also be neutral to the interests of parties and third parties. Then the rule of friendly interpreta-

³³ J. Smarż, op. cit., p. 63.

³⁴ Ibidem, p. 59.

³⁵ G. Ninard, *Procesowa zasada „rozstrzygania na korzyść strony” – art. 7a i art. 81a Kodeksu postępowania administracyjnego*, cz. II, "Nowe Zeszyty Samorządowe" 2018, 4, p. 50 ff.

³⁶ P. Gołaszewski, *Nowelizacja Kodeksu postępowania administracyjnego oraz Prawa o postępowaniu przed sądami administracyjnymi z 7.4.2017 r. (cz. I)*, "Monitor Prawniczy" 2017, 15, pp. 792–793.

³⁷ J. Wegner, *Art. 7(a)*, [in:] *Kodeks postępowania administracyjnego. Komentarz [online]*, Wolters Kluwer Polska, <https://sip.lex.pl/#/commentary/587785799/583239> (access: 18.08.2020).

³⁸ P. Przybysz, op. cit., Art. 7(a).

tion of the regulations may be applied because, as stipulated in Article 7a § 1 of the Code, the application of this principle may be excluded only if there is no conflict of interest between the parties.³⁹

It is argued that the protection of the interests of the other parties, let alone those third parties, should be limited to legitimate interests only, which is not provided for in Article 7a of the Code of Administrative Procedure and which is in axiological conflict with Article 7 of the Code. It cannot be that any factual interest, including an unjust or illegal interest, shall be capable of depriving a party of the benefits of Article 7a of the Code. Adding a 'just' qualifier to the interests of other parties and third parties would also allow for flexibility in the application of this principle, allowing values to be weighed in the assessment of the validity of opposing interests or public order.⁴⁰

Another ambiguous term that hinders the application of the principle is the concept of an important public interest. It is an undefined concept with a variable content, depending on the context (historical, axiological, political, etc.), in which it occurs.⁴¹ The authority should therefore always assess the importance and relevance of a public interest case as an important public interest case. It does not, obviously, exclude the consideration of other categories of non-individual general interests within the scope of the concept of an important public interest, such as, for instance, a 'significant interest' of a local government unit or a local government community. Consequently, the broader the scope of the concept of an important public interest, the broader the scope of the exemption from the principle of the resolution of legal doubts in favour of a party.⁴² Such an exception to the principle of friendly interpretation may lead to a completely different effect from that intended. The notions of an important public interest and important interests of the state are undefined, vague and variable in content. The public interest, as an undefined concept, can therefore take on different meanings in relation to specific administrative matters. The jurisprudence of the administrative courts has accepted that 'the public interest is a directive of conduct which requires that values common to the whole of society or to the local community concerned, such as justice, secu-

³⁹ J. Smarż, op. cit., p. 64.

⁴⁰ D. Gregorczyk, op. cit., pp. 56–60.

⁴¹ For further discussion, see e.g.: J. Chmielewski, *Pojęcie nadrzędnego interesu publicznego w prawie administracyjnym*, Warszawa 2015.

⁴² A. Wróbel, *Art. 7(a)*, [in:] *Komentarz aktualizowany do Kodeksu postępowania administracyjnego [online]*. System Informacji Prawnej LEX, <https://sip.lex.pl/#/commentary/587778410/626715> (access: 18.08.2020).

erty and the citizen's trust in public authorities, be respected.⁴³ An important public interest is a flexible concept that is constantly changing. The public interest also includes many other values, such as openness of public life, state defence, peaceful and safe conduct of assemblies, opposition to fraud and tax fraud, protection of state authority or the stability of the financial system. In such a broad manner, the concept of the public interest should be understood under Article 7a of the Code.⁴⁴

The above-mentioned values are commonly associated with the operation of public administration by issuing administrative decisions and imposing obligations on citizens. After all, the public interest is considered public only when it finds justification for the benefit of the community from the point of view of a specific set of values. It is therefore doubtful whether there is a non-important public interest.⁴⁵

The legal doubts and the most favourable solutions for a party referred to in the 'new' principle of administrative procedure are either objective (there are doubts after an interpretation) or subjective (a party is convinced of the benefit of one and not another way of applying the rule). This requires that it be shown in the justification of the administrative decision that the content of the provision does not give rise to any doubts in this particular case and that the result of a correctly applied interpretation of the provision is different from that indicated by the party.⁴⁶ The assessment of the 'advantage' of a given solution in terms of interpretation always requires the authority to obtain the party's position. What is more beneficial to the party is determined by the subjective feeling of the party.⁴⁷

Conclusions

To sum up, it is correctly argued that as long as the *in dubio pro libertate* principle was a demand of the doctrine and jurisprudence, it did not suffer from such significant limitations and could serve to protect a citizen in a predetermined range of cases. In the current state of law, the administrative authorities can make use of

⁴³ Cf. Judgment of the VAC in Gorzów Wielkopolski of 16 July 2015, I SA/Go 270/15, LEX No. 1936931; Judgment of the SAC of 22 September 2016, I OSK 809/15, LEX No. 2118794.

⁴⁴ J. Smarż, *op. cit.*, p. 65 and the following judgments: Judgment of the CT of 21 June 2005, P 25/02, OTK-A 2005, No. 6, item 65, LEX no 155536; Judgment of the VAC of 6 May 2014, III SA/Wa 201/14, LEX No. 1566201; Judgment of the VAC: of 16 December 2008, II SA/Kr 1065/08, LEX No. 528295 and Judgment of 12 November 2008, II SA/Kr 758/08, Legalis 168917.

⁴⁵ D. Gregorczyk, *op. cit.*, pp. 56–60.

⁴⁶ General Interpretation of the Minister of Finance No. PK4.8022.44.2015 of 29 December 2015.

⁴⁷ G. Ninard, *op. cit.*, p. 35 and Judgment of the VAC in Olsztyn of 21 March 2019, II SA/Ol 163/19, LEX No. 2641415.

Article 7a § 2 point 2 of the Code of Administrative Procedure to justify the omission of this principle and the interpretation to the detriment of a party in a wide range of administrative matters.⁴⁸

Recapitulating further, the *in dubio pro libertate* principle has a protective function as a strengthening of legal certainty and security in administrative proceedings. However, its shape adopted in the Code of Administrative Procedure has led to its significant rationing. In particular, taking into account the application of this principle to date, as well as the recourse to vague terms, such as important public interest, the interest of the parties to the proceedings or the factual interest of the parties concerned in its application. The arrangement of interests during the application of this principle becomes complicated and the legislator has not chosen to protect one of these values (interests). Whenever the application of Article 7a of the Code is at stake, it is the duty of the authority to carry out a complex examination as to whether there is no public interest in the case and whether the outcome of the proceedings will have a direct impact on the legal interests of the parties or on the factual interest of third parties and, further, whether an undefined, variable important public interest does not preclude an interpretation in favour of the party. Moreover, the application of the principle of taking into account the interests referred to in Article 7 of the Code related to similar values as those referred to in the introduced Article 7a of the Code, which raises the question whether there has been any significant qualitative change after the 2017 amendment. After all, as part of the social interest referred to in the previous Article 7 of the Code of Administrative Procedure, one can talk about the national interest, the interest of municipalities, county or another community. The concept of the legitimate interest of citizens should be understood as the interest of an entity, not only as a party to administrative proceedings, but also when it comes to entities having only a factual interest.⁴⁹ This principle concerns the interpretation of the provisions of substantive law. The wide scope of exemptions from this rule is also noteworthy. Appealing by the legislator to the interests of third parties, on which the outcome of the procedure has a direct impact, and to the notion of public interest, state interest and public order, will significantly limit the application of this principle in practice.⁵⁰

⁴⁸ H. Knysiak-Sudyka op. cit., Art. 7(a) and Z. Niewiadomski, K. Jaroszyński, [in:] E. Klat-Górska, A. Mudrecki (eds.), *Kodeks postępowania administracyjnego. Komentarz dla praktyków*, ODDK 2018, p. 42.

⁴⁹ H. Knysiak-Sudyka, op. cit., Art. 7(a).

⁵⁰ W. Piątek, *Kodeks postępowania administracyjnego w świetle ustawy nowelizującej z dnia 7 kwietnia 2017 r. – ogólna charakterystyka zmian*, „Zeszyty Naukowe Sądownictwa Administracyjnego” 2017, 5, p. 24.

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