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On the new approach to the principle of written form in general administrative proceedings (Article 14 CAP)

Keywords: general principles of the proceedings, administrative jurisdiction, principle of written form, application

Summary. One of the consequences of the introduction of the Act of 18 November 2020 on Electronic Delivery of Documents into the Polish legal system was the amendment of the provisions of the Code of Administrative Procedure. Even a cursory analysis of the new regulation indicates that the amendment was not merely an adaptation of the existing wording of the Code to the new solutions. It follows from the scope of the amendment that, as if "by the way", the legislator made significant changes in the scope of the permissible manner of conducting proceedings and handling individual cases. The legislator abandoned the previous manners of handling a case (in writing or as an electronic document) in favour of the "form" of recording the letter (paper or electronic), expanded the catalogue of ways of handling a case in administrative proceedings, and introduced the possibility of handling cases using automatically generated letters. The new way of handling cases is optional ("cases may be handled"), but there are no criteria in the Code for qualifying a particular action (the type of case being handled) for being handled in this manner. Moreover, the possibility of handling cases with the use of automatically generated letters leads to the necessity of redefining the notion of "public administration body" and considering how it may affect the scope of procedural guarantees of a party to the proceedings.

O nowym ujęciu zasady pisemności w ogólnym postępowaniu administracyjnym (art. 14 k.p.a.)

Słowa kluczowe: zasady ogólne postępowania administracyjnego, jurysdykcja administracyjna, zasada pisemności, podanie

Streszczenie. Jedną z konsekwencji wprowadzenia do systemu prawa polskiego ustawy z dnia 18 listopada 2020 r. o doręczeniach elektronicznych była nowelizacja przepisów Kodeksu postępowania administracyjnego. Już pobieżna analiza treści nowej regulacji wskazuje, że zmiana ta nie miała wyłącznie charakteru dostosowującego dotychczasowe brzmienie przepisów kodeksu do nowych rozwiązań. Z zakresu nowelizacji wynika, że niejako „przy okazji" ustawodawca dokonał istotnych zmian w zakresie dopuszczalnego sposobu prowadzenia postępowania i załatwiania spraw indywidualnych. Ustawodawca zrezygnował z dotychczasowych form załatwienia sprawy (formy pisemnej lub formy dokumentu elektronicznego) na rzecz „postaci" utrwalenia pisma (papierowej lub elektronicznej), poszerzył katalog sposobów załatwienia sprawy w postępowaniu administracyjnym oraz wprowadził możliwość załatwiania spraw z wykorzystaniem pism generowanych automatycznie. Nowy sposób załatwiania spraw ma charakter fakultatywny („sprawy mogą być załatwiane"), ale w kodeksie

nie ma żadnych kryteriów kwalifikowania danej czynności (rodzaju rozstrzyganej sprawy) do załatwiania w ten sposób. Ponadto, możliwość załatwiania spraw z wykorzystaniem pism generowanych automatycznie prowadzi do konieczności redefinicji pojęcia „organ administracji publicznej" i rozważenia w jaki sposób może ona wpływać na zakres procesowych gwarancji strony postępowania.

1. Introduction

One of the consequences of the introduction of the Act of 18 November 2020 on Electronic Delivery of Documents[1] into the Polish legal system was the amendment of the provisions of the Code of Administrative Procedure[2]. It consisted, essentially, in adapting the Code solutions to the new system of electronic delivery. The amendments to the CAP covered a total of thirty-six provisions, including Article 14 governing the principle of written form in administrative proceedings[3]. Even a cursory analysis of the new regulation indicates that the amendment was not merely an adaptation of the existing wording to the new solutions. It follows from the scope of the amendment that, as if "by the way", the legislator made significant changes in the scope of the permissible manner of conducting proceedings and handling individual cases. In addition to the repeal of the existing § 1 in Article 14 CAP[4] and the introduction of its equivalent in § 1a, it also provides for new ways of handling cases and regulates the form of letters addressed to public administration bodies. Under the new regulations, cases may be handled using automatically generated letters (§ 1b) and using online services provided by public administration bodies (§ 1c). In addition, letters addressed to public administration bodies may be fixed in paper or electronic form and signed in the same way as letters from public administration bodies (§ 1d). Article 14 § 2 CAP, which defines exceptions to the principle of written form in administrative proceedings, remained unchanged. For this reason, the criticisms raised against the wording of this provision remain fully valid[5]. The subject of this paper is the analysis of the changes introduced in the principle of written form and their influence on the course of administrative proceedings.

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[1] Consolidated text: Journal of Laws of 2022 item 569; hereinafter referred to as the AEDD.

[2] The Act of 14 June 1960 – Code of Administrative Procedure (consolidated text: Journal of Laws of 2021 item 735, as amended; hereinafter referred to as the CAP or the Code).

[3] This term shall be understood as a sequence of procedural steps regulated by the provisions of procedural law taken by the entities involved in the proceedings to resolve an administrative case in the form of an administrative decision, and procedural steps taken in order to verify an administrative decision – B. Adamiak, [in:] B. Adamiak, J. Borkowski, *Postępowanie administracyjne I sądowo administracyjne*, Warszawa 2021, p. 134.

[4] By Article 61(1)(a) AEDD.

[5] K. Kaszubowski, *Zasada ogólna załatwiania spraw w formie pisemnej w ogólnym postępowaniu administracyjnym (Artykul 14 k.p.a.),* „Przedsiębiorczość i Zarządzanie" 2019, vol. 20, is. 3, part 3, pp. 5-16.

2. Principle of written form in general administrative proceedings

The Explanatory Memorandum to the Bill on Electronic Delivery of Documents, in the section on the amendments to the CAP, indicates that the principle of handling cases in written form or in the form of an electronic document "has become largely obsolete"[6] . In its previous wording, Article 14 § 1 CAP stated that: "Cases shall be handled in written form or in the form of an electronic document within the meaning of the provisions of the Act of 17 February 2005 on Informatisation of the Activities of Entities Performing Public Tasks delivered by means of electronic communication".

The inclusion in one provision of "written form", understood as a letter written on paper and signed by hand, and "electronic document", *i.e.* data that may also be a sound or video recording, a database or vector graphics, was regarded by the drafters as one that "not only disrupts the logic of the provision, but also makes it necessary to introduce special requirements for specific types of electronic documents and, consequently, numerous detailed provisions". As the second reason for the amendment, it was pointed out that the current wording of the principle of written form is a factor inhibiting the development of modern online services in public administration. In order to provide such services, electronic identification of the applicant is sufficient and there is no need to use an electronic document within the meaning of Article 3(2) of the Act of 17 February 2005 on Informatisation of the Activities of Entities Performing Public Tasks[7].

According to the new Article 14 § 1a sentence 1 CAP, cases should be conducted and handled in writing recorded in paper or electronic form. This provision upholds the principle of written form as a principle of administrative procedure, while specifying that the written record may be in paper or electronic form. The legislator abolished the distinction hitherto existing in the CAP between the written form and the form of an electronic document as acceptable ways of handling a case. The form of handling the case specified in Article 14 § 1 CAP has been replaced by the manner of recording the letter, which is to avoid doubts whether the case handled in the form of an electronic document is a case handled in writing or perhaps "electronically".

The mandatory nature of the requirement to handle cases in writing is indicated by the phrase "cases shall be conducted and handled in writing recorded in paper or electronic form". The two manners of recording a letter were considered equivalent. However, the Code does not specify the criteria to be adopted in choosing

[6] Sejm of the Republic of Poland, 9th term, paper no. 239 – SIP LEX (accessed on 29 March 2022).

[7] Consolidated text: Journal of Laws of 2021 item 2070, as amended.

one of them. The decisive role in this regard must be attributed to specific provisions. In their absence, the moment when proceedings are instituted should determine how the letter is recorded. If the impulse initiating the proceedings is the party's application recorded in electronic form (see Article 63 § 1 CAP), it should be assumed that other letters in the case should be recorded in this way[8].

Optionally, the legislator has allowed for handling cases by means of automatically generated letters (§ 1b) or online services (§ 1c), orally, by telephone, by means of electronic communication within the meaning of Article 2(5) of the Act of 18 July 2002 on the Provision of Services by Electronic Means[9] or by other means of communication (§ 2). Only in the case of methods of handling cases specified in § 2 of Article 14 CAP, specific prerequisites for their application have been specified. The possibility of handling cases orally, by telephone, by means of electronic communication or by other means of communication may take place if it is in the interest of the party and a specific provision does not preclude it. The substance and relevant reasons for such manner of handling shall be recorded in the minutes or in a note signed by the party.

3. "Handling of cases" within the meaning of Article 14 CAP

It should be emphasised that in the previous wording of Article 14 § 1 CAP, the legislator referred to the concept of "handling cases" which was understood broadly in the science of administrative procedure. It covered all procedural steps taken from the proceeding being initiated up to the moment of its conclusion with an administrative decision, regardless of the instance in which the case is resolved[10]. In Article 14 § 1a CAP, the legislator has explicitly applied the requirement of written form not only to handling cases, but also to conducting them. The term "conducting a case" should be understood as taking all procedural steps in the course of the proceedings, the purpose of which is to examine and resolve the administrative case[11]. Therefore, it can be assumed that the legislator confirmed the

[8] Similarly, in the case of an application filed in writing, it would be appropriate to adopt a requirement that other letters be recorded in "traditional" form. In the case of proceedings initiated *ex officio* (in the absence of specific provisions), it is up to the public administration body to "decide" how to record the letter. The Code does not regulate the permissibility of changing the method of recording letters in the course of the proceedings either.

[9] Consolidated text: Journal of Laws of 2020 item 344, as amended.

[10] Cf. B. Adamiak, [in:] B. Adamiak, J. Borkowski, *Kodeks postępowani aadministracyjnego. Komentarz*, Warszawa 2016, p. 94; R. Kędziora, *Kodeks postępowani aadministracyjnego. Komentarz*, Warszawa 2017, p. 126; A. Wróbel, [in:] A. Wróbel, M. Jaśkowska, *Kodeks postępowania administracyjnego. Komentarz*, Warzawa 2018, p. 186.

[11] Cf. the lexical definition of the term "conduct" (Polish: *prowadzić*) – https://sjp.pwn.pl/szukaj/prowadzić.html (accessed on 30 March 2022).

validity of the views of the doctrine broadly interpreting the scope of the principle of written form. It is only necessary to add that the principle of written form in proceedings applies not only to the case handled under the ordinary mode, but also in extraordinary modes of decision verification and in summary proceedings (Article 163b – Article 163g CAP). Thus, it applies to any proceeding that seeks to handle an individual case resolved by an administrative decision or tacitly. In the latter case, the principle of written form applies only to the "conduct" of the proceedings and not to the handling of the case itself.

It is irrelevant for the application of this principle whether the proceedings are conducted by a public administration body, another state body or another entity appointed by law or under an agreement to handle individual cases (see Articles 1.1 and 1.2 CAP). The essence and importance of this principle also support the assumption that it should apply also in procedures in which individual cases are not resolved by an administrative decision, such as in the procedure for complaints and requests or for issuing certificates, as well as in procedures outside the Code[12] .

In the context of other changes to Article 14 CAP, it should be noted that in § 1b and § 1c, the possibility of using automatically generated letters and online services is limited only to "handling of cases"[13]. In comparison with the wording of § 1a, this may lead to the conclusion that the said manners were reserved only for "handling of cases" in the sense of issuing a decision ending the proceedings. In an extreme case, this would lead to the admissibility of adopting, for example, the automated issuance of decisions within a certain algorithm by an ICT system. Such a solution would be substantially contrary to the procedural guarantees for resolving an administrative case and to the essence of the decision-based application of administrative law norms[14]. As a result, broadening the subject matter of Article 14 § 1a CAP to include "conducting" cases should be regarded as an example of a regulation that does not explain or simplify anything, and may only be a source of additional doubt when interpreting the entire provision[15]. If the legislator had intended to broaden the substantive scope of the principle of written form, it should

[12] Cf. M. Wilbrandt-Gotowicz, *Komentarz do art. 61 ustawy o doręczeniach elektronicznych*, [in:] M. Wilbrandt-Gotowicz (ed.), *Doręczenia elektroniczne. Komentarz*, Lex/el. 2021 (accessed on 4 April 2021).

[13] The same is true for § 2 of Article 14 CAP.

[14] See: W. Dawidowicz, *O stosowaniu prawa administracyjnego*, "Państwo i Prawo" 1993, is. 4, p. 41 et seq. A separate issue, not covered here, is the admissibility of issuing "automated" decisions in repetitive, uncomplicated cases, in which the resolution basically comes down to substituting and calculating certain data, as is the case with, for example, housing benefits or certain family benefit cases.

[15] It is hardly reasonable to assume that the "conducting and handling" construction was introduced in connection with a tacit settlement of a case. This is not indicated in any way in the Explanatory Memorandum to the Bill on Electronic Delivery of Documents in the part concerning the amendment of the CAP. Also, it seems that current interpretation of "handling a case" within

have rather done so with reference to regulations contained in § 1b and § 1c. The limitation of the scope of these provisions to "handling" of cases may suggest that they are not so much about the ways of "conducting" cases in the sense of taking procedural steps, but about "resolving" them in the sense of the final effect, which is an administrative decision. Nor is the situation remedied by assuming that "handling" within the meaning of § 1b and § 1c means "handling and conducting" of cases. In such a case, the result of the grammatical interpretation of the indicated provisions is in conflict with the wording of § 1a. The aforementioned doubts could have been avoided if in § 1b and § 1c, instead of "handling" cases, the legislator had referred to "conducting" them.

4. Possible ways of signing letters by public administration bodies

The substantive scope of the principle of written form has been extended in the final part of Article 14 § 1a CAP by specifying the possible ways of signing letters. Pursuant to Article 14 § 1a sentence 2 and 3, letters in paper form shall be affixed with a handwritten signature, whereas letters in electronic form shall bear a qualified electronic signature, a trusted signature or a personal signature or a qualified electronic seal of a public administration body with the indication in the text of the letter of the person affixing the seal. This regulation is not complete, however, because Article 39^3 § 1 CAP provides that in the case of letters issued by a public administration body in an electronic form using an ICT system, in addition to the above-mentioned methods of signature, it is also possible to affix a letter with an advanced electronic seal[16]. Thus, due to the extension of the substantive scope of the principle of written form by acceptable ways of signing letters issued by a public administration body, for "decoding" of the content of the principle it is necessary to take into account, apart from Article 14 CAP, also Article 39^3 § 1 CAP[17].

The Code does not define the term "handwritten signature", but there should be no doubt that the phrase means the handwriting of the name and surname of the person making the statement on behalf of the public administration body. Letters recorded in electronic form can be affixed with a qualified electronic signature or a trusted signature or a personal signature or a qualified electronic seal

the meaning of Article 14 CAP was sufficient to apply this principle also to conducting those proceedings for which the legislator provided tacit settlement.

[16] See Article 3(26) of Regulation (EU) no. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, OJ EU L. 2014.257.73.

[17] It should only be mentioned with regard to "legislative diligence" that the wording of Article 39^3 § 1 CAP was amended by Article 61(7)(b) AEDD. In the same Act amending the CAP, the legislator in one provision determines the possible ways of signing a letter, and then in the next provision introduces yet another way, not included in the former provision.

of a public administration body with an indication in the text of the letter of the person affixing the seal[18]. This regulation confirms the principle of equivalence of ways of signing (authenticating) a letter, which has been consistently adopted in administrative proceedings.

The indicated catalogue of ways of signing the letter should be considered closed, independent of the ways of recording the letter. This means that other types of signatures not listed in this provision are not possible. The requirement that the "traditional" letter must bear a handwritten signature means that the possibility of signing it by facsimile or affixing it only with a printed (copied) name and surname should be excluded. In such a case, until the handwritten signature is affixed, we will only be dealing with the draft of the letter. Service of such a "letter" on a party or other participant in the proceedings has no legal effect. Only the proper delivery, *i.e.*, in accordance with the requirements set forth in the CAP, of the signed letter means that it is entered into legal circulation and causes specific legal effects, such as *e.g.*, commencement of the period for lodging a legal remedy. The same remarks should be applied to letters recorded in electronic form and not bearing the types of signatures mentioned in Article 14 § 1a CAP and Article 39^3 § 1 CAP or "signed" in a manner not provided for in this regulation[19].

Expanding the substantive scope of the principle of written form in proceedings to include types of acceptable signatures raises questions in the context of other signature indication requirements. In Article 14 § 1a sentence 2 CAP, the legislator used an imprecise expression "letters... shall be affixed with a handwritten signature". However, it is not clear from the wording of this provision who is required to affix a handwritten signature to a letter. The provisions of the Code governing the preparation of typical, most common letters in administrative proceedings provide that the signature is the element that identifies the person acting on behalf of the public administration body. Therefore, the signature with the name and surname should still indicate the official position of the body's employee and include a reference to his/her authorisation to act on behalf of the public administration body[20]. This is the case with a summons (Article 54 § 2 CAP), a decision (Article 107 § 1(8) CAP), a settlement (Article 117 § 1a(4) CAP), a certificate of tacit settlement (Article 122f § 3(7) CAP) or a ruling (Article 124 § 1 CAP). Juxtaposing

[18] For more on the listed types of signatures and their legal character, see A. Wróbel, [in:] M. Jaśkowska, M. Wilbrandt-Gotowicz, A. Wróbel, *Komentarz aktualizowany do Kodeksu postępowania administracyjnego*, Commentary to Article 14, vol. 8-10; Lex/el. 2022 (accessed on 31 March 2022) and B. Kwiatek, *Dokument elektroniczny w ogólnym postępowaniu administracyjnym*, Warszawa 2020, pp. 173-188.

[19] An exception is Article 39^3 § 1 CAP, which provides for admissibility of delivering a printout of a letter issued by a public administration body in an electronic form.

[20] Reference to the authorisation shall cover situations where a letter is signed by a person other than the holder of the office.

the wording of Article 14 § 1a sentences 2 and 3 CAP with the aforementioned provisions, it should be assumed that a letter recorded in paper form should be signed by an employee of the authority with his/her name and surname and official position. However, surprisingly enough, the legislator did not decide to transfer the requirement to indicate the official position from the cited provisions to the new Article 14 § 1a CAP, given that this provision was amended in terms of the types of admissible signatures. The repetition of the same regulation (regarding the requirement to indicate the official position of the signatory) in several different provisions is contrary to the principles of correct legislation[21].

5. Letters addressed to public administration bodies

The presented solutions concerned the direction of communication "public administration body" – "party (other participants in the proceedings)". Article 14 § 1d CAP, concerning letters sent to public administration bodies, was intended as a complementary regulation. This provision states that: "Letters addressed to public administration bodies may be made in writing recorded in paper or electronic form. The provisions of § 1a and § 1b shall apply to affixing them with signatures and seals".

The application remained the expression of will of a party (participant in the proceedings), the minimum formal requirements of which are set forth in the CAP. Pursuant to Article 63 § 2 and § 3 of the Code, an application should include at least: an indication of the person from whom it originates, his/her address, request, and signature, and meet other requirements set forth in specific provisions. An application submitted in writing or orally to the minutes should be signed by the applicant and the employee taking the minutes. Additional reservations concern applications submitted by a person who cannot or is not able to affix a signature, and applications submitted to an electronic delivery address (Article 63 § 3a CAP). In the first case, the application or the minutes are signed for him/her by another person authorised by him/her, making a note about it next to the signature, in the second case – if separate regulations require filing applications according to a specific template, the application should contain data in the format specified in the application template. In the amendment, the legislator also changed the wording of Article 63 § 1 CAP, indicating that applications recorded in electronic form shall be filed to an electronic delivery address. It also unambiguously specified that ap-

[21] See § 4(1) of the Regulation of the Prime Minister of 20 June 2002 on "Principles of Legislative Technique" (consolidated text: Journal of Laws of 2019 item 506, as amended; hereinafter referred to as the RPLT), which prohibits repetition in an act of provisions contained in other acts. Since the prohibition applies to repetition of provisions contained in other acts, it is all the more inappropriate to repeat provisions contained in the same act.

plications submitted to the e-mail address of a public administration body shall not be examined[22]. The purpose of the above amendment, apart from the adjustment of the provisions of the Code to the Act on Electronic Delivery of Documents, was to specify the legal consequences of filing an application in a manner contrary to the wording of Article 63 § 1 CAP, in particular to the e-mail address of the public administration body[23]. In the jurisprudence of the administrative courts[24] the position was presented that in such a case the procedure provided for in Article 64 § 2 CAP should be applied, which met with consistent criticism in the doctrine[25]. This issue has been a momentous practical problem that has not been resolved by the jurisprudence of the administrative courts[26]. The above amendment significantly broadens the scope of procedural situations in which leaving an application unexamined will apply. Both in the doctrine of administrative proceedings[27] and in the prevailing part of the jurisprudence[28] there are no doubts that leaving the application unexamined concerns only the event of failure to remedy formal deficiencies in the application lodged. Formal deficiencies are other elements required by law to structure the content of the application that are missing from the filed document. If an application with deficiencies is submitted, the public administration body is obliged to request the applicant to complete it by setting a deadline for this procedural action (Article 64 § 2 CAP). An exception to this shall be where the applicant fails to provide his/her address and it is not possible

[22] It is stipulated that separate regulations may provide otherwise in this respect.

[23] Until the amendment, the regulations required an "electronic" application to be submitted to an electronic mailbox of a public administration body.

[24] See *e.g.*: judgment by the Supreme Administrative Court of 23 February 2018, II OSK 1901/17, Lex no. 2450427; judgment of the Voivodeship Administrative Court in Warsaw of 11 June 2021, VII SA/Wa 147/21, Lex no. 3193756; judgment of the Voivodeship Administrative Court in Białystok of 7 May 2020, II SA/Bk 313/20, Lex no. 2983916.

[25] M. Jachowicz, M. Kotulski, *Forma dokumentu elektronicznego w działalności administracji publicznej*, Warszawa 2012, p. 122; G. Sibiga, *Zastosowanie środków komunikacji elektronicznej w postępowaniach w sprawach skarg, wniosków i petycji*, [in:] M. Błachucki, G. Sibiga (eds.), *Skargi, wnioski i petycje – powszechne środki ochrony prawnej*, Wrocław 2017, p. 107; K. Kaszubowski, *Wszczęcie postępowania administracyjnego na wniosek w czasie stanu epidemii*, [in:] J. H. Szlachetko, A. Bochentyn (eds.), *Cyfrowa czy analogowa? Funkcjonowanie administracji w stanie kryzysu*, Pelplin 2021, pp. 308-310.

[26] Cf. judgment of the Supreme Administrative Court of 14 July 2021, III OSK 3660/21, Lex no. 3226905; judgment of the Voivodeship Administrative Court in Warsaw of 28 September 2021, I SA/Wa 2703/20, Lex no. 3310194.

[27] B. Adamiak, [in:] B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego*..., pp. 367-368; R. Kędziora, *Kodeks postępowania administracyjnego*, p. 408.

[28] Judgment of the Supreme Administrative Court of 22 February 2021, II GSK 2240/21, Lex No. 3325419; judgment of the Voivodeship Administrative Court in Gorzów Wielkopolski of 29 December 2021, II SAB/Go 208/21, Lex No. 3287101; judgment of the Voivodeship Administrative Court in Białystok of 23 September 2021, II SAB/Bk 99/21, Lex No. 3247752; judgment of the Voivodeship Administrative Court in Gliwice of 17 September 2021, II SA/Gl 652/21, Lex No. 3232790.

for the public administration body to determine that address on the basis of the data in its possession. If the applicant cannot be contacted, the application will not be examined. Failure to complete formal deficiencies has the same effect. No provision of the CAP has so far allowed leaving an application unexamined for any reason other than failure to complete formal deficiencies. In the current wording of Article 63 § 1 CAP, leaving the application unexamined will be possible also in the situation when the application is filed in a manner inconsistent with the provisions of the Code. In other words, the scope of application of the institution of leaving the application unexamined will include, apart from failure to complete formal deficiencies, also filing of the application in a manner contrary to the procedure set out in the CAP. The question may be posed whether the legal effect of infringement of the mode of filing the application as indicated in Article 63 § 1 sentence 3 CAP, according to its literal wording, concerns only filing the application to an e-mail address or other modes of filing the application not provided for in the Code (*e.g.*, on a DVD or on a memory stick). The above amendment to the Code is an example of interference by the legislator that is counterproductive. It should be assumed that the intention of the legislator was to solve the problem of filing an application to an e-mail address, and not to construct a basis for new interpretational doubts.

It should be emphasised that in the hitherto binding wording of the CAP, letters addressed to public administration bodies took the form of an application within the meaning of Article 63 § 1 CAP. Juxtaposition of the content of Article 14 § 1d CAP and Article 63 § 1 CAP leads to the conclusion that there are two types of "pleadings" to public administration bodies conducting the proceedings: letters and applications. This conclusion alone calls into question the rationale for adding a new provision. These doubts are exacerbated by the wording of Article 14 § 1d of the Code. It says that "letters addressed to public administration bodies may be made in writing". This kind of expression is an example of a logical fallacy known as a vicious circle (Latin *circulus in definendo*)[29]. Moreover, contrary to the wording of § 10 of the RPLT, an interpretive distinction of different referents is required in the same provision with respect to the same name. In the initial part of the sentence, a "letter" means a medium containing a statement of will or knowledge of the entity directing it to a public administration body. As used further in this sentence, a "letter" is a sequence of alphabetical characters fixed in paper or electronic form.

The presented action of the legislator is in obvious contradiction to one of the basic principles of law making, which prohibits giving different meanings to identical expressions. As it is recognised in legal theory, "identical expressions within the same legal act cannot be given different meanings unless there are indications

[29] O. Nawrot, *Wprowadzenie do logiki dla prawników*, Warszawa 2007, p. 88.

in that act that allow for such different understandings of the same expressions of particular norms"[30]. It should be emphasised here that the cited prohibition was formulated with reference to the same legal act, which means that it should apply even more to the same article in the legal text.

Similarly, as in the case of letters from bodies conducting proceedings (Article 14 § 1a CAP), the legislator did not specify what circumstances should determine the choice of the method of recording the "letter" submitted to the body. It must therefore be assumed that, unless a specific regulation provides otherwise, this choice is left to the pleader. Moreover, the optionality of submitting letters (essentially, these are applications within the meaning of Article 63 § 1 CAP) drafted "in writing" suggests that some other way of drafting letters is also permissible. Since letters addressed to public administration bodies may be made in writing, they may also be drafted in other ways. It should be assumed that in this case it is not so much about drafting letters as about the manner they are recorded (paper or electronic form).

The general wording indicating that letters addressed to administrative authorities should be the basis for determining the entities that the new provision should be applied to. In the absence of any indication, it should be assumed that it applies to all letters, regardless of the category of entities (participants) in the proceedings. Therefore, it should concern the parties, entities with the rights of a party, and any other participants to whom the provisions of the Code confer a procedural role in the proceedings (*e.g.*, a person upon whom a disciplinary sanction was imposed). In this respect, the term "letter" within the meaning of Article 14 § 1d CAP corresponds to the term "application" in Article 63 § 1 CAP. How such "letters" would be affixed with a qualified electronic seal of a public administrative body is a separate issue. This possibility is clearly indicated in sentence 2 in Article 14 § 1d CAP, which provides that "the provisions of § 1a and § 1b shall apply" to the letters addressed to public administration bodies being affixed with signatures and seals. Both provisions indicate that a letter may be affixed with a qualified seal of a public administration body. According to the rules of interpretation, the absence of an order for the appropriate application of the provisions of § 1a and § 1b means that these provisions shall apply directly, which *de facto* means that their application is (partially) impossible.

As there are no restrictions on entities which are referred to in the provision on "letters addressed to public administration bodies", it shall be understood that "letters" addressed by other public administration bodies to the body conducting the proceedings are also covered by it. This means that if the public administra-

[30] J. Wróblewski, [in:] W. Lang, J. Wróblewski, S. Zawadzki, *Teoria państwa i prawa*, Warszawa 1979, p. 401.

tion body that conducts proceedings in the main case applies to another public administration body for a position under Article 106 CAP, the letter containing the response should be recorded in paper or electronic form. It follows from the cited provision that the choice of the form in which a public administration body taking a position should express it is left to the discretion of that body ("letters... may be made in writing"). It remains an open question whether it can do so using other statutory solutions, *e.g.*, by telephone or other means of communication within the meaning of Article 14 § 2 CAP. Assuming that this is permissible leads to another procedural problem. In case of the cooperation procedure, Article 106 § 5 CAP provides for the issuance of a ruling, which excludes the possibility of handling the case in any of the ways indicated in the said provision.

In view of the reservations as to the drafting of Article 14 § 1d CAP and repeated (to some extent) regulation of the issue of the manner of communication between the party (participant in the proceedings) and the public administration body, the addition of this provision should be regarded as unnecessary. It is an example of a kind of "over-regulation", whereby further provisions are added to the Code to deal with the issues that have already been regulated. The legitimacy of this legislative practice is also undermined by the fact that these provisions are in the conflict with other provisions of the Code and only increase its inconsistency.

6. New ways of handling cases

By the amendment of the Code, two new ways of handling cases have been added: using automatically generated letters (§ 1b) and using online services (§ 1c). In both provisions, the legislator used the phrase "cases may be handled", which supports the conclusion that both ways are optional. However, no criteria were specified for choosing between the indicated manners of handling cases. Juxtaposition of these provisions with Article 14 § 1a CAP raises the question whether it is also possible to "conduct cases" using automatically generated letters and online services. This is because, in contrast to the indicated provision of § 1a, § 1b and § 1c refer only to "handling of cases" but not to "conducting" them. In an extreme case, this would lead to the admissibility of adopting, for example, the automated issuance of decisions within a certain algorithm by an ICT system. Such a solution would be substantially contrary to the procedural guarantees for resolving an administrative case and to the essence of the decision-based application of administrative law norms[31]. A lexical interpretation precludes the assumption that cases may also be "conducted" in the manner indicated in these provisions. On the other hand,

[31] See: W. Dawidowicz, *op. cit.*, is. 4, p.41.

however, it would be completely illogical to be able to handle a case using automatically generated letters or online services without being able to "conduct" it that way. For this reason, the result of the lexical interpretation should be rejected, and the meaning of this provision should be adopted using the results of the functional interpretation. Therefore, contrary to the literal wording of these provisions, it will be possible to both conduct and handle cases using the methods indicated in § 1b and 1c of the discussed provision. Thus, the legislator allowed for the possibility of resolving a case by means of an automatically generated letter, and thus considered permissible the situation in which the resolution of the case was left to the ICT system. The correctness of such a decision in terms of procedural rules remains a separate issue[32] . It should also be emphasised that in contrast to Article 14 § 2 CAP, which also provides for the optionality of other ways of handling the case than in writing, with regard to the new regulations no prerequisites for their application have been indicated.

As a result, broadening the subject matter of Article 14 § 1a CAP to include "conducting" cases should be regarded as an example of a regulation that does not explain or simplify anything, and may only be a source of additional doubt when interpreting the entire provision[33]. If the legislator had intended to broaden the substantive scope of the principle of written form, it should have rather done so with reference to regulations contained in § 1b and § 1c. The limitation of the scope of these provisions to "handling" of cases may suggest that they are not so much about the ways of "conducting" cases in the sense of taking procedural steps, but about "resolving" them in the sense of the final effect, which is an administrative decision. Nor is the situation remedied by assuming that "handling" within the meaning of § 1b and § 1c means "handling and conducting" of cases. In such a case, the result of the grammatical interpretation of the indicated provisions is in conflict with the wording of § 1a. The aforementioned doubts could have been avoided if in § 1b and § 1c, instead of "handling" cases, the legislator had referred to "conducting" them.

The evaluation of this solution must be decidedly negative. It means that in each case, the public administration body conducting the proceedings will decide on the admissibility of handling cases in an automated manner or via online ser-

[32] See M. Wilbrandt-Gotowicz, *Komentarz do art. 61 ustawy o doręczeniach elektronicznych*, [in:] M. Wilbrandt-Gotowicz (ed.), *Doręczenia elektroniczne. Komentarz*, Lex/el. 2021 (accessed on 4 April 2021).

[33] It is hardly reasonable to assume that the "conducting and handling" construction was introduced in connection with a tacit settlement of a case. This is not indicated in any way in the Explanatory Memorandum to the Bill on Electronic Delivery of Documents in the part concerning the amendment of the CAP. Also, it seems that current interpretation of "handling a case" within the meaning of Article 14 CAP was sufficient to apply this principle also to conducting those proceedings for which the legislator provided tacit settlement.

vices. Moreover, the choice of the manner of handling cases is left entirely to the discretion of the public administration body conducting the proceedings, which is not limited by any guidelines. For incomprehensible reasons, the legislator did not decide to make the application of the new methods of handling the case dependent on, for example, the interest of the party and absence of conflict with the law, as in § 2. The lack of any guidance on the permissibility of the discussed methods of handling cases will lead to situations where the same type of case will be handled in a "traditional" manner, using online services or in an automated manner. It does not seem, however, that the admissibility of the application of the automated manner way of handling cases[34] can depend only on technical and organisational aspects.

Undoubtedly, the solution to this problem would be to assume that it is the legislator in the substantive law that determines what types of cases can be handled in an automated manner[35]. However, the fact that such solutions have so far appeared in some specific provisions indicates that "the introduction of automated solutions in Polish legislation is not conceptually prepared"[36] . The discussed amendment to the CAP confirms this conclusion.

The Code does not specify what an automatically generated letter consists of (how it is created). It has been indicated in the literature that automation involves the replacement of human labour entirely or largely by machine (application) labour[37]. Referring to the semantic rules of common language, it should be assumed that it concerns a self-acting operation, performed or produced without human consciousness or will, by means of an appropriate device[38]. This means that the content of such a letter is created without the participation of an employee of the public administration body through the use of a specific algorithm. A consequence of the automated way in which letters are created is that their content is recorded in electronic form. Pursuant to Article 14 § 1a CAP, a letter recorded in electronic form shall be affixed with one of the following – in one of the ways prescribed in that provision: a qualified electronic signature, a trusted signature or a personal signature or a qualified electronic seal of the public administration body with an indication in the text of the letter of the person affixing the seal. However, § 1b of this provision contains a special regulation, according to which automatically generated letters should bear a qualified electronic seal of the public administration body. It should be emphasised that a qualified electronic seal

[34] It is also true for handling cases using online services.

[35] This was pointed out by G. Sibiga, *Czy algorytm może zastąpić człowieka w administracji*, „Rzeczpospolita" of 1 July 2021, no. 13; *Opinie. Przesunięcie zmian w KPA na 5.10.2021 r. nie rozwiązuje wątpliwości prawnych i dalszego prowadzenia postępowania administracyjnego na podstawie przepisów przejściowych*, Legalis C.H. BECK (accessed on 24 March 2022).

[36] G. Sibiga, *Stosowanie technik…*, p. 44.

[37] *Ibidem,* p. 36.

[38] sjp.pwn.pl/szukaj/automatycznie/html (accessed on 22 March 2022).

ensures data integrity and authenticity of the origin of the data which it is linked to[39]. In this case, the entire process of creating a letter, including the method of its signature, is automated. Thus, an automatically generated letter is the only type of a letter recorded in electronic form, which can only bear a qualified electronic seal of a public administration body. The limitation of ways to "authenticate" the letter adopted in this provision excludes the possibility to affix it with a qualified electronic signature, a trusted signature, or a personal signature. Justification for this solution should be sought in the essence of an automatically generated letter, and therefore in the fact that it is created (as a rule) without the participation of an employee of the administrative body. Requiring it to be signed, even with the use of said IT tools would undermine the very logic of such a letter. It should be emphasised that the lack of a requirement to affix an automatically generated letter with signatures and seals is a logical consequence of Article 14 § 1b sentence 1 CAP, therefore the confirmation of this *expresiss verbis* in the second sentence of this provision should be assessed negatively.

The presented solution significantly affects one of the most important legal constructions for the proceedings, or more broadly for the administrative law, *i.e.*, the construction of the "public administration body"[40]. It is the public administration body that conducts the proceedings, takes procedural actions, and resolves the case. The person acting on behalf of the public administration body is the holder of the office or an authorised employee, which is confirmed by his/her signature indicating his/her name and official position. In the case of automatically generated letters reflecting procedural actions, a doubt may arise as to "who is acting" – whether still a public administration body or already a "machine".

7. Conclusion

The amendment of Article 14 CAP made pursuant to Article 61(1)(a) AEDDis not directly related to the subject of electronic delivery. The legislator abandoned the previous manners of handling a case (in writing or as an electronic document) in favour of the "form" of recording the letter (paper or electronic) and expanded the catalogue of ways of handling a case in administrative proceedings. A consequence of the adopted solutions was to determine the ways of signing letters recorded in electronic form. The changes introduced were primarily aimed at streamlining and

[39] Article 35(2) of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93 EC, OJ EU L. 2014.257.73.

[40] See: M. Stahl, *Zagadnienia ogólne,* [in:] R. Hauser, Z. Niewiadomski, A. Wróbel (eds.), *System Prawa Administracyjnego. Podmioty administrujące*, Warszawa 2011, vol. 6, pp. 61-77; J. Zimmermann, *Prawo administracyjne*, Warszawa 2018, pp. 179-198.

unifying the wording of the provisions of the CAP. An important "novelty" in this respect is the possibility of handling cases with the use of automatically generated letters, which has already been referred to as "the principle of autonomous operation of an ICT system in proceedings"[41]. The rule is optional ("cases may be handled"), but there are no criteria in the Code for qualifying a particular action (the type of case being handled) for being handled in this manner. Moreover, the possibility of handling cases with the use of automatically generated letters leads to the necessity of redefining the notion of "public administration body" and considering how it may affect the scope of procedural guarantees of a party to the proceedings. As the analysis of this regulation shows, its introduction was not preceded by adequate deliberation and assessment of its impact on the current wording of the regulations governing administrative proceedings. As a result, any public administration body may use a back door excuse to qualify each handled case to the automated mode. The lack of unambiguous regulation may justify the assumption that in addition to performing all procedural actions "with the use of automatically generated letters" it is also possible to issue a decision ending the proceedings in this manner. However, the legislator did not indicate how the public administration bodies should resolve the conflict between the automated handling of cases and the general principles of proceedings, including the principle of active participation of a party (Article 10 § 1 CAP). This justifies the conclusion that the current construction of the principle of written form and the procedural consequences that are associated with it should become the subject of the next amendment of the CAP.

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